No. S212302
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. c-36, AS AMENDED

AND

IN THE MATTER OF ENCOREFX INC.

PETITIONER

APPLICATION RECORD
(Conversion Order)

Hearing Date: March 18, 2021

Counsel for Ernst & Young Inc.

MLT AIKINS LLP
Barristers and Solicitors
Suite 2600, 1066 West Hastings Street
Vancouver, BC V6E 3X1
Attention: William E.J. Skelly
Email: WSkelly@mltaikins.com
Telephone: 604.608.4597

Date of Application: March 18, 2021
Virtual hearing by way of MS Teams
Vancouver Law Courts
Before The Honourable Madam Justice Fitzpatrick
Time of Application: 10:00 a.m.
Estimated Time: 1 day
Application Record of Ernst & Young Inc.

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TAB NO.	DOCUMENT	DATED
1.	Petition to the Court	March 11, 2021
2.	Notice of Hearing	March 11, 2021
3.	Consent to Act	March 9, 2021
4.	Pre-Filing Report of Ernst & Young Inc., proposed Monitor of EncoreFX Inc.	March 10, 2021
5.	Draft Conversion Order	N/A
6.	Blackline Conversion Order to Template Model Initial Order	N/A

S=212302

No. ___________
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

AND

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. c-36, AS AMENDED

AND

IN THE MATTER OF ENCOREFX INC.

PETITIONER

PETITION TO THE COURT

NAME OF PETITIONER: EncoreFX Inc. ("**EncoreFX**"), by its Trustee in Bankruptcy, Ernst & Young Inc. ("**EY**" or the "**Trustee**") and not in its personal capacity.

ON NOTICE TO: Those parties set out in **Schedule "A"** attached hereof.

This proceeding has been started by the Petitioner for the relief set out in Part 1 below.

If you intend to respond to this petition, you or your lawyer must

(a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and

(b) serve on the Petitioner

(i) 2 copies of the filed response to petition, and

(ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claims, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time For Response To Petition

A response to petition must be filed and served on the Petitioner,

(a) if you were served with the petition anywhere in Canada, within 21 days after that service,
(b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
(c) if you were served with the petition anywhere else, within 49 days after that service, or
(d) if the time for response has been set by order of the court, within that time.

(1) The address of the registry is:

The Law Courts
800 Smithe Street, Vancouver, BC V6Z 2E1

(2) The ADDRESS FOR SERVICE of the Petitioner is:

c/o MLT AIKINS LLP
Barristers and Solicitors
Suite 2600
1066 West Hastings Street
Vancouver, BC V6E 3X1
Attention: William E.J. Skelly

Fax number for service of the Petitioner: (604) 682-7737

Email address for service of the Petitioner: wskelly@mltaikins.com

(3) The name and office address of the Petitioner's lawyer is:

Same as address for service.

CLAIM OF THE PETITIONER

Part 1: ORDERS SOUGHT

1. The Trustee seeks an order substantially in the form of the order attached as **Schedule "B"** hereto (the "**Conversion Order**") for certain relief, including, but not limited to:

a. an order abridging the time for service of this Petition and the Petition Record and dispensing with further service thereof other than in accordance with the Conversion Order;

b. a declaration that EncoreFX is a corporation to which the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") applies;

c. a declaration that the bankruptcy proceedings (the "**BIA Proceedings**") commenced by EncoreFX under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), by the filing of a voluntary assignment into bankruptcy on March 30, 2020 (the "**Bankruptcy Assignment**"), and the appointment of Ernst & Young Inc. ("**EY**") as the Trustee in Bankruptcy (the "**Trustee**"), are continued under the CCAA and that the BIA Proceedings are stayed (the "**Stay**") during the pendency of these CCAA Proceedings (the "**CCAA Proceedings**"), except that the Stay shall not apply to any proceedings commenced by the Trustee, including, inter alia, the following matters:

    i. any extant NOCCs (as defined below), which the Proposed Monitor shall be entitled to continue to prosecute, and for which:

        1. EY, in its capacity as proposed Monitor of EncoreFX, is authorised and directed to file amended NOCCs wherein the sole amendment shall be to change the capacity in which EY has sued the defendants from its capacity as Trustee to its capacity as Monitor of EncoreFX (the "**Amended NOCCs**"); and

        2. the Registrar of the Court is directed to file the Conversion Order in all of the NOCC actions identified by EY and to file each Amended NOCC in its respective NOCC action;

    ii. any Property Claims (as defined below), including any appeals thereof;

    iii. any EFT Reversals (as defined below), including any appeals thereof;

iv. any claim advanced by EY in respect of the AgraCity Double Dip Amount (as defined below);

v. the claim in respect of the Australian Subsidiary (as defined below) in its insolvency proceedings in Australia ("**Voluntary Administration**"); and

vi. the Mediation (as defined below).

d. a declaration that all orders pronounced by the Honourable Madam Justice Fitzpatrick in the BIA Proceedings (the "**Bankruptcy Orders**") apply to and are continued under these CCAA Proceedings, except as amended by the terms of the Conversion Order;

e. an order authorizing EY to file with the Court a plan, or plans, of compromise and arrangement (the "**Plan**");

f. an order declaring that EY shall maintain possession and control of EncoreFX's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"), and continue to carry on EncoreFX's business (the "**Business**") in a manner consistent with the preservation of the Business and the Property;

g. an order authorizing EY to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, "**Assistants**") currently retained or employed by the Trustee or EncoreFX, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order;

h. an order staying all proceedings and remedies taken or that might be taken in respect of EncoreFX or EY or any of the Business or Property, except as otherwise set forth in the Conversion Order or otherwise permitted by law, up to and including March 28, 2021 (the "**Stay Period**");

i. an order appointing EY as the monitor (the "**Monitor**") in the CCAA Proceedings;

j. an order authorising the creation and composition of an oversight committee, which shall be composed of one representative of each of Gustavson Capital Corporation and Mr. Andreas Wrede, and the Monitor (the "**Oversight Committee**"), and whose purpose shall be, *inter alia*, to review and approve settlements in respect of the OTM Claims (as defined below), Claims regarding EFT Reversals (as defined below), Property Claims (as defined below), and generally deal with the continued realization of the assets of EncoreFX;

k. an order directing the bankruptcy filing clerk to file the Conversion Order in the existing BIA Proceedings;

l. an order prescribing the manner of service of the information prescribed under the CCAA; and

m. such further relief as the circumstances may require and as this Honourable Court deems appropriate.

Part 2: FACTUAL BASIS

Introduction and Background

1. EncoreFX is a Federal Corporation duly incorporated on September 15, 2014 under the *Canada Business Corporations Act*. EncoreFX (Australia) Pty Ltd., and EncoreFX (NZ) Limited are wholly owned foreign subsidiaries of EncoreFX. EncoreFX Ltd. is a United States subsidiary of EncoreFX, incorporated in Washington State in the United States.

2. EncoreFX began operating with its head office in Victoria, British Columbia. In EncoreFX's first few years, EncoreFX opened branch offices in the cities of Vancouver, Calgary, Edmonton, Saskatoon, Regina, Winnipeg, Toronto, Ottawa, Kitchener and Mississauga. EncoreFX employed approximately 150 personnel as at the date of the Bankruptcy Assignment.

3. EncoreFX provided foreign exchange ("**FX**") risk management services and cross-border payment solutions. EncoreFX was in the business of providing foreign FX risk management and cross-border payment services predominantly to small- and medium-size enterprises that import or export products to and from foreign markets and base their pricing on foreign currencies.

4. Beginning in March 2020, global FX markets began to observe atypical levels of volatility, largely due to impacts of COVID-19 on the global economy. In particular, the US Dollar strengthened significantly compared to some of the world's most traded currencies, including Canadian, Australian, and New Zealand dollars, in which a majority of EncoreFX contracts were booked.

5. Due to this extreme market volatility, a number of EncoreFX's clients, and clients of EncoreFX's subsidiaries, were out-the-money ("**OTM**") on their transactions. An OTM position means 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.

6. While EncoreFX attempted to work with the clients whose positions were OTM ("**OTM Clients**"), the OTM Clients were facing liquidity issues themselves that also arose as a result of the COVID-19 pandemic.

7. Under a number of standard International Swaps and Derivatives Association, Inc. agreements (the "**ISDA Agreements**") with EncoreFX's liquidity providers, Goldman Sachs and Deutsche Bank (the "**Liquidity Providers**"), EncoreFX was required to pay significant additional margin to cover the value of the OTM contracts.

8. In the days leading up to EncoreFX's Bankruptcy Assignment, EncoreFX's management determined that even if EncoreFX could collect on all OTM amounts owing, there was no short-term liquidity available for EncoreFX to meet its obligations.

9. On Sunday, March 29, 2020, prior to the opening of trading on Monday, March 30, 2020, EncoreFX suspended all trading.

10. On March 30, 2020, at 9:47am PST (the "**Bankruptcy Date**"), EncoreFX filed an assignment into bankruptcy. EY consented to act as the Trustee in the estate of EncoreFX.

11. Pursuant to Section 69.3(1) of the BIA, a stay of proceedings (the "**Stay of Proceedings**") has been in effect with respect to EncoreFX since the Bankruptcy Date.

12. EncoreFX (Australia) Pty Ltd. is a subsidiary of EncoreFX (the "**Australian Subsidiary**"). The Subsidiary was placed into Voluntary Administration in Australia. EncoreFX has filed a proof of claim in the Voluntary Administration of the Subsidiary in an amount totalling CAD $2,169,836 pursuant to intercompany distribution agreement which resulted in obligations owed by the Subsidiary to EncoreFX (the "**Proof of Claim to Australian Subsidiary**").

Closeouts with Liquidity Providers

13. Before the Bankruptcy Date, EncoreFX had posted security, or "margin", with its Liquidity Providers to cover the credit and market risk the Liquidity Providers required as counterparties to EncoreFX in EncoreFX's derivative contracts.

14. EncoreFX also booked hedging transactions with the Australia New Zealand Banking Group ("**ANZ**"), but did not post margin.

15. In the week following the Bankruptcy Date, the Liquidity Providers notified EncoreFX they were terminating, and netting all hedging transactions under their agreements with EncoreFX pursuant to the ISDA Agreements.

16. Goldman Sachs calculated an amount due and payable to EncoreFX of $3,946,765.00 USD, or approximately $5,500,000.00 CAD (the "**GS Closeout Amount**"). The GS Closeout Amount was comprised of a return of the posted margin, net of the gains and losses on the transactions held by Goldman Sachs.

17. On April 9, 2020, Goldman Sachs wired the GS Closeout Amount to MLT Aikins LLP ("**MLT Aikins**") in trust, and MLT Aikins thereafter forwarded the GS Closeout Amount to the Trustee.

18. In addition to collecting the GS Closeout Amount, the Trustee also collected collateral posted with two other liquidity providers, resulting in a total recovery of the collateral posted with liquidity providers totalling CAD $12,678,401.

Employees

19. Following the Bankruptcy Date, the Trustee consulted with senior management of EncoreFX and retained 57 employees (the "**Retained Employees**") to assist the Trustee in its efforts to wind-down or sell all or a portion of EncoreFX. The majority of the Retained Employees were employed within the treasury, credit, finance, IT and administration departments of EncoreFX.

20. On April 6, 2020, EncoreFX terminated the employment of 79 employees (the "**Terminated Employees**"). The Terminated Employees were paid their base pay up to and including April 6, 2020. On April 18, 2020, EncoreFX's finance department, under the direction of the Trustee, prepared and sent pre-populated proof of claim forms to each Terminated Employee to assist them with their Wage Earner Protection Program claims.

Sale to Global Reach Group Limited

21. After running a court-approved sale process, the Trustee negotiated and executed an asset purchase agreement dated May 5, 2020 (the "**Global Reach APA**") with Global Reach Financial Solutions Inc. ("**Global Reach**").

22. Pursuant to the Global Reach APA, Global Reach agreed to acquire EncoreFX's infrastructure to operate the business of providing FX risk management and cross-border payment services in Canada (the "**Infrastructure**"). Specifically, Global Reach agreed to acquire certain assets used in connection with or relating to the operation of EncoreFX's business or used or located at the owned or leased premises of EncoreFX.

Global Reach also acquired an option to acquire certain other tangible assets of EncoreFX, primarily comprised of computer equipment and office furniture, exercisable upon notice by Global Reach to the Trustee at any time within six (6) months following the closing of the purchase and sale of the Infrastructure (the "**Infrastructure Closing**") and upon payment to the Trustee of the sum of CDN $1.00.

23. The amount payable by Global Reach for the Infrastructure was CDN $100,000 (the "**Purchase Price**"), and was paid in full by Global Reach to the Trustee.

24. In addition to the Purchase Price, Global Reach agreed to pay the Trustee an annual royalty of 3.5% on the gross revenue received during the first two (2) annual periods immediately following the Infrastructure Closing, each payable within 90 days of the first and second anniversaries of the Infrastructure Closing Date (as defined below), but subject to adjustment pursuant to the terms and conditions contained in the Global Reach APA.

25. On May 11, 2020 by order of the Honourable Madam Justice Fitzpatrick, the Global Reach APA was approved. On May 12, 2020 (the "**Instructure Closing Date**"), the Trustee delivered to Global Reach a certificate confirming that the conditions precedent to the sale transaction had been satisfied or waived (including a confirmation of payment of the Purchase Price), upon which all of the right, title and interest in the Infrastructure was vested in Global Reach free and clear of all encumbrances.

Sale to StoneX Group Inc.

26. The Trustee negotiated and executed a share purchase agreement dated July 1, 2020 (the "**StoneX SPA**") with StoneX Group Inc. ("**StoneX**") for the sale of the shares of EncoreFX Ltd. ("**EncoreFX USA**"), which was a wholly owned subsidiary of EncoreFX.

27. Pursuant to the StoneX SPA, StoneX agreed to acquire from EncoreFX, all of the issued and outstanding shares (the "**EncoreFX USA Shares**") of EncoreFX USA, a company formed under the laws of the State of Washington, U.S.A. The amount payable to EncoreFX for the EncoreFX USA Shares was a base price of USD $200,000 (the "**Base**

Price"), plus an amount equal to the estimated net working capital of EncoreFX USA at the completion of the transaction (the "**Closing Date Working Capital**", and collectively, with the Base Price, the "**Purchase Price**").

28. In addition to the StoneX SPA, the Trustee negotiated and executed a transition services agreement dated July 2, 2020 with StoneX and EncoreFX USA for the Trustee to provide certain transition services in respect of the operations of the EncoreFX USA (the "**Transition Services**") during the period between execution of the StoneX SPA and the completion of the transaction.

29. On December 17, 2020, StoneX paid to the Trustee USD $200,000, plus an amount equal to the Closing Date Working Capital.

30. On December 21, 2020, by Order of the Honourable Madam Justice Fitzpatrick, the StoneX SPA and the consummation of the share purchase transaction, as more particularly set out therein, was approved. On December 23, 2020, the Trustee delivered to StoneX a certificate confirming that the conditions precedent to the sale transaction had been satisfied or waived (including a confirmation of payment of the Purchase Price and the Transition Expenses), upon which all of the right, title and interest in the EncoreFX USA Shares was vested in StoneX free and clear of all encumbrances.

Electronic Fund Transfer Reversal Claims

31. On the Bankruptcy Date, EY took the steps necessary to freeze EncoreFX's bank accounts, which included four operating accounts that EncoreFX maintained with the Bank of Montreal ("**BMO**"). EncoreFX had used these operating accounts, inter alia, to facilitate a number electronic funds transfers ("**EFTs**") with its clients, pursuant to standard, pre-authorized debit ("**PAD**") agreements.

32. Following the Bankruptcy Date, a number of EncoreFX's clients (the "**PAD Customers**") instructed their financial institutions to reverse pre-authorized payments they made to EncoreFX prior to the bankruptcy (the "**EFT Reversals**"). The EFT Reversals were purportedly effected pursuant to the Rules of the *Canadian Payments Act*, R.S.C. 1985, c. C-21 (the "**CPA Rules**"), and specifically, Rule H1 – Pre-Authorized Debits, which resulted in the return of funds from EncoreFX's BMO accounts to the PAD Customers.

33. In the three days that followed the Bankruptcy Date, EFT Reversals totaling approximately \$4,900,000.00 CAD and \$2,300,000.00 USD (the "**EFT Funds**") were debited from the frozen operating accounts maintained by BMO. BMO advised the Trustee that the EFT Reversals occurred automatically under the CPA Rules.

34. The Trustee took the position that BMO had contravened the Stay of Proceedings by processing the EFT Reversals against EncoreFX's frozen operating accounts. The Trustee instructed BMO to dispute, by way of a standard dispute form, each of the EFT Reversals.

35. In addition, on or about April 1, 2020, MLT Aikins, wrote each of the approximately 70 PAD Customers that initiated EFT Reversals to demand that the funds that were transferred from EncoreFX's BMO operating accounts after the Stay of Proceedings be immediately returned to the Trustee.

36. On or about July 15, 2020, MLT Aikins issued follow-up demand letters to a subset of PAD Customers who effected EFT Reversals after EncoreFX completed wire transactions at the request of a PAD Customer (the "**Double Dip Customers**"). In other words, the Double Dip Customers received a double recovery, as EncoreFX delivered funds to a third-party beneficiary designated by the Double Dip Customers, and the Double Dip Customers' accounts were credited with an EFT Reversal.

37. As of the date of this Application, the Trustee has collected from all but one of the Double Dip Customers, namely AgraCity Crop and Nutrition Ltd. ("**AgraCity**"). The Trustee alleges that AgraCity owes EncoreFX CAD $314,544.20 (the "**Double Dip Amount**").

38. The Trustee has filed an application to recover the Double Dip Amount owed by AgraCity and the application is currently being scheduled by the parties.

39. The Trustee has settled a number of the EFT Reversals, and continues to exercise all available rights and remedies to seek to recover the EFT Funds.

40. On February 17, 2021, BMO repaid the estate of EncoreFX (the "**Estate**") the sum of CAD $4,339,614.62 and USD $1,171,279.45 which represents the amounts which BMO had debited from the EncoreFX operating accounts after the Bankruptcy Date less the amounts which the Trustee has settled with PAD Customers or Double Dip Customers.

<u>OTM Claims</u>

41. Immediately following the Bankruptcy Date, the Trustee determined that EncoreFX could no longer extend credit to the OTM Clients. According to EncoreFX's standard form of Credit Facility Letter, the Trustee, on April 1 or 2, 2020, sent letters to all OTM Clients (the "**Termination Letters**"), advising the OTM Clients of the current quantum of their OTM position, that the Credit Facility Letter was terminated (as applicable), and in accordance with Credit Facility Letter and Master Terms and Conditions, the current quantum of the OTM position was due and owing (the "**Margin Call**").

42. The aggregate value of the Marin Calls identified in the Termination Letters totalled approximately CAD $77 million.

43. Where the OTM Clients failed to pay the Margin Call, the Trustee, with the approval of the inspectors in the BIA Proceedings (the "**Inspectors**"), closed out the OTM Clients' contracts or options, and advised the majority of the OTM Clients of the same and requested payment from the OTM Clients of the amount of their OTM position, in correspondence sent in late May 2020, with the balance of the OTM Clients being advised in June 2020 (the "**OTM Claims**").

44. Where the Trustee was unable to secure a settlement, on or around June 26, 2020, the Trustee sent a demand letter to the OTM Clients demanding the amount of the client's OTM position after close out of the OTM Clients contracts or options (the "**Close Out Amounts**") (the "**First Demand Letter**").

45. After sending the First Demand Letter, the Trustee divided the OTM Clients into two main groups: (i) those OTM Clients whose respective OTM Close Out Amounts was less than \$150,000.00 (the "**Below 150 OTM Clients**"); and (ii) those OTM Clients whose respective OTM Close Out Amounts was over \$150,000.00 (the "**Above 150 OTM Clients**").

46. On or around July 31, 2020, with the approval of the Inspectors, MLT Aikins issued a second formal demand to the Below 150 OTM Clients, notifying them that the Trustee would file a legal claim against them if they did not render payment of the Close Out Amounts within 5 business days.

47. In September 2020, with the approval of the Inspectors, MLT Aikins issued a second formal demand to the Above 150 OTM Clients with a draft Notice of Civil Claim enclosed (the "**Above 150 OTM Clients Second Demand**"). The Above 150 OTM Clients Second Demand resulted in a number of further settlements.

48. With respect to the Below 150 OTM Clients who did not settle their OTM Close Out Amounts, MLT Aikins sent a third demand letter enclosing a draft Notice of Civil Claim.

49. To date, the Trustee has received total payments of CAD **\$13,826,289** from **181** OTM Clients, with additional amounts to be received pursuant to payment plans.

50. To date, MLT Aikins has filed 92 Notices of Civil Claim ("**NOCCs**") against OTM Clients who had not paid or settled their OTM Positions with the Trustee.

51. The Trustee has entered into an agreement to mediate with twelve (12) OTM Clients represented by two legal counsel regarding claims that the Trustee commenced against those OTM Clients, which mediation is expected to occur in early April 2021 (the "**Mediation**").

Gustavson Capital Corp. Secured Claim

52. Gustavson Capital Corporation ("**GCC**") is the only known creditor with a secured claim against EncoreFX. On May 6, 2020, GCC filed a secured proof of claim (the "**Secured Proof of Claim**") with the Trustee in the approximate amount of $35,900,000.00 (the "**GCC Secured Claim**").

53. On June 5, 2020, the Trustee obtained approval from the Inspectors to investigate and determine if the GCC Secured Proof of Claim could be postponed or set aside, including as a result of GCC not being an arm's-length creditor, and the GCC Secured Claim possibly being characterized as an equity claim.

54. The Trustee reviewed the records of EncoreFX and GCC in relation to the Secured Proof of Claim. The Trustee conducted examinations under oath of Peter Gustavson, Briony Bayer and Paul Lennox.

55. On or about November 10, 2020 the Trustee delivered a draft notice of disallowance of the Secured Proof of Claim to Jones Emery Hargreaves Swan LLP, counsel to GCC.

Property Proof of Claims

56. Given the nature of EncoreFX's business, a significant number of clients filed property proofs of claim (the "**Property Claims**"). A total of 84 Property Claims, with a total approximate value of $46,166,442, have been filed with the Trustee.

57. There are four general categories of Property Claims:

    a. In-Flight Claims ("**In-Flight Claims**") (34 claims filed): total value $5,009,446;

    b. Holding Claims ("**Holding Claims**") (24 claims filed): total value $30,544,907;

    c. Margin Call Claims ("**Margin Call Claims**") (22 claims filed): total value $6,856,735; and

    d. Miscellaneous ("**Miscellaneous Claims**") (4 claims filed): total value $3,755,354.

58. In-Flight Claims relate to customer funds paid into EncoreFX's accounts in the days leading up to the Bankruptcy Date for the purpose of a specific transaction that were not completed by EncoreFX following the Bankruptcy Date.

59. Holding Claims relate to customer funds paid to EncoreFX before the Bankruptcy Date, which EncoreFX allocated to the notional customer's internal holding account while EncoreFX was awaiting instructions on how or when to transact these funds.

60. Margin Call Claims relate to client funds paid to EncoreFX before the Bankruptcy Date under a forward or option contract to cover unfavourable market fluctuations in excess of limits set out in their Credit Facility Letter.

61. Miscellaneous Claims do not fit into the above three categories and involve a number of mixed claims.

62. Of the 84 Property Claims filed:

    a. 3 were admitted and paid (total value $2,074,573);

    b. 80 were disallowed (total value $40,419,442); and

    c. 1 was withdrawn (total value $3,672,428).

63. To date, 20 customers, with a total of $35,681,713 in Property Claims, appealed from the

Trustee's decision to disallow their Property Claim. Three appeals have been settled, and 19 customers, with a total value of $33,066,375 in Property Claims, have outstanding appeals, which are broken down as follows (bearing in mind that several customers have an appeal which relate to one or more Property Claim classification):

a. In-Flight Claims: $1,436,070;

b. Holding Claims: $29,365,366; and

c. Margin Claims: $2,264,939.

64. Andreas Wrede ("**Wrede**") is the largest of the Holding Claims of EncoreFX, with a claim of approximately CAD $29,000,000. Legal counsel for Wrede and the Trustee have agreed to deal with the appeal of the Trustee's disallowance of Wrede's Holding Claim by way of a trial of an issue pursuant to s. 187(8) of the BIA.

Continuation of Proceedings Under the CCAA

65. EncoreFX is seeking to transition the BIA Proceedings into CCAA Proceedings in order to allow the Trustee to effect a compromise and arrangement of the affected claims, meaning the claims of creditors which will be affected by the Plan ("**Affected Claims**") as against EncoreFX by way of a liquidating CCAA proceeding.

66. The Trustee has determined through due diligence, including detailed discussions and significant negotiations with GCC, Wrede, BMO, and the Inspectors, that a liquidating CCAA proceeding will result in the best recovery for the stakeholders.

67. The Trustee has also determined that the creation and composition of the Oversight Committee is appropriate as GCC and Wrede represent the overwhelming majority of the of the total creditor claims against the Estate once the General Unsecured Claims have been compromised in the Plan. Accordingly, it would be appropriate for GCC and Wrede to oversee the administration of the Estate within the CCAA Proceedings.

68. The Trustee, GCC and Wrede entered into a term sheet (the "**Term Sheet**") dated

January 15, 2021, which set out indicative terms for a resolution of the various claims against the Estate of EncoreFX and govern the distribution of funds recovered by the Trustee and the Monitor. This Term Sheet was to provide a basis for the material terms of the Plan.

69. A summary of the Term Sheet is as follows:

a. Three classes of creditors:

   i. GCC (secured creditors);

   ii. Property Claimants (holding deposits and funds in flight only);

   iii. General Unsecured Creditors;

b. Subject to reserves, there would be an initial distribution as follows:

   i. GCC - \$12,000,000;

   ii. Property Claimants (which includes Wrede but excludes the Margin Call Claims) – 66.67% of their claims;

   iii. General unsecured creditors – 16% of their claims;

   iv. Convenience Class would be paid 100% of their claims up to \$5,000 and can elect to take \$5,000 if their claims are between \$5,000 and \$31,250. Convenience Class is deemed to vote in favour of the Plan;

c. Reserves established for administration (\$4,000,000), for Disputed Claims and for any additional reserves;

d. Subsequent distributions as follows:

   i. firstly to GGC the amount of \$4,944,475;

   ii. thereafter all funds, if any, to be paid pro-rata to GCC and Property Claimants; and

e. Establishment of an oversight committee comprised of the Monitor and a representative of each of GCC and Wrede.

70. In particular, the Plan will simplify the recovery of assets and distribution of proceeds to the creditors of EncoreFX who will be affected by the Plan by:

a. resolving contested matters regarding the GCC Secured Claim;

b. resolving contested matters with BMO regarding the EFT Reversals;

c. establishing a framework to assess and resolve the disputed Property Claims;

d. establishing a framework to assess and resolve the actively litigated OTM Claims;

e. significantly reducing litigation costs; and

f. establishing a pool of funds to distribute to the unsecured creditors of EncoreFX.

71. The Inspectors have consented to EncoreFX bringing this Petition under s. 11.6 of the CCAA.

72. EncoreFX's bankruptcy was not caused by the operation of subsection 50.4(8) of the BIA, or the refusal, or deemed refusal, of creditors or the court, or an annulment, of a proposal under the BIA.

Appointment of Monitor

73. EY, which has acted as the Trustee in Bankruptcy during the BIA Proceedings, has consented to be appointed as the Monitor in these CCAA Proceedings.

Part 3: LEGAL BASIS

1. EncoreFX relies on:

a. *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, as amended (the "**CCAA**");

b. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**");

c. *Canada Business Corporations Act*, R.S.C. 1985, c. C-44;

d. *Business Corporations Act*, S.B.C. 2002, c. 57;

e. *Supreme Court Civil Rules*, in particular Rules 2-1(2), 8-1, 8-2, 8-5, 16-1, 22-1, and 22-4;

f. the inherent jurisdiction of this Honourable Court; and

g. such further and other legal basis as counsel may advise and this Honourable Court may allow.

Application of the CCAA

2. EncoreFX is a debtor company within the meaning of section 2(1) of the CCAA, and there are more than $5,000,000.00 in claims against EncoreFX.

CCAA, at s. 2(1) and 3(1).

Section 11.6(b) of the *CCAA*

3. Pursuant to s. 11.6(b) of the CCAA, notwithstanding the BIA, a bankrupt can bring an application under the CCAA with the consent of the Inspectors, so long as it is not bankrupt as a result of s. 50.4(8) of the BIA, or a failed proposal under the BIA.

CCAA, at s. 11.6(b).

4. While the jurisprudence fails to disclose any written decisions addressing a company bringing an application under s. 11.6(b), s. 11.6(a) of the CCAA has been judicially considered. In particular, in *Clothing for Modern Times Ltd., Re*, the Ontario Superior Court considered an application under section 11.6(a), and held:

> "It strikes me that on a motion to continue under the CCAA an applicant company should place before the court evidence dealing with three issues:
>
> (i) The company has satisfied the sole statutory condition set out in section 11.6(a) of the CCAA that it has not filed a proposal under the BIA;
>
> (ii) The proposed continuation would be consistent with the purposes of the CCAA; and,
>
> (iii) Evidence which serves as a reasonable surrogate for the information which section 10(2) of the CCAA requires accompany any initial application under the Act."

Clothing for Modern Times Ltd., Re,
2011 ONSC 7522, at para. 9.

5. EncoreFX submits that the requirements for an application under s. 11.6(b) should be similar to an application under s. 11.6(a), so long as the specific statutory requirements of s. 11.6(b) are considered.

6. First, EncoreFX has satisfied the statutory conditions under s. 11.6(b):

   a. it has obtained the consent of the Inspectors;

   b. its Bankruptcy Assignment was not caused by s. 50.4(8) of the BIA, namely, failing to file a proposal within the allotted time; and

   c. its Bankruptcy Assignment was not caused by the refusal, deemed or otherwise, of the creditors, or the court, or the annulment of a proposal under the BIA.

CCAA, at s. 11.6(b).

7. Second, the proposed conversion is consistent with the purposes of the CCAA. In *Ted Leroy Trucking Ltd., Re*, the Supreme Court of Canada set out the purposes of the CCAA as follows:

> "To permit the debtor to continue to carry on business and, where possible, avoid the social and economic costs of liquidating its assets…
>
> "[To provide] a means whereby the devastating social and economic effects of bankruptcy or creditor initiated termination of ongoing business operations can be avoided while a court-supervised attempt to reorganize the financial affairs of the debtor company is made…
>
> "[To] provide the conditions under which the debtor can attempt to reorganize. This can be achieved by… preserving the *status quo* while the debtor plans the compromise or arrangement to be presented to creditors".

Ted Leroy Trucking Ltd., Re, 2010 SCC 60 ("***Leroy Trucking***"), at paras. 15, 59, and 60.

8. More importantly, the CCAA has been used to facilitate more innovative proceedings where the circumstances are complex and call for unique solutions.

Leroy Trucking, at para. 60.

9. Converting EncoreFX's BIA Proceedings to CCAA Proceedings is consistent with the purpose of the CCAA: it allows for a more flexible claims process and can better respond to the varying types of Affected Claims. Further, the CCAA Proceedings achieve, *inter alia*, the following objectives, which are in the best interests of the Estate:

a. establishing a claims bar date;

b. creating a convenience class of creditors within the General Unsecured Creditors;

c. creating of the Oversight Committee in order to replace the Inspectors;

d. enabling the Monitor to enter into releases with third parties; and

e. removing the requirement to pay a levy pursuant to the provisions of the BIA.

Modified Service and Notice is Warranted

10. The Petitioner is also seeking approval of its proposed manner of service and notice of the Conversion Order and the subsequent hearing of EncoreFX's application for an extension of the Stay Period (the "**Comeback Hearing**") authorized under the Conversion Order. In particular, the Petitioner suggests that the Monitor provide notice by way of publication, by making the Conversion Order publicly available as prescribed in the CCAA, and by sending a notice (which shall include the date of the Comeback Hearing) to known creditors.

11. Given the limitations imposed on the ability of the Petitioner to process and send notices to creditors by physical mail as a result of the COVID-19 pandemic and the fact that many businesses may not have staff on-site to open such mailings, the Petitioner is seeking the Court's authorization to deliver the notices to known creditors by email instead of physical mail. If the Petitioner does not have email addresses on file for a known creditor, the Monitor will send a notice by physical mail in the usual manner. In the current circumstances, the Petitioner believes that the notices are more likely to come to known creditors' prompt attention if they are sent by email.

12. The proposed Conversion Order also provides that the Petitioner may rely on the notice provided by the Monitor to provide notice of the Comeback Hearing and shall only be

required to serve motion materials concerning the Comeback Hearing on those parties who serve a Notice of Appearance or Response to the Petition in the proceeding or otherwise request service of such materials or to be added to the service list, in writing, in advance of the Comeback Hearing.

Conclusion

13. As set out above, there are a very significant number of active claims against EncoreFX, totalling tens of millions of dollars. Under the CCAA, EncoreFX can create a more adaptive plan of arrangement to compromise the various types of disputed claims than the more rigid distribution scheme under the BIA. Invoking a more flexible process will benefit all of EncoreFX's stakeholders.

14. Finally, this Application complies with s. 10(2) of the CCAA, as it includes the following materials:

    a. a weekly statement of EncoreFX's projected cash flow;

    b. a report with EncoreFX's representations regarding the preparation of the cash-flow statement; and

    c. copies of all financial statements, audited or unaudited, preparing within a year of this Application.

CCAA, at s. 10(2).

15. In sum, EncoreFX meets the statutory requirements for an Order converting the BIA Proceedings to CCAA Proceedings, and it is consistent with the purpose of the CCAA for such a conversion to occur.

Part 4: MATERIAL TO BE RELIED ON

1. Proposed Monitor's Pre-Filing Report to Court, dated effective March 10, 2021.

2. Consent of Ernst & Young Inc. to act as Monitor.

3. The Bankruptcy Orders.

4. The Pleadings, Orders and Reports of the Trustee in Bankruptcy filed in the BIA Proceedings.

5. Such further materials as may be filed with this Honourable Court.

The Petitioner estimates that the hearing of the petition will take one (1) day.

Dated: [03/11/2021]

Signature of William E.J. Skelly
Lawyer for Petitioner, Ernst & Young Inc., in its capacity as Trustee in Bankruptcy of EncoreFX Inc., and proposed Monitor

To be completed by the court only:

Order made

[ ] in the terms requested in paragraphs .... of Part 1 of this notice of application

[ ] with the following variations and additional terms:

Date: ....

Signature of ☐ Judge ☐ Master

ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE OUTSIDE BRITISH COLUMBIA

The Petitioner claims to serve this pleading/petition on the respondents outside of British Columbia on the grounds that the proceeding is brought to enforce, assert, declare, or determine proprietary or possessory rights or a security interest in property in British Columbia, pursuant to Rule 4-5(1) and s. 10(a) of the *Court Jurisdiction and Proceedings Transfer Act*.

SCHEDULE "A"

(to the Petition)

Service List

No. ___________
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. c-36, AS AMENDED

AND

IN THE MATTER OF ENCOREFX INC.

PETITIONER

SERVICE LIST
(As at March 10, 2021)

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SCHEDULE "B"

(to the Petition)

CCAA Conversion Order

23693394

No. ___________
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF ENCOREFX INC.

PETITIONER

ORDER MADE AFTER HEARING
(Conversion Order)

BEFORE	)	THE HONOURABLE MADAM JUSTICE FITZPATRICK	)	MARCH 18, 2021

ON THE APPLICATION of the Petitioner, EncoreFX Inc. ("**EncoreFX**"), by its Trustee in Bankruptcy, Ernst & Young Inc. and not in its personal capacity, coming on for hearing at the Law Courts, 800 Smithe Street, in the City of Vancouver, British Columbia, on the 18th day of March, 2021 (the "**Order Date**"); **AND ON HEARING** William E.J. Skelly, counsel for Ernst and Young Inc. ("**EY**") in its capacity as the Trustee in Bankruptcy (the "**Trustee**") and in its proposed role as the monitor (the "**Monitor**") of EncoreFX, and those other counsel listed on **Schedule "A"** hereto; **AND ON NOTING** the consent of EY to act as Monitor; **AND ON READING** the pre-filing report of the proposed Monitor dated March 11, 2021 (the "**Pre-Filing Report**"); **AND ON BEING ADVISED** that the Trustee seeks to convert the bankruptcy of EncoreFX into a liquidating proceeding pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"); **AND PURSUANT TO** the CCAA, the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

SERVICE

1. The time for service of this Petition and Notice of Hearing and the supporting materials in respect thereof is hereby abridged and validated so that this Notice of Hearing is properly returnable on the date of this Order (the "**Order Date**"), and further service is hereby dispensed with.

JURISDICTION

2. EncoreFX is a company to which the CCAA applies.

CONTINUANCE UNDER THE CCAA

3. Effective March 18, 2021, EncoreFX's bankruptcy proceedings bearing Court File No. VLC-S-B-200204 and bankruptcy Estate No.11-2634864 (the "**BIA Proceedings**") commenced under the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended (the "**BIA**") are hereby taken up and continued under the CCAA and as of such date, the BIA Proceedings are hereby suspended and stayed, and the provisions of the BIA shall have no further application to EncoreFX, save that any and all steps, agreements and procedures validly taken, done or entered into by EncoreFX or the Trustee during the BIA Proceedings shall remain valid, binding, and actionable within these proceedings (the "**CCAA Proceedings**"), notwithstanding the commencement of the CCAA proceedings, including but not limited to:

a. the sale of any assets, property or undertaking of any of EncoreFX that was approved by this Court or otherwise permitted in the BIA Proceedings;

b. the examination of any proofs of claim delivered by a creditor of EncoreFX within the BIA Proceedings pursuant to s. 81 and s. 124 of the BIA, including but not limited to proofs of claim for which a final determination as to the admission or disallowance of such proofs of claim was not finalized as at the granting of this Order;

c. the continuation or prosecution of proceedings in the BIA Proceedings by EY as against debtors of EncoreFX, including in respect of the following:

(i) any litigation proceedings commenced by the Trustee as against any OTM Clients (as defined at paragraph 50 of the Pre-Filing Report) (the "**OTM Client Claims**") and the Monitor is authorised and directed to file amended OTM Client Claims wherein the amendment shall be to change the capacity in which EY has sued the defendants from its capacity as Trustee to its capacity as Monitor of EncoreFX (the "**Amended OTM Client Claims**");

(ii) any extant Property Claims, including any appeals thereof (as defined at paragraph 62 of the Pre-Filing Report);

(iii) any extant EFT Reversals (as defined at paragraph 77 of the Pre-Filing Report), including any appeals thereof;

(iv) any claim advanced by EY in respect of the AgraCity Double Dip Amount (as defined at paragraph 83 of the Pre-Filing Report);

(v) the Proof of Claim in respect of the Australian Subsidiary (as defined at paragraph 12 of the Petition filed on March 11, 2021); and

(vi) the mediation (as referenced at paragraph 55 of the Pre-Filing Report).

4. All orders pronounced by the Honourable Madam Justice Fitzpatrick in the BIA Proceeding apply to and are continued under the CCAA Proceedings, except as amended by the terms of this Order.

5. This Order shall be filed in the BIA Proceedings.

6. EY shall be permitted to:

(a) file this Order in all of the OTM Client Claim litigation proceedings as identified by the Monitor; and

(b) file each Amended OTM Client Claim in its respective court file number without requiring any further order of this Court.

SUBSEQUENT HEARING DATE

7. The hearing of EncoreFX's application for an extension of the Stay Period (as defined in paragraph 16 of this Order) and for any ancillary relief shall be held at the Courthouse (or as determined by the Court) at 800 Smithe Street, Vancouver, British Columbia at ______ a.m. / p.m. on __________, the ____ day of March, 2021 or such other date as this Court may order.

PLAN OF ARRANGEMENT

8. EncoreFX shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

9. Subject to this Order and any further Order of this Court, EY shall remain in possession and control of EncoreFX's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"), and continue to administer EncoreFX's business (the "**Business**") in a manner consistent with the preservation of the Business and the Property. EY shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.

10. EY shall be entitled, but not required, to pay the following expenses which may have been incurred by EncoreFX prior to March 30, 2020 (the "**Bankruptcy Date**"):

a. all outstanding wages, salaries, employee and pension benefits (including long and short term disability payments), vacation pay and expenses (but excluding severance pay) payable before or after the Bankruptcy Date, in each case incurred in the ordinary course of business and consistent with the relevant compensation policies and arrangements existing at the time incurred (collectively "**Wages**"); and

b. the fees and disbursements of any Assistants retained or employed by EncoreFX which are related to EncoreFX's liquidation, at their standard rates and charges, including payment of the fees and disbursements of legal counsel retained by EY, whenever and wherever incurred, in respect of:

   i. these proceedings or any other similar proceedings in other jurisdictions in which EncoreFX is domiciled;

   ii. any litigation in which EncoreFX is named as a party or is otherwise involved, whether commenced before or after the Bankruptcy Date; and

   iii. any related corporate matters.

11. Except as otherwise provided herein, EY shall be entitled to pay all expenses reasonably incurred in carrying on the Business of EncoreFX following the Bankruptcy Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

a. all obligations incurred by EncoreFX after the Bankruptcy Date, including without limitation, with respect to goods and services actually supplied to EncoreFX following the Bankruptcy Date; and

b. fees and disbursements of the kind referred to in paragraph 10.b. which may be incurred after the Bankruptcy Date.

12. EY is authorized to remit, in accordance with legal requirements, or pay:

a. any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from Wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes or any such claims which are to be paid pursuant to Section 6(3) of the CCAA;

b. all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by EncoreFX in connection with the sale of goods and services by EncoreFX, but only where such Sales Taxes accrue or are collected after the Bankruptcy Date, or where such Sales Taxes accrued or were collected prior to the Bankruptcy Date but not required to be remitted until on or after the Bankruptcy Date; and

c. any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal property taxes, municipal business taxes or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors.

13. Except as specifically permitted herein, EY is hereby directed, until further Order of this Court:

a. to make no payments of principal, interest thereon or otherwise on account of amounts owing by EncoreFX to any of its creditors as of the Bankruptcy Date except as authorized by this Order;

b. to make no payments in respect of any financing leases which create security interests;

c. to grant no security interests, trust, mortgages, liens, charges or encumbrances upon or in respect of any of EncoreFX's Property, nor allow EncoreFX to become a guarantor or surety, nor otherwise to allow EncoreFX to become liable in any manner with respect to any other person or entity except as authorized by this Order;

d. to not grant credit except in the ordinary course of the Business only to EncoreFX customers for goods and services actually supplied to those customers, provided such customers agree that there is no right of set-off in respect of amounts owing for such goods and services against any debt owing by EncoreFX to such customers as of the Bankruptcy Date; and

e. to not incur liabilities except in the ordinary course of Business.

LIQUIDATION

14. Subject to such requirements as are imposed by the CCAA, EY shall have the right to take any and all steps necessary to realize upon and liquidate the assets of EncoreFX, including but not limited to the following:

a. permanently or temporarily cease, downsize or shut down all or any part of EncoreFX's Business or operations and commence marketing efforts in respect of any of EncoreFX's redundant or non-material assets;

b. terminate the employment of such of EncoreFX's employees or temporarily lay off such of EncoreFX's employees as it deems appropriate; and

c. continue to collect the amounts owed to EncoreFX by, inter alia, pursuing litigation claims or causes of action which have been commenced by EY in the BIA Proceedings or initiating new proceedings within the CCAA Proceedings.

all of the foregoing to permit EY to proceed with an orderly liquidation of EncoreFX's Business (the "**Liquidation**").

15. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, and any regulations promulgated under authority of either Act, as applicable (the "**Relevant Enactment**"), EY, in the course of these proceedings, is permitted to, and hereby shall, disclose personal information of identifiable individuals in its possession or control to

stakeholders, its advisors, prospective investors, financiers, buyers or strategic partners (collectively, "**Third Parties**"), but only to the extent desirable or required to negotiate and complete the Liquidation or to prepare and implement the Plan or transactions for that purpose; provided that the Third Parties to whom such personal information is disclosed enter into confidentiality agreements with EY binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Liquidation or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall return the personal information to EY or destroy it. If the Third Parties acquire personal information as part of the Liquidation or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties may, subject to this paragraph and any Relevant Enactment, continue to use the personal information in a manner which is in all respects identical to the prior use thereof by EY.

STAY OF PROCEEDINGS, RIGHTS AND REMEDIES

16. Until and including March 28, 2021 or such later date as this Court may order (the "**Stay Period**"), no action, suit or proceeding in any court or tribunal (each, a "**Proceeding**") against or in respect of EncoreFX or EY, or affecting the Business or the Property, shall be commenced or continued except with the written consent of EY or with leave of this Court, and any and all Proceedings currently under way against or in respect of EncoreFX or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

17. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of EncoreFX or EY, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of EY or leave of this Court.

18. Nothing in this Order, including paragraphs 9 and 10, shall: (i) empower EY to carry on any business which EncoreFX is not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a mortgage, charge or security interest (subject to the provisions of Section 39 of the CCAA relating to the priority of statutory Crown securities); or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on EY.

NO INTERFERENCE WITH RIGHTS

19. During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by EncoreFX, except with the written consent of EY or leave of this Court.

CONTINUATION OF SERVICES

20. During the Stay Period, all Persons having oral or written agreements with EncoreFX or mandates under an enactment for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or EncoreFX, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by EY, and that EY shall be entitled to the continued use of EncoreFX's telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Bankruptcy Date are paid by EY in accordance with normal payment practices of EncoreFX or such other practices as may be agreed upon by the supplier or service provider and EY, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

21. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Bankruptcy Date, nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to EncoreFX on or after the Bankruptcy Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

APPOINTMENT OF MONITOR

22. EY is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of EncoreFX with the powers and obligations set out in the CCAA or set forth herein.

23. EY, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

a. prepare EncoreFX's receipts and disbursements;

b. report to this Court at such times and intervals as EY may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

c. develop and amend the Plan;

d. hold and administer creditors' or shareholders' meetings for voting on the Plan;

e. continue to be vested with EncoreFX's Property, including the premises, books, records, data, including data in electronic form, and other financial documents of EncoreFX;

f. be at liberty to engage independent legal counsel or such other persons as EY deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

g. to receive and collect all monies and accounts now owed or hereafter owing to EncoreFX and to exercise all remedies of EncoreFX in collecting such monies, including, without limitation, to enforce any security held by EncoreFX;

h. to settle, extend or compromise any indebtedness owing to or by the EncoreFX;

i. to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in EY's name or in the name and on behalf of the EncoreFX, for any purpose pursuant to this Order;

j. to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to EncoreFX or the Property, including any such proceedings initiated by EY in its roles as the Trustee in the BIA Proceedings and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding; and

k. perform such other duties as are required by this Order or by this Court from time to time.

24. EY shall continue to have possession of the Property for the purpose of the Liquidation. Nothing in this Order shall be construed as resulting in EY being an employer or a successor employer in its personal capacity, within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

25. Nothing herein contained shall require or allow EY to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Fisheries Act*, the British Columbia *Environmental Management Act*, the British Columbia *Fish Protection Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt EY from any duty to report or make disclosure imposed by applicable Environmental Legislation. For greater certainty, EY shall not, as a result of this Order or anything done in pursuance of its duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

26. In addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, EY shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the rights and protections afforded the Monitor by the CCAA or any applicable legislation.

OVERSIGHT COMMITTEE

27. The Monitor, together with a representative of each of Gustavson Capital Corporation, the secured party claimant, and Andreas Wrede, the largest Property Claim claimant shall, as of this date of this Order, form an oversight committee (the "**Oversight Committee**") which shall review and approve settlements in respect of all matters affecting the liquidation and generally deal with the continued realization of the assets of EncoreFX. The Oversight Committee shall incur no liability or obligation as a result of its appointment as the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

SERVICE AND NOTICE

28. EY shall

(a) without delay, publish in the *Vancouver Sun*, *Times-Colonist* (Victoria), and *The Globe and Mail* (National Edition), a notice containing the information prescribed under the CCAA,

(b) within five days after the Order Date,

(i) make this Order publicly available in the manner prescribed under the CCAA,

(ii) send, in the prescribed manner, a notice to every known creditor who has a claim against EncoreFX, and

(iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

29. EY is at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to EncoreFX's creditors or other interested parties at their respective addresses as last shown on the records of EncoreFX and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

30. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to EY by way of ordinary mail, courier, personal delivery or electronic

transmission a request to be added to the Service List to be maintained by EY. EY shall post and maintain an up to date form of the Service List on its website at: www.ey.com/ca/EncoreFX.

31. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and EY shall post a copy of all prescribed materials on its website at: www.ey.com/ca/EncoreFX/.

32. Notwithstanding paragraphs 28-30 of this Order, service of the Petition, the Notice of Hearing of Petition, any evidence or reporting filed in support of the Petition and this Order shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and regulations thereto, in respect of the Federal Crown, and the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, in respect of the British Columbia Crown.

GENERAL

33. As of the date of this Order, the inspectors appointed in the BIA Proceedings shall be deemed to have resigned.

34. EY may from time to time apply to this Court for directions in the discharge of its powers and duties hereunder.

35. Nothing in this Order shall prevent EY from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of EncoreFX, the Business or the Property.

36. This Court requests the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to EY, as an officer of this Court, as may be

necessary or desirable to give effect to this Order, to grant representative status to EY in any foreign proceeding, or to assist EY and its respective agents in carrying out the terms of this Order.

37. EY is at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of EncoreFX to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended.

38. EncoreFX may (subject to the provisions of the CCAA and the BIA) at any time file a voluntary assignment in bankruptcy or a proposal pursuant to the commercial reorganization provisions of the BIA if and when EY determines that such a filing is appropriate. Upon any Plan being rejected by the creditors of EncoreFX of the Court refusing to sanction a Plan, any interested party make seek to petition EncoreFX into bankruptcy in the within proceedings notwithstanding the conversion set forth herein.

39. EY is hereby at liberty to apply for such further interim or interlocutory relief as it deems advisable within the time limited for Persons to file and serve Responses to the Petition.

40. Leave is hereby granted to hear any application in these proceedings on two (2) clear days' notice after delivery to all parties on the Service List of such Notice of Application and all affidavits in support, subject to the Court in its discretion further abridging or extending the time for service.

41. Any interested party (including EY) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the Service List and to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

42. Endorsement of this Order by counsel appearing on this application, other than counsel for the Trustee and the Monitor, is hereby dispensed with.

43. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.

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

____

Signature of: William E.J. Skelly / Dana M. Nowak

☐ Party ☑ Lawyer for the Petitioner, Ernst & Young in its capacity as Trustee and/or Monitor of EncoreFX Inc., and not its personal capacity

BY THE COURT

____

REGISTRAR

SCHEDULE "A"

List of Counsel

Name of Counsel	**Party Represented**
William E.J. Skelly	Counsel for the Trustee and Proposed Monitor

S=212302
No. ____________
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

AND

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. c-36, AS AMENDED

AND

IN THE MATTER OF ENCOREFX INC.

PETITIONER

NOTICE OF HEARING

TAKE NOTICE that the petition of EncoreFX Inc., by its Trustee in Bankruptcy, Ernst & Young Inc., dated March 10, 2021 (the "**Petition**"), will be heard by MS Teams before the Honourable Madam Justice Fitzpatrick at the Vancouver Courthouse at 800 Smithe Street, in the City of Vancouver, British Columbia on March 18, 2021 at 10:00 a.m.

1. Date of hearing

The parties have been informed as to the date of the hearing of the Petition.

2. Duration of hearing

The Petitioner estimates that the hearing of the Petition will require one (1) day.

3. Jurisdiction

This matter is not within the jurisdiction of a master.

Dated: [03/11/2021]

Signature of William E.J. Skelly
Lawyer for Petitioner, Ernst & Young Inc., in its capacity as Trustee in Bankruptcy of EncoreFX Inc.

VANCOUVER
MAR 11 2021 C
REGISTRY

S212302

No: S______
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT* R.S.C. 1985 c. B-3

AND

IN THE MATTER OF ENCOREFX INC.

PETITIONER

CONSENT TO ACT

Ernst & Young Inc. hereby consents to act as Monitor of the Petitioner pursuant to the Companies' Creditors Arrangement Act.

DATED at Vancouver, British Columbia, this 11th Day of March, 2021.

ERNST & YOUNG INC.

Per:______________________
Mike Bell, CPA, CA, CIRP, LIT
Senior Vice President

VANCOUVER
MAR 11 2021 C
REGISTRY

S-212302

No: S______
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT* R.S.C. 1985 c. B-3

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ENCOREFX INC.

<u>REPORT OF THE PROPOSED MONITOR</u>

ERNST & YOUNG INC.,

March 10, 2021

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TO THE

REPORT OF THE PROPOSED MONITOR

LIST OF APPENDICES

FIRST REPORT TO THE COURT
OF ERNST & YOUNG INC.,
PROPOSED MONITOR IN THE CCAA PROCEEDINGS OF
ENCOREFX INC.
Effective as at March 10, 2021

INTRODUCTION AND PURPOSE OF THIS REPORT

1. On March 30, 2020 (the "**Bankruptcy Date**"), EncoreFX Inc. ("**EncoreFX**" or the "**Company**") filed an assignment into bankruptcy (the "**BIA Proceedings**"). Ernst & Young Inc. ("**EYI**") consented to act as the licensed insolvency trustee (the "**Trustee**") in the estate of EncoreFX (the "**Estate**"). A description of the business of EncoreFX is provided below.

2. Pursuant to s. 69.3(1) of the *Bankruptcy and Insolvency Act (Canada),* RSC 1985, c B-3 (the "**BIA**"), a stay of proceedings (the "**Stay**") has been in effect with respect to EncoreFX since the Bankruptcy Date.

3. A first meeting of creditors (the "**FMOCs**") in the bankruptcy of EncoreFX occurred on May 7, 2020, at which point the creditors of EncoreFX, a) affirmed the appointment of the Trustee, and b) appointed inspectors in the Estate (the "**Inspectors**").

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

5. The Trustee published the materials tabled at the FMOCs on a website that it had set up in respect of the BIA Proceedings at www.ey.com/ca/EncoreFX (the "**Website**"). EYI intends to continue to use the Website during the proposed proceedings under the *Companies' Creditors Arrangement Act* (Canada), RSC 1985, c C-36 (the "**CCAA**" and "**CCAA Proceedings**" respectively) in order to make timely updates to ensure all stakeholders have access to the most current information regarding the Company.

6. The stakeholders with the largest claims filed against the Estate of EncoreFX are as follows:

   a) Gustavson Capital Corporation ("**GCC**") who has filed a secured claim against the Estate in the amount of CAD $35,900,000 (the "**GCC Secured Claim**"); and

   b) Mr. Andreas Wrede ("**Mr. Wrede**") who filed a "**Property Claim**" in the amount of CAD $28,966,893 (the "**Wrede Property Claim**").

7. The Trustee estimates total "**Claims**" filed against EncoreFX of approximately CAD $94,100,000; and accordingly, the Claims of GCC and Mr. Wrede represent approximately 70% of the total claims filed against the Estate.

8. As is described in detail below, the Trustee issued or delivered in draft notices of disallowance to disallow the GCC Secured Claim as a Secured Claim and the Wrede Property Claim as a Property Claim.

9. In late 2020, GCC, Mr. Wrede, and the Trustee commenced negotiations with respect to a global settlement of the various Claims filed against EncoreFX which would allow for a prompt distribution of the funds in the Estate available for distribution to the Company's creditors with Proven Claims (as defined in the Plan).

10. Following extensive discussions with GCC and Mr. Wrede, an analysis by the Trustee of available legal remedies and continuous consultation with the Inspectors with respect to same, in early to mid January 2021, GCC and Mr. Wrede presented a term sheet which outlined the terms of a proposed settlement transaction (the "**Term Sheet**") that sought to achieve and expedite a global settlement and resolution of the various Claims against EncoreFX through a proceedings to be commenced under the CCAA (the "**Settlement Transaction**"). In particular, the Settlement Transaction contemplates, *inter alia*, the following:

a) the Trustee would file an application with this Honourable Court for an Order to convert the BIA Proceedings to CCAA Proceedings where EYI (the "**Proposed Monitor**") would be appointed by this Honourable Court as "**Monitor**" to administer the CCAA Proceedings;

b) the Proposed Monitor would apply for Orders of this Honourable Court approving, *inter alia*:

   i. a "**Claims Process**" to determine the claims of creditors ("**Claims**") and establish a claims bar date by which creditors must file a "**Proof of Claim**" in the CCAA Proceedings:

   ii. the filing of a Plan of Compromise and Arrangement (a "**Plan**") under the provisions of the CCAA; and

   iii. a procedure for calling a "**Creditors' Meeting**" to consider and to vote on the Plan, which, if approved by the Requisite Majority (defined below) of creditors at the Creditors' Meeting and sanctioned by this Honourable Court, compromises the Proven Claims (as defined in the Plan) of Affected Creditors (defined below) against the Company.

11. On January 15, 2021, the Inspectors in the Estate of the Bankruptcy of EncoreFX Inc. approved the Term Sheet which included the procedures noted above. The Trustee, GCC, and Mr. Wrede (the "**Term Sheet Parties**") formally executed the Term Sheet upon approval of same by the Inspectors.

12. On March 10, 2021, the Trustee filed a Petition with this Honourable Court for an Order (the "**Conversion Order**") for certain relief, including, but not limited to:

a) a declaration the BIA Proceedings and the appointment of EYI as Trustee be continued under the CCAA (the "**CCAA Conversion**") and EY will be discharged as Trustee in the BIA Proceedings;

b) a declaration that all orders pronounced by the Honourable Madam Justice Fitzpatrick in the BIA Proceedings (the "**Bankruptcy Orders**") apply to and are continued under the CCAA Proceedings, except as amended by the terms of the Conversion Order;

    i. the pronouncement of a stay of proceedings (the "**CCAA Stay Period**") up to and including March 25, 2021 (the "**Comeback Date**");

    ii. an Order that appoints EYI as Monitor in the proposed CCAA Proceedings;

    iii. an Order that authorizes the Proposed Monitor to file with this Honourable Court a Plan; and

    iv. a declaration that the Proposed Monitor shall maintain possession and control of EncoreFX's property (similar to a receiver); and continue to carry on EncoreFX's business in a manner consistent with the preservation of the business and the property and other ancillary relief with respect to same.

13. The Proposed Monitor has also filed a Notice of Application returnable on or before the Comeback Date for a hearing (the "**Comeback Hearing**") to apply for certain relief, including, but not limited to Orders:

    a) extending the CCAA Stay Period to June 8, 2021 (75 days following the Comeback Date);

    b) approving a "**Claims Process Order**"; and

    c) approving a "**Creditor's Meeting Order**".

14. The purpose of this report of the Proposed Monitor (the "**Proposed Monitor's Report**") is to advise this Honourable Court with respect to the following:

    a) the appointment of the Proposed Monitor;

    b) the background related to the BIA Proceedings;

c) a general overview of the Plan, including the proposed terms thereof;

d) the Proposed Monitor's commentary on the Plan, including in respect of the fairness to the General Unsecured Creditors (defined below);

e) a summary of the Claims Process Order;

f) a summary of the Creditor's Meeting Order;

g) an overview of the 13-week cash flow projection; and

h) the Proposed Monitor's recommendations.

TERMS OF REFERENCE

15. In preparing this Proposed Monitor's Report, the Proposed Monitor has been provided with, and in making the comments herein relied upon, unaudited financial information, the Company's books and records, financial information prepared by the Company, and discussions with key individuals within the Company. The Proposed Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of such information and, accordingly, the Proposed Monitor expresses no opinion or other form of assurance in respect of such information contained in this Proposed Monitor's Report.

16. Certain information referred to in this Proposed Monitor's Report consists of forecasts and projections. The Proposed Monitor 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 Proposed Monitor expresses no opinion or other form of assurance in respect of the Information.

17. Future oriented financial information referred to in this report was prepared based on estimates and probable and hypothetical assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not

readily and currently ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be material.

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

19. Capitalized terms not defined in this Proposed Monitor's Report have the meaning ascribed to them in the Plan, or any other Order referenced in the Proposed Monitor's Report.

20. All references to dollars are in Canadian Currency unless otherwise noted.

APPOINTMENT OF THE PROPOSED MONITOR

21. EYI is currently acting as the Trustee in bankruptcy in the Estate of the EncoreFX. The BIA does not prevent a trustee in bankruptcy from acting as monitor if BIA proceedings are converted to CCAA proceedings. Further, section 11.7(2) of the CCAA does not identify acting as trustee in bankruptcy as one of the restrictions preventing that party from acting as monitor.

22. EYI further confirms that it fulfills the requirement of section 11.7(1) of the CCAA, and that neither EYI nor its affiliates, directors and officers is subject to the restrictions referred to in section 11.7(2)(a) and (b) of the CCAA.

23. Moreover, the senior officers of EYI that would be responsible for the administration of the proposed CCAA Proceedings have administered the BIA Proceedings of EncoreFX since

the Bankruptcy Date and possess a unique understanding of the issues of EncoreFX, claims of creditors, and avenues for future recoveries.

24. A summary of the activities undertaken by the Trustee (with the approval of Inspectors) in the BIA Proceedings since the Bankruptcy Date is provided below.

25. Based on the foregoing and given the administrative efficiencies that would result from EYI's familiarity with the affairs and stakeholders of EncoreFX, EYI has consented to act as the Monitor in these CCAA Proceedings. A copy of the EYI Consent to Act is attached hereto as **Appendix "A".**

BACKGROUND

History of EncoreFX

26. EncoreFX is a Federal Corporation incorporated under the *Canada Business Corporations Act*, RSC 1985, c C-44. EncoreFX Ltd., EncoreFX (Australia) Pty Ltd., and EncoreFX (NZ) Limited are wholly owned foreign subsidiaries of EncoreFX. The Trustee attached a copy of a corporate organization chart provided by management in its First Report, which was filed within the BIA Proceedings.

27. 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.

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

29. 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.

30. As discussed above, EncoreFX is in the business of providing foreign exchange ("**FX**") risk management and cross-border payment services predominantly to small and mid-size enterprise 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 "**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

31. 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.

32. 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.

33. 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).

34. 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.

35. 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.

36. 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:

a) 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;

b) 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

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

The Treasury Function

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

38. 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.

39. 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.

40. 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.

41. 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).

42. 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, then EncoreFX would have to pay USD $500,000 in OTM margin to the Liquidity Provider).

The Credit Function

43. 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).

44. 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.

45. Once the assessment was finalized, EncoreFX would issue and the client would sign a credit facility agreement ("**Credit Facility Agreement**") that outlined the terms under which credit was granted.

46. 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

47. 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.

48. 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.

49. 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.

50. 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 was 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.

51. In the days leading up to the bankruptcy, the Trustee was advised that EncoreFX 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).

52. 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 eve of March 29th (as noted above, the day before markets resumed trading the following Monday).

53. 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.

THE BIA PROCEEDINGS

54. The Trustee's actions and undertakings in the administration of the Estate are described in detail in the Trustee's First Report, Second Report, Third Report and Fourth Report to this Honourable Court (collectively, the "**Trustee's Reports**"). In summary, the Trustee:

a) recovered cash balances in the Company's sixty-one bank accounts held at fourteen separate financial institutions located in Canada and internationally;

b) settled and recovered approximately CAD $12,678,401 of collateral posted by the Company with its Liquidity Providers;

c) closed-out open transactions with 288 OTM Clients resulting in OTM positions (receivables) of approximately $64 million and commenced collection efforts against the OTM Clients (including the filing of 92 Statements of Claim);

d) collected or settled OTM receivables of approximately CAD $13,826,289 to date;

e) completed a sale transaction for the Canadian business infrastructure assets of EncoreFX to Global Reach Group Limited, a United Kingdom based company that provides similar FX backed risk management services and cross-border payments solutions to EncoreFX before it ceased trading, where the amount of the transaction totalled CAD $100,000;

f) completed a sale transaction for 100% of the shares of the US Subsidiary to StoneX Group Inc., a United Stated based financial services company, where the amount of the transaction totalled USD $200,000 plus an amount equal to the estimated net working capital of the US Subsidiary at the completion of the transaction;

g) terminated and facilitated filings under WEPPA for approximately 149 former EncoreFX employees;

h) recovered CAD $481,367 directly from PAD Customers (defined below) or Double Dip Customers (defined below) in respect of the EFT Reversals (defined below) who initiated EFT Reversals;

i) recovered CAD $4,339,615 and USD $1,171,279 from the Bank of Montreal ("**BMO**") representing amounts which BMO had debited from the EncoreFX operating accounts after the Bankruptcy Date, less the amounts which the Trustee has settled with PAD Customers (defined below) or Double Dip Customers (defined below) in respect of the EFT Reversals (defined below);

j) reviewed and responded to numerous property claims ("**Property Claims**") filed by creditors in the Estate to date, including the Claim filed by Mr. Wrede;

k) reviewed and responded to the secured creditor claim of GCC; and

l) closed-out open transactions with 178 ITM Clients resulting in ITM positions (unsecured liabilities) of approximately $11 million.

55. The Trustee has entered into an agreement to mediate with twelve (12) OTM Clients represented by two legal counsel regarding claims that the Trustee commenced against those OTM Clients, which mediation is expected to occur in early April 2021.

56. A statement of receipts and disbursements of the Trustee to March 9, 2021 is attached hereto as **Appendix "B"**.

THE GCC SECURED CLAIM

57. GCC is the only known creditor with a security registration against EncoreFX. On May 6, 2020, GCC filed the GCC Secured Claim with the Trustee in the approximate amount of CAD $35,900,000.

58. On June 5, 2020, the Trustee sought and received the approval from the Inspectors to proceed with an investigation to determine if the GCC Secured Claim could be postponed or set aside, as a result of factors including, but not limited to, GCC not being an arm's length creditor (s. 137(1) of the BIA), and whether the GCC Secured Claim (or a portion thereof) could be characterized as an equity claim (s.140.1 of the BIA).

59. The Trustee reviewed the substantive documentation of EncoreFX and GCC in relation to the GCC Secured Claim and pursuant to s. 163(1) of the BIA, the Trustee's legal counsel conducted examinations of Mr. Peter Gustavson, Ms. Briony Bayer and Mr. Paul Lennox,

in order to gather sufficient and appropriate evidence required to support the Trustee's determination on the GCC Secured Claim.

60. On September 25, 2020, the Trustee presented its findings and recommendation to disallow the GCC Secured Claim pursuant to s. 135(2) of the BIA to the Inspectors, who approved the Trustee with proceeding to issue a notice of disallowance to GCC to disallow the GCC Secured Claim as a secured claim in the Estate and to take any further future actions as may be required for final determination on the GCC Secured Claim.

61. On or about November 10, 2020 the Trustee delivered a draft notice of disallowance of the Secured Proof of Claim to Jones Emery Hargreaves Swan LLP ("**Jones Emery**"), counsel to GCC.

PROPERTY PROOF OF CLAIMS

62. Given the nature of EncoreFX's business, a significant number of clients filed property proofs of claim (the "**Property Claims**"). A total of 84 Property Claims, with a total approximate value of CAD $46,371,787 have been filed with the Trustee, to date.

63. Property Claims can generally be categorized into four categories. The four general categories of Property Claims and the total claims filed under each are summarized below:

Category	**No.**	**$ CAD Amount**
In-Flight Claims	34	$5,009,446
Holding Claims	24	$30,754,557
Margin Call Claims	22	$6,852,430
Miscellaneous	4	$3,755,354
Total	**84**	**$46,371,787**

64. In-Flight Claims relate to customer funds paid into EncoreFX's accounts in the days leading up to the Bankruptcy Date for the purpose of a specific transaction that was not completed by EncoreFX following the Bankruptcy Date.

65. Holding Claims relate to customer funds paid to EncoreFX before the Bankruptcy Date, which EncoreFX allocated to the customer's internal holding account while EncoreFX was awaiting instructions on how or when to transact these funds.

66. Margin Call Claims relate to client funds paid to EncoreFX before the Bankruptcy Date under a forward or option contract to cover unfavourable market fluctuations in excess of limits set out in their Credit Facility Letter.

67. Miscellaneous Claims do not fit into the above three categories and involve a number of mixed claims.

68. The current status of the 84 Property Claims filed is as follows:

Current Status	**No.**	**$ CAD Amount**
Property Claims – Admitted	3	$2,074,573
Property Claims – Withdrawn	1	$3,672,428
Property Claims - Disallowed		
Disallowed – No appeal filed	56	$4,279,340
Disallowed – Still within appeal period	2	$458,389
Disallowed – Appeal filed	19	$33,271,719
Disallowed – Appeal settled	3	$2,615,338
Total Property Claims Filed	**84**	**$46,371,787**

69. To date, twenty-two (22) customers (the "**Appealed Property Claimants**"), with a total of $35,887,057 in Property Claims, have appealed the Trustee's decision to disallow their Property Claims (the "**Appealed Property Claims**"). Three appeals of customers with a

total of $2,615,338 have been settled, and 19 customers, with a total of $33,271,719 in Property Claims, have outstanding appeals, which are broken down as follows:

Category	No.	$ CAD Amount
In-Flight Claims	5	$1,436,070
Holding Claims	6	$29,575,015
Margin Call Claims	8	$2,260,634
Total	**19**	**$33,271,719**

70. The Proposed Monitor notes that with the exception of the Appealed Property Claims classified as "**Margin Call Claims**" above (the "**Margin Call Claims**"), the Appealed Property Claims generally represent Claims by parties who advanced real money (i.e. cash) into "pooled" bank accounts of EncoreFX within a very close proximity of the Bankruptcy Date respecting:

    a) spot transactions or drawdowns to close out OTM or ITM transaction(s) in which the Company received the customer's incoming payment in the days leading up to the Bankruptcy Date but had not yet processed the outgoing payment in return; and

    b) funds for future transaction(s) in which the Company was awaiting further instruction.

71. The Proposed Monitor has distinguished the Margin Call Claims from the other Appealed Property Claims as the Proposed Monitor is of the view that the Margin Call Claims are not property claims but should be treated as unsecured claims.

72. **Accordingly, irrespective of whether Appealed Property Claims are in fact true Property Claims by law, the Proposed Monitor is of the view that they are commercially distinguishable from claims by other parties for financial losses**

incurred with respect to closed-out ITM positions ("ITM Creditors") or other typical unsecured creditor claims.

73. Under the BIA Proceedings, the Trustee intended to have the appeals of the Appealed Property Claims heard by this Honourable Court by category due to each category sharing similar and common facts and characteristics, in an effort to expedite resolution and to minimize professional costs to be borne by the Estate and the Appealed Property Claimants.

74. Mr. Wrede is the largest Appealed Property Claimant of EncoreFX, with an approximately $29 million CAD Property Claim which falls under the category of Holding Claim. Legal counsel for Mr. Wrede and the Trustee agreed to deal with the appeal of the Trustee's disallowance of the Wrede Property Claim by way of a trial of an issue pursuant to s. 187(8) of the BIA.

THE EFT REVERSALS

75. In the Trustee's Reports, the Trustee noted that on the Bankruptcy Date, the Trustee notified the Company's financial institutions that EncoreFX had filed a voluntary assignment into bankruptcy and the Trustee instructed each financial institution to freeze all debit and credit accounts, leaving the accounts open only to accept deposits. The Company maintained its primary banking facilities with BMO.

76. EncoreFX used accounts with BMO (the "**BMO Accounts**") to facilitate electronic funds transfers ("**EFTs**") with the Company's clients pursuant to standard, pre-authorized debit ("**PAD**") agreements.

77. Subsequent to Bankruptcy Date, a number of EncoreFX's clients (the "**PAD Customers**") instructed their financial institutions to reverse pre-authorized payments made to EncoreFX prior to the bankruptcy (the "**EFT Reversals**"). The EFT Reversals were purportedly effected pursuant to the *Rules of the Canadian Payments Act*, R.S.C. 1985,

c. C-21 (the "**CPA Rules**"), and specifically, Rule H1 – Pre-Authorized Debits, which resulted in the return of funds from EncoreFX's BMO accounts.

78. The Trustee has taken the position that the EFT Reversals, which were initiated by the PAD Customers and processed by BMO, constitute a breach of the Stay. In the three days that followed the Bankruptcy Date, EFT Reversals totaling approximately CAD $4,900,000 and USD $2,300,000 (the "**Initial Reversals**") were debited directly from the frozen BMO Accounts.

79. BMO continued to process the EFT Reversals subsequent to the Trustee having transferred the balances of the BMO Accounts to accounts at the Royal Bank of Canada controlled by, and in the name of, the Trustee. From April 2, 2020 to on or around April 14, 2020, additional EFT Reversals totaling approximately CAD $3,900,000 and USD $800,000 were paid to PAD Customers by BMO (the "**Subsequent Reversals**"). These Subsequent Reversals were <u>not</u> processed against the BMO Accounts but paid directly to the PAD Customers by BMO. BMO has recorded the Subsequent Reversals in a loss account in the name of EncoreFX.

80. The Trustee advised BMO that it has taken the position that, amongst other things, the processing of the EFT Reversals against the BMO Accounts contravened the Stay. The Trustee has completed standard dispute forms and instructed BMO to dispute each of the EFT Reversals processed against the operating accounts of the Company.

81. On or about April 8, 2020, MLT Aikins sent a demand letter to the PAD Customers who carried out EFT Reversals notifying that the EFT Reversals were in contravention of the Stay and demanding that any PAD Payments transferred or reversed on or following the Bankruptcy Date be immediately returned to the Trustee.

82. On or about July 15, 2020, MLT Aikins sent follow-up demand letters to a subset of PAD Customers who effected EFT Reversals after EncoreFX completed the requested wire transactions (the "**Double Dip Customers**"). In other words, the Double Dip Customers received a double recovery, as EncoreFX delivered funds to a third-party beneficiary designated by the Double Dip Customers, and the Double Dip Customers still credited their accounts with an EFT Reversal.

83. As of the date of this Application, the Trustee has collected from all but one of the Double Dip Customers, namely AgraCity Crop and Nutrition Ltd. ("**AgraCity**"). The Trustee has taken the position that that AgraCity owes EncoreFX CAD $314,544.20 (collectively, the "**Double Dip Amount**"). The Trustee has filed an application to recover the Double Dip Amount owed by AgraCity.

84. The Trustee has settled a number of the EFT Reversals; and continues to exercise all available rights and remedies to seek to recover the EFT Funds.

85. In order to resolve the contested matters between BMO regarding the EFT Reversals and facilitate the filing of the Plan described herein, BMO agreed to repay the Estate sum of CAD $4,339,614 and USD $1,171,279 (the "**EFT Funds**") representing the amounts which BMO had debited from the EncoreFX operating accounts after the Bankruptcy Date less the amounts which the Trustee has settled with PAD Customers or Double Dip Customers. BMO paid these amounts into the Estate in February 2021 such that the amounts would be available for distribution in accordance with the terms of the Plan.

86. In exchange for receipt of funds, the Trustee agreed to allow BMO to file an unsecured claim for losses incurred with respect to the EFT Reversals; and accordingly, BMO will stand to recover a portion of these losses should the Plan be affirmed by the Company's creditors and approved by this Honourable Court.

THE SETTLEMENT TRANSACTION

87. Various Claims have been asserted against EncoreFX including the Secured Claim of GCC as well as the Appealed Property Claims and unsecured claims. While the Trustee has delivered a draft notice of disallowance of the Secured Proof of Claim to Jones Emery, counsel to GCC, and disallowed the Appealed Property Claims, the Trustee's positions are under appeal and/or remain subject to extensive and uncertain litigation in the BIA Proceedings.

88. If the outstanding litigation validates that the GCC Secured Claim and the Appealed Property Claims are valid, the Trustee notes that little to no recovery would be available to unsecured creditors. However, even if it the outstanding litigation results in a determination that the Trustee properly disallowed the GCC Secured Claim and the Appealed Property Claims, the Trustee is of the view that process of litigating of all these Claims would, a) deplete the funds available for distribution to creditors, and b) delay a distribution to creditors for an extended period of time given that the quantum of those Claims exceeds the proceeds in the Estate available for distribution to creditors.

89. It is noted above that in late 2020, representatives of GCC, Mr. Wrede and the Trustee (defined above as the Term Sheet Parties) commenced discussions around a potential global settlement of the various Claims asserted against EncoreFX which would allow for a prompt distribution of the funds in the Estate available for distribution to EncoreFX's creditors.

90. BMO later became part of these discussions as a requisite to a global settlement was achieving a resolution of the outstanding EFT Funds as amongst BMO and the Estate.

91. As noted at paragraphs 10 and 11 of this report, in early to mid January of 2021, GCC and Mr. Wrede presented the Term Sheet to the Trustee. The Term Sheet was approved by the Inspectors on January 15, 2021 and was formally executed by the Term Sheet Parties later that day.

THE CCAA PLAN

Overview and Objective

92. The Plan seeks to avoid depletion of the Estate's assets resulting from extensive and uncertain litigation and to achieve a balance of the equities of the stakeholders of EncoreFX. The Plan aims to achieve this by providing a global resolution of the Affected Claims (as defined in the Plan) as against the Estate of EncoreFX by way of the distribution of all funds and other assets recovered by the Trustee, and that may be recovered by the Proposed Monitor under the CCAA Proceedings after the CCAA Conversion.

93. The Trustee has determined through due diligence, including detailed discussions and negotiations with the GCC, Mr. Wrede, BMO, and the Inspectors within the BIA Proceedings, that the global resolution outlined in the Term Sheet and this Plan and implemented through a liquidating CCAA proceeding will result in the best recovery for the Affected Creditors (defined below).

94. In particular, the Plan simplifies recovery of assets and distribution of proceeds to the Affected Creditors (defined below) by:

    a) resolving contested matters regarding the secured claim of GCC as further described hereinafter;

    b) resolving contested matters with BMO regarding the EFT Funds; and

    c) establishing a framework to assess and resolve the Property Claims, including the Wrede Property Claim;

    d) establishing a framework to assess and to resolve the outstanding OTM Claims (receivables) that the Trustee has been seeking to recover for the benefit of the Estate; and

    e) establishing a pool of funds to distribute to the General Unsecured Creditors of EncoreFX.

95. The Proposed Monitor notes that the Plan provides at minimum a 16% recovery to the General Unsecured Creditors; which in the Proposed Monitor's view is on the very high end of recoveries received by unsecured creditors in the context of a bankruptcy and liquidation.

96. Moreover, based on the analysis provided below, the Proposed Monitor is of the view that the Plan: (a) very likely provides General Unsecured Creditors with a superior recovery than they would otherwise receive should the BIA Proceedings continue, and (b) allows for a distribution in the very near future that would otherwise not be feasible given the outstanding litigation between the Trustee on behalf of the Estate, GCC, and the Appealed Property Claimants.

97. The terms of the Plan contemplate that Affected Claims will receive a partial payment of their Proven Claims (as defined in the Plan) in full satisfaction of their Proven Claims (as defined in the Plan).

98. The Plan, if sanctioned by this Honourable Court, will involve the payment or compromise, on the terms described therein, of the Affected Claims against EncoreFX.

99. The terms of the Settlement Transaction, and the Plan proposed pursuant thereto, propose EYI as the Monitor of EncoreFX.

Oversight Committee

100. Upon the granting of the Conversion Order, the Inspectors shall be deemed to resign and each of GCC and Wrede shall nominate one person who, together with the Monitor, will form an oversight committee (the "**Oversight Committee**").

101. The purpose of the Oversight Committee shall be, *inter alia*, to review and approve settlements in respect of the Estate Claims (as defined in the Plan), Claims regarding EFT Reversals, Property Claims, and generally deal with the continued realization of the assets of EncoreFX.

102. The Oversight Committee shall not incur any liability with respect to any steps and actions taken in fulfilling their mandate except for gross negligence or willful misconduct.

103. The Proposed Monitor is of the view that the creation and composition of the Oversight Committee is appropriate as GCC and Mr. Wrede represent the overwhelming majority of the value of the GCC Secured Claim and Property Claims. Accordingly, GCC and Mr. Wrede should be entitled to oversee the administration of the Estate within the CCAA Proceedings.

Classification of Creditors

104. For voting and distribution purposes, the Plan shall have three (3) classes ("**Classes**" or "**Affected Creditor Classes**") of creditors (collectively, the "**Affected Creditors**"):

Class	Description
Secured Creditor	The class of secured creditor shall comprise of GCC with respect to the GCC Secured Claim.
Property Claimants	The class of property claimants shall comprise of Affected Creditors who have Appealed Property Claims (excluding the Margin Call Claims).
General Unsecured Creditors	The class of General Unsecured shall comprise any other remaining creditors which have general unsecured claims (the "**General Unsecured Claims**"), including: i. Employee Claims; ii. ITM Creditors; iii. Margin Deposits Claims where the claimant: a) did not submit a Property Proof of Claim; b) submitted a Property Proof of Claim which has been disallowed by the Trustee on a final basis or determined by this Honourable Court or any other court of competent jurisdiction to not have a Property Claim; c) received a notice from the Trustee pursuant to section 81(4) of the BIA and failed to file a

	Property Proof of Claim within the prescribed period; iv. Claims in respect of In-Flight Claims or Holding Claims where the claimant: d) did not submit a Property Proof of Claim; e) submitted a Property Proof of Claim which has been disallowed by the Trustee on a final basis or determined by this Honourable Court or any other court of competent jurisdiction to not have a Property Claim; f) received a notice from the Trustee pursuant to section 81(4) of the BIA and failed to file a Property Proof of Claim within the prescribed period. v. trade creditors; and vi. BMO in respect of its EFT Claim.

Treatment of Proven Distribution Claims

105. The Plan contemplates a compromise and settlement with the Affected Creditors with proven distribution claims, meaning Proven Claims (as defined in the Plan) which have been approved by the Proposed Monitor or this Honourable Court for the purposes of distribution ("**Proven Distribution Claims**"), based on the following consideration to paid to each Class:

a) **Secured Creditor**: In full and final satisfaction of the GCC Secured Claim, the Secured Creditor will receive:

i. a distribution from the Current Funds and EFT Funds (the "**Secured Claim Distribution**") of $12,000,000;

ii. an accepted preferred claim of $4,944,475 (the "**Secured Preferred Claim**"); and

iii. an accepted deficiency claim equal to $18,944,475 (the "**Secured Deficiency Claim**").

b) **Property Claimants**: In full and final satisfaction of the Property Claims, the Property Claimants whose Property Claims constitute Proven Claims (as defined in the Plan) will receive:

i. a distribution from the Current Funds and EFT Funds equal to 66.67% of their respective Property Claim (the "**Property Claim Distributions**"); and

ii. an accepted deficiency claim equal to the amount of their Property Claim minus any amounts received from the Property Claim Distribution (the "**Property Deficiency Claims**"). The amount of any accepted Property Claim shall be net of any amounts owing by the Property Claimant to the Estate in respect of any "OTM" positions, or any other debt owed to the Estate by the Property Claimant.

c) **General Unsecured Creditors**: In full and final satisfaction of the General Unsecured Claims, the General Unsecured Creditors may elect to receive a distribution from the Current Funds and EFT Funds (the "**Unsecured Claim Distributions**") equal to either:

i. 100% of their respective General Unsecured Claim with respect to the first $5,000 of their General Unsecured Claim, or

ii. 16% of their respective General Unsecured Claim.

For those General Unsecured Creditors who are owed $5,000 or less and for those General Unsecured Creditors who are owed between $5,000 and $31,250 and who elect to accept $5,000 in full and final satisfaction of their claims (collectively, the "**Convenience Creditors**"), then in each such case the Convenience Creditors shall be deemed to have voted in favour of the Plan.

The amount of any accepted General Unsecured Claim shall be net of any amounts owing by the General Unsecured Creditors to the Estate as determined by the Monitor or this Honourable Court in respect of any OTM Positions, or any other debt owed to the Estate by the General Unsecured Creditor.

Disputed Claims

106. The portion of an Affected Claim which has not been allowed or accepted by the Proposed Monitor as a Proven Distribution Claim and which has not been resolved (the "**Disputed Claims**") will be permitted to vote at the meeting of creditors. However, Disputed Claims will not be eligible to receive a distribution pursuant to the Plan until settlement or final determination of the Disputed Claim is achieved in accordance with the Claims Process Order and this Plan.

107. On the date that the distribution is to be issued by the Monitor (the "**Distribution Date**"), the distributions relating to Disputed Claims will be held in escrow in a reserve (the "**Disputed Claims Reserve**") until settlement or final determination.

Timing of Distributions under the Plan

<u>Available Funds</u>

108. The funds available for distribution to the Affected Creditors will comprise of the following:

a) funds held in the Proposed Monitor's bank account (inclusive of the EFT Funds) (the "**Current Funds**") which are available for distribution on the date when the Plan is approved by the Honourable Court for implementation ("**Plan Implementation Date**");

b) additional funds to be recovered in respect of the OTM Claims; and

c) any additional funds recovered by the Proposed Monitor or Trustee on behalf of the Estate (collectively, the "**Available Funds**").

Initial Distributions

109. Should the Plan be approved by:

a) the "**Required Majority of Creditors**" or each Class (representing not less than 66 2/3% in value of the Votes Cast (as defined in the Plan) and 50% in number of the Votes (as defined in the Plan) with Affirmative Votes (as defined in the Plan) present and voting in person or by proxy at the Creditor's Meeting (as defined in the Plan)); and

b) this Honourable Court by pronouncement of a "**Sanction Order**" meaning an order to be made in the CCAA Proceeding that among other things, sanctions, authorizes and approves the Plan;

the Monitor will make the following payments:

c) payment of Certain Crown Claims, if any, pursuant to s. 6(3) of the CCAA;

d) payment of employee amounts owing pursuant to s. 6(5) of the CCAA and s. 81.3(1) of the BIA (collectively, with the s. 6(3) Crown Claims, (the "**Priority Payables**"); and

e) deposit $4,000,000 from the Current Funds into a separate account (the "**Administrative Reserve**") for the purpose of funding the Proposed Monitor to continue to pursue the Estate Claims (as defined in the Plan) and for any other reasonable costs and expenses of the Estate.

110. On the Distribution Date, the Proposed Monitor will reserve sufficient funds for the Administrative Reserve, the Disputed Claims Reserve, and any other amount ordered by this Honourable Court or any amount determined by the Proposed Monitor as necessary and advisable to reserve in order to facilitate the orderly and efficient administration of the Plan (the "**Additional Reserve**").

111. On the Distribution Date and upon the payment or reserve of the Priority Payables, the Disputed Claims Reserve, if any, the Administrative Reserve and the Additional Reserve,

if any, and subject to paragraph 108 below, the Proposed Monitor shall make the following payment (the "**Initial Distribution**"):

a) *first*, to the General Unsecured Creditors in respect of the Unsecured Claim Distributions; and

b) *second*, to the Secured Creditor and the Property Claimants in respect of the Secured Claim Distribution and the Property Claim Distributions.

112. Should the Available Funds, after the above noted reserves and payments, be insufficient to pay the amounts described in paragraph 107, the Proposed Monitor will withhold from the Secured Claim Distribution and the Property Claim Distribution, (the "**Withheld Amounts**"), on a *pro rata* basis, the amount necessary to pay the Unsecured Claim Distribution in full and to maintain the Administrative Reserve, the Disputed Claims Reserve and the Additional Reserve (collectively, the "**Reserves**").

113. As Available Funds and funds become available from the Disputed Claims Reserve and the Additional Reserve, such funds will be distributed on a *pro rata* basis to the Secured Creditor and to the Property Claimants with Proven Distribution Claims for payment of the Withheld Amounts until the Withheld Amounts have been paid in full.

<u>Subsequent Distributions</u>

114. The Proposed Monitor will distribute the Available Funds in excess of the Initial Distributions and the Reserves (the "**Remaining Funds**"), as follows:

a) *first*, to the Secured Creditor in satisfaction of the Secured Preferred Claim; and

b) *second*, following payment in full of the Secured Preferred Claim, *pro rata* amongst the Secured Deficiency Claim, and the Property Deficiency Claims (collectively, the "**Subsequent Distributions**").

115. Subsequent Distributions will only be paid by the Proposed Monitor when the Remaining Funds exceed the sum of the Disputed Claims Reserve, the Additional Reserve and

$5,000,000, and at intervals to be determined by the Oversight Committee (as defined in the Plan) or by this Honourable Court.

116. The funds remaining, if any, in the Reserves upon the Proposed Monitor's completion of its obligations under the Plan will be distributed to the Secured Creditor and the Property Claimants with Proven Distribution Claims in accordance with the Plan and paragraph 110 above.

CONDITIONS FOR APPROVAL OF THE PLAN

117. The Proposed Monitor is of the view that the conditions for implementation of the Plan as described in Article 9.2 of the Plan are standard and customary. Should the Plan satisfy the conditions described above, the Proposed Monitor anticipates facilitating the payment of the Initial Distributions under the Plan in May 2021. An indicative timeline is provided below.

Event	Date	Description
Creditor's Meeting Date	April 27, 2021	Creditors meet to vote on the Plan
Sanction Order	Week of May 3, 2021	Hearing to approve the Sanction Order
Satisfaction of Conditions Precedent as defined in the Plan	Week of May 17, 2021	Estimated to occur over two weeks
Plan Implementation Date	Week of May 17, 2021	Monitor to file its certificate upon satisfaction of conditions
Subsequent Distributions	TBD	Timing of payment of any Subsequent Distributions depends on timing and outcome of future recoveries.

PROPOSED MONITOR'S COMMENTS ON THE PLAN

118. The Proposed Monitor is of the view that the Plan:

a) achieves the objectives described Paragraph 92 above;

b) avoids extensive and uncertain litigation that would deplete the funds available for distribution to creditors;

c) was carefully considered and approved by the Inspectors by way of the Term Sheet, where the Inspectors include creditors elected to represent creditor interests in the BIA Proceedings;

d) provides certainty of outcome by crystallizing and providing for a distribution to each of the Affected Creditor Classes, and in particular:

   i. provides a 66.67% recovery to the Appealed Property Claimants with Proven Distribution Claims but excluding the Margin Call Claims;

   ii. provides General Unsecured Creditors with at least a 16% recovery which is a superior recovery than they would otherwise receive should the litigation of outstanding matters continue; and

   iii. provides an initial distribution of $12 million to the Secured Creditor which is a fraction of the amount claimed;

e) resolves the contested matter with BMO with respect to the EFT Reversals; and

f) allows for a distribution in the very near future that would otherwise not be feasible given the outstanding litigation between the Trustee on behalf of the Estate, GCC, and the Appealed Property Claimants.

119. The Plan avoids litigation and removes the uncertainty that surrounds the future distributions to be paid. Rather, the Plan provides certainty of outcome by crystallizing and providing for a distribution to each of the Affected Creditor Classes.

120. The alternative to the Plan is the continuation of the liquidation proceedings of the Company and litigation of the GCC Claim and the Appealed Property Claims which could result in unlimited range of possible recoveries to General Unsecured Creditors as depicted in the analysis attached as **Appendix "C"** and summarized below:

EncoreFX Inc.
Estimated Distribution Analysis under various Bankruptcy Scenarios

		BANKRUPTCY				PLAN
		Scenario 1	Scenario 2	Scenario 3	Scenario 4	
Key Assumptions/Inputs:						
Appealed Property Claims		*100% Admitted*	*100% Disallowed**	*100% Admitted*	*75% Admitted**	*66.67% Admitted*
GCC Secured Claim		*100% Secured*	*100% Secured*	*100% Unsecured**	*$14,000,000 Secured**	*$12,000,000 Secured*
Estimated Cash Available for Distribution	$	**41,752,885**	**41,752,885**	**41,752,885**	**41,252,885**	**38,337,442**
Estimated Creditor Claims						
Appealed Property Claims		31,011,085	-	31,011,085	23,258,314	20,674,057
GCC Secured Claim		32,926,771	32,926,771	-	14,000,000	12,000,000
General Unsecured Creditors		30,152,878	61,163,963	63,079,650	56,832,421	30,152,878
Total Estimated Creditor Claims	$	**94,090,735**	**94,090,735**	**94,090,735**	**94,090,735**	**62,826,935**
Estimated Creditor Recovery %						
Appealed Property Claims		100.0%	0.0%	100.0%	75.0%	66.7%
GCC Secured Claim		32.4%	99.6%	0.0%	42.5%	36.4%
General Unsecured Claims		**0.0%**	**14.4%**	**16.9%**	**6.8%**	**18.5%** **

**Portion of Appealed Property Claims or Secured Claim not admitted as a Property Claim or a Secured Claim are included as general unsecured claims.*

***Total aggregate distribution to general unsecured creditors under the Plan exceeds 16% and estimated at 18.5% due to signficant number of unsecured creditors having their Proven Claim paid in full or to receive a distribution in excess of 16%.*

121. As is noted above, the Proposed Monitor estimates that the 16% recovery to the General Unsecured Creditor Class is a superior outcome to creditors in nearly every probably scenario identified by the Proposed Monitor; and accordingly, **<u>the Proposed Monitor recommends that creditors vote in favour of the Plan.</u>**

THE CLAIMS PROCESS

Summary

122. Should this Honourable Court grant the Conversion Order, the Proposed Monitor has filed a motion with this Honourable Court returnable within 10 days of the date of the granting of the Conversion Order requesting an order (the "**Claims Process Order**") approving a claims process (the "**Claims Process**") for determining the claims of creditors ("**Claims**") and to establish a claims bar date by which creditors must file a Proof of Claim in the

CCAA Proceedings. The proposed forms and notices for the Claims Process are included as schedules to the draft Claims Process Order, a copy of which is appended to the Notice of Application for the Comeback Hearing as Schedule "C". Capitalized terms describing the Claims Process, and as set out below, shall have the meaning ascribed to them in the Claims Process Order.

123. The purpose of the Claims Process is to, *inter alia*:

a) notify Known Creditors of the amounts owed to them as of the CCAA filing date (as reflected in the books and records of EncoreFX) and the characterization of such amounts (the "**Claim Amount Notice**");

b) provide an opportunity for creditors that do not agree with the amount or characterization of the indebtedness to file a Proof of Claim by no later than 4:00PM (Pacific Standard Time) on April 21, 2021 (the "**Claims Bar Date**");

c) require a creditor who has not received a Claim Amount Notice or who does not agree with the Claim Amount Notice, to file a Proof of Claim by no later than 4:00PM (Pacific Standard Time) on the Claims Bar Date;

d) provide the Proposed Monitor the ability to revise and/or to disallow Proofs of Claim (a "**Notice of Revision or Disallowance**" or "**NORD**"); and

e) allow a creditor to dispute the Notice of Revision or Disallowance provided to such creditor (a "**Notice of Dispute**" or "**NOD**") and provide a mechanism for resolving such disputes.

124. Failure of the creditor to file a Proof of Claim in respect of a Claim included in the List of Claims and the Notice to Creditor by the Claims Bar Date or a subsequent Notice of Dispute within the time stipulated in the Claim Process Order will result in the following:

a) the Claim of the creditor shall be deemed to have been accepted for all purposes at the amount and categorization set out in the Claim Amount Notice or in an accepted Proof of Claim;

b) the Claim of the creditor shall be deemed to be the Claim as set out in the Notice of Revision or Disallowance;

c) the Proposed Monitor's Notice of Revision or Disallowance in respect of such Creditor's Claim shall be final and binding on all persons and there shall be no further right to appeal, review or recourse to this Court or any other Court or tribunal in respect of the Proposed Monitor's Notice of Revision or Disallowance; and

d) all other claims of such creditor, if any, shall be forever estopped, extinguished and barred.

125. Failure of the creditor, who has not already submitted a BIA Proof of Claim or who was not provided a Claim Amount Notice, to submit a Proof of Claim by the Claims Bar Date will result in the following:

a) be forever barred, estopped and enjoined from asserting or enforcing any such Claim (or filing a Proof of Claim with respect to such Claim) against EncoreFX and such Claim shall be forever extinguished;

b) not be permitted to vote on any Plan on in respect of any such Claim;

c) not be permitted to participate in any distribution under any Plan; and

d) not be entitled to receive further notice in the CCAA Proceedings.

Creditor Notification

126. Forthwith and in any event within one (1) business day following the date of the Claims Process Order, the Proposed Monitor, on behalf of EncoreFX, will mail a package containing the Notice to Creditor, the List of Claims, a blank Proof of Claim Form with a Proof of Claim instruction letter and such other materials as the Proposed Monitor may consider appropriate or desirable (the "**Claims Package**") to each Known Creditor (as defined in the Creditor's Meeting Order"). Templates for the Claims Package are attached to the Claims Process Order.

127. Forthwith and in any event within one (1) business day following the date of the Claims Process Order, the Proposed Monitor will post the Claims Package on the Website until the Claims Bar Date.

128. Forthwith and in any event within five (5) business days following the date of the Claims Process Order, the Proposed Monitor shall cause the Notice to Creditor to be published for one business day in the *Vancouver Sun*, the *Victoria Times Colonist* and *The Globe and Mail* (collectively the "**Claims Process Newspaper Notice**"). A template for the Notice to Creditor is attached to the Claims Process Order.

Proposed Timeline

129. A timeline of the procedural steps for the Claims Process is as follows:

Activity	Deadline
Court approval of Claims Process Order	Thursday, March 25, 2021
Proposed Monitor to mail Claims Process Documents to creditors	Friday, March 26, 2021
Proposed Monitor to post Claims Process Documents to the Website	Friday, March 26, 2021
Proposed Monitor to advertise Claims Process Newspaper Notice	On or before Tuesday, March 30, 2021
Claims Bar Date	Thursday, April 21, 2021
Deadline for Proposed Monitor to send a Notice of Revision or Disallowance ("**NORDs**")	Friday, April 22, 2021
Deadline for persons to submit a Notice of Dispute to Proposed Monitor ("**NODs**")	the day which is ten (10) days after the date of the NORD
Deadline for persons to file and serve a Claim Application (as defined at paragraph 35 of the Claims Process Order) regarding any NODs	Friday, May 7, 2021

Claims Bar Date

130. It is the view of the Proposed Monitor that the Claims Bar Date is reasonable and appropriate for, *inter alia*, the following reasons:

a) If approved by this Honourable Court, the Claims Bar Date would be twenty-one (21) days following the anticipated Court approval date, which is consistent with the deadline for filing a proof of claim pursuant to a Division 1 Proposal under the BIA;

b) The commencement of the BIA Proceedings has been approximately eleven months prior to the commencement of the proposed Claim Process. The Trustee provided every known creditor of EncoreFX with a Proof of Claim and an extract of the Statement of Affairs detailing the amounts owed to each creditor. It is the view of the Proposed Monitor that EncoreFX's creditors have accordingly been provided an additional eleven months to become aware of these insolvency proceedings and to contact EYI to update the accuracy of the EncoreFX's books and records;

c) the BIA Proceedings have been well publicized, so most creditors are aware of EncoreFX's insolvency;

d) creditors that are required to file a Proof of Claim will be advised of the Claims Process through:

   i. receipt of the Claims Package directly to their last known e-mail or mailing address;

   ii. the Claims Process Newspaper Notice, which will advertise the Claims Process in the jurisdictions where the majority of EncoreFX's operations and creditors are located or where services were sold prior to the filing date; and

   iii. the posting of Claims Package on the Proposed Monitor's website;

e) creditors who disagree with a Notice of Revision or Disallowance will have fourteen (14) days to provide a Notice of Dispute; and

f) in preparing for these insolvency proceedings, the Proposed Monitor, with the assistance of key individuals at EncoreFX, undertook significant efforts to verify the financial records of EncoreFX and is satisfied that EncoreFX's books and records are materially accurate.

131. The majority of creditors will receive a Claim Amount Notice. If the Claim Amount Notice is acceptable to the creditor, then they are not required to do anything further in the Claims Process. The Proposed Monitor expects that the majority of EncoreFX's creditors have either already filed a Proof of Claim or will not be filing Proofs of Claim.

132. The Proposed Monitor is of the view that in the event that a creditor is required to file a Proof of Claim, the Claims Process will provide such creditor with sufficient and timely notification to allow it to submit a Proof of Claim prior to the Claims Bar Date.

Claims Adjudication Process

133. Following the Claims Bar Date, the Proposed Monitor, shall review the Proofs of Claim received to determine if the Proposed Monitor is prepared to allow with the Proofs of Claim as filed. In the event of a dispute, the Claims Process Order provides a mechanism to address disputes through the issuance of NORDs and any subsequent NODs.

Summary Regarding Claims Process Order Sought

134. The Proposed Monitor is seeking the Claims Process Order which declares, *inter alia*:

a) the provisions of the CCAA Process Order shall apply to all proceedings within this CCAA Proceeding;

b) the Claims Bar Date of April 21, 2021 shall apply to all proceedings in this CCAA Proceeding;

c) any creditor of EncoreFX (as defined in the Plan and discussed in further detail below) who received a Claim Amount Notice and who has accepted the determination of the amount of the Claim of such person shall be deemed to have a Proven Claim (as defined in the Plan) for the amount of the Claim Amount Notice as determined by the Proposed Monitor or as subsequently agreed to by the Proposed Monitor and that creditor without the necessity to file a Proof of Claim in this CCAA Proceeding; and

d) all BIA Proof of Claims delivered by a creditor to EYI within the BIA Proceedings, including without limitation, all Disputed Claims within the BIA Proceedings, shall continue to be governed by the applicable rules and processes as prescribed in the BIA, *mutatis mutandis*, including, without limitation, all prescribed timelines, onera, rights of appeal, and rights of examination or discovery.

135. Proposed Monitor proposes that the Proven Claims (as defined in the Plan) should be relied upon for purposes of establishing the voting (the "**Proven Voting Claims**") and distribution amount regarding Proven Distribution Claims for each creditor respecting the Plan.

MEETING OF CREDITORS

Notice of Creditor's Meeting

136. Should this Honourable Court grant the Conversion Order, the Proposed Monitor has filed a motion with this Honourable Court returnable the week of March 22, 2021 requesting an order approving a procedure of a creditor's meeting (the "**Creditor's Meeting**") to consider and vote on the Plan (the "**Creditor's Meeting Order**").

137. The Creditor's Meeting Order directs that the Proposed Monitor shall send the following documents (collectively referred to as the "**Meeting Materials**") to Known Creditors (as defined in the Creditor's Meeting Order) by prepaid regular mail, courier, fax or e-mail, at the last known address by no later than March 26, 2021:

a) the Notice of Meeting to Affected Creditors;

b) Proxy in the form attached as Schedule "E" to the Creditor's Meeting Order; and

c) the Plan Information Letter.

138. The Meeting Materials will advise the Affected Creditors that any other materials may be obtained from the Proposed Monitor's Website or provided upon written request.

139. Further, the Proposed Monitor will publish, as soon as practicable and no later than March 30, 2021, a notice of the Creditor's Meeting, in substantially the form attached as Schedule "D" to the Creditor's Meeting Order, in the *Vancouver Sun, the Victoria Times Colonist* and *The Globe and Mail* newspapers.

140. Pursuant to the terms of the Plan, the Proposed Monitor, shall be authorized to make modifications, amendments or supplements ("**Additional Information**") to such materials, including the Plan as the Proposed Monitor may determine, and the Proposed Monitor shall distribute or make available such Additional Information by one or more of the following methods determined in its discretion: (a) posting on the Website; (b) newspaper advertisement in one Saturday edition of the Vancouver Sun or The Globe and Mail; (c) pre-paid regular mail, e-mail, fax or delivery (in person or by courier); or (d) such other reasonably practicable method in the circumstances.

Procedure for Creditor's Meeting

141. Pursuant to the Creditor's Meeting Order (if approved by this Honourable Court), the Monitor will be authorized to call, hold and conduct a Creditor's Meeting to consider and to vote on the Plan.

142. Due to COVID-19 pandemic and to promote and maintain safe social distancing, the Creditor's Meeting is proposed to be held by video-conferencing technology (Microsoft Teams) beginning at 10:00 a.m. (Pacific Standard Time) on April 27, 2021 or such other

date as the Creditor's Meeting may be adjourned to in accordance with the provisions of the Plan.

143. The Creditor's Meeting will be held and conducted in accordance with the provisions of the Creditor's Meeting Order, notwithstanding the provisions of any other agreement or instrument or this Proposed Monitor's Report.

144. An officer of the Proposed Monitor will act as the chair of the Creditors' Meeting (the "**Chair**") and decide all matters relating to the rules, procedures and conduct of the Creditor's Meeting in accordance with the terms of the Plan, the Creditor's Meeting Order, as approved by this Honourable Court, and any further Order of this Honourable Court.

145. The quorum of the Affected Creditor Class required at the Creditor's Meeting shall be one (1) voting Creditor present in person or by proxy and entitled to vote at the Creditor's Meeting. If the requisite quorum is not present at the Creditor's Meeting, then the Creditor's Meeting shall be adjourned by the Chair to such date, time and place as may be decided by the Chair in his or her sole discretion. The Chair shall decide on the manner of giving notice to the Affected Creditor Class of any rescheduled meeting and may, if he or she deems it appropriate, restrict such notice to a notice posted on the Website.

146. An Affected Creditor with a Proven Voting Claim shall be entitled to attend and vote at the Creditor's Meeting in person or by proxy. To vote by proxy an Affected Creditor must submit the Proxy (as defined in the Creditor's Meeting Order) to the Chair on or before 5:00 pm (Pacific Standard Time) on the business day prior to the Creditor's Meeting or deposited with the Chair before the beginning of the Creditor's Meeting.

Voting at the Creditor's Meeting

147. At the Creditor's Meeting, the Chair shall direct the votes with respect to the Resolution to approve the Plan and any amendments, variations or supplements to the Plan that are made in accordance with the terms thereof.

148. The Proposed Monitor may appoint scrutineers for the supervision and tabulation of the attendance, quorum and votes cast at the Creditor's Meeting and any person to act as secretary at the Creditor's Meeting.

149. Voting at the Creditor's Meeting will be conducted as follows:

a) on a resolution pertaining to the approval of the Plan, a written ballot containing information sufficient to derive a result regarding the Required Majority of Creditors (as defined in the Creditor's Meeting Order); and

b) on a resolution on any matter, a vote by a majority of votes cast on a vote by a show of hands, unless the Chair decides, in his or her sole and absolute discretion, to hold such vote by way of ballot.

150. The only creditors entitled to vote at the Creditor's Meeting shall be Affected Creditors with Proven Voting Claims or their proxy holders as of the date of the Creditor's Meeting, as well as certain creditors with Disputed Claims as described at paragraphs 102 and 149.

151. Any General Unsecured Creditor with a Proven Claim (as defined in the Plan) pursuant to which it shall be entitled to receive 100% of its Proven Claim (as defined in the Plan) or 100% of its Claim Amount Notice, shall be deemed to vote in favour of the Plan and the Proposed Monitor shall be deemed to be, and shall be vested with the right to vote each such General Unsecured Claim in favour of the resolution to approve the Plan and for the purposes of voting, each General Unsecured Claim shall constitute one (1) vote and the value of each such General Unsecured Claim shall be the amount of the Proven Claim (as defined in the Plan) or the Claim Amount Notice of that General Unsecured Creditor.

152. The General Unsecured Creditors that have elected, through the filing with the Proposed Monitor of the Convenience Creditor Form (as defined in the Claims Process Order), to receive the fixed distribution in full and final settlement of their Proven Claim (as defined in the Plan)shall be deemed to have voted their Proven Claim (as defined in the Plan) in favour of the Plan.

153. At the Meeting, for each Affected Creditor's Disputed Claim, the Proposed Monitor shall keep a separate record of votes cast by anyone entitled to vote holding Disputed Claims. The votes cast in respect of any Disputed Claim shall not be counted for any purpose unless, until and only to the extent that such Disputed Claim is finally determined to be a Proven Voting Claim in accordance with the Claims Process Order.

Reporting on the Creditor's Meeting

154. The Proposed Monitor shall file its report to this Honourable Court as soon as reasonably practicable after the Creditor's Meeting with respect to:

a) the voting results of the Affected Creditor Class with respect to the approval of the resolution to approve the Plan;

b) the effect on the results of the vote had the Affected Creditors holding Disputed Claims also voted the amount of their Affected Claims that were disputed for voting purposes; and

c) any other matter that the Monitor considers relevant with respect to the Sanction Hearing.

OVERVIEW OF THE 13-WEEK CASH FLOW PROJECTIONS

155. In order to fulfill the requirements of section 10(2)(a) of the CCAA, the Proposed Monitor has prepared a cash flow forecast, on a weekly basis, for the 13 weeks ending June 4, 2021 (the "**CCAA Cash Flow**").

156. The CCAA Cash Flow is attached hereto as **Appendix "D"**.

157. As set out therein, the anticipated receipts represent the estimated reimbursement to be received from BMO and the collection of approved settlements with OTM Clients. The anticipated expenses to be incurred are for professional fees, payroll expenses, information technology services and general administration expenses.

158. The CCAA Cash Flow for the 13 weeks ending June 4, 2021 (the "**Forecast Period**") has been prepared based on the probable and hypothetical assumptions noted below; to the extent that actual events may vary from these assumptions the results will vary from the forecast and these variances may be material.

159. The CCAA Cash Flow is predicated on the following primary assumptions:

a) OTM Settlements will be received from OTM Clients in accordance with the approved settlement agreements and at the correct amounts and within the agreed upon payment terms; and

b) The fees and disbursements of the Proposed Monitor and its legal counsel in facilitating and administering the Plan will be incurred evenly over each month of the forecast period.

PROPOSED MONITOR'S RECOMMENDATIONS

160. Based on the foregoing, the Proposed Monitor recommends that the Affected Creditors vote in favour of the Plan on the following basis:

a) The Plan provides a global resolution to all outstanding matters and enhancing the funds available for distribution by avoiding depletion of funds from litigation in the BIA Proceedings.

b) The Plan achieves a balance of the equities of the various stakeholders of EncoreFX by providing a distribution to each of the Affected Creditor Classes.

c) The Plan guarantees and provides a superior return to the General Unsecured Creditors, which is otherwise uncertain in the BIA Proceedings.

d) The Plan provides the largest percentage recovery to the Property Claimants who unknowingly paid funds into EncoreFX comingled accounts and who did not receive the benefit of the corresponding FX transaction.

e) The Plan provides an expedited distribution to the Affected Creditors that may otherwise be prolonged in the BIA Proceedings.

f) The Plan is supported by the Secured Creditor, Mr. Wrede (the largest Property Claimant) and BMO (the largest General Unsecured Creditor).

g) From a non-monetary viewpoint, the Plan provides for a global resolution and an expedited distribution to the Affected Creditors. For the majority of Affected Creditors this will conclude their involvement in the EncoreFX proceedings which have been ongoing for approximately one year, and to focus on their continued business operations during the COVID-19 pandemic and these unprecedented times.

161. Based on the forgoing, the Proposed Monitor recommends that this Honourable Court grant an Order:

a) authorizing and directing the filing of the Plan as described herein;

b) authorizing the Claims Process Order;

c) authorizing the Creditor's Meeting Order;

d) approving the form of materials to be distributed to the creditors affected by the Plan; and

e) setting the conditions for approval of the Plan in order for the Plan to be sanctioned by the Court.

All of which is respectfully submitted this 10th day March, 2021.

ERNST & YOUNG INC.
In its capacity as Proposed Monitor 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

No: S______
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT* R.S.C. 1985 c. B-3

AND

IN THE MATTER OF ENCOREFX INC.

PETITIONER

CONSENT TO ACT

Ernst & Young Inc. hereby consents to act as Monitor of the Petitioner pursuant to the Companies' Creditors Arrangement Act.

DATED at Vancouver, British Columbia, this [illegible]th Day of March, 2021.

ERNST & YOUNG INC.

Per:________________________
Mike Bell, CPA, CA, CIRP, LIT
Senior Vice President

APPENDIX B

In the Bankruptcy of EncoreFX Inc.
Estimated Statement of Receipts and Disbursements
As at March 9, 2021

Appendix B

	Mar-09 $ CAD
Cash Receipts	
Cash Accounts	
Island Savings	51
Toronto Dominion Bank	1,371,155
Bank of Montreal	2,818,796
Bank of Montreal - Harris Bank	6,627,903
ATB Financial	39,965
Connexus Credit Union	31,188
Citibank	1,635,407
ANZ	4,009,358
	16,533,824
Receipts from Liquidity Providers	
Deutsche Bank	7,624,481
Goldman Sachs	5,053,920
	12,678,401
OTM Close outs	12,912,787 [2]
OTM Close Outs - Held In trust by MLT Aikins	857,775
	13,770,562
BMO Reimbursement of EFT Reversals	5,822,454
Proceeds from Sale of EncoreFX Inc.	100,000
EFT Reversals	481,367
Global Reach - Cost Reimbursement, net	324,154
Proceeds from Sale of EncoreFX Ltd, net	744,690
Other	103,144
Total Cash Receipts	**50,558,596**
Cash Disbursements	
Bank Charges	3,068
Bond Premium	6,000
Computer and IT services	268,798
Filing Fees	150
GST paid on disbursements	3,004
Legal fees/disbursements	2,149,244
GST on legal fees	105,163
PST on legal fees	144,635
Other misc disbursements	34,697
Payment of Property Claims	2,067,971
Payroll and employee benefits	1,667,453
Rent Payments	347,572
Trustee's Fees	2,456,008
GST charged on Trustee remuneration	122,901
Utilities	81,543
Total Cash Disbursements	**9,458,206**
Total Cash Available	**41,100,390**

[1] USD balances converted using exchange rate of 1.2660 per Bank of Canada as at March 8, 2021

[2] Payment from Agrocenter Belcan ($55,725) deposited and included in TD account balance.

APPENDIX C

EncoreFX Inc. **APPENDIX C**

Estimated Distribution Analysis under various Bankruptcy Scenarios

	Notes		BANKRUPTCY				Plan
			Scenario 1[2]	Scenario 2[2]	Scenario 3[2]	Scenario 4[2]	
Estimated Cash Receipts							
Cash on Hand	3	$	41,100,390	41,100,390	41,100,390	41,100,390	41,100,390
OTM Collections - Approved but not yet received	4		2,066,595	2,066,595	2,066,595	2,066,595	973,052
OTM Collections - Estimate	5		3,821,900	3,821,900	3,821,900	3,821,900	500,000
Total Estimated Cash Receipts			**46,988,885**	**46,988,885**	**46,988,885**	**46,988,885**	**42,573,442**
Estimated Cash Disbursements							
Employees - Super Priority	6		(236,000)	(236,000)	(236,000)	(236,000)	(236,000)
Administration Costs	7		(5,000,000)	(5,000,000)	(5,000,000)	(5,500,000)	(4,000,000)
Total Estimated Cash Disbursements			**(5,236,000)**	**(5,236,000)**	**(5,236,000)**	**(5,736,000)**	**(4,236,000)**
Total Estimated Cash Available for Distribution	8	$	**41,752,885**	**41,752,885**	**41,752,885**	**41,252,885**	**38,337,442**
Estimated Creditor Claims							
Appealed Property Claims	10		**31,011,085**	**-**	**31,011,085**	**23,258,314**	**20,674,057**
GCC Secured Claim	11		**32,926,771**	**32,926,771**	**-**	**14,000,000**	**12,000,000**
Unsecured Claims	12						
Funds In-Flight			1,078,129	1,078,129	1,078,129	1,078,129	1,078,129
Holding Account			2,272,308	2,272,308	2,272,308	2,272,308	2,272,308
Margin Deposits			445,947	445,947	445,947	445,947	445,947
ITM Positions			10,757,099	10,757,099	10,757,099	10,757,099	10,757,099
Employees			3,830,137	3,830,137	3,830,137	3,830,137	3,830,137
Suppliers			685,455	685,455	685,455	685,455	685,455
Property Claims - Unsecured			-	31,011,085	-	7,752,771	-
GCC Secured Claim - Unsecured			-	-	32,926,771	18,926,771	-
BMO Claim - Unsecured			11,083,804	11,083,804	11,083,804	11,083,804	11,083,804
Total Unsecured Creditors			**30,152,878**	**61,163,963**	**63,079,650**	**56,832,421**	**30,152,878**
Total Creditor Claims		$	**94,090,735**	**94,090,735**	**94,090,735**	**94,090,735**	**62,826,935**
Total $ Distribution by Creditor Type	13						
Appealed Property Claims			31,011,085	-	31,011,085	23,258,314	20,674,057
GCC Secured Claim			10,657,445	32,808,255	-	14,000,000	12,000,000
General Unsecured Claims			**-**	**8,782,747**	**10,657,445**	**3,892,084**	**5,564,222**
OSB Levy			84,354	161,882	84,354	102,486	-
Contingency			-	-	-	-	99,164
Total Estimated Distribution		$	**41,752,885**	**41,752,885**	**41,752,885**	**41,252,885**	**38,337,442**
Creditor Recovery %	14						
Appealed Property Claims			100.0%	0.0%	100.0%	75.0%	66.7%
GCC Secured Claim			32.4%	99.6%	0.0%	42.5%	36%
General Unsecured Claims			**0.0%**	**14.4%**	**16.9%**	**6.8%**	**18.5%**

Notes and Assumptions used to prepare the estimated analysis are provided on the accompanying page.

(1) Balances presented in the analysis represent estimates based on currently available information. Actual results and balances may vary materially based on a variety of factors including, but not limited to, additional property proof of claims and proof of claims filed and admitted in the proceedings.

(2) Bankruptcy scenarios presented represent a limited number of numerous scenarios that may likely occur in the proceedings. Assumptions for the bankrutpcy scenarios provided in the anaylsis are as follows:

Creditor Type	Bankruptcy				Plan
	Scenario 1	Scenario 2	Scenario 3	Scenario 4	
Appealed Property Claims	*100% Admitted as Property Claim*	*100% Disallowed as Property Claim**	*100% Admitted as Property Claim*	*75% Admitted as Property Claim**	*66.67% Admitted as Property Claim*
GCC Secured Claim	*100% Admitted as Secured*	*100% Admitted as Secured*	*100% Admitted as Unsecured*	*$14,000,000 Admitted as Secured ***	*$12,000,000 Admitted as Secured*

**Under the Bankruptcy scenarios, any portion of an Appealed Property Claim disallowed or not admitted as a Property Claim is admitted as a general unsecured claim.*

***Under the Bankruptcy scenarios, unless otherwise noted, the portion of the GCC Secured Claim not admitted as a Secured Claim is admitted as a general unsecured claim.*

(3) Estimated Cash on Hand is as reported in the Estimated Statement of Receipts & Disbursements as provided in the Proposed Monitor's Report dated March 10, 2021.

(4) OTM Collections - Approved but not yet received represent collections from OTM Clients with settlements previously approved by the inspectors in the BIA Proceedings and with payment plans. Under the Plan, the amount is adjusted to reflect the estimated portion of the settlement amounts likely to be received by May 2021 for inclusion in the Initial Distributions.

(5) OTM Collections - Estimate represents a general estimate for future collections from OTM clients for which settlement agreements have not been obtained to date. These OTM collections are not assured and litigation likely required for future collection from these OTM clients. For purposes of this analysis, a conservate estimate of 25% recovery on the remaining unsettled OTM Positions is used. Under the Plan, the amount is adjusted to reflect the estimated OTM settlements that may be received by May 2021 for inclusion in the Initial Distributions.

(6) The Employee Super Priorty represents employee claims required to be paid pursuant to section 81.3(1) of the BIA. These are identified as Priorty Payables in the Plan.

(7) The estimated administration costs likely to be incurred in the continued administration of the BIA Proceedings contemplate adminsitration costs and professional fees to be incurred to pursue litgation for resolution of matters including, but not limited to, the GCC Secured Claim, the Appealed Property Claims and for litigation for collection from OTM clients yet to pay or without an approved settlement agreement. Under the Plan, this represents the Administrative Reserve and is reduced to $4M due to the Plan providing resolution to the GCC Secured Claim and Appealed Property Claims.

(8) Under the bankruptcy scenarios, Total Estimated Cash Available for Distribution represents the total estimated cash likely available for distribution upon the completion of the BIA Proceedings. Based on the numerous matters still unresolved, the date of completion for the BIA Proceedings is unknown at this time. Under the Plan, the Total Estimated Cash available for Distribution represents the total estimated cash likely available for distribution at the Initial Distribution date.

(9) Creditors are classified into one of three creditor classes: (1) Appealed Property Claims; (2) Secured Creditor; and (3) General Unsecured Creditors.

(10) Appealed Property Claims represent the Property Claims relating to Funds-in-Flight or Holding Account balances which were disallowed by the Trustee but an appeal to the Trustee's disallowance filed. The Appealed Property Claims do not include Property Claim appeals filed by customers relating to Margin Deposits. The Appealed Property Claims if admitted, will require funds to be paid to the Property Claimants in priority to the Secured Creditor and General Unsecured Creditors. Under the bankruptcy scenarios, the Appealed Property Claim balance is adjusted based on the assumptions noted in (2) above. Under the Plan, the Appealed Property Claims are shown at 66.67% of the total current Property Claim value.

(11) The GCC Secured Claim represents the secured creditor claim filed by Gustavson Capital Corporation. Under the bankruptcy scenarios, the GCC Secured Claim is adjusted based on the assumptions noted in (2) above. Under the Plan, the GCC Secured Claim is admitted as a secured claim of $12M with no amount included as a general unsecured claim.

(12) General unsecured creditors represent all other creditors not Appealed Property Claims or Secured Creditor. The amounts shown are as provided in the Company's books and records. Included in the general unsecured creditors is the BMO claim that was agreed to as part of the settlement with BMO for repayment of the EFT funds to the estate. Under the bankruptcy scenarios, the total general unsecured creditors balance is adjusted based on the assumptions relating to the Appealed Property Claimaints and Secured Creditor as noted in (2) above.

(13) Total $ Distribution by Creditor Type represents the estimated total distribution paid to each Creditor Class based on the assumptions noted in (2) above. Under the BIA Proceedings, the Appealed Property Claimants and Secured Creditor may be paid in priority to the general unsecured creditors for the portion of their claims admitted as a Property Claim or a Secured Claim. Based on the quantum of the Appealed Property Claims and Secured Creditor Claim, it is possible that the general unsecured creditors could receive a distribution of $Nil if such claims are determined as valid and to be admitted. Distributions paid to the Secured Creditor or to the general unsecured creditors under the BIA Proceedings are subject to an OSB levy.

(14) Creditor Recovery % represents the estimated percentage payout that may be received by the creditor classes. Under the bankruptcy scenarios, general unsecured creditors may receive a distribution ranging from $Nil to 16.9%. Alternatively, under the Plan, general unsecured creditors receive a guaranteed aggregate distribution of 18.5%. This is due to a signficant majority of general unsecured creditors being paid in full (unsecured creditors with proven claims under $5,000) or receiving a distribution in excess of 16% (unsecured creditors with proven claims between $5,000 and $31.250) under the terms of the Plan.

APPENDIX D

No. ____________
Vancouver Registry

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. c-36, AS AMENDED

AND

IN THE MATTER OF ENCOREFX INC.

PETITIONER

PROPOSED MONITOR'S REPORT ON CASH FLOW STATEMENT

Ernst & Young Inc. ("**EY**"), the proposed Monitor of EncoreFX Inc. ("**Monitor**"), has developed the assumptions and prepared the attached statement of projected cash flow as of the 10th day of March, 2021 for the period March 10, 2021 to June 4, 2021 ("**Cash Flow**"). All such assumptions are disclosed in the notes to the Cash Flow.

The hypothetical assumptions contained in the Cash Flow are reasonable and consistent with the purpose of the Cash Flow as described in the Notes to the Cash Flow, and the probable assumptions are suitably supported and consistent with the plans of the Monitor and provide a reasonable basis for the Cash Flow.

Since the Cash Flow is based on assumptions regarding future events, actual events will vary from the information presented and the variations may be material.

The Cash Flow has been prepared solely for the purpose outlined in the Notes thereof using a set of hypothetical and probable assumptions set out therein. Consequently, readers are cautioned that the Cash Flow may not be appropriate for other purposes.

Dated: [03/10/2021]

Ernst & Young Inc., in its capacity as the proposed Court-Appointed Monitor of EncoreFX Inc, and not in its personal capacity

In the CCAA Proceedings of EncoreFX Inc
Cash Flow Forecast
For the 13 week period ending June 4, 2021

APPENDIX D

		1	2	3	4	5	6	7	8	9	10	11	12	13	
		12-Mar-21	19-Mar-21	26-Mar-21	02-Apr-21	09-Apr-21	16-Apr-21	23-Apr-21	30-Apr-21	07-May-21	14-May-21	21-May-21	28-May-21	04-Jun-21	Total
OPENING CASH BALANCE		41,100,390	41,608,561	41,728,945	41,728,895	41,473,397	41,510,772	41,631,156	41,763,106	41,833,056	41,673,559	41,758,509	41,893,892	(0)	**41,100,390**
RECEIPTS															
OTM Collections - Previously Approved	(2)	508,221	135,434	-	61,553	37,425	135,434	32,000	-	27,553	-	35,434	-	-	**973,052**
OTM Collections - Estimated New Settlements	(3)	-	-	-	-	-	-	100,000	100,000	100,000	100,000	100,000	-	-	**500,000**
Deposit Interest	(4)	-	-	-	13,000	-	-	-	-	13,000	-	-	-	-	**26,000**
		508,221	**135,434**	-	**74,553**	**37,425**	**135,434**	**132,000**	**100,000**	**140,553**	**100,000**	**135,434**	-	-	**1,499,052**
DISBURSEMENTS															
Professional Fees	(5)	-	-	-	(300,000)	-	-	-	-	(300,000)	-	-	-	-	**(600,000)**
Payroll	(6)	-	(15,000)	-	(15,000)	-	(15,000)	-	(15,000)	-	(15,000)	-	(15,000)	-	**(90,000)**
IT and administrative expenses	(7)	-	-	-	(15,000)	-	-	-	(15,000)	-	-	-	(15,000)		**(45,000)**
		-	**(15,000)**	-	**(330,000)**	-	**(15,000)**	-	**(30,000)**	**(300,000)**	**(15,000)**	-	**(30,000)**	-	**(735,000)**
OPERATING CASH FLOW		**508,221**	**120,434**	-	**(255,447)**	**37,425**	**120,434**	**132,000**	**70,000**	**(159,447)**	**85,000**	**135,434**	**(30,000)**	-	**764,052**
OTHER DISBURSEMENTS															
Bank Fees		(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	-	**(600)**
Priority Payables	(8)	-	-	-	-	-	-	-		-	-	-	(236,000)	-	**(236,000)**
Administrative Reserve	(9)	-	-	-	-	-	-	-		-	-	-	(3,389,564)	-	**(3,389,564)**
Initial Distribution	(10)	-	-	-	-	-	-	-		-	-	-	(38,238,279)	-	**(38,238,279)**
		(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(41,863,893)	-	**(41,864,443)**
NET CASH FLOW		**508,171**	**120,384**	**(50)**	**(255,497)**	**37,375**	**120,384**	**131,950**	**69,950**	**(159,497)**	**84,950**	**135,384**	**(41,893,893)**	-	**(41,100,390)**
ENDING CASH BALANCE		**41,608,561**	**41,728,945**	**41,728,895**	**41,473,397**	**41,510,772**	**41,631,156**	**41,763,106**	**41,833,056**	**41,673,559**	**41,758,509**	**41,893,892**	**(0)**	**(0)**	**(0)**

NOTES AND ASSUMPTIONS

(1) The 13 week cash flow statement has been prepared to estimate the cash position over the 13 week forecast period for the purpose of funding the Initial Distribution as defined in section 6.2 of the Plan.

(2) OTM Collections - Previously Approved represent collections from OTM Clients with settlements previously approved by the inspectors in the BIA Proceedings and with payment plans.

(3) OTM Collections - Estimate represents an estimate for future collections from OTM clients currently without settlement agreements that may be received by the end of May 2021 for inclusion in the Initial Distributions.

(4) Deposit interest represents estimated mothly interest earned from the Monitor's bank accounts.

(5) Professional fees represent professional fees of the Monitor and the Monitor's legal counsel. Professional fees are estimated to be incurred evenly each month of the forecast period.

(6) Payroll represent bi-weekly payroll paid to former EncoreFX employees retained to assist the Monitor in the proceedings.

(7) IT and administrative expenses relate to monthly IT related costs for continued access to EncoreFX IT platforms and financial records.

(8) Payment of Priority Payables as per section 4.9 of the Plan

(9) Payment of the Administrative Reserve as per section 6.4 of the Plan. The Administrative Reserve of $4M is reduced by $610,436 for payment of the Initial Distribution in full and to account for professional fees and administrative costs incurred subsequent to the Conversion Order. Upon approval of the Plan, professional fees and administrative costs will be deducted from the Administrative Reserve.

(10) Payment of the Initial Distribution as per section 6.2 of the Plan.

APPENDIX E

CONSOLIDATED
FINANCIAL STATEMENTS

Consolidated Financial Statements of

ENCOREFX INC.

For the year ended December 31, 2019
(Unaudited)

ENCOREFX INC.

Consolidated Statement of Financial Position
December 31, 2019 with comparative information for 2018
(Unaudited)

	2019	2018
Assets		
Current assets:		
Cash and cash equivalents	$ 39,743,140	$ 33,360,097
Transactions pending settlement	81,346,626	33,744,024
Foreign currency derivatives	24,399,112	39,596,385
Prepaid expense and other current assets	703,457	627,161
	146,192,335	107,327,667
Capital assets	3,013,057	915,956
Intangible assets	783,261	352,431
Other assets	268,214	289,713
	$ 150,256,867	$ 108,885,767
Liabilities and Shareholder's Equity		
Current liabilities:		
Accounts payable and accrued liabilities	$ 3,295,240	$ 2,298,798
Transactions pending settlement	86,171,556	33,693,952
Client deposits	4,884,817	3,268,248
Foreign currency derivatives	20,220,761	32,169,724
Due to related party	17,514,186	19,763,730
	132,086,560	91,194,452
Lease liabilities	2,363,659	108,478
	134,450,219	91,302,930
Shareholder's equity:		
Share capital	35,000,100	35,000,100
Deficit	(18,801,762)	(17,298,084)
Accumulated other comprehensive loss	(391,690)	(119,179)
	15,806,648	17,582,837
	$ 150,256,867	$ 108,885,767

ENCOREFX INC.

Consolidated Statement of Comprehensive Loss
Year ended December 31, 2019 with comparative information for 2018
(Unaudited)

		2019		2018
Foreign exchange and interest income	$	25,019,167	$	17,145,827
Operating expenses:				
Salaries and benefits		19,302,297		15,428,850
Office and general		2,771,144		3,125,507
Software licensing		1,768,163		1,399,251
Transaction costs		970,997		892,487
Professional fees		842,225		623,935
		25,654,826		21,470,030
Loss before interest, tax and amortization		(635,659)		(4,324,203)
Interest expense		140,191		28,664
Income tax		96,560		-
Amortization		1,223,992		264,632
Net loss		(2,096,402)		(4,617,499)
Other comprehensive loss (income)[1]		272,511		(40,824)
Total comprehensive loss	$	(2,368,913)	$	(4,576,675)

1. Represents item that may be reclassified to profit and loss in the future

ENCOREFX INC.

Consolidated Statement of Changes in Equity
Year ended December 31, 2019 with comparative information for 2018
(Unaudited)

	Share capital	Retained earnings (deficit)	Accumulated other comprehensive loss	Total shareholder's equity
Balance, December 31, 2017	$ 35,000,100	$ (13,169,083)	$ (160,003)	$ 21,671,014
Equity-settled share based payments	-	488,498	-	488,498
Net loss	-	(4,617,499)	-	(4,617,499)
Exchange differences on translation of foreign operations	-	-	40,824	40,824
Balance, December 31, 2018	$ 35,000,100	$ (17,298,084)	$ (119,179)	$ 17,582,837
Equity-settled share based payments	-	592,724	-	592,724
Net loss	-	(2,096,402)	-	(2,096,402)
Exchange differences on translation of foreign operations	-	-	(272,511)	(272,511)
Balance, December 31, 2019	$ 35,000,100	$ (18,801,762)	$ (391,690)	$ 15,806,648

ENCOREFX INC.

Consolidated Statement of Cash Flows
Year ended December 31, 2019 with comparative information for 2018
(Unaudited)

	2019	2018
Cash flows from operating activities:		
Net loss	$ (2,096,402)	$ (4,617,499)
Items not involving cash:		
Amortization	1,223,992	264,632
Gain on disposal of capital assets	-	(29,697)
Equity settled share-based payments	592,724	488,498
Unrealized market-to-market loss (gain)	3,248,310	(3,825,471)
Changes in non-cash working capital items:		
Decrease (increase) in net transactions pending settlement	4,868,474	(3,798,571)
Increase in prepaid expense and other current assets	(65,994)	(138,943)
Decrease (increase) in other assets	21,499	(15,742)
Increase in accounts payable and accrued liabilities	986,903	691,865
Increase (decrease) in client deposits	1,616,569	(6,787,131)
	10,396,075	(17,768,060)
Cash flows from investing activities:		
Acquisition of capital assets	(3,311,701)	(675,897)
Acquisition of intangible assets	(434,456)	(366,846)
	(3,746,157)	(1,042,743)
Cash flows from financing activities:		
Proceeds from lease liabilities	2,255,181	-
Proceeds from (payments to) related party	(2,249,544)	15,935,129
	5,637	15,935,129
Increase (decrease) in cash and cash equivalents	6,655,555	(2,875,674)
Effect of movements in exchange rates on cash and cash equivalents	(272,511)	(24,140)
Cash and cash equivalents, beginning of the year	33,360,097	36,259,911
Cash and cash equivalents, end of the period	$ 39,743,140	$ 33,360,097

NON-CONSOLIDATED FINANCIAL STATEMENTS

Non-consolidated Financial Statements of

ENCOREFX INC.

For the year ended December 31, 2019
(Unaudited)

ENCOREFX INC.

Statement of Financial Position
(Unaudited)

	Dec 31, 2019	Dec 31,2018
Assets		
Current assets:		
Cash and cash equivalents	$ 33,341,711	$ 29,068,791
Transactions pending settlement	72,531,701	33,372,628
Foreign currency derivatives	24,076,369	38,181,239
Prepaid expense and other current assets	672,158	487,748
	130,621,939	101,110,406
Investment in subsidiaries	6,395,110	5,506,968
Capital assets	1,771,235	810,409
Intangible assets	715,070	352,431
Other assets	48,289	61,007
	139,551,643	107,841,221
Liabilities and Shareholder's Equity		
Current liabilities:		
Accounts payable and accrued liabilities	$ 2,262,128	$ 1,507,911
Transactions pending settlement	77,470,103	33,356,836
Client deposits	4,605,802	2,659,225
Foreign currency derivatives	20,153,094	31,168,970
Due to related parties	17,692,315	21,438,137
	122,183,442	90,131,079
Lease liabilities	1,147,897	93,976
	123,331,339	90,225,055
Shareholder's equity:		
Share capital	35,000,100	35,000,100
Deficit	(18,779,796)	(17,383,934)
	16,220,304	17,616,166
	139,551,643	107,841,221

ENCOREFX INC.

Statement of Comprehensive Loss
(Unaudited)

	For the period ended Dec 31, 2019	For the year ended Dec 31,2018
Revenue	$ 18,543,296	$ 13,154,992
Operating expenses:		
Salaries and benefits	13,048,437	10,536,952
Office and general	1,887,847	2,052,553
Software licensing	1,608,711	1,217,602
Transaction costs	846,025	733,330
Professional fees	204,891	555,049
	17,595,911	15,095,486
Operating income (loss)	947,385	(1,940,494)
Less: market equalization payments	2,103,347	2,479,609
Net loss before interest and amortization	(1,155,962)	(4,420,103)
Interest expense	82,803	25,835
Amortization	848,948	206,048
Net loss and comprehensive loss	$ (2,087,713)	$ (4,651,986)

ENCOREFX INC.

Statement of Changes in Equity
(Unaudited)

	Share capital	Retained earnings (deficit)	Total shareholder's equity
Balance, December 31, 2017	$ 35,000,100	$ (13,121,318)	21,878,782
Equity-settled share based payments	-	389,370	389,370
Loss for the period	-	(4,651,986)	(4,651,986)
Balance, December 31, 2018	$ 35,000,100	$ (17,383,934)	$ 17,616,166
Equity-settled share based payments	-	691,851	691,851
Loss for the period	-	(2,087,713)	(2,087,713)
Balance, December 31, 2019	$ 35,000,100	$ (18,779,796)	$ 16,220,304

No. ___________
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF ENCOREFX INC.

PETITIONER

ORDER MADE AFTER HEARING
(Conversion Order)

BEFORE	) THE HONOURABLE) MADAM JUSTICE FITZPATRICK	) MARCH 18, 2021

ON THE APPLICATION of the Petitioner, EncoreFX Inc. ("**EncoreFX**"), by its Trustee in Bankruptcy, Ernst & Young Inc. and not in its personal capacity, coming on for hearing at the Law Courts, 800 Smithe Street, in the City of Vancouver, British Columbia, on the 18th day of March, 2021 (the "**Order Date**"); **AND ON HEARING** William E.J. Skelly, counsel for Ernst and Young Inc. ("**EY**") in its capacity as the Trustee in Bankruptcy (the "**Trustee**") and in its proposed role as the monitor (the "**Monitor**") of EncoreFX, and those other counsel listed on **Schedule "A"** hereto; **AND ON NOTING** the consent of EY to act as Monitor; **AND ON READING** the pre-filing report of the proposed Monitor dated March 11, 2021 (the "**Pre-Filing Report**"); **AND ON BEING ADVISED** that the Trustee seeks to convert the bankruptcy of EncoreFX into a liquidating proceeding pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"); **AND PURSUANT TO** the CCAA, the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

SERVICE

1. The time for service of this Petition and Notice of Hearing and the supporting materials in respect thereof is hereby abridged and validated so that this Notice of Hearing is properly returnable on the date of this Order (the "**Order Date**"), and further service is hereby dispensed with.

JURISDICTION

2. EncoreFX is a company to which the CCAA applies.

CONTINUANCE UNDER THE CCAA

3. Effective March 18, 2021, EncoreFX's bankruptcy proceedings bearing Court File No. VLC-S-B-200204 and bankruptcy Estate No.11-2634864 (the "**BIA Proceedings**") commenced under the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended (the "**BIA**") are hereby taken up and continued under the CCAA and as of such date, the BIA Proceedings are hereby suspended and stayed, and the provisions of the BIA shall have no further application to EncoreFX, save that any and all steps, agreements and procedures validly taken, done or entered into by EncoreFX or the Trustee during the BIA Proceedings shall remain valid, binding, and actionable within these proceedings (the "**CCAA Proceedings**"), notwithstanding the commencement of the CCAA proceedings, including but not limited to:

a. the sale of any assets, property or undertaking of any of EncoreFX that was approved by this Court or otherwise permitted in the BIA Proceedings;

b. the examination of any proofs of claim delivered by a creditor of EncoreFX within the BIA Proceedings pursuant to s. 81 and s. 124 of the BIA, including but not limited to proofs of claim for which a final determination as to the admission or disallowance of such proofs of claim was not finalized as at the granting of this Order;

c. the continuation or prosecution of proceedings in the BIA Proceedings by EY as against debtors of EncoreFX, including in respect of the following:

(i) any litigation proceedings commenced by the Trustee as against any OTM Clients (as defined at paragraph 50 of the Pre-Filing Report) (the "**OTM Client Claims**") and the Monitor is authorised and directed to file amended OTM Client Claims wherein the amendment shall be to change the capacity in which EY has sued the defendants from its capacity as Trustee to its capacity as Monitor of EncoreFX (the "**Amended OTM Client Claims**");

(ii) any extant Property Claims, including any appeals thereof (as defined at paragraph 62 of the Pre-Filing Report);

(iii) any extant EFT Reversals (as defined at paragraph 77 of the Pre-Filing Report), including any appeals thereof;

(iv) any claim advanced by EY in respect of the AgraCity Double Dip Amount (as defined at paragraph 83 of the Pre-Filing Report);

(v) the Proof of Claim in respect of the Australian Subsidiary (as defined at paragraph 12 of the Petition filed on March 11, 2021); and

(vi) the mediation (as referenced at paragraph 55 of the Pre-Filing Report).

4. All orders pronounced by the Honourable Madam Justice Fitzpatrick in the BIA Proceeding apply to and are continued under the CCAA Proceedings, except as amended by the terms of this Order.

5. This Order shall be filed in the BIA Proceedings.

6. EY shall be permitted to:

(a) file this Order in all of the OTM Client Claim litigation proceedings as identified by the Monitor; and

(b) file each Amended OTM Client Claim in its respective court file number without requiring any further order of this Court.

SUBSEQUENT HEARING DATE

7. The hearing of EncoreFX's application for an extension of the Stay Period (as defined in paragraph 16 of this Order) and for any ancillary relief shall be held at the Courthouse (or as determined by the Court) at 800 Smithe Street, Vancouver, British Columbia at ______ a.m. / p.m. on __________, the ____ day of March, 2021 or such other date as this Court may order.

PLAN OF ARRANGEMENT

8. EncoreFX shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

9. Subject to this Order and any further Order of this Court, EY shall remain in possession and control of EncoreFX's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"), and continue to administer EncoreFX's business (the "**Business**") in a manner consistent with the preservation of the Business and the Property. EY shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.

10. EY shall be entitled, but not required, to pay the following expenses which may have been incurred by EncoreFX prior to March 30, 2020 (the "**Bankruptcy Date**"):

a. all outstanding wages, salaries, employee and pension benefits (including long and short term disability payments), vacation pay and expenses (but excluding severance pay) payable before or after the Bankruptcy Date, in each case incurred in the ordinary course of business and consistent with the relevant compensation policies and arrangements existing at the time incurred (collectively "**Wages**"); and

b. the fees and disbursements of any Assistants retained or employed by EncoreFX which are related to EncoreFX's liquidation, at their standard rates and charges, including payment of the fees and disbursements of legal counsel retained by EY, whenever and wherever incurred, in respect of:

i. these proceedings or any other similar proceedings in other jurisdictions in which EncoreFX is domiciled;

ii. any litigation in which EncoreFX is named as a party or is otherwise involved, whether commenced before or after the Bankruptcy Date; and

iii. any related corporate matters.

11. Except as otherwise provided herein, EY shall be entitled to pay all expenses reasonably incurred in carrying on the Business of EncoreFX following the Bankruptcy Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

a. all obligations incurred by EncoreFX after the Bankruptcy Date, including without limitation, with respect to goods and services actually supplied to EncoreFX following the Bankruptcy Date; and

b. fees and disbursements of the kind referred to in paragraph 10.b. which may be incurred after the Bankruptcy Date.

12. EY is authorized to remit, in accordance with legal requirements, or pay:

a. any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from Wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes or any such claims which are to be paid pursuant to Section 6(3) of the CCAA;

b. all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by EncoreFX in connection with the sale of goods and services by EncoreFX, but only where such Sales Taxes accrue or are collected after the Bankruptcy Date, or where such Sales Taxes accrued or were collected prior to the Bankruptcy Date but not required to be remitted until on or after the Bankruptcy Date; and

c. any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal property taxes, municipal business taxes or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors.

13. Except as specifically permitted herein, EY is hereby directed, until further Order of this Court:

a. to make no payments of principal, interest thereon or otherwise on account of amounts owing by EncoreFX to any of its creditors as of the Bankruptcy Date except as authorized by this Order;

b. to make no payments in respect of any financing leases which create security interests;

c. to grant no security interests, trust, mortgages, liens, charges or encumbrances upon or in respect of any of EncoreFX's Property, nor allow EncoreFX to become a guarantor or surety, nor otherwise to allow EncoreFX to become liable in any manner with respect to any other person or entity except as authorized by this Order;

d. to not grant credit except in the ordinary course of the Business only to EncoreFX customers for goods and services actually supplied to those customers, provided such customers agree that there is no right of set-off in respect of amounts owing for such goods and services against any debt owing by EncoreFX to such customers as of the Bankruptcy Date; and

e. to not incur liabilities except in the ordinary course of Business.

LIQUIDATION

14. Subject to such requirements as are imposed by the CCAA, EY shall have the right to take any and all steps necessary to realize upon and liquidate the assets of EncoreFX, including but not limited to the following:

a. permanently or temporarily cease, downsize or shut down all or any part of EncoreFX's Business or operations and commence marketing efforts in respect of any of EncoreFX's redundant or non-material assets;

b. terminate the employment of such of EncoreFX's employees or temporarily lay off such of EncoreFX's employees as it deems appropriate; and

c. continue to collect the amounts owed to EncoreFX by, inter alia, pursuing litigation claims or causes of action which have been commenced by EY in the BIA Proceedings or initiating new proceedings within the CCAA Proceedings.

all of the foregoing to permit EY to proceed with an orderly liquidation of EncoreFX's Business (the "**Liquidation**").

15. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, and any regulations promulgated under authority of either Act, as applicable (the "**Relevant Enactment**"), EY, in the course of these proceedings, is permitted to, and hereby shall, disclose personal information of identifiable individuals in its possession or control to

stakeholders, its advisors, prospective investors, financiers, buyers or strategic partners (collectively, "**Third Parties**"), but only to the extent desirable or required to negotiate and complete the Liquidation or to prepare and implement the Plan or transactions for that purpose; provided that the Third Parties to whom such personal information is disclosed enter into confidentiality agreements with EY binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Liquidation or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall return the personal information to EY or destroy it. If the Third Parties acquire personal information as part of the Liquidation or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties may, subject to this paragraph and any Relevant Enactment, continue to use the personal information in a manner which is in all respects identical to the prior use thereof by EY.

STAY OF PROCEEDINGS, RIGHTS AND REMEDIES

16. Until and including March 28, 2021 or such later date as this Court may order (the "**Stay Period**"), no action, suit or proceeding in any court or tribunal (each, a "**Proceeding**") against or in respect of EncoreFX or EY, or affecting the Business or the Property, shall be commenced or continued except with the written consent of EY or with leave of this Court, and any and all Proceedings currently under way against or in respect of EncoreFX or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

17. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of EncoreFX or EY, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of EY or leave of this Court.

18. Nothing in this Order, including paragraphs 9 and 10, shall: (i) empower EY to carry on any business which EncoreFX is not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a mortgage, charge or security interest (subject to the provisions of Section 39 of the CCAA relating to the priority of statutory Crown securities); or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on EY.

NO INTERFERENCE WITH RIGHTS

19. During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by EncoreFX, except with the written consent of EY or leave of this Court.

CONTINUATION OF SERVICES

20. During the Stay Period, all Persons having oral or written agreements with EncoreFX or mandates under an enactment for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or EncoreFX, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by EY, and that EY shall be entitled to the continued use of EncoreFX's telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Bankruptcy Date are paid by EY in accordance with normal payment practices of EncoreFX or such other practices as may be agreed upon by the supplier or service provider and EY, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

21. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Bankruptcy Date, nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to EncoreFX on or after the Bankruptcy Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

APPOINTMENT OF MONITOR

22. EY is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of EncoreFX with the powers and obligations set out in the CCAA or set forth herein.

23. EY, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

a. prepare EncoreFX's receipts and disbursements;

b. report to this Court at such times and intervals as EY may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

c. develop and amend the Plan;

d. hold and administer creditors' or shareholders' meetings for voting on the Plan;

e. continue to be vested with EncoreFX's Property, including the premises, books, records, data, including data in electronic form, and other financial documents of EncoreFX;

f. be at liberty to engage independent legal counsel or such other persons as EY deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

g. to receive and collect all monies and accounts now owed or hereafter owing to EncoreFX and to exercise all remedies of EncoreFX in collecting such monies, including, without limitation, to enforce any security held by EncoreFX;

h. to settle, extend or compromise any indebtedness owing to or by the EncoreFX;

i. to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in EY's name or in the name and on behalf of the EncoreFX, for any purpose pursuant to this Order;

j. to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to EncoreFX or the Property, including any such proceedings initiated by EY in its roles as the Trustee in the BIA Proceedings and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding; and

k. perform such other duties as are required by this Order or by this Court from time to time.

24. EY shall continue to have possession of the Property for the purpose of the Liquidation. Nothing in this Order shall be construed as resulting in EY being an employer or a successor employer in its personal capacity, within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

25. Nothing herein contained shall require or allow EY to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Fisheries Act*, the British Columbia *Environmental Management Act*, the British Columbia *Fish Protection Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt EY from any duty to report or make disclosure imposed by applicable Environmental Legislation. For greater certainty, EY shall not, as a result of this Order or anything done in pursuance of its duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

26. In addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, EY shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the rights and protections afforded the Monitor by the CCAA or any applicable legislation.

OVERSIGHT COMMITTEE

27. The Monitor, together with a representative of each of Gustavson Capital Corporation, the secured party claimant, and Andreas Wrede, the largest Property Claim claimant shall, as of this date of this Order, form an oversight committee (the "**Oversight Committee**") which shall review and approve settlements in respect of all matters affecting the liquidation and generally deal with the continued realization of the assets of EncoreFX. The Oversight Committee shall incur no liability or obligation as a result of its appointment as the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

SERVICE AND NOTICE

28. EY shall

(a) without delay, publish in the *Vancouver Sun, Times-Colonist* (Victoria), and *The Globe and Mail* (National Edition), a notice containing the information prescribed under the CCAA,

(b) within five days after the Order Date,

(i) make this Order publicly available in the manner prescribed under the CCAA,

(ii) send, in the prescribed manner, a notice to every known creditor who has a claim against EncoreFX, and

(iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

29. EY is at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to EncoreFX's creditors or other interested parties at their respective addresses as last shown on the records of EncoreFX and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

30. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to EY by way of ordinary mail, courier, personal delivery or electronic

transmission a request to be added to the Service List to be maintained by EY. EY shall post and maintain an up to date form of the Service List on its website at: www.ey.com/ca/EncoreFX.

31. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and EY shall post a copy of all prescribed materials on its website at: www.ey.com/ca/EncoreFX/.

32. Notwithstanding paragraphs 28-30 of this Order, service of the Petition, the Notice of Hearing of Petition, any evidence or reporting filed in support of the Petition and this Order shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and regulations thereto, in respect of the Federal Crown, and the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, in respect of the British Columbia Crown.

GENERAL

33. As of the date of this Order, the inspectors appointed in the BIA Proceedings shall be deemed to have resigned.

34. EY may from time to time apply to this Court for directions in the discharge of its powers and duties hereunder.

35. Nothing in this Order shall prevent EY from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of EncoreFX, the Business or the Property.

36. This Court requests the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to EY, as an officer of this Court, as may be

necessary or desirable to give effect to this Order, to grant representative status to EY in any foreign proceeding, or to assist EY and its respective agents in carrying out the terms of this Order.

37. EY is at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of EncoreFX to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended.

38. EncoreFX may (subject to the provisions of the CCAA and the BIA) at any time file a voluntary assignment in bankruptcy or a proposal pursuant to the commercial reorganization provisions of the BIA if and when EY determines that such a filing is appropriate. Upon any Plan being rejected by the creditors of EncoreFX of the Court refusing to sanction a Plan, any interested party make seek to petition EncoreFX into bankruptcy in the within proceedings notwithstanding the conversion set forth herein.

39. EY is hereby at liberty to apply for such further interim or interlocutory relief as it deems advisable within the time limited for Persons to file and serve Responses to the Petition.

40. Leave is hereby granted to hear any application in these proceedings on two (2) clear days' notice after delivery to all parties on the Service List of such Notice of Application and all affidavits in support, subject to the Court in its discretion further abridging or extending the time for service.

41. Any interested party (including EY) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the Service List and to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

42. Endorsement of this Order by counsel appearing on this application, other than counsel for the Trustee and the Monitor, is hereby dispensed with.

43. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.

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

____

Signature of: William E.J. Skelly / Dana M. Nowak

☐ Party ☑ Lawyer for the Petitioner, Ernst & Young in its capacity as Trustee and/or Monitor of EncoreFX Inc., and not its personal capacity

BY THE COURT

____

REGISTRAR

SCHEDULE "A"

List of Counsel

Name of Counsel	Party Represented
William E.J. Skelly	Counsel for the Trustee and Proposed Monitor

~~MODEL CCAA INITIAL ORDER~~

~~*[Current to August 1, 2015]*~~

No. ____________
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND

~~**IN THE MATTER OF THE [*CANADA BUSINESS CORPORATIONS ACT*, R.S.C. 1985, c. C-44 and/or the *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57 and/or any other applicable Provincial Statute]**~~

~~**AND**~~

IN THE MATTER OF ENCOREFX INC.

PETITIONER

~~**IN THE MATTER OF [Petitioner(s)]**~~

~~**PETITIONER(S)**~~

~~O R D E R~~ ORDER MADE AFTER ~~APPLICATION~~[1] HEARING

(Conversion Order)

BEFORE	)	~~BEFORE~~	)	
	)	THE HONOURABLE	)	~~dd/mm/yyyy~~MARCH
	)	~~___________________________~~MADAM JUSTICE FITZPATRICK	)	18, 2021
	)		)	

[1] ~~This model Order is not in any way determinative of the applicant's entitlement to the relief provided for in this model Order. It is the responsibility of counsel to ensure that the form of Order they propose is appropriate in the circumstances of the case and to justify the relief they are seeking, including by providing the necessary evidentiary support and judicial authority.~~

ON THE APPLICATION of the Petitioner~~-~~, EncoreFX Inc. (“**EncoreFX**”), by its Trustee in Bankruptcy, Ernst & Young Inc. and not in its personal capacity, coming on for hearing~~[2]~~ at the Law Courts, 800 Smithe Street, in the City of Vancouver, British Columbia, on the ~~_______~~18th day of ~~_______________, 201____~~March, 2021 (the “**Order Date**”); **AND ON HEARING** ~~_______________________, counsel for the Petitioner~~ William E.J. Skelly, counsel for Ernst and Young Inc. (“**EY**”) in its capacity as the Trustee in Bankruptcy (the “**Trustee**”) and in its proposed role as the monitor (the “**Monitor**”) of EncoreFX, and those other counsel listed on **Schedule “A”** hereto; **AND** ~~UPON READING the material filed, including the First Affidavit of _______________________ sworn _________________, 201___ and the consent of ____________________ to act as Monitor; AND UPON BEING ADVISED that the secured creditors [and others] who are likely to be affected by the charges created herein were given notice[3]; AND~~ **ON NOTING** the consent of EY to act as Monitor; **AND ON READING** the pre-filing report of the proposed Monitor dated March 11, 2021 (the “**Pre-Filing Report**”); **AND ON BEING ADVISED** that the Trustee seeks to convert the bankruptcy of EncoreFX into a liquidating proceeding pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the “**CCAA**”); **AND PURSUANT TO** the CCAA, the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

SERVICE

1. The time for service of this Petition and Notice of Hearing and the supporting materials in respect thereof is hereby abridged and validated so that this Notice of Hearing is properly returnable on the date of this Order (the “**Order Date**”), and further service is hereby dispensed with.

JURISDICTION

~~[2] Section 11(1) of the CCAA provides for notice of an application to be given. CCAA orders may, and in some cases must, be sought on notice to affected parties, if this is possible. Applications may be made without notice “as [the court] may see fit”, although recent British Columbia cases have commented on the appropriateness of bringing such applications without notice: *Re Encore Developments Ltd.* 2008 BCSC 13 and *Re Marine Drive Properties Ltd.* 2009 BCSC 145. If service has been abridged, the Order should reflect that.~~

~~[3] Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2)~~

2. ~~1.The Petitioner~~ EncoreFX is a company to which the CCAA applies.

CONTINUANCE UNDER THE CCAA

3. Effective March 18, 2021, EncoreFX's bankruptcy proceedings bearing Court File No. VLC-S-B-200204 and bankruptcy Estate No.11-2634864 (the "**BIA Proceedings**") commenced under the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended (the "**BIA**") are hereby taken up and continued under the CCAA and as of such date, the BIA Proceedings are hereby suspended and stayed, and the provisions of the BIA shall have no further application to EncoreFX, save that any and all steps, agreements and procedures validly taken, done or entered into by EncoreFX or the Trustee during the BIA Proceedings shall remain valid, binding, and actionable within these proceedings (the "**CCAA Proceedings**"), notwithstanding the commencement of the CCAA proceedings, including but not limited to:

a. the sale of any assets, property or undertaking of any of EncoreFX that was approved by this Court or otherwise permitted in the BIA Proceedings;

b. the examination of any proofs of claim delivered by a creditor of EncoreFX within the BIA Proceedings pursuant to s. 81 and s. 124 of the BIA, including but not limited to proofs of claim for which a final determination as to the admission or disallowance of such proofs of claim was not finalized as at the granting of this Order;

c. the continuation or prosecution of proceedings in the BIA Proceedings by EY as against debtors of EncoreFX, including in respect of the following:

(i) any litigation proceedings commenced by the Trustee as against any OTM Clients (as defined at paragraph 50 of the Pre-Filing Report) (the "**OTM Client Claims**") and the Monitor is authorised and directed to file amended OTM Client Claims wherein the amendment shall be to change the capacity in which EY has sued the defendants from its capacity as

Trustee to its capacity as Monitor of EncoreFX (the "**Amended OTM Client Claims**");

(ii) any extant Property Claims, including any appeals thereof (as defined at paragraph 62 of the Pre-Filing Report);

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(iv) any claim advanced by EY in respect of the AgraCity Double Dip Amount (as defined at paragraph 83 of the Pre-Filing Report);

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4. All orders pronounced by the Honourable Madam Justice Fitzpatrick in the BIA Proceeding apply to and are continued under the CCAA Proceedings, except as amended by the terms of this Order.

5. This Order shall be filed in the BIA Proceedings.

6. EY shall be permitted to:

(a) file this Order in all of the OTM Client Claim litigation proceedings as identified by the Monitor; and

(b) file each Amended OTM Client Claim in its respective court file number without requiring any further order of this Court.

SUBSEQUENT HEARING DATE

7. ~~2.~~The hearing of ~~the Petitioner's~~ EncoreFX's application for an extension of the Stay Period (as defined in paragraph ~~[15]~~ 16 of this Order) and for any ancillary relief shall be held at the Courthouse (or as determined by the Court) at 800 Smithe Street, Vancouver, British Columbia at _______ ~~.m~~a.m. / p.m. on ____________, the _____ day of ~~____________, 201__~~ March, 2021 or such other date as this Court may order.

PLAN OF ARRANGEMENT

8. ~~3.The Petitioner~~ EncoreFX shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

9. ~~4.~~Subject to this Order and any further Order of this Court, ~~the Petitioner~~ EY shall remain in possession and control of ~~its~~ EncoreFX's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"), and continue to ~~carry on its~~ administer EncoreFX's business (the "**Business**") ~~in the ordinary course and~~ in a manner consistent with the preservation of the Business and the Property. ~~The Petitioner~~ EY shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.

~~[Cash Management System[4]]~~

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[4] ~~This provision but should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross-border and inter-company transfers of cash. If to be included, the model wording for the provision is as follows: "THIS COURT ORDERS that the Petitioner shall be entitled to continue to utilize the central cash~~

10. ~~5.The Petitioner~~ EY shall be entitled, but not required, to pay the following expenses which may have been incurred by EncoreFX prior to ~~the Order Date~~March 30, 2020 (the "**Bankruptcy Date**"):~~[5]~~

a. ~~(a)~~all outstanding wages, salaries, employee and pension benefits (including long and short term disability payments), vacation pay and expenses (but excluding severance pay) payable before or after the ~~Order~~ Bankruptcy Date, in each case incurred in the ordinary course of business and consistent with the relevant

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~~management system currently in place as described in the Affidavit of [NAME] sworn [DATE] or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Petitioner of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Petitioner, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System."~~

~~[5] Paragraphs 5 and 6 were separated to make it clear that only very limited payments may be made on account of pre-filing accruals and expenses. The Petitioner may consider seeking authority to make other payments during the stay, such as an amendment to paragraph 5 allowing certain payments to creditors, including critical suppliers, on the following terms:~~

~~"...... with the written consent of the Monitor:~~

~~(i) pay the entire amount of its obligations to any creditor if the amount of such obligations, as agreed between the Petitioner and the creditor, is $__________ or less as at the Order Date;~~

~~(ii) pay $__________ to any other creditor to which the outstanding obligations of the Petitioner are greater than $__________ as at the Order Date, provided such creditor agrees to accept that amount in full satisfaction of all obligations of the Petitioner to such creditor as at the Order Date;~~

~~(iii) pay amounts owing to creditors who hold possessory or statutory liens against any asset of the Petitioner where the value of such asset exceeds the amount of the possessory or statutory liens or where the asset is deemed critical by the Petitioner and the Monitor to the business operations of the Petitioner; and~~

~~(iv) amounts outstanding to creditors for goods and services provided prior to the Order Date where expressly authorized by this Order or any further Order of this Court."~~

compensation policies and arrangements existing at the time incurred (collectively "**Wages**");~~[6]~~ and

b. ~~(b)~~the fees and disbursements of any Assistants retained or employed by ~~the Petitioner~~ EncoreFX which are related to ~~the Petitioner's restructuring~~EncoreFX's liquidation, at their standard rates and charges, including payment of the fees and disbursements of legal counsel retained by ~~the Petitioner~~EY, whenever and wherever incurred, in respect of:

i. ~~(i)~~these proceedings or any other similar proceedings in other jurisdictions in which ~~the Petitioner or any subsidiaries or affiliated companies of the Petitioner are~~ EncoreFX is domiciled;

ii. ~~(ii)~~any litigation in which ~~the Petitioner~~ EncoreFX is named as a party or is otherwise involved, whether commenced before or after the ~~Order~~ Bankruptcy Date; and

iii. ~~(iii)~~any related corporate matters.

11. ~~6.~~Except as otherwise provided herein, ~~the Petitioner~~ EY shall be entitled to pay all expenses reasonably incurred ~~by the Petitioner~~ in carrying on the Business ~~in the ordinary course~~ of EncoreFX following the ~~Order~~ Bankruptcy Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

~~(a) all expenses and capital expenditures[7] reasonably incurred and which are necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services, provided that any capital expenditure exceeding $__________ shall be approved by the Monitor;~~

a. ~~(b)~~all obligations incurred by ~~the Petitioner~~ EncoreFX after the ~~Order~~ Bankruptcy Date, including without limitation, with respect to goods and services actually

~~[6] The Petitioner may wish to specifically apply to pay severance pay outstanding as at the Order Date.~~

~~[7] The Petitioner may wish to consider a limit on this prohibition to allow for flexibility: "…. provided that any capital expenditure exceeding $__________ shall be approved by the Monitor."~~

supplied to ~~the Petitioner following the Order Date (including those under purchase orders outstanding at the Order Date but excluding any interest on the Petitioner's obligations incurred prior to the Order Date)~~EncoreFX following the Bankruptcy Date; and

b. ~~(c)~~fees and disbursements of the kind referred to in paragraph ~~[5(b)]~~ 10.b. which may be incurred after the ~~Order~~ Bankruptcy Date.

12. ~~7.The Petitioner~~ EY is authorized to remit, in accordance with legal requirements, or pay:

a. ~~(a)~~any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from Wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes or any such claims which are to be paid pursuant to Section 6(3) of the CCAA;~~[8]~~

b. ~~(b)~~all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by ~~the Petitioner~~ EncoreFX in connection with the sale of goods and services by ~~the Petitioner~~EncoreFX, but only where such Sales Taxes accrue or are collected after the ~~Order~~ Bankruptcy Date, or where such Sales Taxes accrued or were collected prior to the ~~Order~~ Bankruptcy Date but not required to be remitted until on or after the ~~Order~~ Bankruptcy Date; and

c. ~~(c)~~any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal property taxes, municipal business taxes or other taxes, assessments or

~~[8] The definition of Wages in paragraph 5(a) is intended to allow payment of these amounts even if owed prior to the Order Date in recognition of the fact that Wages are paid at the end of a stub period and that continued employment is critical to the ongoing operations of the Petitioner. The extension of the ability of the Petitioner to make payments in addition to just Wages in this paragraph is intended to : (a) protect directors and officers from statutory claims; and (b) recognize that Section 6(3) of the CCAA provides for the payment of some of these amounts in a restructuring in any event . It is anticipated that the magnitude of such obligations will be brought to the attention of the Court if significant.~~

levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors.

~~8. Until such time as a real property lease is disclaimed[9] in accordance with the CCAA, the Petitioner shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated between the Petitioner and the landlord from time to time ("**Rent**"), for the period commencing from and including the Order Date, twice-monthly in equal payments on the first and fifteenth day of the month in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including Order Date shall also be paid.~~

13. ~~9.~~Except as specifically permitted herein, ~~the Petitioner~~ EY is hereby directed, until further Order of this Court:

a. ~~(a)~~to make no payments of principal, interest thereon or otherwise on account of amounts owing by ~~the Petitioner~~ EncoreFX to any of its creditors as of the ~~Order~~ Bankruptcy Date except as authorized by this Order;

b. ~~(b)~~to make no payments in respect of any financing leases which create security interests;

c. ~~(c)~~to grant no security interests, trust, mortgages, liens, charges or encumbrances upon or in respect of any of ~~its~~ EncoreFX's Property, nor allow EncoreFX to become a guarantor or surety, nor otherwise to allow EncoreFX to become liable in any manner with respect to any other person or entity except as authorized by this Orde~~[10]~~r;

~~[9] The term "resiliate" should be used if there are leased premises in the Province of Quebec – see also paras. 12 and 13.~~
~~[10] Counsel may wish to consider adding a provision allowing the granting of PMSI security after the Order Date.~~

d. ~~(d)~~to not grant credit except in the ordinary course of the Business only to ~~its~~ EncoreFX customers for goods and services actually supplied to those customers, provided such customers agree that there is no right of set-off in respect of amounts owing for such goods and services against any debt owing by ~~the Petitioner~~ EncoreFX to such customers as of the ~~Order~~ Bankruptcy Date; and

e. ~~(e)~~to not incur liabilities except in the ordinary course of Business.

~~**FINANCIAL ARRANGEMENTS**~~

LIQUIDATION

~~10. Notwithstanding any other provision in this Order:~~

~~(a) the Petitioner is hereby authorized and empowered to borrow, repay and reborrow from ____________________ (the "**Lender**") such amounts from time to time as the Petitioner considers necessary, and the Lender shall be entitled to revolve its operating loan facility (the "**Lender Loan Facility**") and collect interest, fees and costs on the Lender Loan Facility, subject to such amendments as are agreed between the Lender and the Petitioner;~~

~~(b) the Lender Loan Facility shall be secured by the same charge (the "**Lender Charge**") as secured the Lender Loan Facility as at the Order Date; and~~

~~(c) the Petitioner is authorized to deal with the Lender in respect of the Lender Loan Facility on such terms as may be negotiated and agreed upon between the Petitioner and the Lender.~~

~~**RESTRUCTURING**~~

14. ~~11.~~Subject to such requirements as are imposed by the CCAA ~~and such covenants as may be contained in the Definitive Documents (as hereinafter defined), the Petitioner~~ , EY shall

have the right to take any and all steps necessary to realize upon and liquidate the assets of EncoreFX, including but not limited to the following:

a. ~~(a)~~permanently or temporarily cease, downsize or shut down all or any part of ~~its~~ EncoreFX's Business or operations and commence marketing efforts in respect of any of ~~its~~ EncoreFX's redundant or non-material assets ~~[and to dispose of redundant or non-material assets not exceeding $__________ in any one transaction or $__________ in the aggregate][11]~~;

b. ~~(b)[~~terminate the employment of such of ~~its~~ EncoreFX's employees or temporarily lay off such of ~~its~~ EncoreFX's employees as it deems appropriate~~];[12] and~~; and

c. continue to collect the amounts owed to EncoreFX by, inter alia, pursuing litigation claims or causes of action which have been commenced by EY in the BIA Proceedings or initiating new proceedings within the CCAA Proceedings.

~~(c) pursue all avenues of refinancing for its Business or Property, in whole or part;~~

all of the foregoing to permit ~~the Petitioner~~ EY to proceed with an orderly ~~restructuring of the~~ liquidation of EncoreFX's Business (the "~~Restructuring").~~**Liquidation**").

~~12. The Petitioner shall provide each of the relevant landlords with notice of the Petitioner's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Petitioner's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable~~

~~[11] Section 36 of the CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)), but rather requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or been made available at the initial CCAA hearing.~~

~~[12] It is not clear to the BCMIOC whether the termination of an employee is a "disclaimer or resiliation" of the employment agreement within the meaning of Section 32 of the CCAA. Since the termination of an employee may not be a matter governed by Section 32 of the CCAA (except to the extent that collective agreements are exempted from the application of that Section), the BCMIOC has left this provision in the Model Order.~~

~~secured creditors who claim a security interest in the fixtures, such landlord and the Petitioner, or by further Order of this Court upon application by the Petitioner, the landlord or the applicable secured creditors on at least two (2) clear days' notice to the other parties. If the Petitioner disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any dispute concerning such fixtures (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Petitioner's claim to the fixtures in dispute.~~

~~13. If a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then: (a) during the period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours on giving the Petitioner and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer, the landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims the landlord may have against the Petitioner, or any other rights the landlord might have, in respect of such lease or leased premises and the landlord shall be entitled to notify the Petitioner of the basis on which it is taking possession and gain possession of and re-lease such leased premises to any third party or parties on such terms as the landlord considers advisable, provided that nothing herein shall relieve the landlord of its obligation to mitigate any damages claimed in connection therewith.~~

15. ~~14.~~Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, and any regulations promulgated under authority of either Act, as applicable (the "**Relevant Enactment**"), ~~the Petitioner~~EY, in the course of these proceedings, is permitted to, and hereby shall, disclose personal information of identifiable individuals in its possession or control to stakeholders, its advisors, prospective investors, financiers, buyers or strategic partners (collectively, "**Third Parties**"), but only to the extent desirable or required to negotiate and complete the ~~Restructuring~~ Liquidation or to prepare and implement the Plan or transactions for that purpose; provided that the Third Parties to whom such personal information is disclosed

enter into confidentiality agreements with ~~the Petitioner~~ EY binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the ~~Restructuring~~ Liquidation or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall return the personal information to ~~the Petitioner~~ EY or destroy it. If the Third Parties acquire personal information as part of the ~~Restructuring~~ Liquidation or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties may, subject to this paragraph and any Relevant Enactment, continue to use the personal information in a manner which is in all respects identical to the prior use thereof by ~~the Petitioner~~EY.~~[13]~~

STAY OF PROCEEDINGS, RIGHTS AND REMEDI~~[14]~~~~[15]~~ES

16. ~~15.~~Until and including ~~[MAX. 30 DAYS FROM ORDER DATE],~~ March 28, 2021 or such later date as this Court may order (the "**Stay Period**"), no action, suit or proceeding in any court or tribunal (each, a "**Proceeding**") against or in respect of ~~the Petitioner or the Monitor~~EncoreFX or EY, or affecting the Business or the Property, shall be commenced or

~~[13] Counsel should consider whether the inclusion of this paragraph concerning exemption from privacy legislation should be included as part of the Initial Order. The paragraph is intended to enable the Petitioner to disclose personal information in the course of its dealings with potential lenders, investors or purchasers. Section 18(1)(o) of the British Columbia *Personal Information Protection Act* allows the release of such information only when "required or authorized by law". Accordingly, it may be appropriate to wait until such a transaction is contemplated before seeking to include this term in an order, and counsel may wish to consider whether it is necessary to adduce evidence showing the court that disclosure is necessary.~~

~~[14] In keeping with the underlying philosophy of the Model Order, these provisions include a succinct stay provision which is intended to encapsulate the very broad stay provisions authorized in Section 11 of the CCAA. These provisions are specifically subject to specific limitations, including to permit a regulatory body to continue its investigations of the Petitioner or to permit a lien or security holder to make filings and commence Proceedings necessary to preserve their lien or security. If a case can be made out that such a Proceeding would have the effect of prejudicing the Petitioner's ability to restructure, then, on application based on the applicable facts, the Model Order can be amended to stay such Proceedings.~~

~~[15] In addition, counsel should consider clauses dealing with Section 81.1 and 81.2 of the BIA, as may be appropriate.~~

continued except with the written consent of ~~the Petitioner and the Monitor~~ EY or with leave of this Court, and any and all Proceedings currently under way against or in respect of ~~the Petitioner~~ EncoreFX or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

17. ~~16.~~During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of ~~the Petitioner or the Monitor~~EncoreFX or EY, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of ~~the Petitioner and the Monitor~~ EY or leave of this Court.

18. ~~17.~~ Nothing in this Order, including paragraphs ~~**[15]**~~ 9 and ~~**[16]**~~10, shall: (i) empower ~~the Petitioner~~ EY to carry on any business which ~~the Petitioner~~ EncoreFX is not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a mortgage, charge or security interest (subject to the provisions of Section 39 of the CCAA relating to the priority of statutory Crown securities); or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on ~~the Petitioner~~EY.

NO INTERFERENCE WITH RIGHTS

19. ~~18.~~During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement,

licence or permit in favour of or held by ~~the Petitioner~~EncoreFX, except with the written consent of ~~the Petitioner and the Monitor~~ EY or leave of this Court.~~[16]~~

CONTINUATION OF SERVICES

20. ~~19.~~During the Stay Period, all Persons having oral or written agreements with ~~the Petitioner~~ EncoreFX or mandates under an enactment for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or ~~the Petitioner~~EncoreFX, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by ~~the Petitioner~~EY, and that ~~the Petitioner~~ EY shall be entitled to the continued use of ~~its current premises,~~ EncoreFX's telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the ~~Order~~ Bankruptcy Date are paid by ~~the Petitioner~~ EY in accordance with normal payment practices of ~~the Petitioner~~ EncoreFX or such other practices as may be agreed upon by the supplier or service provider and ~~the Petitioner and the Monitor~~EY, or as may be ordered by this Court.~~[17]~~

~~[16] The Petitioner may wish to consider whether an application should be made relating to the ongoing entitlement/benefit of any applicable volume rebates or discounts based upon volumes supplied during the period prior to the Order Date.~~

~~[17] Counsel may wish to consider whether to seek an order deeming one or more suppliers "critical suppliers" in accordance with Section 11.4 of the CCAA. Notice of an application to deem a supplier a critical supplier must be given to the proposed critical supplier and any secured creditors likely to be affected by the security or charge granted in favour of the proposed critical supplier. Suggested wording for the additional paragraph is as follows: "THIS COURT ORDERS that [Name of supplier] is hereby deemed a critical supplier (the "Critical Supplier") in accordance with section 11.4 of the CCAA and shall, from the Order Date, continue to supply goods and services to the Petitioner on such terms and conditions as are consistent with the supply relationship between the Critical Supplier and the Petitioner. The Critical Supplier is hereby granted a charge (the "Critical Suppliers Charge") on the Property, which charge shall not exceed an aggregate amount of $__________, as security for any amounts for which the Petitioner becomes indebted to the Critical Supplier for the supply of goods or services after the Order Date. The Critical Suppliers Charge shall have the priority set out in paragraphs 40 and 42 herein."~~

NON-DEROGATION OF RIGHTS

21. ~~20.~~Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the ~~Order~~ Bankruptcy Date, nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to ~~the Petitioner~~ EncoreFX on or after the ~~Order~~ Bankruptcy Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCA~~[18]~~A.

~~**PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**~~

~~21. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against the directors or officers of the Petitioner with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Petitioner whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Petitioner, if one is filed, is sanctioned by this Court or is refused by the creditors of the Petitioner or this Court. Nothing in this Order, including in this paragraph, shall prevent the commencement of a Proceeding to preserve any claim against a director or officer of the Petitioner that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such Proceeding except for service of the initiating documentation on the applicable director or officer.~~

~~[18] This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).~~

~~**DIRECTORS AND OFFICERS INDEMNIFICATION AND CHARGE**~~ ~~[19]~~

~~22. The Petitioner shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Petitioner after the commencement of the within proceedings[20], except to the extent that, with respect to any director or officer, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.~~

~~23. The directors and officers of the Petitioner shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**")[21] on the Property, which charge shall not exceed an aggregate amount of **$__________**, as security for the indemnity provided in paragraph **[22]** of this Order. The Directors' Charge shall have the priority set out in paragraphs **[40]** and **[42]** herein.~~

~~24. Notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Petitioner's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph **[22]** of this Order.~~

APPOINTMENT OF MONITOR

22. ~~25. ____________________~~ EY is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of ~~the Petitioner~~

~~[19] Counsel should be aware that the provisions relating to Directors/Officers/Employees Indemnification and Charge may not be appropriate in all circumstances.~~

~~[20] The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge) and the scope of the indemnity are discretionary matters that should be addressed with the Court.~~

~~[21] Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Petitioner could obtain adequate indemnification insurance for the director or officer at a reasonable cost.~~

EncoreFX with the powers and obligations set out in the CCAA or set forth herein~~, and that the Petitioner and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Petitioner pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions~~.

23. ~~26.The Monitor~~EY, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

a. ~~(a)monitor the Petitioner's~~ prepare EncoreFX's receipts and disbursements;

b. ~~(b)~~report to this Court at such times and intervals as ~~the Monitor~~ EY may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

~~(c) assist the Petitioner, to the extent required by the Petitioner, in its dissemination, to the Interim Lender (as hereinafter defined)[22] and its counsel on a [TIME INTERVAL] basis of financial and other information as agreed to between the Petitioner and the Interim Lender which may be used in these proceedings including reporting on a basis to be agreed with the Interim Lender;~~

~~(d) advise the Petitioner in its preparation of the Petitioner's cash flow statements and reporting required by the Interim Lender, which information shall be reviewed with the Monitor and delivered to the Interim Lender and its counsel on a periodic basis, but not less than [TIME INTERVAL], or as otherwise agreed to by the Interim Lender;~~

~~[22] This Model Order assumes that there is an Interim Lender.~~

c. ~~(e)advise the Petitioner in its development of the Plan and any amendments to~~ develop and amend the Plan;

d. ~~(f)assist the Petitioner, to the extent required by the Petitioner, with the holding and administering of~~ hold and administer creditors' or shareholders' meetings for voting on the Plan;

e. ~~(g)have full and complete access to the~~ continue to be vested with EncoreFX's Property, including the premises, books, records, data, including data in electronic form, and other financial documents of ~~the Petitioner, to the extent that is necessary to adequately assess the Petitioner's business and financial affairs or to perform its duties arising under this Order~~EncoreFX;

f. ~~(h)~~be at liberty to engage independent legal counsel or such other persons as ~~the Monitor~~ EY deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;~~and~~

g. to receive and collect all monies and accounts now owed or hereafter owing to EncoreFX and to exercise all remedies of EncoreFX in collecting such monies, including, without limitation, to enforce any security held by EncoreFX;

h. to settle, extend or compromise any indebtedness owing to or by the EncoreFX;

i. to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in EY's name or in the name and on behalf of the EncoreFX, for any purpose pursuant to this Order;

j. to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to EncoreFX or the Property, including any such proceedings initiated by EY in its roles as the Trustee in the BIA Proceedings and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding; and

k. ~~(i)~~perform such other duties as are required by this Order or by this Court from time to time.

24. ~~The Monitor~~ EY shall ~~not take~~ continue to have possession of the Property ~~and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof, and nothing~~ for the purpose of the Liquidation. Nothing in this Order shall be construed as resulting in ~~27.~~ ~~the Monitor~~ EY being an employer or a successor employer in its personal capacity, within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

25. ~~28.~~Nothing herein contained shall require or allow ~~the Monitor~~ EY to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Fisheries Act*, the British Columbia *Environmental Management Act*, the British Columbia *Fish Protection Act* and regulations thereunder (the "**Environmental Legislation**")~~[23]~~, provided however that nothing herein shall exempt ~~the Monitor~~ EY from any duty to report or make disclosure imposed by applicable Environmental Legislation. For greater certainty, ~~the Monitor~~ EY shall not, as a result of this Order or anything done in pursuance of ~~the Monitor's~~ its duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

~~29. The Monitor shall provide any creditor of the Petitioner and the Interim Lender with information provided by the Petitioner in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Petitioner is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Petitioner may agree.~~

26. ~~30.~~In addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, ~~the Monitor~~ EY shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross

~~[23] Counsel should consider whether the Petitioner has property in any other Provinces and, if so, consider whether it is appropriate to include a reference to the relevant environmental legislation of those Provinces.~~

negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the rights and protections afforded the Monitor by the CCAA or any applicable legislation.[24]

~~**ADMINISTRATION CHARGE**~~

~~31. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioner shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Petitioner as part of the cost of these proceedings. The Petitioner is hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Petitioner on a periodic basis and, in addition, the Petitioner is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Petitioner, retainers in the amount[s] of **$__________** [respectively] to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.~~

~~32. The Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the British Columbia Supreme Court who may determine the manner in which such accounts are to be passed, including by hearing the matter on a summary basis or referring the matter to a Registrar of this Court.~~

~~33. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioner shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of **$__________**, as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order which are related to the Petitioner's restructuring. The Administration Charge shall have the priority set out in paragraphs **[40]** and **[42]** hereof.~~[25]

~~[24] Counsel should be aware that the provision exempting the Monitor in situations except for gross negligence may not be appropriate in all circumstances.~~
~~[25] Counsel should be aware that the provision allowing for an Administration Charge in favour of the Petitioner's counsel may not be appropriate in all circumstances.~~

~~**INTERIM FINANCING**~~

~~34. The Petitioner is hereby authorized and empowered to obtain and borrow under a credit facility from [INTERIM LENDER'S NAME] (the "**Interim Lender**") in order to finance the continuation of the Business and preservation of the Property, provided that borrowings under such credit facility shall not exceed $______________ unless permitted by further Order of this Court.~~

~~35. Such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Petitioner and the Interim Lender dated as of [DATE] (the "**Commitment Letter**"), filed.~~

~~36. The Petitioner is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Commitment Letter or as may be reasonably required by the Interim Lender pursuant to the terms thereof, and the Petitioner is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the Interim Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.~~

~~37. The Interim Lender shall be entitled to the benefit of and is hereby granted a charge (the " **Interim Lender's Charge**") on the Property. The Interim Lender's Charge shall not secure an obligation that exists before this Order is made. The Interim Lender's Charge shall have the priority set out in paragraphs **[40]** and **[42]** hereof.~~

~~38. Notwithstanding any other provision of this Order:~~

~~(a) the Interim Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Lender's Charge or any of the Definitive Documents;~~

~~(b) upon the occurrence of an event of default under any of the Definitive Documents or the Interim Lender's Charge, the Interim Lender, upon ____ days notice to the Petitioner and the Monitor, may exercise any and all of its rights and remedies against the Petitioner or the Property under or pursuant to the Commitment Letter, Definitive Documents and the Interim Lender's Charge, including without limitation, to cease making advances to the Petitioner and set off and/or consolidate any amounts owing by the Interim Lender to the Petitioner against the obligations of the Petitioner to the Interim Lender under the Commitment Letter, the Definitive Documents or the Interim Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Petitioner and for the appointment of a trustee in bankruptcy of the Petitioner; and~~

~~(c) the foregoing rights and remedies of the Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Petitioner or the Property.~~

~~39. The Interim Lender, in such capacity, shall be treated as unaffected in any plan of arrangement or compromise filed by the Petitioner under the CCAA, or any proposal filed by the Petitioner under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any advances made under the Definitive Documents.~~

~~VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER~~

~~40. The priorities of the Administration Charge, the Directors' Charge and the Interim Lender's Charge, as among them, shall be as follows:~~

~~First – Administration Charge (to the maximum amount of $__________);~~

~~Second – Interim Lender's Charge;~~

~~Third - Directors' Charge (to the maximum amount of $__________).[26]~~

~~41. Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge, the Interim Lender's Charge and the Directors' Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable[27] for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register or perfect any such Charges.~~

~~42. Each of the Charges shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**"), in favour of any Person, save and except those claims contemplated by section 11.8(8) of the CCAA.[28]~~

~~43. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioner shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Petitioner obtains the prior written~~

~~[26] The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

~~[27] The term "opposable" should be included if there is Property in the Province of Quebec.~~

~~[28] This Model Order is not intended to be determinative of whether the Court has the jurisdiction to grant the Administration Charge, the Interim Lender's Charge and the Director's Charge priority over the deemed trusts identified in subsection 37(2) of the CCAA. If the Petitioner seeks an order granting priority for such charges over any such deemed trusts, notice of the application should be given to the Federal and Provincial Crowns, as appropriate. If the Petitioner does not seek an order subordinating any such deemed trust to such charges, the following should be added to the end of paragraph 42: "with the exception of any deemed trust amounts provided for in subsection 37(2) of the CCAA."~~

~~consent of the Monitor, the Interim Lender and the beneficiaries of the Administration Charge and the Director's Charge.~~

~~44. The Administration Charge, the Director's Charge, the Commitment Letter, the Definitive Documents and the Interim Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the Interim Lender shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Petitioner; and notwithstanding any provision to the contrary in any Agreement:~~

~~(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Petitioner of any Agreement to which it is a party;~~

~~(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Petitioner entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and~~

~~(c) the payments made by the Petitioner pursuant to this Order, the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue,~~

~~oppressive conduct, or other challengeable or voidable transactions under any applicable law.~~

~~45. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Petitioner's interest in such real property leases.~~

OVERSIGHT COMMITTEE

27. The Monitor, together with a representative of each of Gustavson Capital Corporation, the secured party claimant, and Andreas Wrede, the largest Property Claim claimant shall, as of this date of this Order, form an oversight committee (the "**Oversight Committee**") which shall review and approve settlements in respect of all matters affecting the liquidation and generally deal with the continued realization of the assets of EncoreFX. The Oversight Committee shall incur no liability or obligation as a result of its appointment as the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

SERVICE AND NOTICE

28. EY shall

(a) ~~46.The Monitor shall (i)~~ without delay, publish in ~~[newspapers specified by the Court]~~ the *Vancouver Sun*, *Times-Colonist* (Victoria), and *The Globe and Mail* (National Edition), a notice containing the information prescribed under the CCAA,~~(ii) within five days after Order Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Petitioner of more than $1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.~~

(b) within five days after the Order Date,

(i) make this Order publicly available in the manner prescribed under the CCAA,

(ii) send, in the prescribed manner, a notice to every known creditor who has a claim against EncoreFX, and

(iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

29. ~~The Petitioner and the Monitor are~~ EY is at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to ~~the Petitioner's~~ EncoreFX's creditors or other interested parties at their respective addresses as last shown on the records of ~~47. the Petitioner~~ EncoreFX and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.~~[29]~~

30. ~~48.~~Any Person that wishes to be served with any application and other materials in these proceedings must deliver to ~~the Monitor~~ EY by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to ~~a service list (~~the~~"~~ Service List~~")~~ to be maintained by ~~the Monitor~~EY. ~~The Monitor~~ EY shall post and maintain an up to date form of the Service List on its website at: ~~[INSERT WEBSITE ADDRESS]~~www.ey.com/ca/EncoreFX.

~~[29] In all instances, counsel should address the manner of service with the Court, including advising as to how service was or is proposed to be effected.~~

31. ~~49.~~Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and ~~the Monitor~~ EY shall post a copy of all prescribed materials on its website at: ~~[INSERT WEBSITE ADDRESS]~~www.ey.com/ca/EncoreFX/.

32. ~~50.~~Notwithstanding paragraphs ~~**[47] and [49]**~~ 28-30 of this Order, service of the Petition, the Notice of Hearing of Petition, any ~~affidavits~~ evidence or reporting filed in support of the Petition and this Order shall be made on the Federal and British Columbia Crowns~~[30]~~ in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and regulations thereto, in respect of the Federal Crown, and the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, in respect of the British Columbia Crown.~~[31]~~

GENERAL

33. As of the date of this Order, the inspectors appointed in the BIA Proceedings shall be deemed to have resigned.

34. ~~51.The Petitioner or the Monitor~~ EY may from time to time apply to this Court for directions in the discharge of its powers and duties hereunder.

~~[30] Counsel should consider whether the Petitioner has property in any other Provinces and, if so, consider whether it is appropriate to include a reference to those Provinces and the relevant legislation of those Provinces with respect to service.~~

~~[31] *The Crown Proceeding Act*, R.S.B.C. 1996, c. 89, s. 8 provides for service on the British Columbia Crown, as follows:~~

~~8. A document to be served on the government~~

~~(a) must be served on the Attorney General at the Ministry of the Attorney General in the City of Victoria, and~~

~~(b) is sufficiently served if~~

~~(i) left there during office hours with a solicitor on the staff of the Attorney General at Victoria, or~~

~~(ii) mailed by registered mail to the Deputy Attorney General at Victoria.~~

~~A similar provision relating to the Federal Crown is found at s. 23(2) of the *Crown Liability and Proceeding Act*, R.S. 1985, c. C-50, which provides for service on the Deputy Attorney General of Canada or the chief executive officer of the agency in whose name the proceedings are taken, as the case may be. The Federal Crown requests that service of documents be by delivery to Department of Justice, 900 - 840 Howe Street, Vancouver, B.C. V6Z 2S9.~~

35. ~~52.~~Nothing in this Order shall prevent ~~the Monitor~~ EY from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of ~~the Petitioner~~EncoreFX, the Business or the Property.

36. ~~53.THIS COURT REQUESTS~~ This Court requests the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to ~~the Petitioner and to the Monitor~~EY, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to ~~the Monitor~~ EY in any foreign proceeding, or to assist ~~the Petitioner and the Monitor and their~~ EY and its respective agents in carrying out the terms of this Order.

37. ~~54.Each of the Petitioner and the Monitor be~~ EY is at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and ~~the Monitor~~ is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of ~~the Petitioner~~ EncoreFX to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended.

38. ~~The Petitioner~~ EncoreFX may (subject to the provisions of the CCAA and the BIA) at any time file a voluntary assignment in bankruptcy or a proposal pursuant to the commercial reorganization provisions of the BIA if and when ~~55. the Petitioner~~ EY determines that such a filing is appropriate. Upon any Plan being rejected by the creditors of EncoreFX of the Court refusing to sanction a Plan, any interested party make seek to petition EncoreFX into bankruptcy in the within proceedings notwithstanding the conversion set forth herein.

39. ~~56.The Petitioner~~ EY is hereby at liberty to apply for such further interim or interlocutory relief as it deems advisable within the time limited for Persons to file and serve Responses to the Petition.

40. ~~57.~~Leave is hereby granted to hear any application in these proceedings on two (2) clear days' notice after delivery to all parties on the Service List of such Notice of Application and all affidavits in support, subject to the Court in its discretion further abridging or extending the time for service.

41. ~~58.~~Any interested party (including ~~the Petitioner and the Monitor~~EY) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the Service List and to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

42. ~~59.~~Endorsement of this Order by counsel appearing on this application~~.~~, other than counsel for the Trustee and the Monitor, is hereby dispensed with.~~[32]~~

~~[32] Counsel should be aware that the final form of the Order may be modified before entry at the discretion of the Chambers Judge.~~

43. ~~60.~~This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.~~[33]~~

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

Signature of: William E.J. Skelly / Dana M. Nowak

☐ Party ☑ Lawyer for the ~~Petitioners~~Petitioner, Ernst & Young in its capacity as Trustee and/or Monitor of EncoreFX Inc., and not its personal capacity

~~<Print Name>~~

~~Signature of~~
~~☐ Party ☐ Lawyer for <name of party(ies)>~~

~~<Print Name>~~

BY THE COURT

REGISTRAR

~~[33] For a provision of this or any subsequent order in these proceedings to make any provincial law inapplicable or inoperative, notice must be given under s. 8 of the *Constitutional Question Act* R.S.B.C. 1996, c. 68. If notice is not given, the provision could later be challenged and set aside.~~

~~Schedule~~ SCHEDULE "A"

~~(~~List of Counsel~~)~~

Name of Counsel	Party Represented
William E.J. Skelly	Counsel for the Trustee and Proposed Monitor