



# Master Terms and Conditions

This Master Terms and Conditions Agreement (“**Agreement**”) is a contract between the Customer identified as the Applicant on the New Account Application Form and EncoreFX Ltd. and its subsidiaries and affiliates (“EncoreFX”), and governs all use of EncoreFX Services. By completing and submitting a New Account Application form (the “**Application**”) or using the Services (as defined below), the Customer agrees that it has read and understood these Master Terms and Conditions and accepts and agrees to be bound by all of the provisions of those Master Terms and Conditions. The Customer further agrees that it has read and understood the Credit Facility letter (to the extent the Customer will be using margin). These Master Terms and Conditions should be read carefully and completely. Access to, and use of, EncoreFX Services is also subject to all applicable international, federal, state and local laws and regulations, which the Customer acknowledges it is bound by and agrees to comply with.

These Master Terms and Conditions apply to all Transactions and Services entered into between the Customer and EncoreFX, except to the extent modified expressly and clearly by the specific provisions of a Transaction. EncoreFX may amend these Master Terms and Conditions at any time by posting a revised version on the website of EncoreFX (“**Site**”). The revised version will be effective when posted unless a later effective date is specified. A Customer’s continued use of the Services after such posting will constitute the Customer’s agreement to the amendments made to the Master Terms and Conditions. These Master Terms and Conditions contain 11 sections. The headings and subheadings below are for reference only and do not limit the scope of each section. Some capitalized terms have specific definitions in Section 11 (Definitions).

## 1. EncoreFX Services

The Services currently include: (i) Foreign Exchange Spot Transactions; (ii) international Wire Transfers and global automated clearing house (“**ACH**”) transfers; (iii) foreign exchange Forward Contracts and Option Contracts; and (iv) foreign currency drafts and checks. EncoreFX may modify or discontinue any or all Services at any time and without advance notice, and without liability. If EncoreFX modifies or discontinues any Services, existing Transactions will not be affected unless the Customer is in Default (see Section 5.5).

### 1.1 Eligibility

To be eligible to use the Services offered by EncoreFX, the Customer must be organized and registered to do business in the United States, must be legally authorized to agree to these Master Terms and Conditions, and be further authorized to agree to and perform its obligations under these Master Terms and Conditions, without violating any law, regulation, judgment or other governmental provision affecting the Customer or any other agreement to which the Customer is a party. To be eligible to use Forward Contracts and Option Contracts, the Customer must further be an “Eligible Contract Participant” as set forth in Appendix A. By using the Services, the Customer agrees that the foregoing statements are true, correct and complete. EncoreFX reserves the right to refuse to provide Services to any Customer, or enter into any Transaction with a Customer, at any time and for any reason. EncoreFX may cancel any Transaction if the Customer has not fulfilled its obligations for that Transaction. The Customer is responsible for any losses, costs, and expenses EncoreFX incurs resulting from such cancellation.

### 1.2 Authorized Representatives

The Customer agrees that it will act only for itself when using the Services and not on behalf of any third party or beneficial purchaser and that the Customer is entering into all transactions under this agreement as principal and not on behalf of any third-party or beneficial purchaser. The Application includes a list of individuals authorized to provide instructions to EncoreFX and to complete any Transaction with EncoreFX (“**Authorized Representatives**”). A Customer may revise the list by providing EncoreFX with written confirmation of the same in a form acceptable to EncoreFX. EncoreFX assumes the Customer has authorized all information it transmits to EncoreFX, and the Customer agrees that EncoreFX may rely on such information, without liability of any kind. It is the Customer’s responsibility to ensure that only its Authorized Representatives communicate with EncoreFX. EncoreFX will not be liable for any losses a Customer may incur from instructions provided by persons not authorized to act on such Customer’s behalf. In order to communicate instructions to EncoreFX through an Online Ordering System, the Customer will provide a password for the use of such system. The password will be required to access the Online Ordering System, to communicate instructions, and to authorize and consent to any Transactions. The Customer represents that only Authorized Representatives will access and use such Online Ordering System, and acknowledges and agrees that protection of the password is the responsibility of the Customer. EncoreFX shall be entitled to assume that anyone using the password is an Authorized Representative of the Customer, and shall not be responsible for any losses resulting from the use of the password by an unauthorized representative.

### 1.3 Prohibited Activities

In connection with the Customer’s use of Services or in the course of the Customer’s interactions with EncoreFX or third parties, the Customer shall not: breach these Master Terms and Conditions or any of EncoreFX’s Agreements; violate any law, statute, ordinance or regulation; send or receive fraudulent or potentially fraudulent funds; refuse to cooperate in any investigation or provide confirmation of the Customer’s identity or any information provided to EncoreFX; use EncoreFX Services or conduct a Transaction in a manner that results in or may result in liability of any kind to EncoreFX; use EncoreFX Services or conduct a Transaction in a manner that NACHA or any other electronic funds transfer network reasonably believes to be an abuse or violation of their rules; access EncoreFX Services from a State in which EncoreFX is not licensed; take any action that imposes an unreasonable or disproportionately large load on EncoreFX infrastructure; facilitate any viruses, Trojan horses, worms or other computer programming routines that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or Information; use an anonymizing proxy; use any robot, spider, other automatic device, or manual process to monitor or copy any EncoreFX website without EncoreFX’s prior written permission; or use any device, software or routine to bypass EncoreFX’s robot exclusion headers, or interfere or attempt to

interfere with EncoreFX's website or Services; circumvent any of EncoreFX policies or determinations about a Customer's Transactions such as temporary or indefinite suspensions, limitations or restrictions, including, but not limited to, engaging in the following actions: attempting to create new or additional account(s) when the Customer has any outstanding monetary obligations to EncoreFX; creating new or additional accounts using information that is not the Customer's (including but not limited to: name, address, email address); or using a third party's account; or harass and/or threaten any EncoreFX employees or agents or use language that is abusive, defamatory, vulgar, obscene, profane, hateful or racially, ethnically or otherwise objectionable.

Without limiting any of the above activities, the Customer further agrees it will not use EncoreFX Services for any of the following:

- (a) **Speculation** - Customers may not purchase Currency with the intention of investing in or profiting from price fluctuations that occur in the Currency, as compared to an intention to hedge when purchasing Currency; i.e., purchasing Currency with the sole business purpose of offsetting risks of adverse price movements in Foreign Exchange that affect a Customer's business operations.
- (b) **Criminal Activities** - Customers may not use EncoreFX Services to transfer funds which the Customer knows or suspects are derived from or related to or which the Customer knows or suspects will be used for or by people who are engaged in fraud, money laundering, terrorism financing and other financial crimes; and
- (c) **Money Laundering & Terrorist Financing** - Customers may not violate, and may not take any action or fail to take any action, if the result would be an EncoreFX violation of the *Bank Secrecy Act of 1970*, the *USA PATRIOT Act*, the requirements of the Office of Foreign Asset Control, or global sanctions laws (collectively, the "**AML Laws**").

If EncoreFX suspects, in its sole discretion, that a Customer is or may be entering into a Transaction for the purpose of Speculation or otherwise engaging in any of the other Prohibited Activities listed above, or the Transaction will violate the AML Laws, EncoreFX has the right to immediately suspend Services and terminate any or all pending Transactions at the Customer's cost and expense.

#### 1.4 Representations and Warranties

- (a) The Customer agrees that at all times it will comply with these Master Terms and Conditions and will not engage in any practices or take any actions that violate these Master Terms and Conditions Agreement.
- (b) The Customer will exercise its own business judgment when entering into any Transactions with EncoreFX. The Customer agrees that anything received from or provided by EncoreFX, including but not limited to, any and all information, communications and materials, is provided for the purposes of information only, and does not constitute advice given by EncoreFX to the Customer.
- (c) All information the Customer provides and all statements the Customer makes to EncoreFX pursuant to these Master Terms and Conditions are and will be when the Customer engages in any Transaction true, correct, complete, and accurate. The Customer agrees to notify EncoreFX immediately if there are any changes that affect or alter these representations and warranties or any of the information the Customer provided on the Application.
- (d) The Customer must ensure that any Bank account used for payments to EncoreFX is in the name of the Customer or EncoreFX. If a third party makes a payment to EncoreFX on the Customer's behalf, the Customer must immediately notify EncoreFX and provide EncoreFX with all information EncoreFX may request concerning the third party. This may include, but is not limited to, the banking information and/or the nature of the relationship between the Customer and the third party. The Customer agrees to indemnify EncoreFX from and against any claims or losses arising out of the Customer's misrepresentation as to the ownership of any Bank account.
- (e) The Customer acknowledges and agrees that exchange rates can fluctuate rapidly. Any rate EncoreFX quotes to the Customer for a specific Transaction is contingent upon the prompt performance of the Customer's obligations in relation to that Transaction. EncoreFX reserve the right to requote the applicable rate if the Customer does not provide EncoreFX with requested information or funds on time.
- (f) EncoreFX are not obligated for any quoted rate that, as the result of a technical or human error, is clearly an error. The Customer must notify EncoreFX as soon as the misquoted rate comes to its attention. EncoreFX will re-quote the rate as soon as possible.
- (g) EncoreFX currently accept funds by: (i) Bank Draft; (ii) Certified Check; (iii) Wire Transfer; (iv) ACH transfer; (v) electronic funds transfer; or (vi) Authorization for EncoreFX to debit the Customer's account (also known as pre-authorized debit) at the Customer's Bank or other financial institution. EncoreFX may also accept Bank or other guaranteed funds or a Bank letter of guarantee/credit, but only on terms and conditions satisfactory to EncoreFX, including without limitation the identity of the issuing bank or other guarantor and the maturity date of the guarantee. The Customer must ensure that there are sufficient funds in its Bank account to make any payments to EncoreFX. The Customer will be responsible for and will be charged any NSF or related fees incurred due to insufficient funds.
- (h) When the Customer submits an Application, it is providing EncoreFX with written instructions and authorization in accordance with the Fair Credit Reporting Act to obtain the Customer's credit report from a credit bureau. The Customer is also authorizing

EncoreFX to obtain its credit report: (a) when the Customer engages in any Transaction; (b) when the Customer uses any Service; or (c) at any time EncoreFX reasonably believe there may be an increased level of risk associated with the Customer's Transactions.

- (i) The Customer agrees to provide EncoreFX with all banking information EncoreFX may request from time to time, including the name and contact information of the Bank at which the Customer maintains an account. The Customer authorizes and consents to EncoreFX contacting the Customer's Bank to verify the Customer's identity, account information, and any other information EncoreFX reasonably requires from such Bank. The Customer also authorizes EncoreFX to take all commercially reasonable measures to confirm the Customer's identity and confirm its ability to meet its obligations under these Master Terms and Conditions and under the terms of any Transaction between the Customer and EncoreFX.

## **1.5 Nonresident Alien and Foreign Corporation Withholding; Foreign Account Tax Compliance Act ("FATCA")**

The Customer agrees that it is the responsibility of the Customer to determine the chapter 3 and chapter 4 status of the Payee in accordance with Internal Revenue Code sections 1441 through 1446 and 1471 through 1474. The Customer agrees that EncoreFX would not know, or have reason to know of, the withholding status of a payment to a Payee. Accordingly, the Customer represents and warrants to EncoreFX that for each and every Transaction the Customer has determined the chapter 3 and chapter 4 status of the Payee in accordance with Internal Revenue Code sections 1441 through 1446 and 1471 through 1474, and the regulations promulgated thereunder. The Customer further represents and warrants to EncoreFX that it has withheld the appropriate amount, if any, required. The Customer will indemnify EncoreFX and hold EncoreFX harmless from and against any claims by the U.S. Internal Revenue Service (IRS) for tax, interest, and penalties and any and all costs and expenses EncoreFX may incur arising out of or in respect of the Customer's under-withholding or other noncompliance with respect to the IRS withholding rules, including but not limited to FATCA. This indemnity will survive the completion of any Transaction and the termination of any Transaction, Services or these Master Terms and Conditions.

## **1.6 Notice**

Whenever written notice is required under these Master Terms and Conditions, the notice must be in writing and delivered by mail or courier. If the notice is to EncoreFX, notices shall be sent to EncoreFX at the following addresses: 2<sup>nd</sup> Floor, 517 Fort Street Victoria, British Columbia V8W 1E7.

EncoreFX will send notices to the Customer by email or facsimile at the address provided in the Application. Notices will be deemed to have been received on the date sent if before 5:00 Pacific Time on a Business Day (and otherwise on the next Business Day), provided that no indication of service interruption is received by the sender at the time the notice is transmitted. The Customer or EncoreFX may give written notice of any change of address in this manner. EncoreFX will post notice of any amendments to these Master Terms and Conditions on the EncoreFX Website. The notice will be effective from the posting date, unless otherwise indicated. Such a posting will be sufficient notice to the Customer for all Transactions entered into from that date forward.

## **2. Trading**

### **2.1 Accessing EncoreFX Services and Communicating Instructions**

- (a) The Customer may provide instructions to EncoreFX by: (i) telephone call with an EncoreFX designated account representative; (ii) facsimile transmission addressed to an EncoreFX designated account representative; (iii) email sent to an EncoreFX designated account representative; (iv) Short Message Service ("SMS") (i.e. text message via a cellular phone); and/or (v) the EncoreFX Online Ordering System (*for all Transactions except Option Contracts*).
- (b) To use the EncoreFX Online Ordering System, the Customer must provide a username and password. The username and password will be required to access the Online Ordering System, to communicate instructions, and to authorize and consent to any Transactions. It is the Customer's responsibility to protect the confidentiality of its username and password and to ensure that they are used only by the Customer's authorized representatives. EncoreFX will accept any instructions sent by or received from anyone using the Customer's username and password without checking the identity of the user. EncoreFX reserves the right to verify a user's identity, but EncoreFX has no obligation to do so. EncoreFX will not be responsible for any losses resulting from the use of the Customer's username and password by an unauthorized representative.
- (c) EncoreFX will notify the Customer by email of any amounts it owes to EncoreFX for any reason. After receiving notice, the Customer has two (2) Business Days (unless EncoreFX explicitly otherwise agrees in writing) to deliver those funds to EncoreFX. If EncoreFX does not receive the funds owed to EncoreFX by then, the Customer will be in Default. See Section 5.5 for the consequences of a Default.

### **2.2 Confirming and Completing Transactions**

- (a) In order to complete a Transaction, the Customer must clearly authorize and accept each Transaction, and EncoreFX must clearly indicate its receipt of instructions from the Customer. If the instructions are provided via telephone, such authorization and

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

- (b) The terms of each Transaction, per the instructions provided to EncoreFX by the Customer, shall be outlined in the Confirmation ("**Confirmation**"), which will be provided to the Customer by EncoreFX upon the completion of each Transaction. Failure to provide such Confirmation for any reason shall not invalidate any Transaction, the Confirmation being a record only of the Transaction. The records of EncoreFX (absent any manifest errors) shall constitute conclusive evidence of the terms and conditions of any Transaction.
- (c) Once the Customer's instructions regarding a Transaction have been accepted by EncoreFX in accordance with Section 2.2(a), the Customer shall be bound to complete the Transaction in accordance with such instructions and in accordance with these Master Terms and Conditions.
- (d) Upon authorizing and accepting the Transaction the Customer shall forthwith make any required contractual payment to EncoreFX.

### **2.3 Forward Contracts, Option Contracts and Margin Terms**

- (a) For Forward Contract or Option Contract Services, the Customer may be required to set up and maintain margin terms with EncoreFX, which must be in place before any Forward Contract or Option Contract is accepted by EncoreFX. The Customer's Forward Contracts, Option Contracts and margin terms will be subject to the Credit Facility Letter that EncoreFX issues to the Customer outlining the credit terms EncoreFX approves and the Customer accepts, including transaction limits, margin terms, and deposits. The Credit Facility Letter will provide whether the amount required for the Customer's margin terms will be a fixed amount, a floating amount or a combination of the two.
- (b) If margin terms are set up in whole or part on a floating basis, the Customer will be required to deposit additional funds or provide a guarantee as provided below, anytime EncoreFX determines that the mark-to-market potential loss on the Forward Contract exceeds the prescribed amount established by EncoreFX in the Credit Facility Letter. EncoreFX will determine the mark-to-market value of a Forward Contract at a given point on a daily basis on each Business Day, based upon the Mid-Market Rate. The Customer agrees to accept and be bound by the mark-to-market value determination EncoreFX makes. EncoreFX may require additional deposits pursuant to the Customer's margin terms from time to time by issuing a "**Margin Call.**"
- (c) EncoreFX may offer the Customer fixed delivery date Forward Contracts or flexible delivery date Forward Contracts. Any request to change a Currency delivery date once set in the Forward Contract is up to EncoreFX in its sole discretion. If EncoreFX accepts the request, EncoreFX may set a revised exchange rate applicable to the revised Forward Contract, which will be binding on the Customer.
- (d) EncoreFX may offer Option Contracts comprised of any of the Options described in the Product Disclosure Statement, a copy of which the Customer has received and confirms it understands.
- (e) The Customer must indicate to EncoreFX the proposed Currency, the proposed contract amount, the type of Option it desires, the proposed option exercise (strike) price, the proposed term and the Currency in which the Customer proposes to pay any premium, if required.
- (f) EncoreFX may, at its sole discretion, require the Customer to pay a premium to spot value from the initial deal date at the time that the Option Contract is entered into or at a future time agreed to in writing between EncoreFX and the Customer. In the event that EncoreFX requires the Customer to pay a premium, the Option Contract shall not be considered in effect or binding on EncoreFX until such premium is paid.
- (g) The Customer may only exercise the Option stipulated in the Option Contract in accordance with the terms and conditions of the Option Contract by giving notice to EncoreFX of its intention to exercise said Option Contract. Exercise occurs when the Customer gives notice to EncoreFX to convert the Option Contract into the underlying foreign exchange Currency, provided that any premium due has also been received by EncoreFX. The Customer acknowledges and agrees that if the Option Contract trades at or beyond the barrier level or is "in-the-money", EncoreFX shall have the right to convert the Option Contract into the underlying Currency on such Option Contract's Expiry Date.

- (h) If the Option provided for in the Option Contract has been exercised in accordance with Section 2.3(g), then each party to such Option Contract shall pay the Currency and amount due thereunder to the other party on the Settlement Date.
- (i) The Customer may notify EncoreFX that it desires to offset or cancel an Option Contract (a “**Notice of Cancellation**”). EncoreFX may, in its sole discretion, agree to the request in the Notice of Cancellation provided that the Customer has paid any required premium as determined by EncoreFX and any Notice of Cancellation has been received by EncoreFX before the Expiry Time on the Expiry Date of such Option Contract. EncoreFX will evaluate the relevant closing strike rate and premium and the net difference will be charged to the Customer for immediate payment.
- (j) An Option Contract will lapse at its Expiry Date if such Option Contract has not been exercised in accordance with Section 2.3(g) or offset in accordance with Section 2.3(i).
- (k) Option contracts may require a Margin Deposit (unless waived in writing by EncoreFX in its sole discretion) in an amount and on terms specified by EncoreFX, which shall be stated in the Credit Facility Letter. The amount of the Margin Deposit shall be specified at the time that the Option Contract is entered into. The Margin Deposit shall be either in guaranteed funds or by a Bank letter of guarantee or letter of credit (on terms and conditions satisfactory to EncoreFX including without limitation, the issuing Bank and the maturity date) and must be paid within two (2) Business Days. In the event that the Margin Deposit is not received within two (2) Business Days EncoreFX shall at its sole discretion and without further notice, have the right to i) close out the Customer’s account and terminate the contract which relates to the specific Service or Transaction; ii) terminate and close out any other pending Transaction/contract for Services with the Customer; and iii) set off amounts owed to the Customer including any gains on contracts closed out (terminated) against any Losses incurred and amounts then owing to EncoreFX on Transactions with the Customer. Where a Margin Deposit is placed on a floating basis for the Option Contract, the Customer agrees to submit to EncoreFX an Additional Margin Deposit at any time EncoreFX determines that the mark-to-market potential loss on the Option Contract exceeds the prescribed amount established with EncoreFX in the Credit Facility Letter. EncoreFX shall determine the mark-to-market value of an Option Contract at a given point on a daily basis based upon the Mid-Market Rate. The Customer agrees to accept and be bound by such mark-to-market value determination as made by EncoreFX.
- (l) EncoreFX shall have the right, in its sole discretion, to notify a Customer at any time that an Additional Margin Deposit is required pursuant to Section 2.3(k). The Customer acknowledges and agrees that upon such notification from EncoreFX, it will have two (2) Business Days from notification to provide to EncoreFX the Additional Margin Deposit. The amount of the Additional Margin Deposit shall be that amount determined by EncoreFX which is sufficient to ensure that that the Margin Deposit together with the Additional Margin Deposit held by EncoreFX for the particular Option Contract on a mark-to-market value is at least the minimum prescribed amount established by EncoreFX for the Option Contract as established in the Credit Facility Letter.
- (m) Should the Customer not: (a) complete the Option Contract as set out in the terms by the Expiry Date, or (b) pay any Margin Deposit, including any required Additional Margin Deposit, then EncoreFX shall no longer be obligated to complete the Option Contract and at its discretion, any other pending Transaction including any other Option Contract(s) with the Customer. EncoreFX shall have the right to (i) sell the necessary covering Currency to terminate the Option Contract, (ii) charge the Customer with the Losses incurred by EncoreFX, and (iii) apply the Margin Deposit or any Additional Margin Deposit and any other deposit or funds held by EncoreFX to pay the Losses. Should such amounts be insufficient to reimburse EncoreFX for the Losses, the Customer agrees to forthwith pay to EncoreFX any additional amount required to reimburse EncoreFX for the Losses.
- (n) If the Margin Deposit and any Additional Margin Deposit are not needed based upon the Customer performing its obligations under the Option Contract to completion, EncoreFX agrees to return to the Customer the Margin Deposit or the amount remaining that was not required.
- (o) If the Customer does not complete a Forward Contract by the required Settlement Date(s), or otherwise fails to make required deposits or margin calls with two (2) business days, then EncoreFX will no longer be obligated to complete the Forward Contract and, at its sole discretion, EncoreFX may treat the Customer’s failure as a Default. In addition to the provisions in Section 5.5, EncoreFX will have the right to: (i) sell the necessary covering Currency to terminate the Forward Contract(s); (ii) charge the Customer with the Losses; and (iii) apply any amounts collected according to the Customer’s margin terms and any other deposit or funds then held by EncoreFX to pay the Losses. If the amount of funds collected according to the Customer’s margin terms and any other funds EncoreFX then holds is not sufficient to reimburse and indemnify EncoreFX for its Losses, the Customer agrees to immediately pay EncoreFX the additional amount required to cover such a shortfall.
- (p) Please see Section 1.4(g) for information on how the Customer can deliver funds.
- (q) For Forward Contract or Option Contract Services, the Customer hereby represents and warrants to EncoreFX (and acknowledges that EncoreFX is relying thereon) that the Customer is an “Eligible Contract Participant” under the US Commodity Exchange Act as set forth in Appendix A.

## 2.4 Delays and Cancellations

- (a) EncoreFX will use commercially reasonable efforts to process Transactions on the day they are authorized. EncoreFX cannot and does not guarantee that Transactions will be processed the same day they are authorized. EncoreFX is not responsible for the timeliness of other financial institutions in processing Transactions. Absent EncoreFX's gross negligence or willful misconduct, EncoreFX is not liable for any losses the Customer may suffer resulting from a Transaction not being processed on the day it was authorized, even if EncoreFX has been advised of potential adverse consequences due to a delay in processing.
- (b) If the Customer wishes to cancel, amend or reverse a transaction for any reason, the Customer must contact EncoreFX directly by Telephone for this purpose. EncoreFX will use commercially reasonable efforts to effect such cancellation, amendment or reversal, but EncoreFX may not be able to do so. EncoreFX is not responsible for any costs or losses the Customer incurs resulting from EncoreFX's failure or inability to cancel, amend or reverse any Transaction, even if EncoreFX has been advised of the possibility of such costs or losses. The Customer is responsible for any costs EncoreFX incurs in canceling, amending or reversing a Transaction that the Customer has requested be canceled, amended or reversed, whether or not EncoreFX is successful in doing so.

## 2.5 Use of ACH System; NACHA Rules

The Customer agrees and acknowledges that with respect to any payment to a U.S. beneficiary:

- (a) The Transaction will be subject to the Electronic Funds Transfer Act, Chapter 62A.4A of the Revised Code of Washington and the NACHA rules, as each may be amended from time to time;
- (b) The Customer will be designated as the Originator of such transaction, as defined by the NACHA rules, and solely responsible to fulfill all of the obligations of an Originator under the NACHA rules;
- (c) The Customer's instructions to EncoreFX will constitute authorization by the Customer for the EncoreFX Originating Depository Institution (ODFI) to originate an ACH entry on EncoreFX's behalf;
- (d) The ODFI may suspend or terminate the Customer's right to submit ACH entries for breach of the NACHA rules in a manner to permit the ODFI to comply with the rules; and
- (e) EncoreFX and/or the EncoreFX ODFI may audit the Customer's compliance with the provisions of this Section.

## 2.6 Trade Reporting

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), EncoreFX has an obligation to report forward contract and option contract Transactions to a registered Swap Data Repository. Accordingly, the Customer agrees to provide information to EncoreFX as required to facilitate trade reporting including, but not limited to, the Customer's jurisdiction of operations, place of incorporation and where the Customer's head office is located. In addition, the Customer is required to provide their Legal Entity Identifier (LEI) prior to and each time a forward contract is entered into by the Customer. An LEI is a unique twenty (20) digit code used to identify the Customer and is included on trade reports required to be reported by EncoreFX. **It is the Customer's responsibility to obtain an LEI.**

## 3. Funds EncoreFX Holds

### 3.1 No Interest Paid

No interest will accrue or be paid on funds EncoreFX holds for the Customer in the course of providing Services.

### 3.2 No Segregation of Funds.

EncoreFX does not hold the Customer's funds in trust. EncoreFX will not place the Customer's funds into a separate bank account. The Customer will not have a security interest in EncoreFX assets, including the funds that the Customer has provided to EncoreFX. Any obligations EncoreFX may have to the Customer will rank effectively junior to the rights of the holders of any existing or future secured indebtedness of EncoreFX with respect to the assets securing that indebtedness. Any claims the Customer may have against EncoreFX will not have priority over, and may be subordinated to, any other claims against EncoreFX that may exist from time to time. EncoreFX's obligation to provide Services to the Customer will be unsecured special, limited obligations. In the event of EncoreFX's bankruptcy or similar proceeding, the Customer's relative rights as compared to the holders of other unsecured indebtedness are uncertain.

### 3.3 Mistakes in Transmission

If the Customer's funds are sent to the wrong account as the result of a mistake made by the Customer, and EncoreFX has acted in accordance with the Customer's instructions, EncoreFX will make every reasonable effort to recover the Customer's funds but are under no obligation to: (i)

recover the funds; (ii) resend the funds to the correct account; or (iii) reimburse the Customer. The Customer will be required to book a new Transaction. If the Customer's funds are sent to the wrong account as the result of a mistake EncoreFX makes, EncoreFX will take action at its own expense to recover those funds, provided the Customer assists EncoreFX, immediately if requested, in recovering those funds. Where funds cannot be recovered EncoreFX will reimburse the Customer within five (5) business days.

### **3.4 Application of Funds**

If no default has occurred, and EncoreFX holds funds that are not required according to the Customer's margin terms or otherwise held for the purpose of settling a contract or other obligation with EncoreFX based upon a pending or completed Transaction or a Service, the Customer may direct EncoreFX as to the payment or the application of those funds.

## **4. Limitations on Liability and Indemnification**

### **4.1 In addition to the other limitations on liability set forth in these Master Terms and Conditions:**

- (a) ENCOREFX WILL NOT BE LIABLE TO THE CUSTOMER for any losses or damages suffered under these Master Terms and Conditions Agreement, except to the extent that such losses or damages are directly attributable to EncoreFX's gross negligence or willful misconduct.
- (b) ENCOREFX WILL NOT BE LIABLE TO THE CUSTOMER for any losses or damages incurred as a result of:
  - the Customer's use of the EncoreFX online ordering system, any technical difficulties associated with the communication of information, or any interruption, malfunction or lack of availability of any online platform;
  - any act or omission of the Customer in connection with the operation of any device that allows the Customer to access the EncoreFX online ordering system or communicate information to EncoreFX;
  - delays or disruptions in EncoreFX's Services;
  - viruses or other malicious software obtained by accessing the EncoreFX website or Services or any site or service linked to the EncoreFX website or Services;
  - glitches, bugs, errors, or inaccuracies of any kind in the EncoreFX website or Services or in the information and graphics obtained from them;
  - the content, actions, or inactions of third-parties;
  - any termination of a Transaction or Services, regardless of the reason for such termination;
  - the Customer's loss of or inability to do business, as a result of changes to these Master Terms and Conditions;
  - acts of God, strikes or other labor problems, or any force majeure; or
  - The Customer's reliance or attempted reliance on any of EncoreFX's information, communications, or materials.
- (c) ENCOREFX CANNOT AND DOES NOT GUARANTEE CONTINUOUS, UNINTERRUPTED OR SECURE ACCESS TO THE SERVICES OF ENCOREFX. EncoreFX will not be responsible for any losses the Customer incurs due to its inability to continuously access the Services of EncoreFX or the EncoreFX Site.
- (d) ENCOREFX LIABILITY TO THE CUSTOMER WILL AT ALL TIMES BE LIMITED to the lesser of the value of the Transaction out of which the claim arises or the Customer's actual damages. In no event will EncoreFX be liable to the Customer for any economic losses or damages, lost profits or punitive, exemplary or special damages.

**4.2** THE CUSTOMER AGREES TO INDEMNIFY AND HOLD ENCOREFX, ITS PARENT COMPANY AND AFFILIATED COMPANIES, AND ENCOREFX'S AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, MEMBERS, SHAREHOLDERS, PARTNERS, EMPLOYEES AND AGENTS HARMLESS FROM AND AGAINST ANY LOSSES, DAMAGES OR LIABILITIES, OTHER THAN AND THEN SOLELY TO THE EXTENT OF ENCOREFX'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, FROM ANY USE OF ENCOREFX SERVICES, ANY TRANSACTION, ANY DEFAULT UNDER THIS AGREEMENT OR ANY DEFAULT OR BREACH OF ANY OF THE CUSTOMER'S WARRANTIES OR REPRESENTATIONS OR THE CUSTOMER'S OBLIGATIONS UNDER THESE MASTER TERMS AND CONDITIONS.

## **5. Termination and Default**

**5.1** EncoreFX may suspend or terminate all or any Services or these Master Terms and Conditions at any time without prior notice. If EncoreFX suspends or terminates Services or these Master Terms and Conditions without prior notice, EncoreFX will notify the Customer as quickly as is commercially feasible after the suspension or termination. Termination of these Master Terms and Conditions shall not affect the provisions of this Section 5.

**5.2** If the Customer is not then in Default (as defined below), the Customer may terminate these Master Terms and Conditions at any time by providing EncoreFX written notice. If the Customer is not then in Default, termination will not affect any pending Transactions. All Transactions entered into prior to termination will be carried out in accordance with the applicable instructions, and the Customer will still be required to perform its obligations with respect to those Transactions and any other obligations the Customer may have in accordance with these Master Terms and Conditions.

**5.3** If no Default has occurred, EncoreFX shall settle all amounts due and owing under pending Transactions (including, in EncoreFX's discretion, any and all Spot Transactions, Forward Contracts and Option Contracts) under these Master Terms and Conditions within two (2) Business Days of termination.

**5.4** If the Customer is in Default when the Customer terminates or EncoreFX discovers that the Customer was in Default at the time of termination, or the Customer commits a Default after its notice of termination, EncoreFX may terminate any pending Transactions or Services immediately, without prior notice. EncoreFX will notify the Customer of the termination and the circumstances of the Customer's Default as quickly as is commercially feasible, as well as any amounts due to EncoreFX under these Master Terms and Conditions. The Customer agrees to pay all amounts the Customer owes to EncoreFX within two Business Days of notice of such amounts.

#### **5.5 Default**

- (a) In the event the Customer has violated the terms of this Agreement in any way including, but not limited to: engaging in any of the Prohibited Activities listed in Section 1.3; not performing any of its obligations under any Transaction; making a misrepresentation in any of the Customer's representations and warranties under this Agreement; providing any untrue or misleading information to EncoreFX; participating in money laundering or terrorist financing or being pursued by law enforcement and/or regulatory bodies; or the commencement of any proceeding by or against the Customer under any provision of the United States Bankruptcy Code, as amended, or under any other bankruptcy or insolvency law, the Customer will be considered to be in default under this agreement ("**Default**").
- (b) Any funds due to EncoreFX, including, without limitation, deposits for margin terms, must be paid within two (2) Business Days. If EncoreFX does not receive funds required for any Transaction or otherwise due under these Master Terms and Conditions by that time, EncoreFX may, in EncoreFX's sole discretion and without further notice, declare the Customer to be in Default.
- (c) If the Customer is in Default, EncoreFX has the right to take any or all of the following actions: (i) close out the Customer's account and terminate, as applicable, the specific Service or Transaction giving rise to the Default; (ii) terminate and close out any or all other pending Transactions/Services with the Customer; and (iii) set off amounts owed to the Customer, including any gains on terminated or completed Transactions, against any Losses EncoreFX incurs as a result of the Customer's Default and any other amounts then owing to EncoreFX under these Master Terms and Conditions. If EncoreFX terminates a Transaction as a result of the Customer's Default, EncoreFX will be relieved of any and all obligations to complete any Transaction and any and all liability arising from such termination.
- (d) The Customer is liable for any Losses EncoreFX incurs as a result of the Customer's Default.

**5.6** Regardless of the reason for termination, all rights and obligations under these Master Terms and Conditions relating to confidentiality and privacy, data and records, and limitation of liability/indemnity will survive the termination of these Master Terms and Conditions and any Transaction and will continue indefinitely.

#### **5.7 Set-Off**

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

#### **6. Privacy**

Protecting Customer privacy is very important to EncoreFX. Please review EncoreFX's U.S. Privacy Policy in order to better understand EncoreFX's commitment to maintaining Customer privacy, as well as EncoreFX's use and disclosure of Customer Information and EncoreFX's use and disclosure of information EncoreFX maintains and uses relating to any Transaction. Notwithstanding the EncoreFX Privacy Policy, EncoreFX may disclose information to third parties about any Transactions the Customer makes: (i) where necessary for completing Transactions; (ii) in order to comply with any government agency, court order, or other legal, regulatory or administrative reporting requirements (including AML Laws); (iii) if the Customer consents in writing; (iv) to EncoreFX employees, auditors, affiliates, service providers, or attorneys as needed; or (v) otherwise as necessary to fulfill EncoreFX's obligations under these Master Terms and Conditions.

#### **7. EncoreFX Anti-Money Laundering and Counter-Terrorist Financing Statement**

As a global financial business, EncoreFX is committed to full compliance with all applicable laws and regulations regarding anti-money laundering (AML) & counter-terrorist financing (CTF) Laws. EncoreFX policy is to prevent people engaged in illegal activities from using EncoreFX Services. EncoreFX has policies and procedures in place to ensure that EncoreFX is not participating in or assisting in money laundering or terrorist financing activity, including screening EncoreFX customer accounts against government watch lists to detect, prevent and report suspicious activity. EncoreFX may request information from the Customer in the regular course of administering the EncoreFX AML Compliance due-diligence program including, but not limited to, processes related to watch list screening. The Customer agrees to provide all information EncoreFX reasonably requires in order to ensure that a Transaction does not breach any law or regulation or that a Transaction does not involve the proceeds of crime or unlawful conduct, including information to help prove the Customer's identity or for business verification purposes. EncoreFX reports suspicious transactions to the financial intelligence unit in the respective country. In certain circumstances, EncoreFX may be obliged to freeze or block the Customer's access to EncoreFX services if EncoreFX believes the Customer may be using EncoreFX services in connection with Prohibited Activities or suspected Prohibited Activities. EncoreFX will not be liable to the Customer for any actions EncoreFX takes in the process of complying with the AML Laws, including freezing or blocking the Customer's account, and the Customer agrees to indemnify EncoreFX against any claims of third parties in connection with EncoreFX's compliance, including freezing or blocking the Customer's account or funds held by EncoreFX on behalf of the Customer.

## **8. Intellectual Property**

EncoreFX owns or licenses from third parties the EncoreFX Site, Services, the content, and all intellectual property included in the foregoing (including but not limited to authors, patents, database rights, trademarks and service marks), and EncoreFX retains all right, title and interest in and to such property. The Customer may view and retain a copy of the pages of the Site only for the Customer's own non-commercial use. The Customer may not duplicate, publish, modify, create derivative works from, participate in the transfer of, post on the World Wide Web, or in any way distribute or exploit the EncoreFX Site or Services, in all or in part, for any public or commercial use without EncoreFX's express prior written consent. The Customer shall not: (i) use any robot, spider, scraper or other automated device to access the EncoreFX Site or Services; or (ii) remove or alter any author, trademark or other proprietary notice or legend displayed on the EncoreFX Site (or printed pages thereof). The name "EncoreFX" and other names and indicia of ownership of the Services are EncoreFX's exclusive marks.

## **9. EncoreFX's Use of Information**

The Customer authorizes EncoreFX to maintain and provide information about the Customer's business and Transactions to third parties for the purpose of facilitating Transactions and in connection with any inquiries or disputes with respect to any of the Customer's Transactions. EncoreFX shall have the right to: (i) use the information EncoreFX receives from the Customer as necessary to perform Services; (ii) collect and process the information subject to applicable law to use internally for record keeping, internal reporting, analytics, fraud detection and support purposes; (iii) compile and disclose information in the aggregate where the Customer's individual information is not identifiable; and (v) provide the Customer's information as required by Banks with whom EncoreFX is engaged in Transactions, law or court order, or to defend EncoreFX's rights in a legal dispute. Please see the EncoreFX Privacy Policy for a more complete discussion of how EncoreFX uses information.

## **10. Miscellaneous**

### **10.1 Complete Agreement**

These Master Terms and Conditions, along with the Credit Facility Letter (to the extent the Customer is using margin) and the specific provisions of a Transaction as found in each respective Confirmation, set forth the entire understanding between the Customer and EncoreFX with respect to the Customer's use of EncoreFX Services. Unless stated otherwise in these Master Terms and Conditions, if any provision of these Master Terms and Conditions is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall remain in full force and effect.

### **10.2 Assignment**

The Customer may not assign its rights or obligations under these Master Terms and Conditions, directly or by operation of law, without EncoreFX's prior written consent. EncoreFX may assign its rights and obligations under these Master Terms and Conditions without prior notice or consent from the Customer. These Master Terms and Conditions, including all interests in any Transactions, will enure to EncoreFX's benefit and the benefit of EncoreFX's successors and assigns, and will remain binding on the Customer and its respective successors and assigns.

### **10.3 Applicable Law and Jurisdiction**

The Customer agrees that, except to the extent inconsistent with or preempted by federal law and except as otherwise stated in these Master Terms and Conditions, the laws of the State of Washington, without regard to principles of conflict of laws, will govern these Master Terms and Conditions and any claim or dispute that has arisen or may arise between the Customer and EncoreFX. The Customer agrees that any claim or dispute it may have against EncoreFX must be resolved by a court located in Seattle, Washington. The Customer agrees to submit to the personal jurisdiction of the courts located in Seattle, Washington for the purpose of litigating all such claims or disputes.

#### 10.4 No Waiver

The Customer agrees that EncoreFX's failure to act with respect to a Default by the Customer does not waive EncoreFX's right to act with respect to subsequent or similar Defaults.

#### 10.5 Time

Any reference to time of day refers to either Pacific Daylight or Pacific Standard Time, as applicable.

### 11. Definitions

**"ACH"** has the meaning ascribed in 1.

**"AML Laws"** has the meaning ascribed in 1.4(c).

**"Agreement"** means these Master Terms and Conditions together with the Credit Facility Letter (applicable to Services involving Margin) and the specific terms and conditions related to each Transaction entered into on the basis of and adopting these Terms and Conditions as forming part of such Transaction.

**"Application"** means the EncoreFX New Account Application Form.

**"Authorized Representative"** has the meaning ascribed in 1.2.

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

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

**"Business Day"** means Monday through Friday excluding federally recognized bank holidays.

**"Certified Check"** means a check for which a Bank guarantees payment.

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

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

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

**"Default"** has the meaning ascribed in 5.5.

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

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

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

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

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

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

**"Losses"** means and includes any and all damages, losses (including loss of profit), costs and expenses (including attorney's fees and litigation costs) EncoreFX incurs as a result of the Customer's Default.

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

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

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

**"NACHA"** means the National Automated Clearing House Association.

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

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

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

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

**“Payee”** means an individual or entity which receives a form of payment.

**“PST”** means Pacific Standard Time.

**“Services”** has the meaning ascribed in 1.

**“Settlement Date”** means the date on which the underlying Currency of a Forward Contract or Option Contract is delivered.

**“Site”** means the website of EncoreFX.

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

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

**“Transaction”** means the specific Service(s) contracted by the Customer and EncoreFX.

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