



Master Terms and Conditions

ARTICLE 1 – APPLICANT BOUND

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

ARTICLE 2 – APPLICATION

- 2.1 This Agreement applies to all transactions entered into between the Customer and EncoreFX (“**Transactions**”). Such Transactions and all related contracts or agreements between the Customer and EncoreFX will at all times be subject to the provisions of this Agreement, except to the extent modified expressly and clearly by the specific provisions of a Transaction.

ARTICLE 3 – ENCOREFX SERVICES

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

ARTICLE 4 – REPRESENTATIONS AND WARRANTIES

- 4.1 The Customer hereby represents and warrants to EncoreFX that:
- (a) it has the authority and legal capacity to enter into this **Agreement** and to carry out all of its obligations hereunder including any of its obligations under any Transaction it may enter into pursuant to this Agreement;
 - (b) the execution of this Agreement by the Customer and the performance of the Customer’s obligations under this Agreement will not violate any applicable law, statute, regulation or by-law, nor will such execution and performance violate the terms of any constitutional documents, including any constitution, articles, by-laws and other organizational documents of the Customer, or any agreement which is binding upon the Customer;
 - (c) it is entering into this Agreement as principal and not on behalf of any third party or beneficial purchaser (unless expressly disclosed to EncoreFX);
 - (d) it is in compliance with all terms of this Agreement, and is not engaged in any practices or procedures that may constitute a violation of any provision of this Agreement;
 - (e) it is entering into this Agreement and any Transactions contemplated by this Agreement for the purpose of **Hedging**, and not for the purpose of **Speculation** or investment;
 - (f) it is exercising its own business judgement when entering into all Transactions pursuant to this Agreement;
 - (g) all information provided to EncoreFX by the Customer is true, correct, complete and accurate and the Customer agrees to notify EncoreFX forthwith should such information change;
 - (h) it has received, read and understood the following documentation:
 - i. Product Disclosure Statements
 - ii. Financial Services Guide
 - iii. Credit Facility Letter (to the extent the Customer will use Margin)
 - (i) all representations and warranties made by the Customer will be true at the time that the **Parties** enter into this Agreement and at the time that the Parties enter into any Transaction pursuant to this Agreement or any Service is provided by EncoreFX to the Customer; and

- (j) where the Customer has disclosed any third party's personal information (as defined in the Privacy Act) to EncoreFX, the relevant third party has consented to the disclosure of that information to EncoreFX and the Customer has made the third party aware of the purposes for which the third party's personal information may be used as set out in the Master Terms and Conditions (including without limitation disclosure to third party service providers for the purposes of identity verification).

ARTICLE 5 – TRADE PROCESS

- 5.1** The following procedures shall apply with respect to the Customer's access to the Services, and the Customer's communication of instructions to EncoreFX:
- (a) The Customer may provide instructions to EncoreFX by the following modes of communication: i) telephone call with the EncoreFX designated account representative, ii) facsimile transmission addressed to the Encore FX designated account representative, iii) email sent to the EncoreFX designated account representative, iv) Short Message Service ("**SMS**") (i.e. text message via a cellular phone), and v) the EncoreFX Online Ordering System (*for all Transactions except Options*).
 - (b) The Customer has provided on its Application a list of representatives authorized to provide such instructions and to complete any Transaction with EncoreFX, which the Customer may update by providing EncoreFX with written confirmation of same in a form acceptable to EncoreFX. EncoreFX will attempt to determine that instructions from the Customer are being provided by a Customer authorized representative before engaging in a Transaction for the Customer's account, provided that EncoreFX shall not be liable for any losses incurred by the Customer resulting from any unauthorized representative of the Customer providing instructions to EncoreFX. The onus rests with the Customer to ensure that only its authorized representatives provide instructions to EncoreFX or enter into a Transaction with EncoreFX or use the Services.
 - (c) In order to communicate instructions to EncoreFX through an Online Ordering System, the Customer will provide a password for the use of such system. The password will be required to access the Online Ordering System, to communicate instructions, and to authorize and consent to any Transactions. The Customer represents that only authorized representatives will use such Online Ordering System, and acknowledges and agrees that protection of the password is the responsibility of the Customer. EncoreFX shall be entitled to assume that anyone using the password is an authorized representative of the Customer, and shall not be responsible for any losses resulting from the use of the password by an unauthorized representative.
- 5.2** The following procedures shall apply with respect to the confirmation and completion of Transactions between the Customer and EncoreFX:
- (a) In order to complete a Transaction, the Customer must clearly authorize and accept each Transaction, and EncoreFX must clearly indicate its receipt of instructions from the Customer. If the instructions are provided via telephone, such authorization and acceptance shall be provided by the Customer to EncoreFX over the telephone, and such indication of receipt shall be provided by way of EncoreFX's positive affirmation of its receipt of instructions over the telephone. If the instructions are provided via facsimile transmission, such authorization and acceptance shall be clearly indicated by the Customer in the facsimile transmission, and such indication of receipt shall be provided by EncoreFX by return email. If the instructions are provided via email, such authorization and acceptance shall be clearly indicated by the Customer in the email, and such indication of receipt shall be provided by EncoreFX by return email. If the instructions are provided via SMS (text message), such authorization and acceptance shall be clearly indicated by the Customer in the SMS, and such indication of receipt shall be provided by EncoreFX by return email. If the instructions are provided to EncoreFX through EncoreFX's Online Ordering System, such authorization and acceptance shall be clearly indicated by the Customer having sent instructions through the Online Ordering System, and such indication of receipt shall be provided by EncoreFX by email.
 - (b) The terms of each Transaction, per the instructions provided to EncoreFX by the Customer, shall be outlined in the **Confirmation**, which will be provided to the Customer by EncoreFX upon the completion of each Transaction. Failure to provide such Confirmation for any reason shall not invalidate any Transaction, the Confirmation being a record only of the Transaction. The records of EncoreFX (absent any manifest errors) shall constitute conclusive evidence of the terms and conditions of any Transaction.
 - (c) Once the Customer's instructions regarding a Transaction have been accepted by EncoreFX in accordance with Section 5.2(a), the Customer shall be bound to complete the Transaction in accordance with such instructions and in accordance with these Master Terms and Conditions.
 - (d) Upon authorizing and accepting the Transaction the Customer shall forthwith make any required contractual payment to EncoreFX.

- 5.3** The following procedures shall apply with respect to payments made by the Customer to EncoreFX:
- (a) The Customer may be required to pay a deposit in order to effect the Transaction, as set out in the **Credit Facility Letter**. The deposit may be a fixed amount, a floating **Margin Deposit** or a combination of the two types of deposit, as specified by EncoreFX.
 - (b) At the discretion of EncoreFX, certain Customers shall be required to maintain margins with respect to certain accounts or Transactions, as set out in the Credit Facility Letter. From time to time, EncoreFX may issue a **Margin Call** to such a Customer to ensure that the Customer is maintaining the appropriate deposit margin in its account. Upon the issuance of such a Margin Call, the Customer shall forthwith deposit the funds required to maintain the appropriate margin with EncoreFX. In the event that the Customer fails to either pay a deposit or respond to the Margin Call by depositing such required funds within two (2) **Business Days**, the Customer shall be in default under the Transaction, which shall cause a default under all pending Transactions and EncoreFX shall, at its sole discretion and without further notice and in addition to any other rights it may have herein, have the right to: i) close out the Customer's account and terminate the contract which relates to the specific Service or Transaction; ii) terminate and close out any other pending Transaction/contract for Services with Customer; and iii) set off amounts owed to the Customer including any gains on contracts closed out (terminated) against any losses incurred and amounts then owing to EncoreFX on Transactions with the Customer.
 - (c) The Customer may provide funds to EncoreFX by way of: i) **Bank Draft**; ii) **Certified Cheque**; iii) **Wire Transfer**; iv) ACH transfer; v) electronic funds transfer; or vi) authorizing EncoreFX to debit its account (also known as pre-authorized debit) with the Customer's Bank or any other financial institution.
 - (d) The Customer is to ensure that any **Bank** account used for payments is in its own name. Should a third party make a payment to EncoreFX on behalf of a Customer, the Customer shall forthwith notify EncoreFX and provide EncoreFX with all information requested by EncoreFX concerning the third party, including without limitation the banking information and/or the nature of the relationship between Customer and the third party. Customer shall ensure that there are sufficient funds in its Bank account to make the payments to EncoreFX. The payment of any non-sufficient funds or related fees incurred as a result of having insufficient funds to clear the payment in question shall be the responsibility of and charged to the Customer. The Customer indemnifies EncoreFX from and against any claims or losses arising out of the Customer's misrepresentation as to the ownership of any Bank account.
 - (e) Under any circumstance in which monies are owed to EncoreFX by the Customer pursuant to this Agreement or any Transaction, EncoreFX will provide notice to the Customer of such outstanding amounts. Upon receiving such notice, the Customer shall have two (2) Business Days (unless otherwise agreed to in writing by EncoreFX) to provide such amounts to EncoreFX. Failure to provide the required amount to EncoreFX shall be a default under any and all contracts for Services and Transactions pending or in place with EncoreFX.
- 5.4** The following procedures shall apply with respect to the processing of Transactions between the Customer and EncoreFX:
- (a) EncoreFX shall use commercially reasonable efforts to process Transactions on the day on which they are authorized. EncoreFX cannot guarantee that such Transactions will be processed on the day on which they are authorized, and is not responsible for the timeliness of other financial institutions in processing such Transactions. Absent gross negligence or wilful misconduct on the part of EncoreFX, EncoreFX shall not be liable for any losses suffered by the Customer resulting from a Transaction not being processed on the day on which it was authorized.
 - (b) If the Customer wishes to cancel, amend or reverse a Transaction for any reason whatsoever, the Customer must contact EncoreFX directly to do so. EncoreFX shall use commercially reasonable efforts to effect such cancellation, amendment or reversal, but cannot guarantee that such cancellation, amendment or reversal will be possible. EncoreFX shall not be responsible for any costs or losses incurred by the Customer resulting from EncoreFX's failure or inability to cancel, amend or reverse any Transaction. The Customer shall reimburse EncoreFX for any costs incurred by it as a result of EncoreFX's efforts to cancel, amend or reverse a Transaction undertaken by EncoreFX on the instructions of the Customer.
- 5.5** The terms and conditions contained herein are hereby incorporated into each Transaction entered into between the Parties.
- 5.6** EncoreFX shall be entitled to cancel any Transaction where the Customer has not carried out its obligations. The Customer shall reimburse EncoreFX for any losses, costs and expenses incurred as a result of such cancellation.
- 5.7** EncoreFX reserves the right to refuse to provide the Services to the Customer or enter into any Transaction with the Customer at any time for any reason whatsoever.

ARTICLE 6 – FORWARD CONTRACTS

- 6.1** Forward Contracts must not be entered into by a Customer with EncoreFX for the purpose of Speculation or investment. By entering into a Forward Contract with EncoreFX, the Customer is deemed to represent and warrant to EncoreFX at that time and at all times thereafter that the purpose of the Forward Contract is solely for Hedging.
- 6.2** EncoreFX may offer to the Customer fixed delivery date Forward Contracts or flexible delivery date Forward Contracts. Any request by a Customer for a change to a **Currency** delivery date once set in the Forward Contract shall be considered by EncoreFX in its sole discretion and if accepted by EncoreFX, EncoreFX shall set a revised exchange rate applicable to the revised Forward Contract, which the Customer shall accept as a term of the revised Forward Contract.
- 6.3** Forward Contracts may require a Margin Deposit in an amount and on terms specified by EncoreFX which shall be stated in the Credit Facility Letter. The Margin Deposit shall be the amount specified by EncoreFX when the Forward Contract is entered into. The Margin Deposit shall be either in guaranteed funds or by a bank letter of guarantee/credit (on terms and conditions satisfactory to EncoreFX including without limitation, the issuing bank and the maturity date) and must be paid within two (2) Business Days. In the event that the Margin Deposit is not received within two (2) Business Days EncoreFX shall at its sole discretion and without further notice, have the right to i) close out the Customer's account and terminate the contract which relates to the specific Service or Transaction; ii) terminate and close out any other pending Transaction/contract for Services with Customer; and iii) set off amounts owed to the Customer including any gains on contracts closed out (terminated) against any Losses incurred and amounts then owing to EncoreFX on Transactions with Customer. Where a Margin Deposit is placed on a floating basis for the Forward Contract, the Customer agrees to submit to EncoreFX additional deposit funds/letter of guarantee (the "**Additional Margin Deposit**") when EncoreFX determines that the mark-to-market potential loss on the Forward Contract exceeds the prescribed amount established with EncoreFX in the Credit Facility Letter. EncoreFX shall determine the mark-to-market value of a Forward Contract at a given point on a daily basis on each business day based upon the **Mid-Market Rate**. The Customer agrees to accept and be bound by such mark-to-market value determination as made by EncoreFX.
- 6.4** EncoreFX shall have the right, in its sole discretion, to notify a Customer at any time that an Additional Margin Deposit is required as determined by EncoreFX in accordance with [Section 6.3](#). The Customer agrees that upon such notification from EncoreFX, the Customer will have two (2) Business Days from notification to provide to EncoreFX the Additional Margin Deposit. The amount of the Additional Margin Deposit shall be that amount determined by EncoreFX which is sufficient to ensure that the Margin Deposit together with the Additional Margin Deposit held by EncoreFX for the particular Forward Contract on a mark-to-market value is at least the minimum prescribed amount established by EncoreFX for the Forward Contract as established in the Credit Facility Letter.
- 6.5** Should the Customer not: (i) complete the Forward Contract by the required Settlement Date(s), or (ii) pay to EncoreFX any Margin Deposit, including any required Additional Margin Deposit, then in that event, EncoreFX shall no longer be obligated to complete the Forward Contract and at EncoreFX's sole discretion, any other pending Transaction including any other Forward Contract(s) with the Customer. In addition, EncoreFX shall have the right to: (i) sell the necessary covering Currency to terminate the Forward Contract(s), (ii) charge the Customer with the damages, losses (including loss of profit), costs and expenses incurred by EncoreFX (the "**Losses**"), and (iii) apply the Margin Deposit, the Additional Margin Deposit and any other deposit or funds on hand then held by EncoreFX to pay the Losses. Should the Margin Deposit, the Additional Margin Deposit and any other deposit or funds on hand then held by EncoreFX not be sufficient to reimburse and indemnify EncoreFX for the Losses incurred, the Customer agrees to forthwith pay to EncoreFX any additional amount required to cover such shortfall.
- 6.6** If the Margin Deposit and any Additional Margin Deposit are not needed based upon the Customer performing its obligations under the Forward Contract to completion, EncoreFX agrees to return to the Customer the Margin Deposit or the amount thereof remaining that was not required.

ARTICLE 7 – OPTION CONTRACTS

- 7.1** Option Contracts must not be entered into by a Customer with EncoreFX for the purpose of Speculation or investment. By entering into an Option Contract with EncoreFX, the Customer is deemed to represent and warrant to EncoreFX at that time and at all times thereafter that the purpose of the Option Contract is solely for Hedging.
- 7.2** EncoreFX may offer Option Contracts comprised of any of the Options described in the relevant Product Disclosure Statement, a copy of which the Customer has received and confirms it has read and understood.
- 7.3** The Customer must indicate to EncoreFX the proposed Currency, the proposed contract amount, the type of Option it desires, the proposed option exercise (strike) price, the proposed term and the Currency in which the Customer proposes to pay any premium, if required.

- 7.4** EncoreFX may, at its sole discretion, require the Customer to pay a premium to spot value from the initial deal date at the time that the Option Contract is entered into or at a future time agreed to in writing between EncoreFX and the Customer. In the event that EncoreFX requires the Customer to pay a premium, the Option Contract shall not be considered in effect or binding on EncoreFX until such premium is paid.
- 7.5** The Customer may only exercise the Option stipulated in the Option Contract in accordance with the terms and conditions of the Option Contract by giving notice to EncoreFX of its intention to exercise said Option Contract. Exercise occurs when the Customer gives notice to EncoreFX to convert the Option Contract into the underlying foreign exchange Currency, provided that any premium due has also been received by EncoreFX. The Customer acknowledges and agrees that if the Option Contract trades at or beyond the barrier level or is “in-the-money”, EncoreFX shall have the right to convert the Option Contract into the underlying Currency on such Option Contract’s Expiry Date.
- 7.6** If the Option provided for in the Option Contract has been exercised in accordance with [Section 7.5](#), then each party to such Option Contract shall pay the Currency and amount due thereunder to the other party on the Settlement Date.
- 7.7** The Customer may notify EncoreFX that it desires to offset or cancel an Option Contract (a “**Notice of Cancellation**”). EncoreFX may, in its sole discretion, agree to the request in the Notice of Cancellation provided that the Customer has paid any required premium as determined by EncoreFX and any Notice of Cancellation has been received by EncoreFX before the Expiry Time on the Expiry Date of such Option Contract. EncoreFX will evaluate the relevant closing strike rate and premium and the net difference will be charged to the Customer for immediate payment.
- 7.8** An Option Contract will lapse at its Expiry Date if such Option Contract has not been exercised in accordance with [Section 7.5](#) or offset in accordance with [Section 7.7](#).
- 7.9** Option contracts may require a Margin Deposit (unless waived in writing by EncoreFX in its sole discretion) in an amount and on terms specified by EncoreFX, which shall be stated in the Credit Facility Letter. The amount of the Margin Deposit shall be specified at the time that the Option Contract is entered into. The Margin Deposit shall be either in guaranteed funds or by a Bank letter of guarantee or letter of credit (on terms and conditions satisfactory to EncoreFX including without limitation, the issuing Bank and the maturity date) and must be paid within two (2) Business Days. In the event that the Margin Deposit is not received within two (2) Business Days EncoreFX shall at its sole discretion and without further notice, have the right to i) close out the Customer’s account and terminate the contract which relates to the specific Service or Transaction; ii) terminate and close out any other pending Transaction/contract for Services with Customer; and iii) set off amounts owed to the Customer including any gains on contracts closed out (terminated) against any Losses incurred and amounts then owing to EncoreFX on Transactions with Customer. Where a Margin Deposit is placed on a floating basis for the Option Contract, the Customer agrees to submit to EncoreFX an Additional Margin Deposit when EncoreFX determines that the mark-to-market potential loss on the Option Contract exceeds the prescribed amount established with EncoreFX in the Credit Facility Letter. EncoreFX shall determine the mark-to-market value of an Option Contract at a given point on a daily basis based upon the Mid- Market Rate. The Customer agrees to accept and be bound by such mark-to-market value determination as made by EncoreFX.
- 7.10** EncoreFX shall have the right, in its sole discretion, to notify a Customer at any time that an Additional Margin Deposit is required pursuant to [Section 7.9](#). The Customer acknowledges and agrees that upon such notification from EncoreFX, it will have two (2) Business Days from notification to provide to EncoreFX the Additional Margin Deposit. The amount of the Additional Margin Deposit shall be that amount determined by EncoreFX which is sufficient to ensure that that the Margin Deposit together with the Additional Margin Deposit held by EncoreFX for the particular Option Contract on a mark-to-market value is at least the minimum prescribed amount established by EncoreFX for the Option Contract as established in the Credit Facility Letter.
- 7.11** Should the Customer not: (a) complete the Option Contract as set out in the terms by the Expiry Date, or (b) pay any Margin Deposit, including any required Additional Margin Deposit, then EncoreFX shall no longer be obligated to complete the Option Contract and at its discretion, any other pending Transaction including any other Option Contract(s) with the Customer. EncoreFX shall have the right to (i) sell the necessary covering Currency to terminate the Option Contract, (ii) charge the Customer with the Losses incurred by EncoreFX, and (iii) apply the Margin Deposit or any Additional Margin Deposit and any other deposit or funds held by EncoreFX to pay the Losses. Should such amounts be insufficient to reimburse EncoreFX for the Losses, the Customer agrees to forthwith pay to EncoreFX any additional amount required to reimburse EncoreFX for the Losses.
- 7.12** If the Margin Deposit and any Additional Margin Deposit are not needed based upon the Customer performing its obligations under the Option Contract to completion, EncoreFX agrees to return to the Customer the Margin Deposit

or the amount remaining that was not required.

ARTICLE 8 – SPECULATION/INVESTMENT NOT PERMITTED

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

ARTICLE 9 – NO INTEREST PAID

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

ARTICLE 10 – SET OFF

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

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

ARTICLE 11 – TERMINATION

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

11.2 Subject to [Section 11.3](#), the Customer may terminate this Agreement at any time by providing written notice to EncoreFX.

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

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

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

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

ARTICLE 12 – DATA AND RECORDS

- 12.1** EncoreFX will retain a record of information provided to it by the Customer, including a database of all instructions provided to it by the Customer and Confirmations issued. EncoreFX will record the Customer's use of specific Services offered by EncoreFX. The Customer acknowledges and understands that the data and records collected by EncoreFX may be used by it for its own business purposes. All data and records collected by EncoreFX will be collected and maintained strictly in accordance with EncoreFX's own privacy policy.
- 12.2** The records kept by EncoreFX shall be conclusive and binding upon the Customer in the event of any dispute or legal proceeding involving the Customer, EncoreFX and any third party in the absence of clear proof that the records of EncoreFX are incorrect or incomplete.

ARTICLE 13 – CONFIDENTIALITY AND PRIVACY

- 13.1** EncoreFX will take commercially reasonable precautions to maintain the privacy and confidentiality of all information provided to EncoreFX by the Customer, including collecting, using and disclosing all such information strictly in accordance with EncoreFX's own privacy policy. The Customer understands and acknowledges that information exchanged electronically is subject to inherent risks with respect to privacy and confidentiality, and that EncoreFX cannot assure that any particular communication between itself and the Customer will remain private and confidential. The Customer hereby indemnifies and holds EncoreFX harmless for any unintended or accidental disclosure by EncoreFX of its confidential information.
- 13.2** EncoreFX may disclose certain personal, private or confidential information of the Customer to employees, agents, officers or affiliates of EncoreFX for the purpose of providing the Services offered by EncoreFX. Further, EncoreFX may disclose certain personal, private or confidential information of the Customer as required by law and for the purposes of complying with all applicable legislation or legal requirements.

ARTICLE 14 - TRANSMISSION OF DATA AND INFORMATION

- 14.1** The Customer understands and acknowledges that data and information transmitted electronically may be subject to loss or error. EncoreFX shall not be liable to the Customer for any loss or damage suffered as a result of or in connection with any such loss or error or resulting from or in connection with any transmission failure or communication failure.
- 14.2** Any time information (which includes instructions) is transmitted electronically by the Customer to EncoreFX, EncoreFX will use commercially reasonable efforts to provide the Customer with confirmation of EncoreFX's receipt of such information. Failure to provide the Customer with a confirmation will not invalidate or cancel any Transactions entered into by the Customer and EncoreFX pursuant to the transmission of such information. Any such information transmitted by the Customer to EncoreFX will be deemed to have been duly authorized by the Customer and EncoreFX will be entitled to rely on such information.
- 14.3** Pursuant to applicable privacy legislation, EncoreFX is only responsible for the security and confidentiality of information under its control. EncoreFX is not liable for any loss or damage arising out of an error, transmission failure or communication failure that is outside the control of EncoreFX.

ARTICLE 15 – SERVICE MODIFICATIONS AND INTERRUPTIONS

- 15.1** All electronic or internet-based Services offered by EncoreFX are subject to interruption, malfunction or breakdown. EncoreFX does not guarantee the offering or availability of such Services, and shall not be responsible for any losses incurred by the Customer resulting from the unavailability or malfunction of any such Services.
- 15.2** EncoreFX may alter, modify or terminate the Services offered by it, including any electronic or internet-based Services, at any time for any reason whatsoever. EncoreFX will provide the Customer with written notice of any upcoming alteration, modification or termination of any Services offered by it where possible. Failure to provide such notice will not result in EncoreFX being liable to the Customer for any losses or damages suffered as a result of the alteration, modification or termination of any Services offered by it.

ARTICLE 16 – CONSENT TO CREDIT CHECKS

- 16.1** The Customer will provide EncoreFX with all banking information reasonably required and requested by EncoreFX from time to time, including the name and contact information of the Bank at which the Customer maintains an

account. The Customer authorizes and consents to EncoreFX contacting the Customer's Bank to verify the Customer's identity, account information, and any other information reasonably required by EncoreFX from the Customer's Bank. The Customer further authorizes EncoreFX to take all commercially reasonable measures to confirm the Customer's identity and confirm the Customer's ability to meet its obligations under this Agreement and under the terms of any Transaction between the Customer and EncoreFX.

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

ARTICLE 17 - ANTI-MONEY LAUNDERING

- 17.1** EncoreFX will take precautions, as set out in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* and associated regulations, to ensure that it is not participating in or assisting money laundering or terrorist financing.
- 17.2** EncoreFX may, at its own sole discretion, refuse to accept instructions from the Customer or refuse to carry out any Transaction if it suspects that the Transaction may breach any law or regulation, or that the Transaction may involve the proceeds of crime or unlawful conduct. The Customer agrees to provide all information required by EncoreFX in order to ensure that any Transaction does not breach any law or regulation or that any Transaction does not involve the proceeds of crime or unlawful conduct.
- 17.3** The Customer acknowledges and understands that law enforcement and regulatory agencies may inspect any Transaction either with the consent of EncoreFX or pursuant to applicable law. As such, any information provided to EncoreFX by the Customer may be subject to disclosure to law enforcement or regulatory agencies pursuant to such inspection. The Customer hereby consents to the disclosure of any such information, as required by law, to law enforcement and regulatory authorities.

ARTICLE 18 – SECURITIES LAWS AND DERIVATIVES LAWS COMPLIANCE

- 18.1** The Customer shall be subject to the terms and conditions set out in Appendix "A".
- 18.2** The Customer represents and warrants that it is not resident in or otherwise subject to the laws of any jurisdiction other than Australia.

ARTICLE 19 - LIMITATION OF LIABILITY/INDEMNITY

- 19.1** EncoreFX will not be liable to the Customer for any losses or damages suffered under this Agreement except to the extent that such losses or damages are directly attributable to the gross negligence or wilful misconduct of EncoreFX, its officers or its employees.
- 19.2** EncoreFX will not be liable to the Customer for any losses or damages incurred as a result of the Customer's use of any online platform or online ordering system, any technical difficulties associated with the communication of information, or any interruption, malfunction or lack of availability of any online platform. Further, EncoreFX will not be liable to the Customer for any losses or damages incurred as a result of any act or omission of the Customer in connection with the operation of any device that allows the Customer to access online platforms or communicate information to EncoreFX.
- 19.3** EncoreFX's liability to the Customer shall at all times be limited to the value of the Transaction out of which the claim arises. In no event shall EncoreFX be liable to the Customer for any economic losses or damages, nor will it be liable for any lost profits or punitive, exemplary or special damages, each of which is hereby excluded by agreement of the Customer and EncoreFX.
- 19.4** EncoreFX will not be liable to the Customer for any losses or damages suffered by the Customer as a result of delays in monies being received by a designated **Payee**.
- 19.5** The Customer acknowledges and understands that all representations and warranties provided by the Customer under this Agreement will be relied upon by EncoreFX. The Customer agrees to indemnify and hold harmless EncoreFX and its officers, directors, employees, securityholders and agents from and against any losses, damages or liabilities arising out of any breach of any warranty or representation of the Customer.
- 19.6** The Customer acknowledges and understands that anything received from or provided by EncoreFX, including but not limited to, any and all information, communications and materials, is provided for the purpose of information only. The Customer agrees to indemnify and hold harmless EncoreFX and its officers, directors, employees, securityholders

and agents from and against any losses, damages or liabilities arising out of the Customer's reliance on such information, absent gross negligence or wilful misconduct on the part of EncoreFX.

ARTICLE 20 – AMENDMENTS TO MASTER TERMS AND CONDITIONS

- 20.1** EncoreFX reserves the right to amend any terms of these Master Terms and Conditions or this Agreement at any time for any reason whatsoever.
- 20.2** Any amendments to the Master Terms and Conditions or this Agreement shall be effective upon the Customer's receipt of notice of such amendments. The Customer's continued use of the Services offered by EncoreFX following receipt of notice of any amendment shall constitute the Customer's agreement and consent to any such amendment without any signature from the Customer or further action of the Customer.

ARTICLE 21 – NOTICE

- 21.1** In this Agreement, written notice means a notice in writing delivered by mail or courier to the address provided in this Agreement, or by facsimile to the fax number provided in this Agreement or by e-mail to the e-mail address provided in this Agreement. With respect to these Master Terms and Conditions, notice of change to these terms and conditions shall be given by posting same to the EncoreFX website which shall be effective notice from the date of posting (unless otherwise indicated) and which posting shall be sufficient notice to Customer for all Transactions entered into from that date forward.
- 21.2** Notice provided by mail or courier shall be deemed to have been received on the date that such notice is delivered. Notice provided by facsimile or e-mail shall be deemed to have been received on the date that such notice is sent, provided that no indication of service interruption is received by the sender at such time as the notice is provided.
- 21.3** Either Party to this Agreement may provide notice to the other that it wishes to change its address, fax number or e-mail address for the purpose of receiving notices at any time.

ARTICLE 22 – MISCELLANEOUS

- 22.1** The parties acknowledge that they have specifically requested that all correspondence, agreements and other communications between the Customer and EncoreFX be in the English language.
- 22.2** The Customer may not assign its interest in this Agreement without the prior written consent of EncoreFX. Where the Customer is a corporate entity, any Transaction whereby the effective voting control of the Customer changes shall be deemed to be an assignment for the purposes of this paragraph. EncoreFX may assign this Agreement without prior notice to or the consent of the Customer.
- 22.3** This Agreement, including all interests in any Transactions, shall enure to the benefit of EncoreFX, its successors and assigns and shall remain binding upon the Customer and its respective successors and assigns.
- 22.4** No delay or omission on the part of EncoreFX in exercising any of its rights under this Agreement shall be deemed to be a waiver thereof, nor shall any waiver preclude the right of EncoreFX to exercise such right in the future pursuant to the terms of this Agreement.
- 22.5** Headings in this Agreement are used for ease of reference only and do not form part of this Agreement.
- 22.6** Neither Party shall be liable for any failure or delay in the performance of any of its obligations under this Agreement which arise due to acts of God, war, terrorism, civil unrest or any other circumstances which are reasonably beyond the Party's control, provided that insolvency, lack of funds or other financial cause for delay will not be permitted reasons for any failure or delay hereunder.
- 22.7** In the event any one or more of the provisions contained in this Agreement should be held to be invalid, illegal or otherwise unenforceable in any respect under the laws of any applicable jurisdiction, such provision shall only be ineffective to the extent of such invalidity, illegality or unenforceability and the remaining provisions of this Agreement shall remain in full force and effect.
- 22.8** Time shall be of the essence in this Agreement. Any reference to times shall refer to the local time of EncoreFX's principal office in Sydney, Australia.
- 22.9** This Agreement shall be construed in accordance with and governed by the laws of New South Wales, Australia. All Transactions hereunder shall be deemed to have been entered into and have taken place in Australia at the principal

office of EncoreFX in Sydney, Australia. The courts of Australia shall have exclusive jurisdiction for settling disputes arising out of this Agreement and both Parties irrevocably submit to that jurisdiction.

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

ARTICLE 23 – DEFINITIONS

“**ACH**” has the meaning ascribed thereto in [Section 3.1 hereof](#).

“**Additional Margin Deposit**” has the meaning ascribed thereto in [Section 6.3 hereof](#).

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

“**Application**” has the meaning ascribed thereto in [Section 1.1 hereof](#).

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

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

“**Business Day**” means a day, other than (a) Saturday and Sunday, and other than (b) a day on which commercial banking institutions are required to be closed in Sydney, Australia.

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

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

“**Corporations Act**” means the Corporations Act 2001 (Cth).

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

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

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

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

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

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

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

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

“**Insolvency Event**” means any of the following events:

- (a) in the case of a corporation:
 - i. the corporation is dissolved (whether pursuant to Chapter 5A of the Corporations Act or otherwise);
 - ii. a controller, liquidator, provisional liquidator, trustee or administrator is appointed in respect of the corporation or any of its assets;
 - iii. an application is made to a court or a meeting is convened, or a resolution is passed (or notice is given of such meeting or resolution) or a notice is issued or any other step is taken by any person for the corporation to be wound up or dissolved or for the appointment of a liquidator, provisional liquidator, trustee or administrator to the corporation or any of its assets;
 - iv. the corporation:
 - a. decides to enter into, or enters into, a scheme of arrangement, a deed of company arrangement or composition with its creditors or an assignment for their benefit;
 - b. proposes or is made subject to a moratorium of its debts; or
 - c. takes proceedings or actions similar to any of those mentioned in this paragraph and as a result of which any of the corporation's assets are, or are proposed to be, submitted to

- the control of its creditors;
 - v. the corporation seeks or obtains protection from its creditors under any statute or any other law;
 - vi. the corporation is unable to pay all of its debts as and when they become due and payable or is deemed to be insolvent under any provision of the Corporations Act or any other statute or law;
 - vii. any attachment, distress, execution or other process is made or levied against any asset of the corporation;
 - viii. the corporation ceases to carry on all or a substantial part of its business (or threatens to do so); and
 - ix. an event occurs in relation to the corporation which is analogous to anything referred to above or which has a substantially similar effect; and
- (b) in the case of a natural person, the person:
- i. dies;
 - ii. becomes, or is declared by a medical practitioner (who is registered to practice in an Australian State) to be mentally or physically incapable of managing his or her affairs;
 - iii. is or states that he or she is unable to pay all of his or her debts when they become due and payable;
 - iv. enters into, attempts to enter into, or convenes a meeting for the purpose of entering into, an arrangement, assignment or composition with his or her creditors; and
 - v. an event occurs in relation to the person which is analogous to anything referred to in this definition or which has a substantially similar effect; and
- (c) in the case of a partnership:
- i. an event described in (a) or (b) above occurs in relation to one or more partners in the partnership;
 - ii. the giving of any notice of intention to dissolve or wind-up the partnership, or the giving of any notice purporting to dissolve or wind-up the partnership; and
 - iii. the partnership is dissolved or wound up by operation of law.

“**Losses**” has the meaning ascribed thereto in [Section 6.5](#) hereof.

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

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

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

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

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

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

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

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

“**Payable**” means an individual who receives a form of payment.

“**Product Disclosure Statement**” means a product disclosure statement issued by EncoreFX relating to a Transaction.

“**Services**” has the meaning ascribed thereto in [Section 3.1](#) hereof.

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

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

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

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

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