

1ENCORE BITS L.L.C.

TERMS AND CONDITIONS

Orders for rental equipment ("Equipment"), services, ("Services"), and the supply or sale of products or equipment ("Products") is to be provided by ENCORE BITS L.L.C., referred to herein as "ENCORE" to its customers (each a "CUSTOMER") are subject to acceptance by ENCORE, and any orders so accepted will be governed by the terms and conditions stated herein and any additional terms proposed or agreed to in writing by an authorized representative of ENCORE (these terms and conditions and any such additional terms collectively referred to herein as the "Agreement"). Any additions to or modifications of these terms and conditions, or any terms and conditions contained in CUSTOMER's order inconsistent herein, shall not bind ENCORE unless accepted in writing by an authorized officers of ENCORE.

1. PAYMENT TERMS

Unless alternate payment terms are specified or approved by the ENCORE Credit Department, all charges including applicable packing and transportation costs, billed by ENCORE are payable within thirty (30) days of the date of invoice. At ENCORE's sole election, interest may be charged at the rate of ten percent (10%) per annum unless rate contravenes local law in which case the interest charged will be the maximum allowed by law. Operating, production or well conditions which prevent satisfactory operation of Equipment, Services or Products do not relieve CUSTOMER of its payment responsibility.

2. CANCELLATION

Products: Orders for Products which are subject to cancellation after acceptance by ENCORE will be subject to a restocking charge of a minimum of twenty-five percent (25%), plus the actual packing and transportation costs. Products specially designed, built or manufactured to CUSTOMER specifications, or orders for substantial quantities manufactured specially for CUSTOMER may only be cancelled subject to either (i) payment of a cancellation fee by CUSTOMER, or (ii) a return credit against future purchases, to be determined solely by ENCORE. Credit for unused Products will be issued for the quantity returned at the original purchase price, less restocking or cancellation charges, provided the returned Products are in usable condition. No credit will be given for shipping charges incurred by CUSTOMER. In no event will credit be allowed for Products returned without prior written authorization by ENCORE.

Equipment Services: In the event CUSTOMER cancels an order for Services or Equipment, CUSTOMER shall be liable for all costs incurred by ENCORE in the mobilization/demobilization related thereto, and any other reasonable costs incurred by ENCORE incident to such cancellation. In addition, a restocking charge of at least twenty-five percent (25%%) of the original order may be applied at ENCORE's sole discretion.

3. THIRD-PARTY CHARGES, TAXES

CUSTOMER shall pay all third-party charges, in compliance with ENCORE's current price list, and any sales, use, rental or other taxes that may be applicable to transactions hereunder. CUSTOMER shall pay all applicable customs, excise, import and other duties unless otherwise agreed to in writing by an authorized representative of ENCORE. CUSTOMER shall provide necessary import licenses and extensions thereof.

4. RISK OF LOSS AND TITLE:

For Product sales within the United States of America, title and risk of loss shall pass to CUSTOMER as soon as the Products depart ENCORE's point of origin. For Product sales outside the United States of America, unless otherwise agreed to in writing between ENCORE and CUSTOMER, INCOTERMS "CPT" shall apply with the following exception: TITLE AND RISK OF LOSS REMAIN WITH ENCORE UNTIL THE PRODUCTS REACH THE PORT OF ENTRY.

5. LIABILITIES, RELEASES AND INDEMNIFICATION:

- A. In this Agreement, "Claims" shall mean any claims, demands, causes of action, liabilities, damages, judgments, fines, penalties, awards, costs, expenses (including, without limitation, attorneys' fees and costs of litigation) of any kind or character arising out of or related to, the performance of or subject matter of this Agreement (including, without limitation, real or personal property loss, damage or destruction, personal or bodily injury, illness, sickness, disease or death, loss of services or wages, or loss of consortium or society).
- B. ENCORE shall release, indemnify, defend and hold CUSTOMER, its parent, subsidiary and affiliated or related companies, and the officers, directors, employees, consultants and agents of all of the foregoing (referred to in this Agreement as "CUSTOMER INDEMNITEES") harmless from and against any and all Claims asserted by or in favor of any member of ENCORE INDEMNITEES (as defined in this Agreement) or ENCORE INDEMNITEES' subcontractors at any tier or their employees, agents, or invitees.
- C. CUSTOMER shall release, indemnify, defend and hold ENCORE, its parent, subsidiary and affiliated or related companies, and the officers, directors, employees, consultants and agents of all of the foregoing (referred to in this Agreement as "ENCORE INDEMNITEES") harmless from and against any and all Claims asserted by or in favor of any member of CUSTOMER INDEMNITEES or CUSTOMER INDEMNITEES' contractors at any tier (except ENCORE INDEMNITEES or ENCORE INDEMNITEES' subcontractors) or their employees, agents or invitees.
- D. Notwithstanding paragraph B above, should any of ENCORE INDEMNITEES' or ENCORE INDEMNITEES' subcontractors's instruments, equipment or tools ("Tools") become lost or damaged in the well when performing or attempting to perform the Services hereunder, it is understood that CUSTOMER shall make every effort to recover the lost or damaged Tools.

CUSTOMER shall assume the entire responsibility for such fishing operations in the recovery or attempted recovery of any such lost or damaged Tools. None of ENCORE's

employees are authorized to take any action, nor shall any of ENCORE's employees be required to do anything, other than consult in an advisory capacity with CUSTOMER in connection with such fishing operations.

Should CUSTOMER fail to recover such Tools lost in the well, or should such Tools become damaged in the well, or damaged during recovery, CUSTOMER shall reimburse ENCORE the replacement value of such lost Tools or for the cost of repairing any damage to said Tools.

All risks associated with loss of or damage to property of ENCORE INDEMNITEES or ENCORE INDEMNITEES' subcontractors while in the custody and control of CUSTOMER or during transportation arranged by or controlled by CUSTOMER, shall be borne by CUSTOMER.

- E. CUSTOMER to the maximum extent permitted under applicable law, shall release, indemnify, defend and hold ENCORE INDEMNITEES and ENCORE INDEMNITEES' subcontractors harmless from and against any and all Claims asserted by or in favor of any person or party, including ENCORE INDEMNITEES, CUSTOMER INDEMNITEES or any other person or party, resulting from (i) loss of or damage to any well or hold (including but not limited to the costs of re-drill), (ii) blowout, fire, explosion, cratering or any uncontrolled well condition (including but not limited to the costs to control a wild well and the removal of debris), (iii) damage to any reservoir, geological formation or underground strata or the loss of oil, water or gas therefrom (iv) the use of ENCORE INDEMNITEES' or ENCORE INDEMNITEES' subcontractors' radioactive tools or any contamination resulting therefrom (including but not limited to retrieval or containment and clean-up), (v) pollution or contamination of any kind (other than surface spillage of fuels, lubricants, rig sewer or garbage, to the extent attributable to the negligence of ENCORE INDEMNITEES) including but not limited to the cost of control, removal and clean-up, or (vi) damage to, or escape of any substance from, any pipeline, vessel or storage facility.
- F. Neither party shall be liable to the other for any indirect, special, punitive, exemplary or consequential damages or losses (whether foreseeable or not at the date of this Agreement), including without limitation damages for lost production, lost revenue, lost product, lost profit, lost business or lost business opportunities.
- G. In the event this Agreement is subject to the indemnity or release limitations in Chapter 127 of the Texas Civil Practices and Remedies Code (or any successor statute), and so long as such limitations are in force, each party covenants and agrees to support the mutual indemnity and release obligations contained in paragraphs B and C above by carrying amount of insurance (or qualified self-insurance) in an amount not less than U.S. \$5,000,000.00.
- H. **THE EXCLUSIONS OF LIABILITY, RELEASES AND INDEMNITIES SET FORTH IN PARAGRAPHS B. THROUGH F. OF THIS ARTICLE 5, SHALL APPLY TO ANY CLAIM(S), LOSSES OR DAMAGES WITHOUT REGARD TO THE CAUSE(S) THEREOF INCLUDING BUT NOT LIMITED TO PRE-EXISTING CONDITIONS, WHETHER SUCH CONDITIONS BE PATENT OR LATENT, THE**

UNSEAWORTHINESS OF ANY VESSEL OR VESSELS, IMPERFECTION OF MATERIAL, DEFECT OR FAILURE OF PRODUCTS OR EQUIPMENT, BREACH OF REPRESENTATION OR WARRANTY (EXPRESS OR IMPLIED), ULTRAHAZARDOUS ACTIVITY, STRICT LIABILITY, TORT, BREACH OF CONTRACT, BREACH OF DUTY (STATUTORY OR OTHERWISE), BREACH OF ANY SAFETY REQUIREMENT OR REGULATION, OR THE NEGLIGENCE OR OTHER LEGAL FAULT OR RESPONSIBILITY OF ANY PERSON (INCLUDING THE INDEMNIFIED OR RELEASED PARTY), WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, ACTIVE OR PASSIVE.

I. REDRESS UNDER THE INDEMNITY PROVISIONS SET FORTH IN THIS ARTICLE 5 SHALL BE THE EXCLUSIVE REMEDY(IES) AVAILABLE TO THE PARTIES HERETO FOR THE MATTERS, CLAIMS, DAMAGES AND LOSSES COVERED BY SUCH PROVISIONS.

6. CUSTOMER WARRANT/BINDING AUTHORITY

In the event CUSTOMER is not the sole owner of the mineral interests, the well or the field, CUSTOMER'S request for Services, Equipment or Products shall constitute CUSTOMER's warranty that CUSTOMER is the duly constituted agent of each and every owner and has full authority to represent the interest of the same with respect to all decisions taken throughout the provision of any Services, Equipment or Products hereunder.

CUSTOMER shall defend, release, indemnify and hold ENCORE INDEMNITEES harmless from and against all Claims resulting from the allegation by any person that CUSTOMER has misrepresented or lacked sufficient authority to represent such person as warranted by CUSTOMER in this Article.

7. ACCESS TO WELL AND STORAGE

With respect to onshore and offshore operations, CUSTOMER shall provide at its expense adequate means of transportation required for Equipment, Products and ENCORE personnel to gain access to or return from a well site, and shall obtain at CUSTOMER's sole cost and expense all permits, licenses or other authorization required for ENCORE to enter upon work areas for the purposes contemplated. When necessary to repair roads or bridges, or to provide transportation to more Equipment, Products or ENCORE personnel, such shall be arranged and paid for by CUSTOMER.

CUSTOMER shall provide transportation and proper storage space at the well site, meeting all applicable safety and security requirements and consistent with good industry practices, for the Equipment and Products, including without limitation, all explosives and radioactive materials.

8. WARRANTY

A. Services: ENCORE warrants that the Services to be provided by ENCORE pursuant to this Agreement shall conform to the material aspects of the specifications set forth in the relevant scope of work document agreed to in writing by ENCORE and CUSTOMER.

In the event that the Services fail to conform with such specifications, ENCORE shall re-perform that part of the non-conforming Services, provided ENCORE is notified in writing by CUSTOMER prior to ENCORE's departure from the work site.

- B. Equipment: ENCORE warrants that the Equipment will be of the types specified by CUSTOMER and will be in good operating condition. Liability for loss or damage to Equipment is set forth in Article 5.
- C. Drill Bits: ENCORE warrants that the drill bits to be provided by ENCORE pursuant to this Agreement shall conform to ENCORE's published specifications. If any of the drill bits fail to conform to such specifications upon inspection by ENCORE, ENCORE, at its option, shall repair or replace the non-conforming drill bits with the type originally furnished or issue credit to the CUSTOMER, provided ENCORE is notified thereof in writing within thirty (30) days from the date of shipment.
- D. Specialty Products: In the event ENCORE is to provide Products to CUSTOMER based upon CUSTOMER's specific request that ENCORE develop, manufacture, test or put to use Products that are intended to satisfy a unique need identified by CUSTOMER and are not "standard" Products of ENCORE ("Specialty Products"), CUSTOMER hereby recognizes and agreed that the Specialty Products being provided do not, necessarily, have or contain the same or similar characteristics as ENCORE's "standard" Products, including, but not limited to, a historical performance against which future performance can be measured. In developing manufacturing, testing and putting in use any Specialty Products, ENCORE will be relying upon information and specifications provided by CUSTOMER relating to the unique needs of CUSTOMER. As such, ENCORE shall have no responsibility for the design, manufacture or engineering of any such Specialty Products, even though ENCORE may have participated in the development and manufacture of the Specialty Products, or for any CUSTOMER-furnished materials, information and specifications. If any of the Specialty Products fail to meet the specifications conforming Specialty Products with (i) the type originally furnished to CUSTOMER, or (ii) substituted Products having ENCORE's "standard" specifications and qualifications.

ENCORE warranty obligations hereunder shall not apply if the non-conformity was caused by (i) CUSTOMER's failure to properly store or maintain the Products or Equipment, (ii) abnormal well conditions, abrasive materials, corrosion due to aggressive fluids or incorrect specifications provided by CUSTOMER, (iii) unauthorized alteration or repair of the Products or Equipment by CUSTOMER (iv) the Products or Equipment are lost or damaged while on CUSTOMER's site due to CUSTOMER's or any third party's negligence, vandalism or force majeure (including, but not limited to, lightning), or (v) use of handling of the Products or Equipment by CUSTOMER in a manner inconsistent with ENCORE's recommendations. Further, ENCORE'S warranty obligations under this Article 8 shall terminate if (i) CUSTOMER fails to perform its obligations under this or any other Agreement between the parties, or (ii) CUSTOMER fails to pay any charges due ENCORE.

All non-conforming Products shall be delivered to the service facility designed by ENCORE. All transportation charges related to the repair or replacement of non-conforming Products shall be borne by CUSTOMER. Any parts for which ENCORE provides replacement under this warranty shall become the property of ENCORE. With regard to materials or

equipment furnished by third party vendors and/or suppliers, ENCORE's liability therefor shall be limited to the assignment of such third party vendor's or supplier's warranty to CUSTOMER, to the extent such warranties are assignable.

Interpretations, research, analysis, recommendations, advice or interpretational data ("Interpretations and/or Recommendations") furnished by ENCORE hereunder are opinions based upon inferences from measurements, empirical relationships and assumptions, and industry practice, which inferences, assumptions and practices are not infallible, and with respect to which professional geologists, engineers, drilling consultants, and analysts differ. Accordingly, ENCORE, does not warrant the accuracy, correctness, or completeness of any such Interpretations and/or Recommendations, or that CUSTOMER's reliance on any third party's reliance on such Interpretations and/or Recommendations will accomplish any particular results. CUSTOMER assumes full responsibility for the use of such Interpretations and/or Recommendations and for decisions based thereon (including without limitation decisions based on any oil and gas evaluations, production forecasts and reserve estimates, furnished by ENCORE to CUSTOMER hereunder), and CUSTOMER hereby agreed to release, defend, and indemnify ENCORE from any Claims arising out of the use of such Interpretations and/or Recommendations.

ENCORE will endeavor to transmit data to CUSTOMER as accurately and securely as practicable in accordance with current industry. Notwithstanding the foregoing, ENCORE does not warrant the accuracy of data transmitted by electronic processes and will not be responsible to CUSTOMER for accidental or intentional interception of such data by others.

THIS ARTICLE 8 SETS FORTH CUSTOMER'S SOLE REMEDY AND ENCORE'S ONLY OBLIGATION WITH REGARD TO NON-CONFORMING SERVICES, EQUIPMENT OR PRODUCTS, EXCEPT AS TO OTHERWISE EXPRESSLY PROVIDED PURSUANT TO THE PROVISIONS OF THIS ARTICLE 8, ENCORE MAKES NO WARRANTY OR GUARANTEE OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, REGARDING ANY SERVICES PERFORMED OR EQUIPMENT OR PRODUCTS SUPPLIED BY ENCORE HEREUNDER.

9. LOST-IN-HOLE COVERAGE

In some locations, lost-in-hole coverage is available for some Equipment. Such coverage must be purchased by CUSTOMER prior to the Equipment leaving ENCORE's point of origin for the coverage to take effect. ENCORE reserves the right not to offer coverage at its sole discretion.

10. INSURANCE

Upon written request, each party shall furnish to the other party certificates of insurance evidencing the fact that adequate insurance to support each party's obligations hereunder has been secured. To the extent of each party's release and indemnity obligations hereunder, each party agrees that all such insurance policies shall (i) be primary to the other party's insurance, (ii) include the other party, its parent, subsidiary and affiliated or related companies, and its and their respective officers, directors, employees, consultants, and agents as additional insured,

and (iii) be endorsed to waive subrogation against the other party, its parent, subsidiary and affiliated or related companies, and its and their respective officers, directors, employees, consultants and agents.

11. CHANGE OF DESIGN

ENCORE expressly reserves the right to change or modify the design and construction of any of its Products without obligation to furnish or install such changes or modifications on Products previously or subsequently sold.

12. PATENTS

ENCORE warrants that the use or sale of Equipment or Products hereunder will not infringe patents of others by reason of the use of sale of such Equipment or Products *per se*, and hereby agreed to hold CUSTOMER harmless against judgment for damages for infringement of any such patent, provided that CUSTOMER shall promptly notify ENCORE upon receipt of any claim for infringement, or upon the filing of any such suit for infringement, whichever first occurs, and shall afford ENCORE full opportunity, at ENCORE's option and expense, to answer such claim or threat of suit, assume the control of the defense of such suit, and settle or compromise same in any way ENCORE sees fit. ENCORE does not warrant that such Equipment or Products (a) will not infringe any such patent when not of ENCORE's manufacture, or specially made, in whole or in part, to the CUSTOMER's design specifications, or (b) if used or sold in combination with other materials or apparatus or used in the practice of processes, will not, as a result of such combination or use, infringe any such patent, and ENCORE shall not be liable and does not indemnify CUSTOMER for damages or losses of any nature whatsoever resulting from actual or alleged patent infringement arising pursuant to (a) and (b) above. **THIS PARAGRAPH STATES THE ENTIRE RESPONSIBILITY OF ENCORE CONCERNING PATENT INFRINGEMENT.**

13. CONFIDENTIALITY

Each party shall maintain all data and information obtained from the other party in strict confidence, subject only to disclosure required by law or legal process. In the event that ENCORE copyrights to, patents to, or has filed patent applications on, any technology related to the Services, Products or Equipment furnished by ENCORE hereunder, and if ENCORE makes any improvements on such technology, then such improvements shall not fall within the confidentiality obligations included herein, and ENCORE shall own all such improvements, including drawings, specifications, calculations and other documents.

The design, construction, application and operation of ENCORE's Services, Equipment and Products embody proprietary and confidential information. CUSTOMER shall maintain the information in strict confidence and shall not disclose it to others, subject only to disclosure required by law or legal process.

14. LIENS, ATTACHMENTS AND ENCUMBRANCES

Should CUSTOMER commit a material breach of any terms and conditions of this

Agreement, become bankrupt, insolvent, go into receivership or should any creditor or other person attach or levy CUSTOMER's property or equipment, ENCORE shall immediately have the right, without notice and without liability for trespass or damages, to retake and remove any of its Products or Equipment wherever it may be found. CUSTOMER shall release, defend, indemnify and hold ENCORE INDEMNITEES harmless from any and all liens and encumbrances against Products or Equipment furnished hereunder and shall return same promptly to ENCORE free of any liens or encumbrances.

15. FORCE MAJEURE

If either party is unable by reason of Force Majeure to carry out any of its obligations under this Agreement, other than obligations to pay money, then on such party giving notice and particulars in writing to the other party within a reasonable time after the occurrence of the cause relied upon, such obligations shall be suspended. "Force Majeure" shall include acts of God, laws and regulations, government action, war, civil disturbances, strikes and labor problems, delays of vendors or carriers, lightening, fire, flood, washout, storm, breakage or accident to equipment or machinery, shortage of raw materials, and any other causes that are not reasonably within the control of the party so affected.

16. INDEPENDENT CONTRACTOR

It is expressly understood that ENCORE is an independent contractor, and that neither ENCORE nor its principals, partners, employees or subcontractors are servants, agents or employees of CUSTOMER.

In all cases where ENCORE's employees (defined to include ENCORE's and its subcontractors' direct, borrowed, special, or statutory employees) are covered by the Louisiana Workers' Compensation Act, La. R.S. 23:102 *et seq.* ENCORE and CUSTOMER agree that all Services, Products and Equipment provided by ENCORE and ENCORE's employees pursuant to this Agreement are an integral part of and are essential to the ability of CUSTOMER to generate CUSTOMER's goods, products, and services for the purpose of La. R.S.23:106(A) (1). Furthermore, ENCORE and CUSTOMER agree that CUSTOMER is the statutory employer of ENCORE's employees for purposes of La. R.S. 23:1061 (A) (3).

17. LAWS, RULES AND REGULATIONS

ENCORE and CUSTOMER agree to be subject to all laws, rule, regulations and decrees of any governmental or regulatory body having jurisdiction over the Services, Equipment or Products to be provided by ENCORE or the work site or that may otherwise be applicable to ENCORE's or CUSTOMER's performance under this Agreement.

18. GOVERNING LAW

NOTWITHSTANDING ARTICLE 17.

A. Except for Services, Equipment or Products provided or to be provided, by ENCORE in North or South America (the "AMERICAS"), THIS AGREEMENT SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH TEXAS LAW IN THE UNITED

STATES OF AMERICA, EXCLUDING CONFLICTS OF LAW AND CHOICE OF LAW PRINCIPALS.

- B. For Services, Equipment or Products provided, or to be provided, by ENCORE in the AMERICAS, THIS AGREEMENT SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF TEXAS, EXCLUDING CONFLICTS OF LAW AND CHOICE OF LAW PRINCIPALS.

19. MEDIATION/ARBITRATION

- A. Except for a dispute, controversy, or claim (a "Dispute") arising out of this Agreement from Services, Equipment or Products provided, or to be provided, by ENCORE, in the AMERICAS, the parties will attempt to resolve any Dispute between them which results from this Agreement in a spirit of cooperation. Accordingly, the parties agree to engage in good faith negotiations to reach a rapid and equitable solution. If the parties are unable to resolve a dispute through direct negotiation, they will use the services of a mediator. The rules of the Centre for Dispute Resolution (CEDR) will apply to the mediation. Each party will bear its own expenses and an equal share of the costs of the mediators and the body administering the mediation. If the negotiation or mediation fails to reach an equitable solution to the Dispute within forty-five (45) days after the request by either party to submit the Dispute to negotiation or mediation, then the Dispute shall be referred to and finally resolved by the Harris County District Courts in the State of Texas which shall have exclusive jurisdiction. Notwithstanding the provisions of this paragraph, the parties accept that they may take proceedings for injunctive or similar relief in the courts of any jurisdiction to restrain or prevent any breach of this Agreement.
- B. Any Dispute arising out of or in connection with this Agreement from Services, Equipment or Products provided, or to be provided, by ENCORE in the AMERICAS shall be referred to and determined by binding arbitration, as the sole and exclusive remedy of the parties as to the Dispute, conducted in accordance with the American Arbitration Association ("AAA") arbitration rules for commercial disputes, as in effect on the date hereof (the "Rules"), which are deemed to be incorporated by reference, and the Federal Arbitration Act (Title 9 of the United States Code), except that in the event of any conflict between those Rules and the arbitration provisions set forth below, the provisions set forth below shall govern and control this arbitral tribunal (the "Tribunal") shall use the substantive laws of Texas excluding conflicts laws and choice law principals, in construing and interpreting this Agreement, and direct the Tribunal to respect the parties' selection of the law governing the interpretation of this Agreement. The Tribunal shall be composed of three arbitrators, with each party appointing one arbitrator, and the two arbitrators so appointed appointing the third arbitrator who shall act as Chairman of the Tribunal. Should any arbitrator fail to be appointed, as aforesaid, then such arbitrator shall be appointed by the AAA in accordance with the Rules. Should a vacancy in the Tribunal arise because of any arbitrator dies, resigns, refuses to act, or becomes incapable of performing his functions, the vacancy shall be filled by the method by which that arbitrator was originally appointed. The language of the arbitration, the submission of all writings, the decision of the Tribunal, and the reasons supporting such decision, shall be in English. The arbitration shall be in Houston, Texas, and the proceedings shall be conducted and concluded as soon as possibly practicable, based upon the schedule

established by the Tribunal, but in any event the decision of the Tribunal shall be rendered within one hundred twenty (120) days following the selection of the Chairman of the Tribunal. Any decision of the Tribunal shall be made by the majority of the arbitrators comprising the Tribunal. No award shall be made for punitive, special, exemplary, indirect or consequential damages or losses, including loss of profits or loss of business opportunity. Any monetary award shall be made in U. S. Dollars, free of any tax or other deduction. The decision of the Tribunal pursuant hereto shall be final and binding upon the parties and shall be enforced in accordance with the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958). It is the desire of the parties that any Dispute be resolved quickly and at the lowest possible cost, and the Tribunal shall act in a manner consistent with these intentions, including limiting discovery to only that which is absolutely necessary to enable the Tribunal to render a fair decision which reflects the parties' intent set forth in this Agreement.

20. ASSIGNMENT

ENCORE shall have the right to assign this Agreement to any of its subsidiaries, affiliated or related companies without the consent of CUSTOMER.

21. GENERAL

Failure of CUSTOMER or ENCORE to enforce any of the terms and conditions of this Agreement shall not prevent a subsequent enforcement of such terms and conditions or be deemed a waiver of any subsequent breach. Should any provision of this Agreement, or a portion thereof, be unenforceable or in conflict with governing country, state, province, or local laws, then the validity of the remaining provisions, and portion thereof, shall not be affected by such unenforceability or conflict, and this Agreement shall be construed as if such provisions, or portion thereof, were not contained herein. This Agreement contains all representations of the parties and supercedes all prior oral or written agreements or representations. CUSTOMER acknowledges that it has not relied on any other representations other than those contained in this Agreement. This Agreement shall not be varied, supplemented, qualified, or interpreted by any prior course of dealing between the parties or by any usage of trade and may only be amended by an agreement executed by both parties.