

**ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST**

BETWEEN:

JAMES RYAN

Applicant

- and -

6356095 CANADA INC.

Respondent

APPLICATION UNDER SECTION 211(8) OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C. 1985, c. C-44, AS AMENDED, AND RULE 14.05(2) OF THE *RULES OF CIVIL PROCEDURE*

**MOTION RECORD OF THE LIQUIDATOR
(Returnable October 1,2009)**

DAVIES WARD PHILLIPS & VINEBERG LLP
1 First Canadian Place
Suite 4400
Toronto, ON M5X 1B1

Robin Schwill (LSUC #38452I)
Tel: 416.863.0900
Fax: 416.863.0871

Solicitors for XMT Liquidations Inc., in its capacity as the liquidator of 6356095 Canada Inc. (formerly known as Excapsa Software Inc.), and not in its personal capacity

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TAB 1

Court File No. 06-CL-6752

**ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST**

BETWEEN:

JAMES RYAN

Applicant

- and -

6356095 CANADA INC.

Respondent

APPLICATION UNDER SECTION 211(8) OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C. 1985, c. C-44, AS AMENDED, AND RULE 14.05(2) OF THE *RULES OF CIVIL PROCEDURE*

NOTICE OF MOTION
(Returnable October 1, 2009)

XMT Liquidations Inc., in its capacity as the liquidator of 6356095 Canada Inc. (formerly known as Excapsa Software Inc.) (the "**Liquidator**") will make a motion to a judge presiding over the Commercial List at 330 University Avenue, Toronto, on Thursday, October 1, 2009 or soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard

- in writing under subrule 37.12.1(1) because it is on consent or unopposed or made without notice;
- in writing as an opposed motion under subrule 37.12.1(4)
- orally.

THE MOTION IS FOR

- a) an Order, if necessary, abridging the time for service of this Notice of Motion and the Motion Record and that the Notice of Motion is properly returnable on October 1, 2009 and that further service of the Notice of Motion on any interested party, other than those served, may be dispensed with;
- b) an Order extending the time pursuant to Section 223(2)(b) of the *Canada Business Corporations Act*, R.S.C. 1985, C. C-44, as amended (the "CBCA");
- c) an Order approving the activities of the Liquidator as set out in its second report to this Honourable Court dated September 18, 2009;
- d) an Order approving the professional fees and disbursements of the Liquidator and its counsel and of counsel to the Respondent; and
- e) such further and other Orders as counsel may request and this Honourable Court permit.

THE GROUNDS FOR THE MOTION ARE:

- a) the Liquidator continues to effect the liquidation of the assets of the Respondent in good faith and with due diligence;
- b) given that the liquidation of the assets of the Respondent primarily consists of monitoring and enforcing the collection of certain promissory notes with payment terms beyond 2018, the liquidation proceedings are expected to

continue until at least 2018 unless such notes can be monetized at an earlier date;

- c) the Canada Revenue Agency has yet to complete its audit with respect to the Respondent's last several taxation years, which audit is required to obtain final clearance certificates from the Canada Revenue Agency;
- d) accordingly, it is premature for the Liquidator to apply to this Honourable Court for approval of its final accounts and distribution of the remaining property of the Respondent to the Respondent's shareholders as required by Section 223(2)(a) of the CBCA;
- e) the Liquidator has and continues to carry out and fulfil its obligations under the various Orders of this Honourable Court;
- f) the Liquidator's accounts are fair and reasonable given the nature of the instant liquidation proceedings and the work required to effectively carry out and fulfil its obligations under the various Orders of this Honourable Court in a prudent and diligent manner;
- g) the Liquidator has examined the bills of costs of its counsel and counsel to the Respondent, has verified that the services have been duly authorized and duly rendered and, in the opinion of the Liquidator, are reasonable;
- h) the inspectors appointed by this Honourable Court in respect of the liquidation of the Respondent support the relief being sought by the Liquidator;

- i) Paragraphs 11 and 44 of the amended and restated order of this Honourable Court made in these proceedings on November 30, 2006;
- j) Sections 217 and 223(2)(b) of the CBCA;
- k) Rules 3.02, and 37 of the *Rules of Civil Procedure*;
- l) such other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- a) the Second Report of the Liquidator dated September 18, 2009;
- b) the Affidavit of Sheldon W. Krakower sworn on August 26, 2009, filed separately;
- c) the Affidavit of Mark Schragger sworn on August 25, 2009, filed separately;
- d) the Affidavit of Gary Steinhart sworn on August 25, 2009, filed separately; and
- e) such further and other material as counsel may advise and this Honourable Court may permit.

September 23, 2009

DAVIES WARD PHILLIPS & VINEBERG LLP
44th Floor, 1 First Canadian Place
Toronto Canada M5X 1B1

Robin B. Schwill (LSUC #38452I)
Tel: 416.863.5502
Fax: 416.863.0871

Solicitors for XMT Liquidations Inc., in its
capacity as the liquidator of 6356095 Canada
Inc. (formerly known as Excapsa Software Inc.),
and not in its personal capacity

TO: See attached service list.

SERVICE LIST

TO: Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, Ontario M5H 3C2

John N. Birch
Tel: 416.860.5225
Fax: 416.640.3057
jbirch@casselsbrock.com

Joseph J. Bellissimo
Tel: 416.860.6572
Fax: 416.642.7150
jbellissimo@casselsbrock.com

Counsel to Gail Gleed and Melissa Gaddis in there capacities as Inspectors
appointed in the liquidation of 6356095 Canada Inc.

AND TO: Paliare Roland Rosenberg Rothstein LLP
250 University Avenue
Suite 501
Toronto, Ontario M5H 3E5

Chris G. Paliare
Tel: 416.646.4318
Fax: 416.646.4338
chris.paliare@paliareroland.com

Massimo (Max) Starnino
Tel: 416.646.7431
Fax: 416.646.4301
max.starnino@paliareroland.com

Counsel to Blast Off Limited and Joseph Tokwiro Norton

AND TO: Heenan Blaikie LLP
Suite 2600
200 Bay Street
South Tower, Royal Bank Plaza
Toronto, Ontario M5J 2J4

Angus T. McKinnon
Tel: 416.360.2632
Fax: 1.866.687.9888
amckinnon@heenan.ca

Counsel to SC Fundamental LLC

AND TO: The Director appointed pursuant to Section 260 of the *Canada Business Corporations Act*
9th Floor, Jean Edwards Towers South
365 Laurier Avenue West
Ottawa, Ontario K1A 0C8

Valérie Carpentier
Tel: 613.957.4422
Fax: 613.941.5781
Valerie.Carpentier@ic.gc.ca

BETWEEN:

JAMES RYAN (Applicant) – and - 6356095 CANADA INC. (Respondent)
APPLICATION UNDER SECTION 211(8) OF THE CANADA BUSINESS CORPORATIONS ACT, R.S.C. 1985, c. C-44, AS AMENDED,
AND RULE 14.05(2) OF THE RULES OF CIVIL PROCEDURE

**ONTARIO
SUPERIOR COURT OF JUSTICE –
COMMERCIAL LIST**

Proceeding commenced at Toronto

NOTICE OF MOTION

DAVIES WARD PHILLIPS & VINEBERG LLP
1 First Canadian Place
Suite 4400
Toronto, ON M5X 1B1

Robin B. Schwill (LSUC #384521)
Tel: 416.863.5502
Fax: 416.863.0871

Solicitors for XMT Liquidations Inc., in its capacity as
the liquidator of 6356095 Canada Inc. (formerly known
as Excapsa Software Inc.), and not in its personal
capacity

TAB 2

Court File No. 06-CL-6752

**ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST**

BETWEEN:

JAMES RYAN

Applicant

-and-

6356095 CANADA INC.

Respondent

**APPLICATION UNDER SECTIONS 211(8) AND 223(2) OF THE CANADA BUSINESS
CORPORATIONS ACT, R.S.C. 1985, c. C-44, AS AMENDED, AND RULE 14.05(2) OF
THE RULES OF CIVIL PROCEDURE**

SECOND REPORT TO THE COURT OF XMT LIQUIDATIONS INC.

Date of Report: September 18th, 2009

A. INTRODUCTION

- (a) Pursuant to an order of the Ontario Superior Court of Justice – Commercial List (the “**Court**”) dated November 30, 2006 (the “**Original Order**”) annexed hereto as Appendix A, the Court made an order pursuant to section 211(8) of the *Canada Business Corporations Act* (the “**CBCA**”) to continue the voluntary dissolution and liquidation of the Respondent, formerly known as Excapsa Software Inc. (“**Excapsa**”) under the supervision of the Court. On December 22, 2006, the Court issued an Amended and Restated Order (the “**Amended and Restated Order**”) annexed hereto as Appendix B which, in part, made the appointment of the former liquidator, Mintz & Partners Limited, effective from January 15, 2007.
- (b) On August 21, 2008, the Court issued a subsequent order, inter alia, replacing the initial liquidator with XMT Liquidations Inc. (the “**Liquidator**”). A copy of such order is

annexed hereto as Appendix C (the “**Substitution Order**”). XMT Liquidations Inc. is a subsidiary of the Montreal-based accounting firm of WSBG LLP, a firm established in 1964 which has become a highly successful mid-sized boutique accounting firm with over 60 people.

- (c) On October 14, 2008, the Court issued an order approving the Amendment to Sale Documents Agreement with Blast Off Limited (“**Blast Off**”) and Tokwiwo Enterprises ENRG (“**Tokwiwo**”) dated as of September 22, 2008 (the “**Amending Agreement**”), subject to the Liquidator filing a further report (the “**Supplemental Report**”) to satisfy the Court that all of the conditions precedent in the Amending Agreement had been met and the basis on which the Liquidator concluded that such conditions precedent had been met (the “**Approval Order**”). Subsequent to the filing of the Supplemental Report, on November 3, 2008, the Court issued an Order authorizing the implementation of the Amending Agreement (the “**Final Approval Order**”). The Final Approval Order authorized the Liquidator to enter into such amendments to the Amending Agreement as it may consider necessary and appropriate. A copy of the Amending Agreement and the First Amendment thereto dated November 4, 2008 are attached hereto as Appendix D. A copy of the Approval Order is attached hereto as Appendix E. A copy of the Supplemental Report is attached hereto as Appendix F. A copy of the Final Approval Order is attached hereto as Appendix G.

B. BACKGROUND

1. The Original Order resulted from a special resolution of the shareholders of Excapsa passed at a special meeting held on November 24, 2006 under the provisions of the CBCA which also adopted a plan of liquidation and distribution dated October 30, 2006. A special resolution was also passed authorizing Excapsa Software Inc. to change its name to 6356095 Canada Inc. which name change became effective on November 29, 2006.
2. Excapsa was a holding company which held the shares, directly and indirectly, in certain subsidiaries, being Excapsa Services Inc. (an Ontario corporation), Game Theory Ltd. (a Malta corporation), Game Theory Holdings Ltd. (a Malta corporation) and Game

Theory Services Ltd. (a Malta corporation). Game Theory Ltd. and Game Theory Services Ltd. were subsidiaries of Game Theory Holdings Ltd. Excapsa was incorporated in April 2004 and later continued under the CBCA with its registered and head office in Toronto, Ontario.

3. Excapsa and its subsidiaries developed, maintained, and marketed online gaming software applications, its main products being multi-player, real time, internet-enabled poker software, back office e-cash and reporting software and the poker network which it licensed to a variety of parties and were operated principally under the domain names ultimatebet.com and ultimatepoker.com.
4. On February 13, 2006, Excapsa issued a placement memorandum for a private placement of approximately 23 million shares. Concurrent with the private placement, Excapsa applied for and obtained a listing on the Alternative Investments Market of the London Stock Exchange (“AIM”). Excapsa’s shares began trading on AIM on February 16, 2006. Excapsa constitutes a mutual fund corporation for purposes of the *Income Tax Act* (Canada).
5. In anticipation of the passage of certain legislation in the United States (i.e., the *Safe Port Act* (Title 7 of the *Safe Port Act*, entitled Unlawful Internet Gambling Enforcement)), Excapsa entered into a stock purchase agreement on October 12, 2006 with Blast Off Limited (the “**Stock Purchase Agreement**”). According to the Stock Purchase Agreement, Blast Off Limited (“**Blast Off**”) is a company incorporated and based in Malta. Pursuant to the terms of the Stock Purchase Agreement, Excapsa sold all of the issued and outstanding common shares of its operating subsidiaries, namely Excapsa Services Inc. and Game Theory Holdings Ltd., for an aggregate purchase price of US \$130,000,000 (the “**Purchase Price**”) and delivered a promissory note (“**Note**”) for the balance of the Purchase Price. Blast Off transferred its shares of Game Theory Holdings Ltd. to a related party effective October 12, 2006.
6. Given the sale, Excapsa no longer had any operating business. As a result, and in light of the determination that there was no other business venture that Excapsa could reasonably undertake to maximize shareholder value, the board of directors of Excapsa decided to

place Excapsa into liquidation which decision was authorized by the shareholders by special resolution adopted at a meeting held on November 24, 2006.

7. Excapsa's shares no longer trade on AIM, having been de-listed in early December 2006. From the best information available to the Liquidator to date, it appears that Excapsa has approximately 224 shareholders of record. There is currently no active trading market for Excapsa's shares.
8. Pursuant to the Amending Agreement, Excapsa, Blast Off and Tokwiro agreed to the following material changes to the Stock Purchase Agreement and the Note:
 - 8.1. Excapsa paid Blast Off the sum of US \$14,625,000 by way of the reduction of the Purchase Price;
 - 8.2. Blast Off caused the delivery of approximately 6,900,000 shares in the capital stock of Excapsa for cancellation;
 - 8.3. Blast Off caused the delivery of approximately 49,312,566 shares (the "**Pledged Shares**") in the capital of Excapsa by way of a pledge as collateral security for the next US \$10,250,000 of payments under the Note (the "**Pledge**");
 - 8.4. Pursuant to a copyright assignment dated November 4, 2008 (the "**Copyright Assignment**"), Blast Off's subsidiary, Game Theory Limited, transferred an undivided ownership interest in certain gaming software (the "**Software**") to Aspacxe Holdings Inc. ("**Aspacxe**"), a wholly-owned subsidiary of Excapsa, in consideration of a payment of US \$375,000;
 - 8.5. Blast Off agreed to pay US \$500,000 in January 2009 on account of the indebtedness under the Note; and
 - 8.6. Blast Off agreed to resume monthly payments under the Note at the rate of US \$500,000 per month commencing in January 2009, subject to the right of Blast Off to defer up to two monthly instalments per year in certain circumstances.

Pursuant to the Amending Agreement, Blast Off acknowledged its indebtedness to Excapsa for principal in the amount of approximately US \$108,869,000 and unpaid interest as at September 30, 2007 in the amount of approximately US \$24,235,000.

9. In addition to the Approval Order, the transactions contemplated by the Amending Agreement were approved by the shareholders of Excapsa at a special meeting of shareholders held on November 14, 2008.
10. Blast Off and its subsidiaries provided the “Malta Pledge”, the “DN Security Agreement” and the “CL Escrow Agreement” (all as defined in the Amending Agreement) as security for the Note.
11. Blast Off paid the US \$500,000 referred to in Section 8.5 above as well as the monthly principal instalments due in January, March, April and May 2009. Blast Off claimed deferrals of the monthly principal instalments due in February and June 2009.
12. As at June 30, 2009, Blast Off was indebted to Excapsa for principal in the amount of US \$106,369,257 and accrued interest in the amount of US \$34,187,917 (in aggregate, the “**Existing Indebtedness**”).
13. The Liquidator was recently informed that Blast Off had suffered unexpected cash losses, due to the failure of a payment processor and the seizure of funds held in a US based bank account. Blast Off also reported operating losses in the first quarter of 2009. Blast Off’s management represented to the Liquidator that these financial setbacks coupled with a substantial and growing debt load had given rise to enhanced scrutiny over the company’s operations and were impeding its longer term growth objectives. As a result, Blast Off requested certain changes to the terms of the Existing Indebtedness in order to improve its capital structure, balance sheet, and business prospects. These changes are summarized below.

C. ACTIVITIES OF THE LIQUIDATOR

14. Since completing the transactions contemplated by the Amending Agreement in November 2008, a number of initiatives relating to the Software have been and are being pursued including the following:

- 14.1. Aspacxe obtained a perpetual royalty-free license from Centaurus Games LLC relating to the “Elimination Blackjack” game rules associated with Aspacxe’s blackjack Software;
- 14.2. Aspacxe is in active negotiations with a third party to license the blackjack Software in return for royalties;
- 14.3. Aspacxe is pursuing other potential opportunities for licensing the TBJ Software and Aspacxe’s poker Software.

In connection with the above opportunities, Aspacxe has been working closely with Realtime Edge Software Inc., the principal of which was Excapsa’s former VP Engineering and subsequently supported the Software for Game Theory Ltd. Aspacxe and Realtime Edge Software Inc. are in the process of formalizing a maintenance and support agreement. All transactions relating to the Software are subject to the approval of Aspacxe’s board of directors;

Ultimately, Aspacxe could eventually be sold or its shares distributed as part of the overall liquidation process.

- 14.4. The Liquidator completed and filed Excapsa’s tax return for the financial year ended June 30, 2008. Subsequent to the filing of the tax return, the Liquidator received federal and Ontario tax refunds totalling approximately \$2,541,317.00;
- 14.5. the Liquidator obtained a partial clearance certificate from Canada Revenue Agency (“CRA”) authorizing a US \$10,000,000 distribution by way of capital gains dividend to Excapsa’s shareholders (the “**Dividend**”). The Dividend was paid on July 24, 2009;

- 14.6. the Liquidator has been actively involved in negotiations with Blast Off as outlined in Sections 13 and 15 of this Report;
- 14.7. the Liquidator was able to secure CRA's commitment to commence its audit procedures with respect to Excapsa's last several taxation years. Various requests for information have been received from CRA and responses have been provided or are in process of being provided. After completion of the audit, the Liquidator is confident that it will be able to obtain the necessary clearance certificates from the CRA to make additional distributions to Shareholders.

D. RESTRUCTURING OF THE EXISTING INDEBTEDNESS AND RELATED MATTER

15. Pursuant to the Second Amendment to the Amendment to Sale Documents Agreement dated as of June 30, 2009 (the "**Second Amendment**"), Excapsa, Blast Off and the other applicable parties entered into the following transactions:

- 15.1. Effective June 30, 2009, the Existing Indebtedness was cancelled and Blast Off issued the following promissory notes in full, final and absolute payment of the Existing Indebtedness:

- (i) a promissory note (the "**First Note**") in the principal amount of US \$41,900,000 bearing interest at 8% per annum; and
- (ii) a promissory note (the "**Second Note**") in the principal amount of US \$64,469,257 bearing interest at 6% per annum.

(the First Note and the Second Note, collectively "**the New Notes**"). Principal under the First Note is payable at the rate of US \$225,000 per month from July through October 2009 and thereafter at the rate of US \$500,000 per month. Principal payments under the Second Note will commence in January of 2018 or when the First Note is retired, whichever is earlier, at the rate of US \$500,000 per month. Commencing in 2010, Blast Off has the right to defer up to 2 monthly principal instalments per year upon the satisfaction of certain conditions. Blast Off is entitled to a 10% early payment discount if the Notes are repaid in

conjunction with a sale transaction. The obligations of Blast Off under the New Notes are secured pursuant to the Malta Pledge, the DN Security Agreement and the CL Escrow Agreement.

- 15.2. 24,656,283 of the Pledged Shares were surrendered to Excapsa for cancellation without any repayment of capital or any other amount (the “**Share Cancellation**”). The remainder of the Pledged Shares were released from the Pledge. The 24,656,283 Excapsa Shares cancelled pursuant to the Share Cancellation representing approximately 12.65% of the total issued and outstanding share capital of Excapsa. After paying the Dividend, the Company had cash of approximately \$20,000,000. Accordingly, the Share Cancellation results in an immediate benefit of approximately \$2,530,000 for Excapsa’s shareholders. The shareholders will also benefit from an increased share of future receipts based on fewer shares outstanding. The Liquidator concluded that these benefits warranted the release of the remainder of the Excapsa Shares from the Pledge.
- 15.3. The Copyright Assignment will be amended to provide that Game Theory Limited may use the Software for internal purposes only and will not sell, license, market or otherwise commercially exploit the Software. This could ultimately enhance the value of Aspacxe and thus the shareholdings of Excapsa. This amendment is subject to the approval of Aspacxe’s board of directors.

After careful consideration of the relevant factors, including the financial pressures facing Blast Off, the Liquidator concluded that the changes to the terms of the Existing Indebtedness would improve Excapsa’s prospects for receiving continuous payments from Blast Off. In fact, Blast Off was falling behind on the payment schedule in the Note by availing itself of the right to miss two payments annually. Under the New Notes, Blast Off can only justify missing a payment where it has experienced actual cash losses as further set forth in the New Notes. The inspectors appointed by the Court in respect of the liquidation (the “**Inspectors**”) have approved of the Liquidator entering into the Second Amendment.

Moreover, under the Note, taxes in respect of the entire capital gain on the sale which occurred in 2006 was payable (over five years) irrespective of the receipt of payments under the Note by Excapsa. For this additional reason, the Liquidator concluded that the Second Amendment benefits Excapsa and its shareholders in so far as it ensures that Excapsa will continue to receive funds in respect of which it pays tax.

For Canadian tax purposes, Excapsa will be considered to have disposed of the Existing Indebtedness for proceeds of disposition equal to the aggregate fair market value of the New Notes. It is expected that the disposition will result in a capital loss to Excapsa which can be used to offset capital gains, reduce tax payable and ultimately increase payments to the Shareholders. The Liquidator is in the process of obtaining an independent valuation of the New Notes.

E. FEE APPROVALS

16. For the period ending July 31, 2009, the Liquidator has charged professional fees and disbursements to Excapsa of \$612,955.00 and has incurred legal fees to Liquidator's counsel (Davies Ward Phillips & Vineberg LLP) of \$465,941.00 for the period July 24, 2008 to May 31, 2009. Excapsa has incurred legal fees and disbursements of \$869,656.24 to Cassels Brock & Blackwell LLP for the period August 1, 2008 to June 30, 2009 and legal fees of \$167,895.37 for tax advice to Davies Ward Phillips & Vineberg LLP for the period August 25, 2008 to May 31, 2009. Approval of these fees is sought in concurrent applications before the Court. Affidavits regarding these fees will be filed with the Court separately.
17. The Liquidator has examined the bills of counsel, has verified that the services have been duly authorized and duly rendered and, in the opinion of the Liquidator, are reasonable. The Inspectors have approved all of the fees referred to in paragraph 16.

F. RECEIPTS AND DISBURSEMENTS

18. The Liquidator produces herewith as Appendix H a reconciliation of all cash received and paid out for the period of August 21, 2008 to June 30, 2009.

G. RECOMMENDATIONS

19. The Liquidator seeks:

- (i) an extension of time pursuant to Section 223(2)(b) of the CBCA in order to allow the Liquidator to continue its activities to realize on the assets of Excapsa and distribute proceeds to the Shareholders;
- (ii) approval of the Court of the activities of the Liquidator set forth in this report;
- (iii) approval of the professional fees and disbursements set forth in Section E herein and the fee application filed herewith.

All of which is respectfully submitted this 18th day of September, 2009.

**XMT LIQUIDATIONS INC., in its
capacity as liquidator of 6356095
Canada Inc., and not in its personal
capacity**

by

Name: Sheldon Krakower, C.A.

Title: Director

LIST OF APPENDICES

- Appendix A – Original Order dated November 30, 2006
- Appendix B – Amended and Restated Order dated December 22, 2006
- Appendix C – Substitution Order, replacing the initial liquidator by XMT Liquidations Inc., dated August 21, 2008
- Appendix D – Amending Agreement and the First Amendment thereto dated November 4, 2008
- Appendix E – Approval Order
- Appendix F – Supplemental Report
- Appendix G – Final Approval Order
- Appendix H – Reconciliation of all cash received and paid out for the period of August 21, 2008 to June 30, 2009

TAB A

This is Appendix A of the Second Report to the Court of XMT Liquidations Inc.

Original Order, dated November 30, 2006

Court File No. 06-CL-6752

**ONTARIO
SUPERIOR COURT OF JUSTICE-COMMERCIAL LIST**

THE HONOURABLE MADAM) THURSDAY, THE 30TH
))
JUSTICE MESBUR) DAY OF NOVEMBER, 2006

BETWEEN:

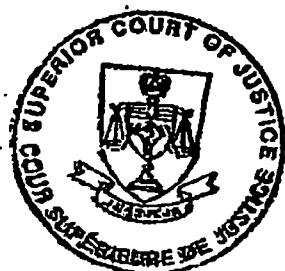
JAMES RYAN

Applicant

- and -

EXCAPSA SOFTWARE INC.

Respondent



ORDER

THIS APPLICATION, brought by James Ryan, for an order pursuant to section 211(8) of the *Canada Business Corporations Act* (the "CBCA") to continue the voluntary dissolution and liquidation (the "Dissolution") of the respondent, 6356095 Canada Inc. (formerly known as Excapsa Software Inc.) ("Excapsa") (which was approved by Excapsa's directors and by its shareholders at a meeting of shareholders on November 24, 2006), under the supervision of the Court, including approving and ratifying the appointment of Mintz & Partners Limited ("Mintz") as a court-appointed liquidator and authorizing and empowering Mintz as liquidator to carry out and complete the Dissolution in accordance with (a) a plan of liquidation and distribution dated as of October 30, 2006 (the "Plan of Liquidation and Distribution") attached hereto as Schedule "A" and (b) the CBCA, as amended, and for other relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, the Affidavit of Daniel Friedberg, sworn November 27, 2006, and the consent of the respondent, filed, and on hearing the

submissions of counsel for the applicant, the Director under the CBCA advising in writing that he did not need to appear or be heard on the application,

1. THIS COURT ORDERS that the time for service of this application be and the same is hereby abridged.
2. THIS COURT ORDERS that the application be and the same is hereby granted and the Dissolution of the respondent, Excapsa, shall continue under supervision of the Court, pursuant to section 211(8) of the CBCA.
3. THIS COURT ORDERS that the title of proceedings be and the same is hereby amended so that the name of the Respondent is changed to 6356095 Canada Inc.

I. APPOINTMENT & POWERS OF LIQUIDATOR

4. THIS COURT ORDERS that the appointment of Mintz as liquidator (the "Liquidator") of all the present and future undertaking, property and assets of whatsoever nature and kind and wherever situate of Excapsa (the "Property"), without security, is hereby approved and ratified and the Liquidator is hereby empowered, authorized and directed to take possession of and control the Property, to implement the Plan of Liquidation and Distribution, and to effect the Dissolution. Without in any way limiting the generality of the foregoing and in furtherance thereof, the Liquidator is hereby expressly empowered, authorized, and directed to take the following actions:

(a) to take such steps as are necessary to satisfy the obligations and exercise the rights of Excapsa under a sale transaction with Blast-Off Limited (the "Buyer") that closed and was effective on October 12, 2006, as memorialized in a Stock Purchase Agreement between Excapsa and the Buyer dated October 12, 2006 (the "Sale Agreement") including, without limiting the generality of the foregoing,

(i) preparing, executing, and delivering necessary documents,

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- (ii) collecting amounts owing from the Buyer pursuant to the Sale Agreement and a promissory note given pursuant to the Sale Agreement (the "Promissory Note"),
 - (iii) taking all necessary actions, after working with the Buyer to the extent deemed reasonably necessary by the Liquidator to enforce the Sale Agreement, the Note and the security granted to Excapsa to secure the Note (the "Security"), including bringing proceedings in other jurisdictions, as required, to enforce and carry out the terms of this order, the Sale Agreement, the Note and the Security;
 - (iv) to the extent necessary, paying to the Buyer the net tax liability incurred by Game Theory Holdings Limited ("GTH") and its subsidiaries up to and including October 12, 2006;
 - (v) preparing or causing the preparation of tax returns of Excapsa and Excapsa Services Inc.;
 - (vi) perfecting the security interest(s) of Excapsa in accordance with the Sale Agreement, the Promissory Note, and the Security; and
 - (vii) causing the payment of any other expenses or the collection of any other receivables authorized by the Sale Agreement and taking any other reasonable actions in accordance with the provisions of such agreement.
- (b) to take such steps as in the opinion of the Liquidator that are necessary to appropriate, receive, preserve, protect, maintain control over, liquidate and realize upon the Property or any part or parts thereof including, but not limited to, the changing of locks and security codes, the relocating of the Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

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- (c) to hold and invest Property that is money in bank accounts, term deposits, or cashable guaranteed investment certificates of a Canadian chartered bank or in treasury bills issued by the Government of Canada;
- (d) to uphold and enforce the by-laws of Excapsa;
- (e) to take such steps as are required to maintain the status of Excapsa as a "mutual fund corporation" as defined in the *Income Tax Act*;
- (f) to take such steps as in the opinion of the Liquidator are necessary or appropriate to maintain control over all receipts and disbursements including, without limiting the generality of the foregoing, taking such steps as are necessary or desirable to control access to and use of all bank accounts of Excapsa or open new bank accounts, approve all cheques or other instruments drawn on such accounts, and permit payment of those expenses which in the opinion of the Liquidator are necessary to implement the terms of the Plan of Liquidation and Distribution;
- (g) to take such steps as in the opinion of the Liquidator are necessary or appropriate to verify the existence and location of all of the Property, the terms of all agreements or other arrangements relating thereto, whether written or oral, the existence or assertion of any lien, charge, encumbrance or security interest thereon, and any other matters which in the opinion of the Liquidator may affect the extent, value, existence, preservation and liquidation of such Property;
- (h) to negotiate and enter into agreements in respect of the Property, including without limitation, the amendment or termination of existing lease agreements;
- (i) to pay all liabilities and on-going expenses on or after the date of this Order which arise out of or in connection with the prior or future ownership or operation of the Property and/or premises of Excapsa including, without

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- limitation, taxes, rents, utilities, heating, maintenance, insurance, supplies and other expenses, and to establish reserves for contingent liabilities;
- (j) to make such repairs or alterations to the Property as the Liquidator deems advisable;
 - (k) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets as may be necessary or desirable in the opinion of the Liquidator to receive, preserve, protect or realize upon the Property;
 - (l) to receive and collect all monies and accounts now owed or hereafter owing to Excapsa in respect of the Property, and to exercise all remedies of Excapsa in collecting all such monies, including, without limitation, to exercise any security held by Excapsa;
 - (m) to declare and pay capital gains dividends (as defined in subsection 131(1) of the *Income Tax Act* (Canada)), other dividends, distributions, returns of capital and other amounts to the shareholders of Excapsa, including all distributions permitted by the CBCA, as contemplated by the Plan of Liquidation and Distribution and this order, including establishing record dates for such dividends and other payments;
 - (n) to cause
 - (i) the preparation and the filing of the tax return(s), forms, notices, and other documents of Excapsa, and such tax elections as the Liquidator deems advisable (including, without limitation, in connection with dividends and distributions referred to in paragraph 4(m)),
 - (ii) Excapsa to pay any associated tax liability pursuant to any applicable taxation legislation or regulations, provided, however, that approval of the court or unanimous approval of the Inspectors (defined below) shall be required for

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- (A) the filing of any tax return or other tax form or statement involving a liability to Excapsa of more than \$100,000 for taxes, penalties, and/or interest, or
 - (B) the payment to tax authorities of more than \$100,000 on account of taxes, penalties, and/or interest.
- (iii) Excapsa to obtain all certificates, clearance certificates and other authorizations under applicable taxation legislation and regulations in connection with any matter affecting or contemplated by the Plan of Liquidation and Distribution, provided, however, that a clearance certificate shall not be required with respect to the payment provided for in paragraph 16, below;
- (o) to cause the preparation and delivery to shareholders and other recipients of payments from the Liquidator of all tax information and slips relating to such payments that is required to be delivered under applicable taxation legislation and regulations;
- (p) to prepare and deliver to current and former employees, officers, directors, and independent contractors of Excapsa records of employment, T4 slips, or other prescribed forms as may be applicable to such persons;
- (q) to otherwise carry out the terms, and the transactions contemplated by the Plan of Liquidation and Distribution and the provisions of the CBCA applicable to the Dissolution including, without limitation, delivering notices to shareholders and creditors of Excapsa, filing of Articles of Dissolution with the Director appointed under the CBCA, and completing all other filings and obtaining all consents under the CBCA and any other legislation applicable to the Dissolution; and
- (r) to apply to the Court for additional authority, power, or directions.

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5. THIS COURT ORDERS that from and after the time of this order, the powers of the directors and shareholders of Excapsa shall cease and such powers shall vest in the Liquidator, provided, however, that the Liquidator may in its discretion temporarily or permanently delegate back to the directors and shareholders in writing some or all of the powers that they had prior to the date of this order.

6. THIS COURT ORDERS that the Liquidator be and it is hereby fully and exclusively authorized and empowered to institute and prosecute and to continue the prosecution of all actions, applications or proceedings in and before both courts and administrative bodies as may in its judgment be necessary or desirable to properly receive, protect, preserve and realize upon the Property or any part or parts thereof and also to defend all actions, applications or proceedings now pending or hereafter instituted against Excapsa or the Liquidator in respect of the Property, and to appear in and conduct the prosecution or defence of any such actions, applications or proceedings now pending or hereafter instituted in any court or administrative body by or against Excapsa or the Liquidator, the prosecution or defence of which will in the judgment of the Liquidator be necessary or desirable to properly receive, protect, preserve and realize upon the Property, and to settle or compromise any such actions, applications or proceedings which in the judgment of the Liquidator should be settled, and the authority hereby conferred shall extend to such appeals as the Liquidator shall deem proper and advisable in respect of any order or judgment.

7. THIS COURT ORDERS that the Liquidator be at liberty and is hereby authorized and empowered to employ or retain such assistants, agents, employees, experts, auditors, advisors, solicitors and counsel, including legal counsel, as it may from time to time consider necessary or desirable for the purposes of receiving, preserving, protecting and realizing upon the Property or any part or parts thereof, or generally exercising its powers and performing its duties hereunder.

8. THIS COURT ORDERS that when all or part of the Property is sold or otherwise dealt with, Excapsa shall join in and execute all necessary powers of attorney, conveyances, deeds and documents of whatsoever nature or form. For such purpose,

the Liquidator is hereby authorized and empowered to execute such powers of attorney, conveyances, deeds or other documents in the name of and on behalf of Excapsa. Any such powers of attorney, conveyances, deeds or documents so executed by the Liquidator shall have the same force and effect as if executed by Excapsa.

9. THIS COURT ORDERS that nothing herein contained shall vest in the Liquidator the care, ownership, control, charge, occupation, possession or management (separately and/or collectively, "Possession"), or require or obligate the Liquidator to occupy, or to take control, care, charge, possession or manage any of the Property which may be environmentally contaminated or a pollutant or a contaminant or cause or contribute to a spill, discharge, release or deposit of a substance contrary to any legislation enacted for the protection or preservation of the environment including, without limitation the *Canadian Environmental Protection Act*, the *Transportation of Dangerous Goods Act*, the *Environmental Protection Act (Ontario)*, the *Ontario Water Resources Act*, the *Occupational Health and Safety Act (Ontario)* or the regulations thereunder, or any federal or provincial legislation, or rule of law or equity in any jurisdiction affecting the environment or the transportation of goods (collectively "Environmental Laws" or "Environmental Liabilities"). The Liquidator shall not be deemed as a result of this Order to be in control, charge, possession or management of any of the Property within the meaning of any Environmental Laws.

10. THIS COURT ORDERS that any expenditure which shall be properly made or incurred by the Liquidator, including without limitation, expenditures in the exercise of its powers hereunder, together with its remuneration, form a charge on the Property.

11. THIS COURT ORDERS that, before passing of its accounts, the Liquidator be at liberty and is hereby authorized and empowered, periodically from time to time to apply reasonable amounts from monies in its possession against its fees and disbursements, including without limitation, legal fees and disbursements of counsel to the Liquidator and counsel to Excapsa, and such amounts shall constitute advances against its remuneration and disbursements when fixed, providing that all of the same be subject to a final accounting in the passing of the Liquidator's accounts.

II. PRE-FILING CLAIMS BAR PROCESS

12. THIS COURT ORDERS that the Liquidator shall implement the following process for the purpose of the submission of any claims based on acts and omissions occurring up to and including the date of this order that anyone may wish to assert against Excapsa, its officers, its directors, its employees, and independent contractors with respect to the business of Excapsa (collectively, "Pre-Filing Claims"), and the Liquidator is hereby expressly empowered and authorized, and where indicated directed, to take the following actions:

- (a) The notice of claim procedure substantially in the form attached as Schedule B (the "Claims Bar Notice") shall be:
 - (i) sent via regular mail, postage prepaid, to all known claimants or potential claimants of Excapsa, at their last known address, as identified by Excapsa in good faith, which persons may include employees, shareholders, optionholders, and contracting parties of Excapsa (collectively, the "Potential Claimants"); and
 - (ii) published once a week for two consecutive weeks in *The Wall Street Journal*, *The Globe & Mail* (national edition), *The Times of London*, and a newspaper of general circulation in Malta typically used for legal notices. The date of mailing to the current list of all known Potential Claimants shall be on or before December 15, 2006, and the date of initial publication in the newspapers shall be no later than December 15, 2006. The inclusion of a person in the list of Potential Claimants shall not be an admission of liability or used as evidence to support the veracity of any claim or charge brought by such Potential Claimant.
- (b) All claimants who wish to assert a Pre-Filing Claim must complete a notice of claim (the "Notice of Claim") and properly deliver such Notice of Claim, together with supporting documentation, to the Liquidator by 5:00 pm on

February 15, 2007 at 5:00 pm (Toronto time) (the "Claims Bar Date") or its claim shall be forever extinguished and barred to the fullest extent afforded under applicable law, unless this Court later finds that due to the gross negligence or intentional misconduct of Excapsa or the Liquidator such claimant was not served with, or did not become aware of, the Claims Bar Notice.

- (c) Following its receipt of the Notices of Claim, the Liquidator is authorized and empowered to review the Notices of Claim and, if the Liquidator determines in its discretion that a Pre-Filing Claim is wholly or partially valid, the Liquidator may settle all or part of such Pre-Filing Claim (a "Settled Claim") in an amount determined by the Liquidator, up to a limit of \$100,000 per claim.

13. THIS COURT ORDERS that following the Claims Bar Date, to the extent that there are remaining Pre-Filing Claims, other than Settled Claims, in respect of which Notices of Claim have been delivered by the Claims Bar Date, the Liquidator shall apply to the court for a further order establishing a claims adjudication process.

III. POST-FILING CLAIMS BAR PROCESS

14. THIS COURT ORDERS that the Liquidator may bring further motion(s) to the court for the establishment of a process to receive, adjudicate and bar claims that anyone may wish to assert against Excapsa, and its officers, directors, employees, and independent contractors with respect to the business of Excapsa that are based on acts and omissions occurring after the date of this order ("Post-Filing Claims").

IV. DISTRIBUTIONS

15. THIS COURT ORDERS that, subject to any other court order or direction to the contrary, the Net Realized Value of the Property (as hereinafter defined) shall be held by the Liquidator to be disposed of pursuant to the terms of the Plan of Liquidation and Distribution, the CBCA and, if applicable, further order of this Court. The "Net Realized Value of the Property" means at any time and from time to time, cash proceeds actually

received by the Liquidator from the disposition of the Property (including proceeds received pursuant to the Sale Agreement, the Note and the Security) less the aggregate of: (i) all amounts previously distributed by the Liquidator to the shareholders of Excapsa; and (ii) amounts paid to satisfy or settle, or set aside for payment of the liabilities (including contingent liabilities) of Excapsa and the Liquidator and all applicable taxes, the remuneration and expenses of the Liquidator, including, without limitation, the fees and disbursements of the Liquidator's counsel and Excapsa's counsel.

16. THIS COURT ORDERS that the Liquidator and/or Excapsa is authorized and directed to make payment of a capital gains dividend equal to the lesser of

- (a) US\$26,000,000, and
- (b) the balance in Excapsa's capital gains dividend account at the time that such capital gains dividend becomes payable.

Such payment shall be made on a *pro rata* basis in an equal amount per share to persons who were shareholders of record of Excapsa on December 8, 2006.

17. THIS COURT ORDERS that, within five business days after March 1, 2007, and within five business days after the first day of each calendar month thereafter if proceeds have been received by Excapsa from the Buyer or other sources, the Liquidator and/or Excapsa may, after determining that such proceeds are available to distribute as part of the Net Realized Value of the Property, distribute such proceeds (the "Monthly Distribution") to shareholders of record as of the last business day of the prior calendar month, such distributions to be made on a *pro rata* basis in an equal amount per share, provided that the Liquidator may, in its discretion, defer the distribution in respect of any monthly period if the Net Realizable Value of the Property available for distribution in respect of such monthly period is less than US\$1,000,000. However, the Liquidator and/or Excapsa may suspend or reduce Monthly Distributions to shareholders in the event that the Liquidator determines in its discretion that the money held by it may be insufficient to pay actual, contingent, and anticipated liabilities

of Excapsa or the Liquidator, including income tax liabilities, or if the Liquidator has been unable to obtain clearance certificates from income tax authorities.

18. THIS COURT ORDERS that, in addition to the Monthly Distributions and any other payments to shareholders of Excapsa that are permitted by this order or the Plan of Liquidation and Distribution, the Liquidator and/or Excapsa may in its discretion make further payments to shareholders ("Special Distributions") on a *pro rata* basis in an equal amount per share in such amounts as the Liquidator determines after taking into account the Net Realized Value of the Property at such time.

19. THIS COURT ORDERS that with respect to any Monthly Distribution, Special Distribution or other payment or distribution made under the authority of this order or the Plan of Liquidation and Distribution, the Liquidator and/or Excapsa is authorized to withhold from shareholders and remit to the relevant taxation authorities in Canada or other jurisdictions any taxes or other amounts that the Liquidator reasonably believes that it is required to withhold and remit.

20. THIS COURT ORDERS that, for the purposes of determining who is entitled to payments and other distributions and what amount should be paid, the Liquidator and/or Excapsa may rely on information concerning the identity, address, and number of shares held by registered and beneficial shareholders that is provided by Excapsa's transfer agent, Computershare Trust Company of Canada ("Computershare"), or any other transfer agent appointed to replace Computershare (collectively, the "Transfer Agent Information") and the Liquidator is specifically authorized to determine entitlement to, and make payment of, dividends and other distributions in reliance on the Transfer Agent Information. The Liquidator shall not be liable for any errors in the Transfer Agent Information or for any over-payments, under-payments, or failure to make payments that result from the Liquidator's use of and reliance on the Transfer Agent Information.

21. THIS COURT ORDERS that, in the event that the Liquidator and/or Excapsa determines, on the advice of counsel, that a shareholder of Excapsa was entitled to participate in any previous distribution made by the Liquidator but such shareholder has failed to receive all or part of the distribution to which the shareholder was entitled, the

Liquidator and/or Excapsa may pay a shareholder the amount of such distribution to be equal to the amount that such shareholder would have received had he, she or it participated in the previous distribution.

22. THIS COURT ORDERS that the Liquidator is authorized to recover any overpayments made to a shareholder, including by setting off the amount of the overpayment against future payments to that same shareholder, by bringing an action, or by any other method permitted by law.

23. THIS COURT ORDERS that the Liquidator and/or Excapsa may make payments to shareholders of Excapsa who tender their shares for redemption in accordance with the Articles of Incorporation of Excapsa, and in calculating the amount of the redemption proceeds payable to such shareholder, the Liquidator and/or Excapsa shall be entitled to rely on the advice of counsel, the auditor of Excapsa (if any), or any other professional advisor, investment banker, broker or other intermediary retained by the Liquidator.

24. THIS COURT ORDERS that the Liquidator and/or Excapsa may, for tax, corporate, or other purposes, designate any payment made to a shareholder pursuant to this order or under the Plan of Liquidation and Distribution as a "dividend", a "deemed dividend", a "capital gains dividend", a "capital dividend", a "return of capital", "proceeds of redemption", a "distribution in liquidation", or any other designation permitted under the CBCA, and any such designation by the Liquidator shall be binding for all purposes under applicable law.

V. INSPECTORS

25. THIS COURT ORDERS that the appointment of Gail Gleed, John K. Fitzgerald, and James Ryan as inspectors in the Dissolution (the "Inspectors") is hereby confirmed. The Inspectors are authorized to supervise and assist the Liquidator in connection with the implementation of the Plan of Liquidation and Distribution and to represent the shareholders of Excapsa. The Inspectors shall serve until their appointment is terminated in accordance with the terms of the Plan of Liquidation and Distribution.

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26. THIS COURT ORDERS that the Inspectors at any time shall have the right and are hereby authorized and empowered from time to time to apply to this Court for advice and directions in the discharge of their powers and/or the conduct of the Dissolution and, for greater certainty, the Inspectors shall have standing to file evidence and make submissions in regard to any motion or other proceeding in the Liquidation brought by the Liquidator or any other party.

27. THIS COURT ORDERS that any motion or other proceeding in the Liquidation brought by the Liquidator or any other person shall be made on notice to the Inspectors.

VI. RELEASES, INSURANCE AND INDEMNIFICATION

28. THIS COURT ORDERS that the Liquidator shall use reasonable efforts to obtain and maintain for the benefit of Excapsa's present and former officers and directors Excapsa's current directors and officers liability insurance, including a tail policy with respect thereto, and such persons shall be named as additional insured on such policies and the Liquidator is further authorized to obtain policies of insurance covering its acts and omissions.

29. THIS COURT ORDERS that the Liquidator is a representative of Excapsa and does not incur any liability in its personal capacity.

30. THIS COURT ORDERS that the Liquidator and the Inspectors shall incur no liability or obligation as a result of their appointment or the fulfillment of their duties in carrying out the provisions of this Order, save and except that they shall be liable for gross negligence or wilful misconduct on their part.

31. THIS COURT ORDERS that excepting liability for acts of wilful misconduct or gross negligence on the part of the Liquidator, the Inspectors (as such term is defined below), the present and former officers, directors and employees of Excapsa, or the officers, directors, employees, agents, and independent contractors of the Liquidator, any liability of the Liquidator, the Inspectors or such other persons whatsoever resulting out of or from the election or appointment of the Liquidator, the Inspectors or such other persons or the exercise of the powers of the Liquidator, the Inspectors and such other

persons as contemplated hereunder including, without limitation, arising in connection with Environmental Laws, shall be limited in the aggregate to the Net Realizable Value of the Property in the possession of the Liquidator at the time any claim is finally adjudicated.

32. THIS COURT ORDERS that the indemnification agreements listed in Schedule "C" hereto between Excapsa and its former directors and certain of its officers (collectively, the "Indemnification Agreements") are ratified and confirmed and shall continue in full force and effect, and shall be fully enforceable against Excapsa, in accordance with the respective terms thereof.

33. THIS COURT ORDERS that the Liquidator is authorized and directed to set aside US\$5,000,000 or such additional amount approved by further order of this court (the "Indemnification Fund") in the trust account of counsel to the Liquidator or counsel to Excapsa for the purpose of funding actual and potential claims, together with legal fees and other expenses of defending such claims (the "Claim Expenses"), against

- (a) the parties to the Indemnification Agreements,
- (b) the Liquidator and its officers, directors, employees, and independent contractors, and
- (c) Excapsa and its current and former officers, directors, employees, and independent contractors,

and all such claims, together with the Claim Expenses, shall be paid first out of the Indemnification Fund until such fund is exhausted.

VII. OBLIGATIONS OF PERSONS

34. THIS COURT ORDERS that, subject to the other provisions of this order, Excapsa and all of its respective present and former directors, officers, employees, agents, and shareholders, and other persons acting on its instructions including, without limitation, the accountants and counsel of Excapsa, and all other persons having notice of this Order (all of whom are collectively referred to as the "Affected Persons") do

forthwith grant access to and deliver possession of the Property of every nature and kind whatsoever (subject to the proviso set out below), wheresoever situate, to the Liquidator including, without limitation: (i) any and all of the books, securities, records, documents, accounts, contracts, deeds, appears, records and information related in any way to the Property; (ii) any and all budgets, accounting records, computer records, computer programs, computer tapes, computer disks, leases and agreements related in any way to the Property; (iii) any and all information and documents relating to patents, trademarks, copyrights and other intellectual rights that were owned, licensed or used by Excapsa in its respective businesses, whether registered in the name of Excapsa or otherwise; (iv) any and all data storage media and programs containing any such information; and (v) any other records of every kind and nature relating to the Property or the businesses carried on by Excapsa (Items (i), (ii), (iii), (iv) and (v) above being collectively, the "Information"); and (vi) all monies, cheques, post dated cheques, and remittances of every kind and nature, whenever and howsoever arising in respect of the Property and to provide or permit the Liquidator to make, retain and take away copies thereof, and allow the Liquidator immediate, continued and unrestricted access to the Property and that they must grant to the Liquidator access to and use of accounting, computer, software and escrow facilities relating thereto promptly at the request of the Liquidator, provided that, in the case of Property in the hands of external professional advisors to Excapsa who are Affected Persons, the Liquidator shall leave a copy of any such Property, if capable of being copied, with such Affected Persons, who shall continue to treat all such Property as confidential.

35. THIS COURT ORDERS that the Affected Persons be and are hereby restrained and enjoined from disturbing or interfering with the Property and the Liquidator and with the exercise of the powers and authority of the Liquidator conferred hereunder, and to the extent required to effect the provisions hereof, the Affected Persons are hereby relieved of the powers conferred on such Affected Persons by virtue of any office or position they may hold relating to Excapsa.

36. THIS COURT ORDERS that if any of the Information is stored or otherwise contained on a computer or other electronic system of information storage, and if the

Liquidator has not otherwise been given timely access to the Information, Excapsa and the Affected Persons shall forthwith give unfettered access to the Liquidator for the purpose of allowing the Liquidator to obtain a full copy of the Information whether by way of printing the Information on to paper or making copies of computer disks or such other manner of retrieving and copying the Information as the Liquidator in its discretion deems expedient. For the purposes of this paragraph, Excapsa and the Affected Persons shall provide the Liquidator with all such assistance in gaining access to the Information as the Liquidator may in its discretion require, including, without limiting the generality of the foregoing, providing the Liquidator with Instructions on the use of any computer or other system and providing the Liquidator with any and all access or other codes as may be required to gain access to the Information.

IX. LIMITATIONS OF ACTIONS

37. THIS COURT ORDERS that, without limiting the generality of any of the provisions hereof, no one claiming an interest in the Property, or any part or parts thereof, shall be at liberty to exercise any rights in respect of such interest, including without limitation any right to possession of such Property, or any part or parts thereof, except with the prior written consent of the Liquidator or with leave of this Court being first sought and obtained on at least seven days' notice to the Liquidator.

38. THIS COURT ORDERS that no legal actions, administrative proceedings, self-help remedies, or any other acts, proceedings or private remedies including, without limitation, the exercise of any landlord's right to distrain or terminate any lease, the termination of any contract, including any contract of insurance of Excapsa or in which Excapsa is named or unnamed insured or from which Excapsa may derive a benefit, the exercise of any right of set-off, the exercise of any construction, repair, storage or other lien, the prosecution of any counterclaim or the commencement or continuation of any proceedings under any environmental regulation or similar statute in any jurisdiction in which the Property may be located, shall be taken or continued against Excapsa or the Liquidator, with respect to the Property or any part thereof except with the prior written consent of the Liquidator or with leave of this Court being first sought and obtained on at

least seven days' notice to the Liquidator, provided, however, that any recognized public authority taking such action solely to protect imminent and material danger to life, health, limb or property, whether pursuant to Environmental Laws or otherwise, shall not be so restrained.

IX. MISCELLANEOUS

39. THIS COURT ORDERS that the Liquidator shall, in concert with Computershare or such other transfer agent as Excapsa may retain from time to time, establish procedures for the transfer of shares of Excapsa, including, without limiting the generality of the foregoing, procedures to confirm share ownership by transferors and transferees and procedures to ensure that all transfers of shares comply with securities laws and regulations.

40. THIS COURT ORDERS that, without limiting the generality of any of the provisions hereof, all persons, firms and corporations including, without limitation, equipment lessors and Affected Persons (collectively the "Persons"), be and they are hereby restrained and enjoined from varying, amending, terminating, cancelling or breaching any agreements with Excapsa in respect of any of the Property. In addition, such Persons are enjoined from disturbing or interfering with utility services, including but not limited to the furnishing of fuel, gas, oil, heat, electricity, garbage collection, water, cable televisions, computers, telephones, telecopiers (at former and present telephone numbers) or any other utilities of like kind, furnished up to the present date to Excapsa, provided nothing herein shall be construed as (i) prohibiting a person from requiring payments to be made in cash for goods, services, use of leased or licensed Property or other valuable consideration in respect of obligations incurred from and after the date of this Order; or (ii) requiring the further advance of money or credit.

41. THIS COURT ORDERS that all Persons shall continue to perform and observe all terms, conditions and provisions contained in any agreement with Excapsa in respect of any of the Property subject to the obligation of the Liquidator to pay for goods and services required by the Liquidator to be supplied to the Liquidator, for the period commencing with the date of this Order, and all Persons are restrained from disturbing

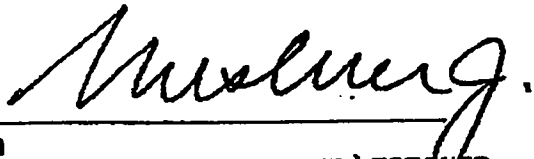
or otherwise interfering with the possession, use or occupation, as the case may be, by the Liquidator of any Property leased by Excapsa, subject to the obligation of the Liquidator to pay rent, as the case may be, for the period commencing with the date of actual occupation, use or possession, as the case may be, of such Property by the Liquidator at the rate presently payable by Excapsa.

42. THIS COURT ORDERS that liberty be reserved to any interested person or persons to apply to this Court for further or other orders on at least seven days' notice to the Liquidator.

43. THIS COURT ORDERS that the Liquidator be at liberty and is hereby authorized and empowered from time to time to apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

44. THIS COURT ORDERS that in the event there is insufficient funding available to the Liquidator to perform all of its obligations hereunder or there is a determination by the Liquidator that continuing to act as Liquidator would be impractical or of no utility, leave is hereby granted to the Liquidator to apply to this Court for an Order amending this Order, terminating its appointment as Liquidator of the Property, substituting some other party as Liquidator, or for such other Order as is just in the circumstances, such motion to be on such terms as to notice as this Court shall direct.

45. THIS COURT ORDERS that in the event that the Liquidator resigns or is removed as contemplated by the Plan of Liquidation and Distribution, any Inspector or other person or entity authorized pursuant to the CBCA may apply to this Court for an order appointing a replacement Liquidator to carry out the terms of this order and to take such other actions as this Court deems appropriate.



Schedule A: Plan of Liquidation and Distribution
Schedule B: Claims Procedure/Form of Notice of Claims
Schedule C: List of Indemnification Agreements

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

NOV 30 2006

PER/PAR: 

SCHEDULE "A"

EXCAPSA SOFTWARE INC.

PLAN OF LIQUIDATION AND DISTRIBUTION

This Plan of Liquidation and Distribution is adopted by the Board of Directors (the "Board") of Excapsa Software Inc. ("Excapsa" or the "Company") as of the last date set forth below.

RECITALS

1. Due to a change in the legislation passed in the United States as well as uncertain commercial considerations, the Company undertook a strategic review to assess and evaluate the impact of this legislation and the other commercial considerations. After considering the foregoing issues, and given the stated intention of the Board to comply fully with the spirit and intent of all legislation applicable to the Company, it was the consensus of the Board that a sale of all of the Company's operating assets would provide Shareholders with the best possible return on their investment in the exceptional circumstances facing the Company.
2. Accordingly, after consulting with its business and legal advisors, Excapsa disposed of its operating subsidiaries effective October 12, 2006 in accordance with purchase agreements (the "Purchase Agreements") by and between Excapsa and Blast Off Limited (the "Buyer").
3. Excapsa is required to pay certain liabilities, honour its current liabilities and pay all wind-down costs (collectively, the "Liabilities") and is entitled to certain consideration from the Buyer (the "Consideration") pursuant to the transaction contemplated by the Purchase Agreements (the "Transaction").
4. Excapsa is a holding company. As a result of the Transaction, Excapsa no longer has an operating business.
5. The Board desires to realize maximum value for the holders of Excapsa's capital stock (the "Shareholders") and, accordingly, it is deemed advisable for Excapsa to collect in its property, provide for payment or discharge of its liabilities and distribute its remaining property to the Shareholders, and dissolve under applicable law (the "Liquidation and Distribution").
6. It is deemed to be in the best interests of all stakeholders for the Liquidation and Distribution to proceed as soon as practicable and, to that end, for Excapsa to implement a plan of liquidation and distribution (the "Plan of Liquidation and Distribution"), which shall include transitioning the implementation of the Plan of Liquidation and Distribution, including management of the payment of the ongoing Liabilities and the collection of the Consideration, to a trustee for the

Company as further described below (the "Trustee"). The Trustee shall be independent of the Board and management of Excapsa.

7. The Company intends to apply to the Ontario Superior Court of Justice (the "Court") for an order providing for the Court's supervision of this Plan of Liquidation and Distribution.

PLAN OF LIQUIDATION AND DISTRIBUTION

1. **Effective Date.** This Plan of Liquidation and Distribution is hereby adopted and shall become effective on the date on which the approval of the Transaction by the Shareholders is obtained (the "Effective Date"). The Shareholders shall also be requested to approve the cancellation of the admission of the Company's common shares to trading on AIM and (subject to paragraph 4 below) to ratify this Plan of Liquidation and Distribution.

2. **Termination of Management.** All employees and independent contractors of the Company shall be terminated as of the Effective Date, other than those employees and independent contractors who are requested by the Trustee to remain in service to assist in the Liquidation and Distribution and agree to do so. The Trustee is empowered to fix the terms of the continued employment engagement of such individuals. In connection with the termination of all employees and independent contractors of the Company, the Company shall honour and fully comply with all existing agreements with such parties.

3. **Approval of Change of Name.** Following approval of the Sale, the Company shall change its name to "6356095 Canada Inc." (the "Name Change").

4. **Appointment of Trustee.** The Board has declared its intention to ensure that the Plan of Liquidation and Distribution is effected in a manner that is fair and equitable for all stakeholders of the Company. To that end, the directors have appointed the Trustee, effective immediately prior to the granting of the Court Order (as defined below), to implement the Plan of Liquidation and Distribution. The initial Trustee, as recommended by the Board, is Mintz & Partners Limited. The Trustee shall be a liquidator within the meaning and for the purposes of the *Canada Business Corporations Act*. The approval by the Shareholders of this Plan of Liquidation and Distribution constitutes ratification of the appointment of the initial Trustee, who shall serve until removal in accordance with this Plan of Liquidation and Distribution. This appointment, the Plan of Liquidation and Distribution, and implementation of the Plan of Liquidation and Distribution shall be conducted, to the extent practicable, under the supervision of the Court pursuant to an order of the Court (the "Court Order").

5. **Scope of Court Order.** The Court Order may address such procedures, actions and other matters relating to the Liquidation and Distribution as the Court deems appropriate including, without limitation, the appointment of inspectors to oversee the activities of the Trustee, the billing and payment of the reasonable fees and expenses of the Trustee, its separate counsel (if appointed), Excapsa's counsel, and other

applicable advisors (including the Inspectors) and applicable taxes thereon. The Court's supervisory discretion in connection with the implementation of the Plan of Liquidation and Distribution and all related matters shall not be fettered, and the Court shall be permitted to modify or dispense with any part of the Plan of Liquidation and Distribution as it deems advisable including dispensing with any approvals of the Shareholders required under applicable law.

6. **Initial Distribution to Shareholders.** Excapsa will make an initial distribution to the Shareholders as soon as practicable after the Effective Date in an amount to be determined by the Board and/or the Trustee and, if deemed necessary or appropriate, ratified pursuant to the Court Order. The remaining funds of the Company from time to time will be distributed to the Shareholders by the Trustee in accordance with Section 8 of this Plan of Liquidation and Distribution and, if applicable, the Court Order. The form of distributions shall be determined by the Trustee in consultation with its advisors. The initial distribution shall be made within 90 days of the Effective Date or as soon as practicable thereafter as determined by the Trustee and, if applicable, pursuant to the Court Order.

7. **Management of Remaining Business.** The Trustee shall pay or satisfy all Liabilities, including all wind-down costs of the Company, and shall collect the Consideration on behalf of Excapsa as soon as is practicable. The Trustee shall manage the affairs of Excapsa with the goal of maximizing distributions to the Shareholders. The Trustee shall maintain such reserves as are reasonably deemed necessary to cover contingent liabilities of Excapsa. The Trustee may set aside amounts in trust accounts for extended periods of time as reasonably deemed necessary by the Trustee to cover contingencies and costs associated with the Liquidation and Distribution.

8. **Periodic Distributions.** The Trustee is directed to make distributions to the Shareholders, including "capital gains dividends" out of the Company's capital gains dividend account, as soon as practicable after receipt of any amount on account of the Consideration and in any event no less frequently than quarterly unless otherwise determined pursuant to this Plan of Liquidation and Distribution or the Court Order.

9. **Release and Indemnity.** Subject to the terms of the Court Order, the Company releases, holds harmless, and indemnifies the Trustee and the Inspectors from and against all liabilities, claims and costs of any nature arising from the Trustee's execution of the Plan of Liquidation and Distribution.

10. **Power of Attorney.** Each of the Trustee and any officer or employee of the Company designated in writing by the Trustee is hereby appointed as the agent and attorney-in-fact to act for and on behalf of the Company, with authority including, but not limited to; the right to give and receive all notices and to execute all documents pursuant to the Plan of Liquidation and Distribution or as contemplated by the Court Order, to agree to, negotiate and enter into settlements and compromises of claims against the Company and to comply with orders and decrees with respect to such

claims, and to take all actions necessary or appropriate in the attorney's judgment for the accomplishment of the foregoing. A decision, act, consent or instruction of the attorney authorized hereunder shall constitute a decision of the Company and shall be final, binding and conclusive upon the Company. Without limiting the generality of the foregoing, each attorney authorized hereunder shall have full power and authority, on behalf of the Company and its successors, to interpret all the terms and provisions of the Plan of Liquidation and Distribution, to negotiate and compromise any dispute which may arise under the Plan of Liquidation and Distribution or in connection with the Court Order, and to sign any releases or other documents with respect to any such dispute.

11. **Inspectors and Directors.** The Company will continue to have a board composed of three directors to assist the Liquidator in connection with the Plan of Liquidation and Distribution. The directors may fix their own remuneration for acting as such at reasonable levels. The exercise of the powers of the directors of the Company shall be subject to the Act and the Court Order. In addition, the Trustee shall arrange for the appointment from time to time of inspectors to supervise and assist the Trustee in connection with the implementation of the Plan of Liquidation and Distribution (the "Inspectors"). The initial Inspectors shall be Gail Gleed, the current Chief Financial Officer of the Company and a shareholder, James Ryan, the current Chief Executive Officer of the Company, and John K. Fitzgerald, an independent attorney. The approval by the Shareholders of this Plan of Liquidation and Distribution constitutes approval of the appointment of the three Inspectors, who shall serve until they are unable or unwilling to continue to act as such. For at least 6 months after the approval of the Plan of Liquidation and Distribution, and in any event until the initial distribution to the Shareholders of the Company, the Trustee shall meet with the Inspectors no less frequently than once per month. Thereafter, meetings between the Inspectors and the Trustee shall take place on an as needed basis but in any event at least quarterly. Any Inspector who is not also on retainer to the Company shall be paid for his or her services as such at the per diem rate of US\$1,200 or such greater number as the Trustee approves based on its determination that more involvement of such Inspectors is required in connection with the implementation of the Plan of Liquidation and Distribution. The Trustee shall appoint replacement Inspectors who shall be Shareholders or their designees. Failing such appointment, any shareholder of the Company shall be entitled to apply to a court of competent jurisdiction for an order appointing a replacement Trustee. The Inspectors shall be paid reasonable fees by the Company for their services as such and shall remain in service until the final distribution to the Shareholders. At any time that the Company has assets or deferred payments owed to it, the Inspectors shall have the right to petition the Court or request the Shareholders to remove or replace the Trustee.

12. **Removal of Trustee.** At any time that the Company has assets or deferred payments owed to it, the Trustee may be removed by: (a) court order; (b) the majority vote of the Shareholders present in person or by proxy at a special meeting of the Shareholders; or (c) a written notice of removal signed by Shareholders holding more than 50% of the outstanding shares of the Company's capital stock. A successor

- 5 -

Trustee shall then be appointed by the Shareholders of the Company or the Court, as applicable.

The foregoing Plan of Liquidation and Distribution was adopted by the Board of Directors of Excapsa Software Inc. as of the 30th day of October, 2006.

BY THE ORDER OF THE BOARD

Per. Paul A. Pity, Secretary

Schedule "B"

**IN THE MATTER OF THE LIQUIDATION OF
6356095 CANADA INC.
(FORMERLY KNOWN AS
EXCAPSA SOFTWARE INC.)**

**Notice to Shareholders, Creditors
and all others having claims against the
Corporation and to all persons indebted to or in
possession of property of the Corporation**

TAKE NOTICE THAT the shareholders of Excapsa Software Inc., at a special meeting duly called for the purpose and held on the 24th day of November, 2006, passed a special resolution requiring the Corporation to be voluntarily liquidated and dissolved under the provisions of section 211 of the Canada Business Corporations Act (the "Act") and appointing Mintz & Partners Limited of Toronto, Ontario as Liquidator, effective November 30, 2006.

A special resolution was also passed authorizing the change of the corporation's name from Excapsa Software Inc. to 6356095 Canada Inc. (the "Corporation").

On November 30, 2006, the Honourable Justice _____ of the Ontario Superior Court of Justice (the "Court") approved and ratified the appointment of Mintz & Partners Limited as Liquidator of the Corporation and issued an order granting the Liquidator authority to carry out the liquidation and dissolution of the Corporation under supervision of the Court.

Notice is hereby also given that, pursuant to an order of the Court dated November 30, 2006, all creditors and all others having claims against the Corporation (whether liquidated, unliquidated, future, or contingent) are required to file and prove their claims with the Liquidator on or before the 15th day of February, 2007 (the "Claims Deadline").

And further take notice that after the Claims Deadline, the Liquidator will proceed to distribute the property of the said Corporation among the persons entitled thereto, having regard only to the claims of which the Liquidator shall then have had notice, and that the Liquidator and the Corporation will not be liable for the said property or any part thereof to any person or persons who has failed to submit a claim on or before the Claims Deadline.

Notice is hereby given that all persons that are

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Indebted to the Corporation are required to forthwith render an account and pay to the Liquidator (at the address below) any amount owing to the Corporation.

Notice is also hereby given that all persons that are in possession of property of the Corporation are required to forthwith deliver up to the Liquidator (at the address below) any such property of the Corporation.

Dated at Toronto, the 15th day of December, 2006.

MINTZ & PARTNERS LIMITED
In its capacity of Liquidator of
6356095 Canada Inc.
1 Concorde Gate, Suite 200
North York, Ontario, M3C 4G4
Tel: (416) 391-2900
Fax: (416) 644-4303

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SCHEDULE C: Excapsa Indemnification Agreements

<u>Indemnitee</u>	<u>Date of Agreement</u>
Peter S. Jensen	September 19, 2005
Norman D. Inkster	September 19, 2005
Bernard R. Wilson	September 19, 2005
David Peterson	September 19, 2005
James A. Ryan	September 19, 2005
Chris Welch	August 1, 2006
Uri Kozai	October 1, 2005
Gail Gleed	October 1, 2005
Daniel Friedberg	October 1, 2005
Melissa Gaddis	October 1, 2005
John K. Fitzgerald	November 24, 2006

JAMES RYAN
Applicant and **EXCAPSA SOFTWARE INC.**
Respondent

Court File No: 06-CL-6752

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

ORDER

Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, Ontario M5H 3C2

John N. Birch LSUC#: 38968U
Tel: 416 860-5225
Fax: 416 840-3057

Solicitors for the Applicant

Served on Fax:

TAB B

This is Appendix B of the Second Report to the Court of XMT Liquidations Inc.

Amended and Restated Order, dated December 22, 2006

Court File No. 06-CL-6752

ONTARIO
SUPERIOR COURT OF JUSTICE-COMMERCIAL LIST

THE HONOURABLE MADAM) THURSDAY, THE 30TH
JUSTICE MESBUR) DAY OF NOVEMBER, 2006

BETWEEN:

JAMES RYAN

Applicant

- and -

6356095 CANADA INC.

Respondent



AMENDED AND RESTATED ORDER

THIS APPLICATION, brought by James Ryan, for an order pursuant to section 211(8) of the *Canada Business Corporations Act* (the "CBCA") to continue the voluntary dissolution and liquidation (the "Dissolution") of the respondent, 6356095 Canada Inc. (formerly known as Excapsa Software Inc.) ("Excapsa") (which was approved by Excapsa's directors and by its shareholders at a meeting of shareholders on November 24, 2006), under the supervision of the Court, including approving and ratifying the appointment of Mintz & Partners Limited ("Mintz") as a court-appointed liquidator and authorizing and empowering Mintz as liquidator to carry out and complete the Dissolution in accordance with (a) a plan of liquidation and distribution dated as of October 30, 2006 (the "Plan of Liquidation and Distribution") attached hereto as Schedule "A" and (b) the CBCA, as amended, and for other relief, was initially heard on November 30, 2006 at 330 University Avenue, Toronto, Ontario, with the applicant and Mintz subsequently appearing before this court on December 22, 2006, to seek an Amended and Restated Order.

