

**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**

**SUPPLEMENTAL REPORT TO THE
SECOND REPORT TO THE COURT OF XMT LIQUIDATIONS INC.**

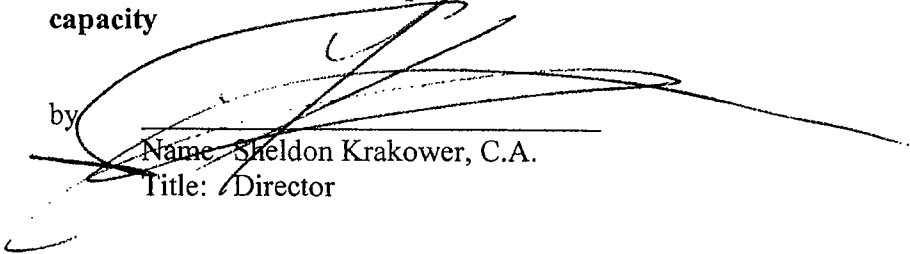
Date of Report: September 28th, 2009

1. The first attachment to Appendix D of the Second Report to the Court of XMT Liquidations Inc., in its capacity as the court appointed liquidator of the Respondent, formerly known as Excapsa Software Inc. (the "**Liquidator**"), dated September 18, 2008, being pages from and including 88 to and including 92 of the motion record of the Liquidator for the motion in these proceedings returnable on October 1, 2009, was the incorrect attachment and should have been the Amendment to Sale Documents Agreement dated as of September 22, 2008 as attached hereto as Appendix "A".

All of which is respectfully submitted this 28th 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 – Amendment to Sale Documents Agreement dated September 22, 2008.

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

Amendment to Sale Documents Agreement dated September 22, 2008.

AMENDMENT TO SALE DOCUMENTS

This Amendment (the "Amendment") is made as of the last date set forth below, by and among 6356095 Canada Inc., formerly known as Excapsa Software Inc., a corporation continued under the laws of Canada (the "Seller"), Blast Off Limited, a corporation established under the laws of Malta (the "Buyer") and Tokwiro Enterprises ENRG, a sole proprietorship registered under the laws of the Province of Quebec ("Tokwiro"). The Seller and the Buyer are referred to herein as the "Parties".

WHEREAS, the Buyer and the Seller entered into a Stock Purchase Agreement effective October 12, 2006 pursuant to which the Seller sold all of its shares of Game Theory Holdings Ltd. ("GTHL") and Excapsa Services Inc. to the Buyer, and in connection therewith, the Buyer, its Subsidiaries and the Seller have also entered into, or agreed to enter into, an Addendum, Promissory Note and Security Agreement of even date and certain other agreements, all as more particularly described in Schedule "A" hereto (together referred to herein collectively as the "Sale Documents");

AND WHEREAS, Tokwiro has purchased all of the outstanding shares of the Buyer (the "Secondary Transfer"), which sale remains subject to the subsequent approval of this Amendment;

AND WHEREAS, the Seller is in liquidation in virtue of a Court Order made on November 30, 2006 by the Honourable Madam Justice Mesbur of the Ontario Superior Court of Justice ("Commercial List") (the "Court") as amended by Orders dated December 22, 2006 and August 21, 2008;

AND WHEREAS, XMT Liquidations Inc. (the "Liquidator") was appointed as the substitute liquidator of the Seller by order of the Court on August 21, 2008, replacing Mintz & Partners Limited;

AND WHEREAS, the Buyer has asserted certain claims against the Seller which claims are more fully set forth in that certain letter of the Buyer's legal counsel (Messrs. Paliare Roland Rosenberg Rothstein LLP) dated August 23, 2008 claiming damages in an amount of \$US 81,400,000 (hereinafter the "Buyer's Claim");

AND WHEREAS, the Buyer has ceased making instalment payments under the Promissory Note since October 2007, other than a partial payment made in December 2007;

AND WHEREAS, the Seller does not admit or acknowledge the validity of the Buyer's Claim;

AND WHEREAS, the Parties wish to clarify and modify certain security obligations required by the Sale Documents;

AND WHEREAS, the Parties desire to amend the Sale Documents and resolve their outstanding difference (including the Buyer's Claim) as hereinafter provided.

NOW THEREFORE, in consideration of the covenants set forth herein, such consideration constituting good, valuable, and adequate consideration, the Parties hereby agree as follows:

1. Disposition of the Buyer's Claim and Confirmation of Promissory Note. The Parties agree to settle the Buyer's Claim as follows:

- (i) The Seller shall pay the Buyer the sum of US\$14,625,000 (the "Settlement Payment"). The Settlement Payment shall be made on the business day immediately following satisfaction of the "Liquidator's Conditions Precedent" (as defined below) to the Settlement Payment (the "Payment Date"). It is expressly agreed by the Parties that the Settlement Payment constitutes a reduction of the Purchase Price under the Stock Purchase Agreement. The Stock Purchase Agreement as well as the Promissory Note are amended accordingly;
- (ii) The Buyer shall use its best efforts to cause the delivery to the Seller of duly executed stock powers and an agreement to sell shares for cancellation, each in a form (including the guarantee of signature thereon) acceptable to the Seller, together with the related share certificates in respect of approximately (but not less than) 6,900,000 shares in the capital stock of the Seller to be purchased for cancellation by the Seller for the aggregate sum of US\$1.00. The said shares belong to third parties known to the Parties who have consented to such transfer, provided that the other documentation required by the Seller is in order (including a sworn declaration of loss from the registered holder); the Seller agrees to waive delivery of share certificates for up to 4,400,000 of the said 6,900,000 shares;
- (iii) The Settlement Payment shall be made on the Payment Date to Tokwiro by wire transfer to the account(s) designated by Tokwiro, and the Buyer consents to and directs the Seller to effectuate such payment to Tokwiro;
- (iv) The Buyer shall use its best efforts to arrange for certain shareholders of the Seller to pledge approximately (but not less than) 49,300,000 outstanding shares in the capital stock of the Seller (the "Pledged Shares") as collateral security for the next US\$10,250,000 of payments due hereafter on account of the principal portion of the indebtedness under the Promissory Note (including the One-Time Payment as defined below) (such portion of the indebtedness is referred to herein as the "Pledge-Backed Indebtedness") by: (a) causing the delivery of stock powers in a form acceptable to the Seller to transfer such shares to a new corporation approved by the Seller ("Newco"); (b) causing Newco to execute a limited recourse guarantee and stock pledge agreement in forms acceptable to the Seller (collectively the "Securities Pledge Agreement") in respect of such shares; and (c) causing delivery to the Seller of duly executed stock powers (including the guarantee of signatures) in forms satisfactory to the Seller together with the

related share certificates in respect of the pledged shares. The said shares belong to third parties known to the Parties who have consented to such transfer;

- (v) The Indebtedness of the Buyer under the Promissory Note is hereby confirmed and is in the principal amount of US\$108,869,257 on the date hereof. The Promissory Note will be amended as hereinafter provided; and
- (vi) The Buyer will satisfy the Liquidator's Conditions Precedent set forth in Section 13 hereof.

For further clarity, the Parties have expressly agreed that there shall be no novation of the obligations created pursuant to the Sale Documents including, without limitation, the obligations of the Buyer pursuant to the Promissory Note. The failure of the Buyer to deliver or cause the delivery of the agreements, instruments and documents referred to in subsections (ii) and (iv) above shall not constitute a breach of the Buyer hereunder, provided that the Buyer satisfies the "Liquidator's Condition Precedent" relating to such items. It is expressly agreed by the parties that the Buyers Claim is settled and the Settlement Payment will be made without any admission of liability whatsoever, but rather to buy the peace. Each of the Seller and the Buyer expressly denies any liability or wrongdoing on its own part or by any of its current and former directors, officers and employees in relation to any matter contemplated by the Buyer's Claim.

2. **Definitions.** In this Amendment: (i) the term "Software" means the online gaming software indirectly transferred by the Seller to the Buyer by way of the sale of the shares of GTHL pursuant to the Sale Documents and now owned by Game Theory Limited and currently used at the domain names Ultimatebet.com, Ultimateblackjack.com and Ultimatepoker.com (the "Websites") together with any updates, upgrades, modifications and improvements thereto and all related materials and documentation; and includes, without limitation, all applications of such Software (including poker, blackjack, tournament blackjack, game engine, and all back office applications), and all operating systems, interfaces, development tools, test environments (including hardware), content and other software code and all related materials and documentation, whether in object code, source code or other form, or in SQL, hypertext or wireless mark-up, xml or other language; and (ii) "Subsidiary" and "Affiliate" have the meanings ascribed to those terms in the *Canada Business Corporations Act*, as amended from time to time, and "Subsidiaries" and "Affiliates" have similar extended meanings.

3. **Ownership of the Buyer.** The Buyer hereby represents and warrants to the Seller that the Buyer is beneficially owned by the sole owner of Tokwiro and that the Software, as well as the Secured Stock and the Secured Assets (as defined in Section 10 below) are solely beneficially owned, directly or indirectly by the entities designated by the Buyer to the Seller, all of which such entities shall be subject to the obligations of the Buyer under this Agreement and shall execute counterpart(s) to this Amendment. No changes shall be made to the owner(s) of the Secured Stock and the Secured Assets without the prior written approval of the Seller, which may not be unreasonably withheld and, in order to provide such consent, the Seller shall, acting reasonably, be satisfied that all of its rights and interests hereunder including, without limitation, the security interests in the Secured Stock and the Secured Assets (as hereinafter defined) are

unimpaired and remain fully perfected and enforceable in accordance with the provisions of this Agreement and any other agreement, instrument or document delivered pursuant hereto.

4. Correction. Section 1 of the Promissory Note is amended by deleting the words "One Hundred and Twenty Million" and substituting the words "One Hundred and Twenty Five Million".

5. Interest. Section 4, the last two sections of Section 10 and the first sentence of Section 13 of the Promissory Note are deleted in their entirety and restated as follows:

"Prior to a Default, interest shall accrue on the Indebtedness from the date of this Promissory Note at the greater of: (a) the simple rate of 12% per annum compounded annually; or (b) the official Bank Rate of the Bank of England paid on commercial bank reserves on the first business day of each month while the Promissory Note is outstanding (as reported through www.bankofengland.co.uk or any replacement official website) plus 3 percentage points per annum compounded annually (ie. if the Bank of England rate is 5.25% per annum on the first business day of a month, then the rate pursuant to clause (b) would be 8.25% per annum). After Default, interest shall accrue on the Indebtedness at the rate of the lesser of 18% per annum or the maximum rate permitted under applicable law, compounded annually. The Parties acknowledge that the Promissory Note shall be further amended to the extent necessary to reflect that all payments made under the Promissory Note (including any payments made prior to the date of this Amendment) shall first be applied to pay down principal, and thereafter to pay down interest and/or any other amounts owed under the Promissory Note. Within ten (10) days of the end of each month, the Seller or its authorized representatives shall provide an invoice to the Buyer and Tokwiro for the interest accrued in the immediately preceding month setting forth the applicable interest rate for such month based on the greater of the amounts determined pursuant to clauses (a) and (b) above, and each invoice shall, absent manifest error, be conclusive and binding on the Seller and the Buyer, provided that the failure of the Seller or its authorized representatives to issue one or more monthly invoices for accrued interest shall not resile, impair or otherwise affect the right of the Seller to recover such accrued interest. Subject to Section 7 of this Promissory Note, interest accrued on the Indebtedness up to the date hereof (as detailed below) and interest accruing on the Indebtedness after the date hereof shall become due and be paid by the Buyer to the Seller at the end of the term of the Promissory Note. In the event of a Default, the Buyer shall be entitled to immediately recover accrued and unpaid interest in full and interest accruing after Default shall be payable by the Buyer on demand. Interest on overdue interest, if any, shall, as the case may be, accrue and be paid at the pre-Default rate or the post-Default rate specified in this Section 4. The Buyer acknowledges that, at the date hereof, it is indebted to the Seller for interest in the amount of US\$24,234,795.39, accrued from October 12, 2006 to September 30, 2007 at the Default rate and interest from October 1, 2007 to the date hereof at the post-Default rate, such amount to be

payable at the end of the term of this Promissory Note or after Default as hereinafter provided."

6. Limitations Act, 2002 (Ontario). The Promissory Note is amended by the addition of the following provision designated as Section 14 thereof:

"14. The Buyer acknowledges and agrees that the Seller may demand payment in accordance with the terms of this Promissory Note and commence proceedings against the Buyer in respect of any claim pursuant to this Promissory Note at any time while any of the Indebtedness and other amounts owing hereunder remain unpaid, notwithstanding any limitation period under the *Limitations Act, 2002* (Ontario) or any other applicable law and, to the fullest extent permitted by law, all limitation periods under such Act or other applicable law are hereby expressly excluded. For greater certainty, the Buyer acknowledges that this Promissory Note is a "business agreement" within the meaning of subsection 22(6) of the *Limitations Act, 2002* (Ontario)."

7. Payments. No amounts are payable by the Buyer under the Sale Documents with respect to periods prior to the Commencement Date (as defined below) and the Seller hereby waives all prior payment defaults under the Promissory Note. Notwithstanding the foregoing, the Buyer shall pay the Seller one payment of US\$500,000 sixty (60) days after the Settlement Payment is received by the Buyer (the "One-Time Payment"). The One-Time Payment shall be considered a payment on account of the principal amount of the Indebtedness. Section 3 of the Promissory Note is deleted in its entirety and restated in the following provisions, designated as Sections 3(a) and (b):

(a) The Buyer shall resume payments on account of the principal amount of the Indebtedness by way of instalments in the amount of US\$500,000 per month. The first monthly principal instalment shall be due and payable on the first day of January 2009 (the "Commencement Date"). All subsequent monthly principal instalments shall be due and payable on or before the last day of each calendar month until the Indebtedness is paid-in-full, commencing in February of 2009.

(b) If the January 2009 principal instalment is paid in full, the Buyer may at its option, commencing in February 2009, defer up to two (2) monthly principal instalments per year (i.e. up to US\$1,000,000 per year in aggregate). If the Buyer wishes to defer a monthly principal instalment hereunder, it shall provide the Seller with a written notice prior to the due date of such instalment. This right to defer principal instalments may not be exercised more than once per calendar quarter and not after the occurrence of a Default under the Promissory Note as contemplated by Section 7 thereof. For certainty, the Buyer must pay the Seller at least US\$5,000,000 on account of the principal amount of the Indebtedness (the "Minimum Annual Payment") during each consecutive twelve (12) month period following the Commencement Date. In addition, in order to defer monthly principal instalments as provided above, the following additional conditions must apply or be complied with: (a) the Buyer and its Subsidiaries and/or its/their

permitted assigns or successor(s)-in-interest shall remain actively in business and put forth best efforts to make the next required monthly principal instalment and pay all arrears in respect of prior periods; and (b) the Buyer shall not make any long-term payments of debt (including a payment on account of the Long-Term Debt as hereinafter defined), prepayments of capital leases or similar obligations or pay any dividends or profit, other distributions or returns of capital in any manner, directly or indirectly, (collectively "Distributions") to its shareholders, debt holders or other stakeholders (collectively the "Other Capital Contributors"), or make any material acquisitions of any other business, until all prior monthly principal instalments due to the Seller are paid in full. The Buyer shall provide the Seller with reasonable evidence in support of the Buyer's contention that the conditions in clauses (a) and (b) apply or are being complied with. In addition, the Buyer shall provide a copy of this Amendment to all of the Other Capital Contributors. Any excess amounts over and above the Minimum Annual Payment paid by the Buyer in any period shall be applied first to arrears due in respect of prior periods, and then to reduce the Minimum Annual Payment in future period(s), provided that the amount of any such reduction in the Minimum Annual Payment in a future period shall not be taken into account in determining whether the Buyer is entitled to the prepayment incentive pursuant to Section 5 of the Promissory Note (i.e. the Buyer must actually pay US\$12,000,000 in a calendar year to earn such incentive).

(b) The Buyer represents and warrants to the Seller that at the date hereof the Buyer or its affiliates has another debt obligation in the face amount of \$250 million plus interest thereon owed to a third party known to the Parties (such indebtedness plus interest accrued or accruing thereon and all costs of enforcement being hereinafter referred to as the "Long Term Debt"). The Buyer covenants and agrees that, in any given calendar year commencing on January 1, 2009, the Buyer, its Subsidiaries, and Tokwiro shall not, in the aggregate, make payments on account of the Long Term Debt, for principal, interest, costs of enforcement or otherwise, in excess of the aggregate of the payments made by the Buyer to the Seller in the same calendar year pursuant to this Promissory Note; provided however, that to the extent that the Buyer or Tokwiro pays a fine in excess of US\$500,000 to its gambling commission as a result of the ultimate bet fraud investigation currently being conducted by such commission, an amount equal to such excess may be paid under the Long Term Debt and not under the Promissory Note provided that the Minimum Annual Payments are made and current under the Promissory Note.

8. Prepayment Incentive. Section 5 of the Promissory Note is deleted in its entirety and restated as follows:

"The Indebtedness may be prepaid in its entirety at any time without notice. Interest accrued on the amount prepaid shall be paid by the Buyer to the Seller together with such prepayment. The Buyer covenants that it will employ best efforts to attempt to prepay principal to the extent it has cash flow available to do

so. Partial or full payments in excess of US\$12,000,000 in any calendar year (calculated without taking into account any carry forward applied to the Minimum Annual Payment pursuant to Section 3 of the Promissory Note) shall reduce the outstanding indebtedness by 110% of such excess amount. For example only, total payments of US\$13,000,000 in any calendar year would reduce the outstanding indebtedness by \$13,100,000."

9. Promissory Note Default. Section 7 and the first sentence of Section 10 of the Promissory Note is deleted in its entirety restated as follows:

"7(a) The Buyer shall be in default under this Promissory Note upon the occurrence of any one or more of the following events (each, a "Default"):

- (i) the Buyer fails to pay any amount payable hereunder on the due date thereof (a "Payment Default"), except where a Payment Default is remedied ninety (90) days after a written notice of default is delivered by the Seller to the Buyer;
- (ii) the Buyer or any of its Subsidiaries defaults in the performance of or compliance with any of its material covenants, representations or obligations contained herein or in any of the Sale Documents, and in any such case the Buyer or the applicable Subsidiary does not remedy the default within ninety (90) days after a written notice of default is delivered by the Seller to the Buyer;
- (iii) Newco defaults in the performance of or compliance with any of its material covenants, representations or obligations contained in the Securities Pledge Agreement and does not remedy the default within ninety (90) days after written notice of default is delivered by the Seller to Newco and the Buyer, provided that the Seller's rights and remedies upon a Default pursuant to this section shall be limited as provided in Section 7(c) hereof;
- (iv) any of the Buyer or its Subsidiaries commits an act of bankruptcy within the meaning of any bankruptcy or insolvency legislation applicable to it or admits or acknowledges in writing its inability to pay its debts generally as they become due; or
- (v) the Buyer or any of its Subsidiaries ceases to carry on its business.

For the avoidance of doubt, the Buyer shall be considered to have remedied a Default pursuant to clause (i) and (ii) of this Section 7 only if the Buyer concurrently remedies any subsequent Defaults occurring within the ninety (90) day cure period. By way of illustration, if there is a Payment Default in respect of the US\$500,000 monthly instalment due on the last day of February 2009, the Buyer shall have until May 29, 2009 to remedy such Payment Default but shall only be considered to have done so if the \$500,000 monthly instalments due in March and April 2009 are paid in full on or before May 29, 2008 and the Buyer is not then otherwise in Default hereunder. The Seller shall

