

**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990 c. S.5, AS AMENDED**

- AND -

IN THE MATTER OF XPLORE TECHNOLOGIES CORP.

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Hearing dated January 23, 2006, the Ontario Securities Commission announced that it proposed to hold a hearing to consider whether pursuant to section 127 and section 127.1 of the *Securities Act*, R.S.O. 1990, C. S. 5, as amended (the *Act*), it is in the public interest to make an order that Xplore Technologies Corp. (“Xplore” or the “Company”):

- (a) be reprimanded for filing financial statements which, *inter alia*, were not prepared in accordance with generally accepted accounting principles; and
- (b) pay the costs of Staff’s investigation and the costs of the hearing in this matter.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff recommends settlement of the proceeding initiated against Xplore by the Notice of Hearing dated January 23, 2006 in accordance with the terms and conditions contained in this agreement. Xplore agrees to the settlement on the basis of the facts as

agreed to in Part III and consents to the making of an order in the form attached as Schedule A to this agreement on the basis of the facts contained in this agreement.

III. FACTS

Background

3. Xplore is a corporation amalgamated under the laws of Canada. It is listed on the Toronto Stock Exchange (“TSX”) and is a reporting issuer in Ontario as well as other provinces in Canada.

4. Xplore was incorporated under the laws of Ontario in August 1996 and was continued under the *Canada Business Corporations Act* and amalgamated under such Act in March 2000. Xplore is engaged in the business of the development, integration and marketing of rugged mobile wireless Tablet PC computing systems. Xplore’s products enable the extension of traditional computing systems to a range of field and on-site personnel, regardless of location or environment. Using a range of wireless communication mediums together with the Company’s rugged computing products, the Company’s customers are able to receive, collect, analyze, manipulate and transmit information in a variety of environments not suited to traditional non-rugged computing devices. Xplore’s customers are in the following markets: utility, warehousing/logistics, public safety, field service, transportation, manufacturing, route delivery, military and homeland security. The company sells its product through distributors referred to as Value Added Resellers (“VARs”) who have existing sales and local resource capabilities. The VARs have sales distribution agreements with Xplore and work closely with the company’s sales force to identify and sell its products to end consumers.

5. Xplore’s registered office is in Ontario and its head office was in Ontario until August 2004, when its head office was consolidated with its operations and management functions in Austin, Texas.

Improper Revenue Recognition

6. In respect of its 2002 fiscal year, Xplore filed financial statements disclosing revenue of approximately \$19.7 million. Included in this amount was approximately \$10 million of revenue improperly recognized under GAAP (as more fully described below). In fiscal 2003 and 2004, Xplore took back inventory representing approximately \$7.5 million of revenue receivable from its VARs. The approximately \$7.5 million receivable taken back was part of the original approximately \$10 million of overstated revenue accounted for in fiscal 2002. The difference between the approximately \$10 million of improperly recognized revenue and the subsequent revenue reversal of approximately \$7.5 million represents product for which Xplore was paid during 2003 and 2004 and for which revenue should have been appropriately recognized at that time. The “take-back” transactions were recorded as a reduction in revenue and accounts receivable.

7. According to GAAP, in a transaction involving the sale of goods, performance should be regarded as achieved when the seller of the goods has transferred to the buyer the significant risks and rewards of ownership, in that all significant acts have been completed and the seller retains no continuing managerial involvement in, or effective control over, the goods transferred, and when reasonable assurance exists regarding the measurement of the consideration that will be derived from the sale of goods, and the extent to which goods may be returned.

8. The approximately \$10 million which was recognized as revenue in 2002 (out of the \$19.7 million of total revenue in such fiscal year) and the \$7.5 million reduction of revenue transaction recorded in 2003 and 2004 did not comply with GAAP. With respect to the approximately \$10 million of improperly recognized revenue, the risks and rewards of ownership had not been transferred by Xplore to the VARs. There was still ongoing involvement with the product, and ultimate collection was not reasonably assured. The payment terms set out in the VAR agreements were generally not observed. In particular, the VARs did not pay substantially in accordance with the terms of the VAR agreements, nor did Xplore charge interest on the unpaid balance. Xplore did not require payment

according to the terms of the agreement. In essence, there was an implied understanding that payments were not due by the VARs until such time as the products were sold to the end customer. In short, the VARs acted as agents for Xplore and held inventory on consignment.

9. The overstated revenue in respect of the 2002 fiscal year in turn resulted in understated revenue in respect of the 2003 and 2004 fiscal years (which reflected the “take back” transaction described above and other consequential adjustments). Xplore’s financial statements for each of the 2002, 2003 and 2004 fiscal years were audited by Deloitte & Touche LLP and were accompanied by unqualified auditor’s reports.

10. In April 2005, Deloitte & Touche LLP resigned as Xplore’s auditors, and new auditors were retained. Such resignation was not as a result of any disagreement or unresolved issue. Restated audited comparative financial statements have been subsequently filed in November 2005 for each of the fiscal years 2002, 2003 and 2004, and restated interims were filed for the three month period and nine month period ended December 31, 2004.

11. The restated financial statements reflected (as described above) that revenue in respect of the 2002 fiscal year was materially overstated and that revenue in respect of the subsequent fiscal years was materially understated. As a result, the financial statements for each such fiscal year, taken separately, included material misstatements, although the effect of the misstatements in the financial statements in respect of the 2003 and 2004 fiscal years was to adjust for the overstatement in respect of the 2002 fiscal year (Xplore hereby acknowledging that the cumulative result as aforesaid did not alter its obligations under the Act to ensure that each such financial statement be free of material misstatements when filed).

Allegations

12. The specific allegation advanced by Staff against Xplore is that Xplore filed comparative financial statements for fiscal 2002, 2003, and 2004, and interim statements

for the quarter ended June 30, 2004, that reflected the accounting treatments described above, were materially misleading and were not prepared in accordance with GAAP. By way of example, the financial statements in respect of the 2002 fiscal year included a material misstatement of revenue, and therefore were contrary to sections 77 and 78 of the Act.

New Stakeholders and Related Factors

13. Xplore appointed a new chief financial officer in August 2004, and significant investment in Xplore has been made by a new investor group. In addition, an interim executive committee has been formed (which includes, among others, senior representatives of the new investor group) to collectively carry out chief executive officer responsibilities. As a result, there have been significant changes in the ownership and management stakeholders of Xplore.

14. These stakeholders have, on behalf of Xplore, devoted significant financial and non-financial resources (i) to co-operate fully with Staff in Staff's investigation of Xplore's financial disclosure and (ii) together with Xplore's new auditors, to finalize and file restated financial statements.

15. Xplore's board of directors appointed a special committee to consider and oversee appropriate review and remedial actions.

16. Xplore does not have significant financial resources available to fund non-operational expenses, but recognizes the importance of making payment as proposed below in order to settle those matters on a basis believed reasonable by its management and by Staff.

IV. CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND CONTRARY TO THE PUBLIC INTEREST

17. Xplore acknowledges that the conduct described in Part III was conduct contrary to Ontario Securities Law and contrary to the public interest.

V. TERMS OF SETTLEMENT

18. Xplore agrees to the following terms of settlement:
- (a) Xplore agrees to make a settlement payment of \$50,000.00 to the Ontario Securities Commission for allocation to and for the benefit of third parties under section 3.4(2);
 - (b) Xplore will provide a letter of comfort to Staff of the Commission to confirm that (i) Xplore has instituted new practices and procedures related to preventing the future improper recognition of revenue; and (ii) management and the directors of Xplore have been further reviewing Xplore's internal controls with a view to implementing any additional internal controls which may be determined appropriate so as to be in a position to provide the certifications required under Multilateral Instrument 52-109 (Certification of Disclosure in Issuers' Annual and Interim Filings) within the time periods contemplated in such instrument;
 - (c) Pursuant to clause 6 of subsection 127(1) of the Act, Xplore shall be reprimanded for its failure to file financial statements prepared in accordance with GAAP; and
 - (d) Pursuant to section 127.1 of the Act, Xplore agrees to pay the sum of \$20,000.00 toward the costs of the investigation and hearing in this matter.

V. STAFF COMMITMENT

19. If this settlement agreement is approved by the Commission, Staff will not initiate any other proceedings under the Act against Xplore based on the facts admitted in this Settlement Agreement.

20. This settlement agreement constitutes full answer to the allegations contained in the Notice of Hearing and Statement of Allegations.

VI. PROCEDURE FOR APPROVAL OF SETTLEMENT

21. Approval of the settlement shall be sought at the hearing of the Commission scheduled for January 27, 2006.

22. Counsel for Staff and Counsel for Xplore may refer to any part or all of this settlement agreement at the settlement hearing.

23. Staff and Xplore agree that this settlement agreement will constitute the entirety of the evidence to be submitted at the settlement hearing. If this settlement agreement is approved by the Commission, Xplore agrees to waive its rights under the Act to a full hearing, judicial review or appeal of the matter.

24. Whether or not the settlement agreement is approved by the Commission, Xplore agrees that it will not, in any proceeding, refer to or rely on this Settlement Agreement, the settlement discussions and negotiations or the process of approval of the Settlement Agreement as the basis of any attack on the Commission's jurisdiction, alleged bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

25. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or an order in the form attached to this Settlement Agreement as Schedule "A", is not made by the Commission:

- (a) this Settlement Agreement and its terms, including all discussions and negotiations between Staff and Xplore leading up to its presentation of the settlement hearing, shall be without prejudice to Staff or Xplore ; and
- (b) except as set out in paragraph 28, Staff and Xplore shall be entitled to all available proceedings, remedies and challenges, including the proceeding

to a hearing of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by this Settlement Agreement or the settlement discussions and negotiations.

VII. DISCLOSURE OF AGREEMENT

26. Except as required by its terms, this Settlement Agreement will be treated as confidential by the Commission until approved, and forever if, for any reason whatsoever, the Settlement Agreement is not approved by the Commission, except with the written consent of Staff and Xplore or as may be required by law.

27. Any obligations of confidentiality attached to this Settlement Agreement shall terminate upon approval of this settlement by the Commission.

28. Staff and Xplore agree that if this Settlement Agreement is approved by the Commission, they will not make any public statement inconsistent with the Settlement Agreement.

VIII. EXECUTION OF SETTLEMENT AGREEMENT

29. This Settlement Agreement may be signed in one or more counterparts which together shall form a binding agreement.

30. A facsimile copy of any signature shall be as effective as an original signature.

DATED this 23rd day of January , 2006

“Michael Rapisand”

XPLORE TECHNOLOGIES CORP.

“Michael Watson”

Michael Watson
Director of Enforcement

SCHEDULE “A”

**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990 c. S.5, AS AMENDED**

- AND -

IN THE MATTER OF XPLORE TECHNOLOGIES CORP.

ORDER

(Section 127(1) and Section 127.1)

WHEREAS on January 23, 2006, the Ontario Securities Commission issued a Notice of Hearing pursuant to Section 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the *Act*) in respect of Xplore Technologies Corp. (“Xplore”);

AND WHEREAS Xplore entered into a settlement agreement with Staff of the Commission dated January 23, 2006 in which it agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing subject to the approval of the Commission;

AND UPON receiving the Settlement Agreement and the Notice of Hearing and upon hearing submissions of Staff and counsel for Xplore;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS ORDERED THAT:

1. the Settlement Agreement attached to this Order as Schedule "A" is approved;
2. pursuant to clause 6 of subsection 127(1) of the *Act*, Xplore is reprimanded for having failed to file financial statements prepared in accordance with generally accepted accounting principles; and
3. pursuant to section 127.1 of the *Act*, Xplore shall pay the sum of \$20,000 to the Ontario Securities Commission in respect of the costs of Staff's investigation and the hearing of this matter.

DATED at Toronto, Ontario, this ____day of _____, 2006.