

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.
JUSTICE NEWBOULD

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TUESDAY, THE 28TH
DAY OF AUGUST, 2012

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENTS ACT,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.

(the "Applicants")



ORDER
(Interim Distribution to IQ)

THIS MOTION, made by Timminco Limited and Bécancour Silicon Inc. (BSI and, together with Timminco Limited, the "Timminco Entities") for an order authorizing and directing the Monitor to distribute cash up to the outstanding amounts owing under the term loan agreement dated July 10, 2009 (the "Secured Term Loan") to Investissement Québec ("IQ"), less the amount of the Reserves (as defined below) was heard this day at 330 University Avenue, Toronto, Ontario.

and together with any successors thereto

ON READING the Affidavit of Sean Dunphy sworn August 23, 2012, and on hearing the submissions of counsel to the Timminco Entities, FTI Consulting Canada Inc. in its capacity as the monitor of the Timminco Entities (the "Monitor"), IQ, Mercer (Canada) Limited, the administration of the Haley Pension Plan, QSI Partners

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Inc., the former directors and officers of the Timminco Entities, BSI Non-Union Employee Pension Committee and BSI Union Employee Pension Committee, no one appearing for any other person on the Service List, although properly served as appears from the affidavit of service, filed,

1. **THIS COURT ORDERS** that, unless otherwise indicated, any capitalized terms used but not defined herein shall have the meaning ascribed to such term in the agreement dated August 27, 2012 between BSI, the Monitor and IQ attached hereto as Schedule "A" (the "**Reimbursement Agreement**").

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2. **THIS COURT ORDERS** that the terms of the Reimbursement Agreement are hereby approved and authorizes and directs the Monitor and BSI to enter into the Reimbursement Agreement.

Service

3. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record in respect of this Motion is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.

Distribution to IQ

4. **THIS COURT ORDERS** that the Monitor is authorized and directed, without further order of the Court, subject to the Claw Back Procedure described below at paragraphs 6 to 9 below, to immediately distribute to IQ, from the proceeds of sale (the "**Sale Proceeds**") currently being held by the Monitor pursuant to the Orders of

the Honourable Mr. Justice Morawetz dated May 22, 2012 and June 1, 2012, the initial amount of \$⁵~~2~~393,057.43 together with subsequent distributions to IQ up to the amount of the Indebtedness, provided that, the Monitor in its discretion considers such subsequent distributions to be reasonable and appropriate in light of all relevant circumstances (collectively, the "Interim Distribution").

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after Thursday, August 30, 2012 at 5:00 pm (Toronto time) MS.

Balance of Sale Proceeds

5. **THIS COURT ORDERS** that the balance of the proceeds, after payment of the Interim Distribution, shall be held and disbursed in accordance with existing and future orders of the Court.

Claw Back Procedure

6. **THIS COURT ORDERS** that a party that has filed a claim against BSI as a secured claim in accordance with the Claims Procedure Order ("**Secured Creditor**") must, in accordance with the Reimbursement Agreement, deliver notice of same to the Monitor, the CRO and IQ within 7 days from the date of this Order (the "**Claw Back Deadline**") stating its name, the amount of its claim for which priority is asserted and in summary form, the basis on which such claim has priority. If a Secured Creditor fails to submit a claim in accordance with this paragraph 6, the Secured Creditor's claim shall not constitute a Reimbursement Claim for the purposes of the Reimbursement Agreement.

7. **THIS COURT ORDERS** that on the consent of the Monitor, the CRO and IQ, to be provided in accordance with and the standard set out in the Reimbursement Agreement, a Secured Creditor's claim (a "**Reimbursement Claim**") shall be added to Schedule "A" of the Reimbursement Agreement and such Secured Creditor shall be a Priority Claimant for the purposes of the Reimbursement Agreement. If such consent cannot be reached, the Monitor shall, on at least fifteen days' notice to the affected Priority Claimant, apply to the Court for advice and directions, in accordance with the Reimbursement Agreement.

8. **THIS COURT ORDERS** that a Priority Claimant shall submit a claim asserting priority to the IQ Security (a "**Priority Assertion**") to the Monitor and IQ within 60 days of the date hereof, together with such supporting evidence and authority as the creditor considers appropriate to substantiate its Priority Assertion. If the Monitor and IQ, acting reasonably, are satisfied that the Priority Claimant has a Priority Claim, no further steps shall be required to be taken by such Priority Claimant to establish that the Priority Claimant has a Priority Claim and IQ, and any successor thereto, shall reimburse BSI in accordance with IQ's reimbursement obligations under the Reimbursement Agreement. If the Monitor, IQ and the Priority Claimant are not able to agree within seven days of the date the Priority Claim is submitted to IQ and the Monitor, any of IQ, the Monitor or the Priority Claimant may refer the dispute to a Claims Officer or the Court, as is contemplated by the Claims Procedure Order. If a Priority Claimant fails to deliver a Priority Assertion to the Monitor and IQ in accordance with this paragraph 8, the Priority Claimant's

claim shall not constitute a Priority Claim for the purposes of the Reimbursement Agreement.

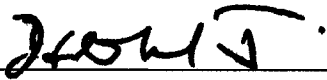
9. **THIS COURT ORDERS** that, in accordance with the Reimbursement Agreement, IQ shall repay to BSI by payment to the Monitor any portion of the Interim Distribution as may be necessary to satisfy any Priority Claim within seven business days following the date that such Reimbursement Claim has been finally determined to be a Priority Claim.

10. **THIS COURT ORDERS** that the Reimbursement Agreement and the liability of IQ to BSI with respect to any Reimbursement claim shall terminate in accordance with the Reimbursement Agreement.

11. **THIS COURT ORDERS** that each of the CRO, the Monitor, IQ or any Secured Creditor may apply to this Court for directions in respect of any aspect of this Order.

12. **THIS COURT ORDERS** the Monitor, in carrying out its role under the Reimbursement Agreement and this Order, shall have all of the protections given it by the CCAA and the Initial Order or as an officer of this Court, including the stay of proceedings in its favour, shall incur no liability or obligation as a result of the carrying out of its obligations under this Order, shall be entitled to rely on the books and records of the Timminco Entities, and any information provided by the Timminco Entities or a Priority Claimant, and shall not be liable for any claims or damages resulting from any errors or omissions in such books, records, or information.

13. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Monitor, the CRO and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor and to the CRO, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.



ENTERED AT / INSERÉ À TORONTO
BOOK NO. / NO. DE LIVRE
LE / DANS LE REGISTRE NO.:

AUG 28 2012

~~PER/PAR~~

REIMBURSEMENT AGREEMENT

THIS AGREEMENT is made as of August _____, 2012,

BETWEEN

BÉCANCOUR SILICON INC. ("BSI")

-and-

INVESTISSEMENT QUÉBEC ("IQ")

-and-

FTI CANADA CONSULTING INC., solely in its capacity as court-appointed monitor (the "**Monitor**") of Timminco Limited ("**Timminco**") and BSI and not in its personal capacity or corporate capacity

RECITALS

- A. On January 3, 2012, Timminco and BSI (collectively, the "**Timminco Entities**") commenced proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA Proceedings**"), and an initial order was made by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") pursuant to which, among other things, FTI Consulting Canada Inc. was appointed as Monitor.
- B. Pursuant to a term loan agreement, dated July 10, 2009, between BSI and IQ (the "**Loan Agreement**"), IQ advanced funds to BSI in the principal amount of \$25,000,000. The amount outstanding under the Loan Agreement (including principal and interest accrued to date but excluding applicable costs and expenses) as at August 17, 2012 was \$29,118,708.44. The amount owing by BSI to IQ from time to time under the Loan Agreement shall hereinafter be referred to as the "**Indebtedness**".
- C. The Indebtedness is secured by, *inter alia*, a charge upon all of BSI's present and future assets, undertaking and properties (the "**Collateral**") pursuant to the terms of a Hypothec Universelle dated July 10, 2009 between BSI and IQ (the "**IQ Security**").
- D. The Monitor is in possession of certain proceeds from the realization of Collateral (collectively, the "**Proceeds**").
- E. IQ asserts a claim to the Proceeds, and the other Collateral pursuant to the IQ Security. Certain Claims (as defined below) have been asserted against BSI in the CCAA Proceedings pursuant to the Claims Procedure Order. The holders of these Claims may assert that the Claims are Priority Claims (as defined below).

- F. As a condition precedent to BSI bringing a motion before the Court authorizing and directing the Monitor to make an initial interim distribution to IQ in the amount of \$27,393,057.43 in partial repayment of the Indebtedness (the “**Initial Distribution**”) together with such additional distributions to IQ up to the amount of the Indebtedness that the Monitor in its discretion considers to be reasonable and appropriate in light of all circumstances (the “**Subsequent Distributions**”) and together with the Initial Distribution the “**Interim Distribution**”) BSI requires that IQ enter into this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1 - INTERPRETATION

1.1 Definitions

In this Agreement:

- (1) “**Agreement**” means this agreement and all attached schedules, as the same may be supplemented, amended, restated, updated or replaced from time to time;
- (2) “**Business Day**” means a day on which banks are open for business in the City of Toronto, but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario;
- (3) “**CCAA Proceedings**” has the meaning set out in the Recitals;
- (4) “**Claim**” means a claim as defined in the Claims Procedure Order and submitted in compliance with the procedure set out in the Claims Procedure Order;
- (5) “**Claims Procedure Order**” means the order of the Court dated June 15, 2012 dealing with, *inter alia*, the solicitation, classification and adjudication of Claims against the Timminco Entities;
- (6) “**Collateral**” has the meaning set out in the Recitals;
- (7) “**Court**” has the meaning set out in the Recitals or such other court of competent jurisdiction with respect to the applicable matter in dispute;
- (8) “**Finally Determined**”, means the validity, quantum and priority of a Reimbursement Claim have been finally determined in accordance with the Priority Claim Adjudication Process and the Claims Procedure Order;
- (9) “**Indebtedness**” has the meaning set out in the Recitals;
- (10) “**Initial Distribution**” has the meaning set out in the Recitals;
- (11) “**Interim Distribution**” has the meaning set out in the Recitals;

- (12) **“Interim Distribution Order”** means an order of the Court authorizing and directing the Monitor to make the Interim Distribution and providing for the Priority Claims Adjudication Process;
- (13) **“IQ Security”** has the meaning set out in the Recitals;
- (14) **“Proceeds”** has the meaning set out in the Recitals;
- (15) **“Priority Claim”** means a Reimbursement Claim that has been Finally Determined to be secured against the Collateral by security ranking in priority to the IQ Security or a Reimbursement Claim that has otherwise been Finally Determined to be entitled to payment in priority to the Indebtedness;
- (16) **“Priority Claimant”** means a creditor holding a Reimbursement Claim which creditor asserts that such Reimbursement Claim is a Priority Claim;
- (17) **“Priority Claim Adjudication Process”** means the process to be established by the Interim Distribution Order whereby the Monitor, IQ or a Priority Claimant may submit a dispute regarding the priority of a Reimbursement Claim to be adjudicated in accordance with paragraphs 20-27 of the Claims Procedure Order; provided, however, such adjudication process will provide that the quantum and validity of a Reimbursement Claim determined to be a Priority Claim will not be voluntarily settled without the consent of IQ, acting reasonably;
- (18) **“Reimbursement Claim”** means a Claim that is held by Priority Claimant and has been added to Schedule “A” in accordance with the protocol set out on Schedule “A”;
- (19) **“Reimbursement Payment”** has the meaning set out in Section 2.1; and
- (20) **“Subsequent Distributions”** has the meaning set out in the Recitals.
- (21) **“Timminco Entities”** has the meaning set out in the Recitals.

1.2 Interpretation Not Affected by Headings, etc.

The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless otherwise indicated, all references to a “section” followed by a number and/or a letter refer to the specified section of this Agreement. The terms “this Agreement”, “hereof”, “herein” and “hereunder” and similar expressions refer to this Agreement and not to any particular section hereof.

1.3 Extended Meanings

Words importing the singular include the plural and vice versa, words importing gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations and governmental authorities. The term “including” means “including, without limitation,” and such terms as “includes” have similar meanings.

SECTION 2 - REIMBURSEMENT

2.1 IQ Undertaking

Subject to the terms hereof, IQ hereby undertakes and agrees to reimburse to BSI by payment to the Monitor such portion of the Interim Distribution as may be necessary to satisfy any Reimbursement Claim, or portion thereof, that has been Finally Determined to be a Priority Claim (a “**Reimbursement Payment**”). Such Reimbursement Payment shall be made by IQ to the Monitor, by way of immediately payable funds within (7) seven business days following the time that a Reimbursement Claim has been Finally Determined to be a Priority Claim.

2.2 Limitation of Liability

Notwithstanding any other provision of this Agreement, the liability of IQ to reimburse the Interim Distribution pursuant to this Agreement shall be limited to the lesser of: (a) the aggregate amount of all Reimbursement Claims that are Finally Determined to be Priority Claims; and (ii) the aggregate amount of the Interim Distribution received by IQ.

2.3 Distributions

Provided that the Interim Distribution Order is issued, the Monitor shall distribute the Initial Distribution to IQ or its designee. The Monitor shall be entitled but under no obligation to distribute the Subsequent Distributions to IQ. The Monitor shall be entitled to disburse the balance of the Proceeds to parties other than IQ only in accordance with existing or future orders of the Court.

2.4 Term

This Agreement and the liability of IQ to BSI with respect to any Reimbursement Claim shall terminate on the earlier of: (a) (2) two months from the date of the issuance of the Interim Distribution Order; and (b) the date such Reimbursement Claim has been Finally Determined and all reimbursement obligations of IQ hereunder in respect thereof have been satisfied (the “**Term**”); provided, however, if the process to Finally Determine a Reimbursement Claim has been commenced during the Term, the Term will be extended until the date such Reimbursement Claim is actually Finally Determined and any reimbursement obligation of IQ in respect of such Reimbursement Claim is satisfied.

2.5 IQ Security and Interest

Upon receipt of the Interim Distribution, or any portion thereof, by IQ, or any designee of IQ, no further interest will continue to accrue on the amount of the repaid Indebtedness unless a Reimbursement Payment is made. If a Reimbursement Payment is made pursuant to this Agreement, the amount of the Reimbursement Payment shall be added back to the Indebtedness and such amount (plus all interest accrued thereon (i) from the date the Reimbursement Payment is made if the Priority Claim in respect of which the Reimbursement Payment is made has not borne interest since the date the Interim Distribution was made; and, (ii) from the date the Interim Distribution was made if the Priority Claim in respect of which the Reimbursement Payment is made has borne interest from the date of the Interim Distribution) shall be secured by

the IQ Security. BSI acknowledges and agrees that: (a) the payment of the Initial Distribution to IQ does not discharge all of the Indebtedness; (b) the Collateral and Proceeds remain subject to the IQ Security until such time as the Indebtedness is indefeasibly paid in full; and (c) all legal costs incurred by IQ in connection with the CCAA Proceedings prior to or after the entering into of this Agreement are to be included in the Indebtedness in accordance with the Loan Agreement.

2.6 Use of Interim Distribution

Subject to Section 2.1, BSI and the Monitor each acknowledge and agree that IQ shall have the full use of the Interim Distribution and IQ shall have no obligation to hold the amount of the Interim Distribution in trust or keep it separate and apart from its general assets.

SECTION 3 - GENERAL

3.1 Notice

All notices and other communications pursuant to this Agreement shall be in writing and delivered or transmitted by facsimile or other electronic transmission as follows:

- (a) in the case of BSI:

Bécancour Silicon Inc.
c/o Russell Hill Advisory Services Inc.
150 King Street West
Suite 2401
Toronto, Ontario
M5H 1J9

Attention: Sean Dunphy
Fax No.: 416.364.3451
Email: sdunphy@timminco.com

with a copy to:

Stikeman Elliott LLP
199 Bay Street
5300 Commerce Court West
Toronto, Ontario
M5L 1B9

Attention: Ashley Taylor
Fax No.: 416.947.0866
Email: ataylor@stikeman.com

- (b) in the case of IQ:

Direction des créances spéciales
413, rue Saint-Jacques, bureau 500
Montreal, PQ H2Y 1N9

Attention: François Lamothe
Fax No.: 514.873.1212
Email: Francois.Lamothe@invest-quebec.com

with a copy to:

Fasken Martineau DuMoulin LLP
333 Bay Street, Suite 2400
Toronto, ON M5H 2T6

Attention: Aubrey Kauffman
Fax No.: 416-364-7813
Email: akauffman@fasken.com

(c) in the case of the Monitor:

FTI Canada Consulting Inc.
TD Waterhouse Tower
79 Wellington St. W., Suite 2010
Toronto ON M5K 1G8

Attention: Nigel Meakin
Fax No.: 416-649-8101
Email: nigel.meakin@fticonsulting.com

with a copy to:

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000
Toronto, ON M5L 1A9

Attention: Linc Rogers
Fax No.: 416-863-2653
Email: linc.rogers@blakes.com

Any such notice or other communication, if given by personal delivery, will be deemed to have been given on the day of actual delivery thereof and, if transmitted by fax or other electronic transmission before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day, and if transmitted by fax or other electronic transmission after 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day after the date of transmission. The parties may update their respective contact information by providing notice to the other parties to the Agreement in accordance with this Section.

3.2 Entire Agreement

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof.

3.3 Governing Law

This Agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

3.4 Benefit of Agreement

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

3.5 Further Assurances

At the reasonable request of another party to this Agreement, each of the parties hereto agrees to do, execute and deliver all such further acts, instruments or documents as may be necessary to give effect to this Agreement and the mutual obligations contained herein.

3.6 Counterparts

This Agreement may be signed in counterparts, by original, facsimile or other electronic transmission, and each such counterpart taken together shall constitute a binding agreement among all the parties hereto.

3.7 Court Approval

It is a condition precedent to the effectiveness of this Agreement that it be approved by the Court.

3.8 Capacity of the Monitor

IQ and BSI acknowledge and agree that FTI Consulting Canada Inc. is party to this Agreement solely in its capacity as court-appointed monitor and not in its personal or corporate capacity and shall have no liability under this Agreement of any kind in its personal or corporate capacity.

[Signatures following on next page]

SCHEDULE "A"
REIMBURSEMENT CLAIMS*

The parties agree that this Schedule "A" will be updated in accordance with the following protocol:

1. Within (7) seven days of the date of the Interim Distribution Order is issued by the Court, a creditor that has filed a Claim as a secured Claim in accordance with the provisions of the Claims Procedure Order, must provide a written notice to the Monitor, IQ and BSI, in accordance with the notice provisions of this Agreement, which states (a) the name of the creditor; (b) the quantum of the claim that the creditor asserts constitutes a Priority Claim; and (c) in a summary manner only, the basis on which the Claim constitutes a Priority Claim. If a creditor fails to file a notice in accordance with this paragraph, its Claim shall not constitute a Reimbursement Claim for the purpose of this Agreement and its Claim shall not be added to this Schedule "A".
2. If the Monitor, IQ and BSI collectively agree that the basis on which the creditor (that satisfies the criteria set out in paragraph 1 above) asserts its Claim is a Priority Claim establishes a genuine issue for adjudication, the Claim shall constitute a Reimbursement Claim for the purpose of this Agreement and shall be added to this Schedule "A".
3. If the Monitor, IQ and BSI do not agree that the basis on which a creditor (that satisfies the criteria set out in paragraph 1 above) establishes a genuine issue for adjudication, then the Monitor shall seek advice and direction from the Court, on notice to the applicable creditor, IQ and BSI as to whether the Claim establishes a genuine issue for adjudication. If the Court concludes the Claim does establish a genuine issue for adjudication, the Claim shall constitute a Reimbursement Claim for the purpose of this Agreement and shall be added to this Schedule "A". If the Court concludes the Claim does not establish a genuine issue for adjudication then the Claim shall not constitute a Reimbursement Claim for the purpose of this Agreement and shall not be added to this Schedule "A".

* The inclusion of a Claim on this Schedule as a Reimbursement Claim does not create a presumption that such Reimbursement Claim is a Priority Claim and IQ expressly disputes that any such Reimbursement Claim is a Priority Claim.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED

Court File No: CV-12-9539-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

ORDER
(Interim Distribution to IQ)

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