

**Court File No. CV-12-9539-00CL**

**Timminco Limited  
Bécancour Silicon Inc.**

**THIRTEENTH REPORT OF THE MONITOR**

**AUGUST 27, 2012**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT 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.

**THIRTEENTH REPORT TO THE COURT  
SUBMITTED BY FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR**

**INTRODUCTION**

1. On January 3, 2012, Timminco Limited (“**Timminco**”) and its wholly owned subsidiary, Bécancour Silicon Inc. (“**BSI**”, together with Timminco, the “**Timminco Entities**”) made an application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and an initial order (the “**Initial Order**”) was made by the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), granting, *inter alia*, a stay of proceedings against the Applicants until February 2, 2012, (the “**Stay Period**”) and appointing FTI Consulting Canada Inc. as monitor of the Timminco Entities (the “**Monitor**”). The proceedings commenced by the Timminco Entities under the CCAA will be referred to herein as the “**CCAA Proceedings**”.
2. The Stay Period has been extended a number of times. Pursuant to the Order of the Honourable Mr. Justice Morawetz dated April 27, 2012, the Stay Period currently expires on September 30, 2012.

3. Pursuant to the Order of the Honourable Mr. Justice Morawetz dated March 9, 2012 (the “**Bidding Procedures Order**”), the Timminco Entities were authorized to enter into the Stalking Horse Agreement and the Bidding Procedures were approved, each as defined in the Monitor’s Fourth Report.
4. As described in the Monitor’s Seventh Report, the marketing process was completed and the Auction was conducted by the Timminco Entities, in consultation with the Monitor, on April 24 and 25, 2012 pursuant to Bidding Procedures Order. At the conclusion of the Auction, the asset purchase agreement entered into between the Timminco Entities and QSI Partners Ltd. (the “**QSI APA**”) and the asset purchase agreement between the Timminco Entities and Ferroatlantica, S.A. (the “**Ferro APA**”) were collectively designated as the Successful Bid.
5. No assets of Timminco were included in the sale to QSI or Ferro.
6. The Ferro APA was approved pursuant to an Order granted by the Court on May 22, 2012. The QSI APA was approved pursuant to an Order granted by the Court on June 1, 2012. Closing under the Ferro APA occurred on June 14, 2012. Closing under the QSI APA occurred on June 13, 2012.
7. The Monitor is in possession of the proceeds of sale (the “**Sale Proceeds**”) from the QSI APA and the Ferro APA. The total amount held by the Monitor is approximately \$30.8 million.
8. On June 15, 2012, the Honourable Mr. Justice Morawetz granted an order approving a procedure for the submission, review and adjudication of claims against the Timminco Entities and of claims against the directors and officers of the Timminco Entities (the “**Claims Procedure Order**”).
9. The Claims Bar Date was set at 5:00 PM Toronto time on July 23, 2012. The Monitor reported on the claims filed in accordance with the Claims Procedure Order in its Twelfth Report dated August 13, 2012.

10. By Order of the Honourable Mr. Justice Newbould dated August 17, 2012, Russell Hill Advisory Services Inc. was appointed as Chief Restructuring Officer (the “**CRO**”) of the Timminco Entities.
11. The Monitor has filed reports on various matters relating to the CCAA Proceedings, including the various reports referenced above. The purpose of this, the Monitor’s Thirteenth Report, is to inform the Court on the Timminco Entities’ request for an order (the “**Interim Distribution Order**”):
  - (a) Authorizing and directing the Monitor to make an initial interim distribution to Investissement Quebec (“**IQ**”), the secured creditor of BSI, in the amount of \$27,393,057.43, together with subsequent distributions (collectively, the “**Interim Distribution**”) up to the total amount owing to IQ by BSI (the “**Indebtedness**”); and
  - (b) Approving the Reimbursement Agreement (as defined below) between the Monitor, IQ and BSI.
12. In preparing this report, the Monitor has relied upon unaudited financial information of the Timminco Entities, the Timminco Entities’ books and records, certain financial information prepared by the Timminco Entities and discussions with the Timminco Entities’ management. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information. Accordingly, the Monitor expresses no opinion or other form of assurance on the information contained in this report or relied on in its preparation. Future oriented financial information reported or relied on in preparing this report is based on management’s assumptions regarding future events; actual results may vary from forecast and such variations may be material.
13. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined herein have the meanings defined in the previous reports of the Monitor, the Bidding Procedures Order or in the Initial Order.

## **IQ DEBT AND SECURITY**

14. IQ and BSI are party to a term loan agreement dated July 10, 2009 (the “**Term Loan Agreement**”), pursuant to which BSI received a term loan in the principal amount of \$25,000,000 (the “**Secured Term Loan**”). As noted in the affidavit of Peter A.M. Kalins dated January 2, 2012 in support of the issuance of the Initial Order and in the affidavit of the CRO dated August 23, 2012 (the “**CRO Affidavit**”) in support of an order approving the Interim Distribution, the Secured Term Loan accrues interest at a variable rate of Canada prime plus 9% which is currently approximately 12% per annum, or \$10,000 per day. The Sale Proceeds earn nominal interest only.
15. IQ has provided the Monitor and the CRO with a statement of account as of August 17, 2012 which indicates the total amount owing to IQ as of that date is \$29,118,708.44 on which interest and fees continue to accrue. Timminco’s Vice President, Finance and Corporate Controller has reviewed the statement of account and advised the Monitor that to the best of his knowledge, the statement of account is accurate. The statement of account is attached hereto, as Appendix A.
16. BSI’s obligations under the Term Loan Agreement are secured by hypothecary security (collectively, the “**IQ Security**”) registered in both the real and personal property registries in Quebec, the province where BSI’s assets are situated.
17. As stated in the Monitor’s Fourth Report dated March 7, 2012, the Monitor’s independent counsel reviewed the IQ Security and issued an opinion to the Monitor (the “**IQ Opinion**”) that the IQ Security was valid, legal and enforceable, subject to standard qualifications and assumptions.

## **PRIORITY OF IQ SECURITY AND OTHER SECURED CLAIMS**

18. The IQ Opinion did not address the priority of the IQ security relative to other claims against BSI; however, IQ's counsel has advised the Monitor that IQ asserts a claim to the Sale Proceeds in priority to all other creditors, other than the court ordered Administration Charge, in the amount of \$1,000,000 and the court ordered Directors and Officers Charge in the amount of \$400,000 (collectively, the "**Priority Charges**"). In addition to the Priority Charges, the Monitor is authorized to pay certain post-filing payables from the Sales Proceeds pursuant to an Order of the Honourable Mr. Justice Morawetz dated June 14, 2012.
19. The Claims (as defined in the Claims Procedure Order) set out in Appendix **B** hereto were delivered to the Monitor, in accordance with the Claims Procedure Order, and purported to be secured claims (the "**Secured Claims**"). The amounts of these Secured Claims are also set out in Appendix **B**. The Monitor has not yet completed its review of these Secured Claims with respect to validity, quantum and classification.
20. The Claims Procedure Order did not request that creditors make any classification with respect to priority, relative to other Secured Claims against the Timminco Entities.

## **PROPOSED INTERIM DISTRIBUTION**

21. In order to arrest the continuing accumulation of interest on the Secured Term Loan, which has the effect of eroding any potential recovery for unsecured creditors of BSI, the Timminco Entities initially sought to have the Interim Distribution approved contemporaneously with the appointment of the CRO.

22. A creditor of Timminco objected to such Interim Distribution. As a result of the objection the motion to approve the Interim Distribution did not proceed. In order to prevent the further accumulation of interest while this and other potential objections were being adjudicated, following its appointment, the CRO requested that IQ agree to accept repayment of the Indebtedness subject to a reimbursement obligation. IQ was agreeable to doing so subject to a mutually acceptable protocol being established for the determination and resolution of Secured Claims held by creditors asserting their Secured Claims had priority to the IQ Security (a “**Priority Claimant**”).
23. IQ, BSI and the Monitor then sought to negotiate the terms of a reimbursement agreement between IQ, BSI and the Monitor whereby if it was ultimately determined that a Secured Claim had priority over the IQ Security (a “**Priority Claim**”), IQ would be obliged to repay the amount of the Priority Claim. The form of proposed reimbursement agreement has been settled by the parties, subject to Court approval, and is attached as Appendix C hereto, together with a blackline against an earlier draft of the Reimbursement Agreement appended to the CRO Affidavit.
24. As noted above, the alternative was the continuation of interest accruals, to the detriment of other stakeholders, while disputes between IQ and other Priority Claimants were being adjudicated. IQ advised the Monitor that absent a conditional repayment of the Indebtedness, IQ was not prepared to waive its contractual right to interest on the Secured Term Loan.

#### **PRIORITY CLAIMS AND REIMBURSEMENT AGREEMENT**

25. The Reimbursement Agreement contemplates a two-step process to determine if a Secured Claim has a Priority Claim. The process is described below:

##### **Step 1 – Establishing a Reimbursement Claim**

- (a) A Reimbursement Claim is a Claim that is held by a Priority Claimant and has been listed on Schedule “A” to the Reimbursement Agreement.

- (b) The protocol to be followed in order to become a Reimbursement Claim listed on Schedule A is as follows:
- (i) Within (7) seven days of the date of the Interim Distribution Order is issued by the Court, a creditor that has filed 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 the Reimbursement Agreement, which notice 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 Secured Claim constitutes a Priority Claim. If a creditor fails to file a notice in accordance with this paragraph, its Secured Claim shall not constitute a Reimbursement Claim for the purpose of the Reimbursement Agreement and its Secured Claim shall not be added to Schedule "A".
  - (ii) If the Monitor, IQ and BSI collectively agree that the basis on which the creditor (that satisfies the criteria set out in paragraph (i) 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 the Reimbursement Agreement and shall be added to Schedule "A".
  - (iii) If the Monitor, IQ and BSI do not agree that the basis on which a creditor (that satisfies the criteria set out in paragraph (i) 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 Secured Claim establishes a genuine issue for adjudication. If the Court concludes the Secured Claim does establish a genuine issue for adjudication, the Secured Claim shall constitute a Reimbursement Claim for the purposes of the Reimbursement Agreement and shall be added to this Schedule "A". If the Court concludes the Secured Claim does not establish a genuine issue for adjudication then the Secured Claim shall not constitute a Reimbursement Claim for the purpose of the Reimbursement Agreement and shall not be added to this Schedule "A".

## **Step 2 – Establishing a Priority Claim**

- (c) By operation of the combined terms of the Reimbursement Agreement, the Interim Distribution Order and the Claims Procedure Order, it is contemplated that a Priority Claimant will be required to advance its claim for priority over the IQ Security by submitting a claim asserting priority to



the IQ Security (a “**Priority Assertion**”) to the Monitor and IQ within 60 days of the issuance of the Interim Distribution Order. The Priority Assertion should be supported by such evidence and supporting authority as the creditor considers appropriate to substantiate its Priority Assertion. If the Monitor and IQ, acting reasonably, are satisfied that the creditor has a Priority Claim, no further steps are required and IQ will reimburse the Monitor for the amount of the Priority Claim. If the Monitor, IQ and the creditor are not able to agree within 7 days of the date the Priority Claim is submitted to IQ and the Monitor, either party may refer the dispute to a Claims Officer or the Court, as is contemplated by the Claims Procedure Order. It is contemplated that any dispute with respect to priority, quantum, validity or classification would be addressed in a single consolidated adjudication process.

If a Priority Claimant does not submit its Priority Assertion within 60 days of the date of the issuance of the Interim Distribution Order, its Reimbursement Claim will not constitute a Priority Claim.

#### **NOTICE TO SECURED CREDITORS**

26. The Monitor supplied e-mail contact information to counsel to the Timminco Entities for Secured Creditors that were not represented by counsel or otherwise not on the Service List in these proceedings. Counsel for the Timminco Entities advised counsel for the Monitor that these Secured Creditors were served with notice of the within motion, via e-mail. Should this Honourable Court grant the relief requested by the Timminco Entities, it is the Monitor’s intention to send further e-mail correspondence to Secured Creditors not represented by counsel to advise them of the issuance of the requested Order.

#### **MONITOR’S RECOMMENDATIONS**

27. The relief sought by the Timminco Entities seeks to strike a reasonable balance between the legitimate interests of various stakeholders: (i) the continued accumulation of interest on the Secured Term Loan erodes any potential recovery by unsecured creditors of BSI; (ii) IQ seeks a process that provides for certainty and finality with respect to any repayment of the Secured Term Loan; and (iii) other secured creditors require a reasonable opportunity to assert priority over the IQ Security should they wish to do so.

28. In the Monitor's view, 7 days from the issuance of the Interim Distribution Order is a reasonable timeframe for a creditor to submit a simple statement asserting its priority and the basis for its priority. To the extent IQ, BSI and the Monitor cannot agree that the initial claim for priority does not establish a genuine issue for adjudication, the Monitor will seek advice and direction from the Court, on notice to the creditor, IQ and BSI to ensure the interests of all parties are protected.
29. The Monitor is also of the view that 60 days from the date of the Interim Distribution Order is an ample amount of time to allow a creditor to submit more comprehensive written materials in support of its alleged Priority Claim. Again, to the extent parties cannot agree on the merits of such Priority Assertion, recourse may be had to a Claims Officer or the Court to ensure the legitimate rights and interest of the parties are properly protected.
30. The Monitor is also satisfied that after the Initial Payment the Monitor will still be in possession of sufficient funds to satisfy any claims against the Priority Charges and to satisfy post-filing payables. Subsequent distributions to IQ will not be agreed to by the Monitor unless the Monitor is satisfied sufficient Sales Proceeds are retained by the Monitor to satisfy any claims against Priority Charges and to satisfy post-filing payables.
31. Finally, as a provincial Crown agency, the Monitor has no concerns with respect to the credit-worthiness of IQ.
32. For the reasons set out above, it is the Monitor's respectful view, that the relief sought by the Timminco Entities strikes the appropriate balance between the legitimate interests of various stakeholders, and respectfully recommends that this Honourable Court grant the requested relief.

The Monitor respectfully submits to the Court this, its Thirteenth Report.

Dated this 27<sup>th</sup> day of August, 2012.

FTI Consulting Canada Inc.  
In its capacity as Monitor of  
Timminco Limited and Bécancour Silicon Inc.



Nigel D. Meakin  
Senior Managing Director



Toni Vanderlaan  
Managing Director

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## **Appendix A**

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### IQ Statement of Account

Le 1<sup>er</sup> août 2012

Silicium Bécancour Inc.  
6500, rue Yvon-Trudeau  
Bécancour (Québec) G9H 2V8

No dossier: D122446

**ÉTAT DE COMPTE  
AU 2012-08-17**

Numéro de dossier :		D122446
Montant du prêt autorisé :		25 000 000,00 \$
Montant du prêt déboursé :		25 000 000,00 \$
Intérêts capitalisés :		1 437 371,05 \$
Solde du prêt :		26 437 371,05 \$
Capital à recevoir:		0,00 \$
Intérêts à recevoir au 31 juillet 2012 :		2 191 296,60 \$
Intérêts courus à recevoir au 17 août 2012 :		159 569,62 \$
<b>Sous-Total :</b>		<b>28 788 237,27 \$</b>
Déboursés payés :		305 849,29 \$
Déboursés engagés et à payer :		(1) 24 621,88 \$
<b>Total :</b>		<b>29 118 708,44 \$</b>
<b>Solde dû et exigible :</b>		<b>29 118 708,44 \$</b>
Type de taux :		Préférentiel + 9,0% soit 12,0%
Date d'échéance du prêt :		2019-07
Nombre de versements de capital en arrérages :		N/A
Nombre de versements d'intérêts en arrérages :		8 mois incluant juillet 2012
Dernier versement de capital :		Début du remb. en août 2012
Dernier versement d'intérêts :		Novembre 2011
<b>Per diem :</b>		<b>9 438,77 \$</b>

1) Includes Fasken's fees until July 11, 2012.



François Lamothe  
Directeur de portefeuille - Créances spéciales  
Direction des créances spéciales

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## **Appendix B**

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### Secured Claims

Company Name	Cad Equiv	Debtor
Priestly Demolition Inc.	131,426.01	TMM
Entreprises Arseneault	306,956.84	BSI
Ministère de la Justice - Direction des affaires juridique du ministère du Développement durable, de l'Environnement et des Parcs	201,250.00	BSI
Ministère de la Justice - Direction des affaires juridique du ministère du Développement durable, de l'Environnement et des Parcs	1,340,001.89	BSI
Ministère de la Justice - Direction des affaires juridique du ministère du Développement durable, de l'Environnement et des Parcs	1,612,500.00	BSI
Les services d'entretien de Bécancour Inc.	7,847.14	BSI
Maskimo Construction inc.	16,578.00	TMM
Wajax Equipment	117,205.00	BSI
Mercer (Canada) Ltd., as Administrator of the Pension Plan for Hourly Employees of Timminco Ltd. (Reg. No. 058648) (the "Haley Pension Plan")	5,177,689.00	TMM
Mercer (Canada) Ltd., as Administrator of the Pension Plan for Hourly Employees of Timminco Ltd. (Reg. No. 058648) (the "Haley Pension Plan")	5,177,689.00	TMM
Delage Landen Financial	553.89	BSI
Township of Whitewater Region	0	TMM
Régime de rentes pour les employés syndiqués de Silicium Bécancour Inc.	668,690.00	BSI
Régime de rentes pour les employés syndiqués de Silicium Bécancour Inc.	9,889,600.00	BSI
Régime de rentes pour les employés non-syndiqués de Silicium Bécancour Inc.	3,998,700.00	BSI
Régime de rentes pour les employés non-syndiqués de Silicium Bécancour Inc.	297,520.00	BSI

Note: The claim by Les services d'entretien de Bécancour Inc. has been withdrawn as a secured claim and will be reclassified as an unsecured claim.

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## **Appendix C**

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### Reimbursement Agreement



## 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](mailto: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](mailto: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](mailto: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](mailto: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]*

This Agreement is made as of the date first above written.

**BÉCANCOUR SILICON INC.**

By: \_\_\_\_\_  
Name:  
Title:

**INVESTISSEMENT QUÉBEC**

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged and consented to this \_\_\_\_\_ day of August, 2012

**FTI CANADA CONSULTING INC.**, solely in  
its capacity as court-appointed monitor of  
Timminco Limited and Bécancour Silicon Inc.  
and not in its personal or corporate capacity

By: \_\_\_\_\_  
Name:  
Title:



**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.

## 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 is ~~\$~~ 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 ~~which~~. The holders of these Claims purport to be 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 "~~Interim Distribution~~"; **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) "~~Final Order~~" means an order of the Court pursuant to which all timeframes and rights to seek leave to appeal or all timeframes and rights to appeal have been either expired or been exhausted, as applicable.
- (9) (10) "**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 identified in Schedule “A” and 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) ~~(20)~~ **“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 ~~Other 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) ~~three~~(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 ~~Interim~~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](mailto: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**

~~Each~~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 3.7 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]*

This Agreement is made as of the date first above written.

**BÉCANCOUR SILICON INC.**

By: \_\_\_\_\_  
Name:  
Title:

**INVESTISSEMENT QUÉBEC**

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged and consented to this \_\_\_\_\_ day of August, 2012

**FTI CANADA CONSULTING INC.**, solely in  
its capacity as court-appointed monitor of  
Timminco Limited and Bécancour Silicon Inc.  
and not in its personal or corporate capacity

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE "A"**  
**REIMBURSEMENT CLAIMS\***

~~{NTD: Any interest or penalties payable in respect of a Reimbursement Claim should be included in the Claim described}~~

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.

Document comparison by Workshare Compare on Monday, August 27, 2012  
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Rendering set	Standard

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