

**IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
IN BANKRUPTCY AND INSOLVENCY
JUDICIAL DISTRICT OF MIRAMICHI**

IN THE MATTER OF THE RECEIVERSHIP OF:

**ATCON GROUP INC., ATCON HOLDINGS INC., ATCON PROPERTY HOLDINGS INC.,
ATCON VENEER PRODUCTS INC., ATCON LOGISTICS INC., ATCON
CONSTRUCTION INC., ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD.,
DYCON CONSTRUCTION LTD., ATCON STRUCTURES INC. AND ENVIREM
TECHNOLOGIES INC.**

**PURSUANT TO Section 33 of the *Judicature Act*, R.S.N.B. 1973, Ch. J-2, Rule 41, Rules of
Court, New Brunswick and Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.
B-3**

BETWEEN:

**THE BANK OF NOVA SCOTIA, a Canadian chartered bank
with a registered office in the City of Saint John, Province of
New Brunswick**

APPLICANT

- and -

**ATCON GROUP INC., ATCON HOLDINGS INC., ATCON
PROPERTY HOLDINGS INC., ATCON VENEER PRODUCTS
INC., ATCON LOGISTICS INC., ATCON CONSTRUCTION
INC., ATCON MANAGEMENT SERVICES INC., ATCON
CIVIL LTD., DYCON CONSTRUCTION LTD., ATCON
STRUCTURES INC. AND ENVIREM TECHNOLOGIES INC.,
all of which are carrying on business in the Province of New
Brunswick**

RESPONDENTS

RECORD ON MOTION

dated 9 April 2013

**ON BEHALF OF THE MOVING PARTY,
ERNST & YOUNG INC., for the motion returnable
23 April 2013 at 1:30 p.m. AST**

INDEX

**IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
IN BANKRUPTCY AND INSOLVENCY
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Court, New Brunswick and Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.
B-3**

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APPLICANT

- and -

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CIVIL LTD., DYCON CONSTRUCTION LTD., ATCON
STRUCTURES INC. AND ENVIREM TECHNOLOGIES INC.,
all of which are carrying on business in the Province of New
Brunswick**

RESPONDENTS

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COURT FILE NO.: N/M/17/10

IN THE COURT OF QUEEN'S BENCH
OF NEW BRUNSWICK

IN BANKRUPTCY AND INSOLVENCY

JUDICIAL DISTRICT OF MIRAMICHI

COUR DU BANC DE LA REINE
DU NOUVEAU-BRUNSWICK

DIVISION DE PREMIERE
INSTANCE

CIRCONSCRIPTION
JUDICIAIRE DE MIRAMICH

**IN THE MATTER OF THE
RECEIVERSHIP OF:**

**ATCON GROUP INC., ATCON
HOLDINGS INC., ATCON PROPERTY
HOLDINGS INC., ATCON VENEER
PRODUCTS INC., ATCON LOGISTICS
INC., ATCON CONSTRUCTION INC.,
ATCON MANAGEMENT SERVICES
INC., ATCON CIVIL LTD., DYCON
CONSTRUCTION LTD., ATCON
STRUCTURES INC. AND ENVIREM
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**PURSUANT TO Section 33 of the
Judicature Act, R.S.N.B. 1973, Ch. J-2,
Rule 41, Rules of Court, New Brunswick
and Section 243 of the *Bankruptcy and
Insolvency Act*, R.S.C. 1985, c. B-3**

BETWEEN:

**THE BANK OF NOVA SCOTIA, a Canadian
chartered bank with a registered office in the
City of Saint John, Province of New
Brunswick**

(Applicant)

ENTRE:

-and-

ATCON GROUP INC., ATCON HOLDINGS INC., ATCON PROPERTY HOLDINGS INC., ATCON VENEER PRODUCTS INC., ATCON LOGISTICS INC., ATCON CONSTRUCTION INC., ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD., DYCON CONSTRUCTION LTD., ATCON STRUCTURES INC. AND ENVIREM TECHNOLOGIES INC. all of which are carrying on business in the Province of New Brunswick

(Respondents)

- and -

IN THE MATTER OF THE APPLICATION OF ERNST & YOUNG INC. in its capacity as Court-appointed receiver and receiver and manager of the property, assets and undertakings of the Respondents.

NOTICE OF MOTION
(FORM 37A)

AVIS DE MOTION
(FORMULE 37A)

TO:

DESTINAIRE:

The Persons on the Service List attached hereto as **Schedule "A"** to this Notice of Motion

Ernst & Young Inc., in its capacity as receiver and receiver and manager of the property, assets and undertakings of the Respondents (the "**Receiver**") will apply to the Court of Queen's Bench, at 673 King George Highway, Miramichi, New Brunswick, at 1:30 p.m. AST on Tuesday, April 23, 2013, by way of teleconference hearing for the following relief:

Le demandera à la Cour à
le , à :

- (a) an Order, substantially in the form and substance of the draft order

attached hereto as **Schedule "B"**, *inter alia*:

- (b) approving the Deh Cho Settlement Agreement (as defined below) and approving and authorizing the execution of the Deh Cho Settlement Agreement by the Receiver;
- (c) authorizing and directing the Receiver to take such steps and execute such additional documents as may be necessary or desirable for the completion of the settlement contained in the Deh Cho Settlement Agreement;
- (d) authorizing, empowering and directing the Receiver to distribute certain amounts to the Secured Creditors (as defined below), which have been agreed to and accepted by the Secured Creditors;
- (e) approving the conduct, actions and activities of the Receiver in administering this receivership proceeding as set out in the Twenty-Fourth Report of the Receiver dated 15 February 2013, and the Twenty-Fifth Report of the Receiver dated 8 April 2013 (the "**Twenty-Fifth Report**"); and
- (f) such further and other relief as may be just.

The grounds upon which the Receiver relies are as follows:

1. The relief sought by the Receiver is appropriate in the circumstances and is in accordance with the provisions of the Receivership Order, the jurisdiction of the Court under the *Bankruptcy and Insolvency Act* and the inherent jurisdiction of the Court.
2. In 2008, Atcon Construction Inc. ("**Atcon Construction**") was retained by the Deh Cho Bridge Corporation Ltd. ("**DCBC**") pursuant to an agreement dated 22 February 2008 (the "**Deh Cho Contract**") to provide engineering, design, bridge fabrication and construction services in connection with a concession agreement between DCBC and the Government of the Northwest Territories ("**GNWT**") for the construction of a bridge over the Mackenzie River (the "**Deh Cho Bridge Project**").
3. In December 2009, DCBC terminated the Deh Cho Contract with Atcon Construction. In April 2010, GNWT terminated its agreement with DCBC. As a result of this termination, GNWT assumed ownership of the Deh Cho Bridge Project.
4. In October 2010, the Receiver submitted a claim in the amount of \$5,329,728 to GNWT pursuant to the termination provision contained in the Deh Cho Contract which stipulated how the parties would determine the final contract payment to Atcon Construction, if any, in the event the Deh Cho Contract was terminated prior to the

completion of the bridge (the "**Termination Claim**").

5. GWNT took the position that a large number of the costs in the Termination Claim were not properly claimable for various reasons. Notwithstanding the differences between the positions of the parties, both the Receiver and GWNT were committed to negotiating a reasonable and fair settlement.
6. On 6 November 2012, the Receiver and the GNWT entered into minutes of settlement settling the Termination Claim (the "**Deh Cho Settlement Agreement**"), which provides that, subject to the approval of this Honourable Court, GNWT will pay \$1,300,000 (the "**Deh Cho Settlement Agreement Funds**") to the Receiver and will release the Receiver and Atcon Construction with respect to all potential claims held by DCBC in connection with the Deh Cho Contract.
7. The Receiver is of the view that the Deh Cho Settlement Agreement represents a fair and reasonable settlement of the matters relating to the Termination Claim, on the basis that:
 - (a) The Bank of Nova Scotia, which has valid, perfected and enforceable security against the property of Atcon Construction and is the party with the proprietary interest in any amounts recovered by the Receiver in connection with the Termination Claim, supports the terms of the Deh Cho Settlement Agreement and the quantum of the Deh Cho Settlement Agreement Funds to be paid by GNWT; and
 - (b) in the event that the Deh Cho Settlement Agreement is not approved by this Honourable Court, time consuming and costly litigation would be necessary to resolve the issues between the parties, perhaps in both the Province of New Brunswick and the Northwest Territories, and there is no guarantee that the Receiver would be successful in realizing as much or more for the Atcon Construction receivership estate as it will pursuant to the Deh Cho Settlement Agreement as a result of such litigation.
8. The Receiver proposes to make a distribution to certain secured creditors of the Respondents including The Bank of Nova Scotia, the Province of New Brunswick, GE Canada Equipment Financing G.P. and its affiliated entities, and Aviva Insurance Company of Canada and its affiliated entities (the "**Secured Creditors**") as set out in the Draft Order and the Twenty-Fifth Report, which have been agreed to and accepted by the Secured Creditors.
9. The Receiver relies on:
 - (a) the Twenty-Fifth Report, filed;
 - (b) the *Rules of Court*, as amended, including but not limited to Rules 1.03, 2.01, 2.02 and 3.02;

- (c) the *Judicature Act*, R.S.N.B. 1973, c. J-2, as amended, and
- (d) such further and other grounds as counsel for the Receiver may advise and this Honourable Court may permit.

UPON the hearing of the motion the following affidavit or other documentary evidence will be presented:

A l'audition de la motion, les affidavits ou les autres preuves littérales suivantes seront présentées:

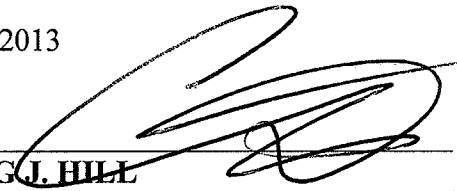
- (1) the Twenty-Fifth Report; and
- (2) such further and other affidavits or documentary evidence as counsel for the Applicant may advise and this Honourable Court may permit.

You are advised that:

Sachez que:

- (a) you are entitled to issue documents and present evidence at the hearing in English or French or both;
 - (b) the applicant intends to proceed in the English language; and
 - (c) if you intend to proceed in the other official language, an interpreter may be required and you must so advise the Clerk at least 5 days before the hearing.
- (a) vous avez le droit d'émettre des documents et de présenter votre preuve à l'audience en français, en anglais ou dans les deux langues;
 - (b) le demandeur à l'intention d'utiliser la langue anglais; et
 - (c) si vous avez l'intention d'utiliser l'autre langue officielle, les services d'un interprète pourront être requis et vous devrez un aviser le greffier au moins 5 jours avant l'audience.

DATED at Toronto, Ontario, this 9th day of April, 2013


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**Lawyers for Ernst & Young Inc.,
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of the Respondents**

TOR01: 5142584: v1

SCHEDULE “A”

Schedule "A"

**IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
TRIAL DIVISION
JUDICIAL DISTRICT OF MIRAMICHI**

Court File No. N/M/16/10

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

- and -

**IN THE MATTER OF ATCON CONSTRUCTION INC.,
ATCON INDUSTRIAL SERVICES INC., ATCON
MANAGEMENT SERVICES INC., ATCON CIVIL LTD.,
DYCON CONSTRUCTION LTD., ATCON STRUCTURES
INC., ENVIREM TECHNOLOGIES INC. all of which are
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- AND -

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**PURSUANT TO Section 33 of The *Judicature Act*, R.S.N.B.
1973, Ch. J-2, Rule 41, Rules of Court, New Brunswick and
Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985,
c. B-3**

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(as of April 9, 2013)**

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N/M/16/10**

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SCHEDULE “B”

**IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
IN BANKRUPTCY AND INSOLVENCY
JUDICIAL DISTRICT OF MIRAMICHI**

IN THE MATTER OF THE RECEIVERSHIP OF:

ATCON GROUP INC., ATCON HOLDINGS INC., ATCON PROPERTY HOLDINGS INC., ATCON VENEER PRODUCTS INC., ATCON LOGISTICS INC., ATCON CONSTRUCTION INC., ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD., DYCON CONSTRUCTION LTD., ATCON STRUCTURES INC. AND ENVIREM TECHNOLOGIES INC.

PURSUANT TO Section 33 of the *Judicature Act*, R.S.N.B. 1973, Ch. J-2, Rule 41, Rules of Court, New Brunswick and Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3

BETWEEN:

**THE BANK OF NOVA SCOTIA, a Canadian chartered bank
with a registered office in the City of Saint John, Province of
New Brunswick**

APPLICANT

- and -

ATCON GROUP INC., ATCON HOLDINGS INC., ATCON PROPERTY HOLDINGS INC., ATCON VENEER PRODUCTS INC., ATCON LOGISTICS INC., ATCON CONSTRUCTION INC., ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD., DYCON CONSTRUCTION LTD., ATCON STRUCTURES INC. AND ENVIREM TECHNOLOGIES INC., all of which are carrying on business in the Province of New Brunswick

RESPONDENTS

ORDER

(Approval of the Deh Cho Settlement Agreement and the Second Interim Distribution)

THIS MOTION, made by Ernst & Young Inc. in its capacity as Court-appointed receiver and receiver manager of the property, assets and undertakings of the Respondents (the “**Receiver**”) for an order, *inter alia*:

- (i) approving the Deh Cho Settlement Agreement (as defined below) and approving and authorizing the execution of the Deh Cho Settlement Agreement by the Receiver;
- (ii) authorizing and directing the Receiver to take such steps and execute such additional documents as may be necessary or desirable for the completion of the settlement contained in the Deh Cho Settlement Agreement;
- (iii) authorizing, empowering and directing the Receiver to distribute certain amounts to the Secured Creditors (as defined below), which have been agreed to and accepted by the Secured Creditors; and
- (iv) approving the conduct, actions and activities of the Receiver in administering this receivership proceeding as set out in the Twenty-Fourth Report of the Receiver dated 15 February 2013 (the “**Twenty-Fourth Report**”), and the Twenty-Fifth Report of the Receiver dated 8 April 2013 (the “**Twenty-Fifth Report**”),

was heard this day at 673 King George Highway, Miramichi, New Brunswick.

ON READING the Receiver’s Notice of Motion dated 9 April 2013, the Twenty-Fifth Report, and on hearing the submissions of counsel for the Receiver, and such other counsel in attendance, and on reading the affidavit of service of ● sworn ●, and on being advised of the consent of each of The Bank of Nova Scotia (the “**Bank**”), the Province of New Brunswick (the “**Province**”), Aviva Insurance Company of Canada and its affiliated entities (“**Aviva**”), and GE Canada Equipment Financing G.P. and its affiliated entities (“**G.E.**”, and together with the Bank, the Province and Aviva, the “**Secured Creditors**”) to this Order,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Receiver's Notice of Motion, the Twenty-Fifth Report and the Record on Motion shall be and is hereby abridged and validated so that the motion is properly returnable today, and that any further service thereof is hereby dispensed with.

APPROVAL OF ACTIVITIES OF THE RECEIVER

2. **THIS COURT ORDERS** that the conduct, actions and activities of the Receiver in administering this receivership proceeding as set out in the Twenty-Fourth Report and the Twenty-Fifth Report, be and are hereby approved.

APPROVAL OF DEH CHO SETTLEMENT AGREEMENT

3. **THIS COURT ORDERS AND DECLARES** that the Deh Cho Settlement Agreement (as defined in the Twenty-Fifth Report and attached as Appendix "C" thereto), and the execution of the Deh Cho Settlement Agreement by the Receiver, is hereby approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the terms of the settlement contained in the Deh Cho Settlement Agreement.

DISTRIBUTIONS

4. **THIS COURT ORDERS** that the Receiver is authorized, empowered and directed, upon receipt of the settlement amount under the Deh Cho Settlement Agreement, to pay from proceeds in its possession:

- (a) the sum of \$1,300,000.00 to the Bank;
- (b) the sum of \$18,048.51 to G.E.;
- (c) the sum of \$7,871.86 to the Province; and
- (d) the sum of \$7,551.09 to Aviva.

Dated at Miramichi, New Brunswick, this 23rd day of April, 2013.

Thomas W. Riordon
Judge of the Court of Queen's Bench of
New Brunswick

TOR01: 5142526: v1

TAB 2

**IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
IN BANKRUPTCY AND INSOLVENCY
JUDICIAL DISTRICT OF MIRAMICHI**

IN THE MATTER OF THE RECEIVERSHIP OF:

**ATCON GROUP INC., ATCON HOLDINGS INC., ATCON PROPERTY HOLDINGS INC.,
ATCON VENEER PRODUCTS INC., ATCON LOGISTICS INC., ATCON CONSTRUCTION
INC., ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD., DYCON
CONSTRUCTION LTD., ATCON STRUCTURES INC. AND ENVIREM TECHNOLOGIES INC.**

**PURSUANT TO Section 33 of The *Judicature Act*, R.S.N.B. 1973, Ch. J-2, Rule 41, Rules of Court,
New Brunswick and Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3**

BETWEEN:

**THE BANK OF NOVA SCOTIA, a Canadian chartered bank
with a registered office in the City of Saint John, Province of
New Brunswick**

APPLICANT

- and -

**ATCON GROUP INC., ATCON HOLDINGS INC., ATCON
PROPERTY HOLDINGS INC., ATCON VENEER PRODUCTS
INC., ATCON LOGISTICS INC., ATCON CONSTRUCTION INC.,
ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD.,
DYCON CONSTRUCTION LTD., ATCON STRUCTURES INC.
AND ENVIREM TECHNOLOGIES INC., all of which are carrying
on business in the Province of New Brunswick**

RESPONDENTS

**TWENTY-FIFTH REPORT OF THE RECEIVER
(Approval of Deh Cho Settlement Agreement and Second Interim Distribution Motion)
8 April 2013**

INTRODUCTION AND PURPOSE

1. In connection with the applications of The Bank of Nova Scotia (the “**Bank**”) pursuant to section 33 of the *Judicature Act* (New Brunswick), Rule 41 of the Rules of Court of New Brunswick, and section 243 of the *Bankruptcy and Insolvency Act* (Canada) that were heard by The Honourable Mr. Justice Riordon of the Court of Queen’s Bench of New Brunswick on 1 March 2010 and 30 March 2010, Ernst & Young Inc. was respectively appointed as receiver and receiver manager (the “**Receiver**”) of the property, assets and undertakings of:
 - (a) Atcon Group Inc., Atcon Holdings Inc., Atcon Property Holdings Inc., Atcon Veneer Products Inc. and Atcon Logistics Inc. pursuant to the Receivership Order dated 2 March 2010 (the “**March 2 Order**”); and
 - (b) Atcon Construction Inc. (“**Atcon Construction**”), Atcon Management Services Inc., Atcon Civil Ltd., Dycon Construction Ltd., Atcon Structures Inc. and Envirem Technologies Inc. pursuant to an Order dated 30 March 2010 (together with the March 2 Order, the “**Receivership Order**”).
2. The Receivership Order authorizes the Receiver to, among other things:
 - (a) take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
 - (b) receive, preserve and protect the Property, or any parts thereof;
 - (c) receive and collect all monies and accounts now owed or thereafter owing to the Respondents and exercise all remedies of the Respondents in collecting such monies;
 - (d) settle, extend or compromise any indebtedness owing to the Respondents;
 - (e) execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver’s name or in the name and on behalf of any of the Respondents, for any purpose pursuant to the Receivership Order; and
 - (f) apply to the Court for advice and directions in the discharge of its powers and duties under the Receivership Order.

3. The purpose of this Twenty-Fifth Report is to:
- (a) report to this Honourable Court on the status of matters relating to the Deh Cho Bridge Project (as defined below) and recommend that this Honourable Court grant an Order: (i) approving the Deh Cho Settlement Agreement (as defined below); (ii) authorizing and approving the execution of the Deh Cho Settlement Agreement by the Receiver; and (iii) authorizing and directing the Receiver to take such steps and execute such additional documents as may be necessary or desirable for the completion of the settlement contained in the Deh Cho Settlement Agreement;
 - (b) provide an update to this Honourable Court on various asset realizations since the Receiver's Twenty-Third Report dated 25 July 2012 – which was filed in connection with the interim distribution approval motion heard on 31 July 2012;
 - (c) seek the approval of this Honourable Court of an interim distribution to certain Secured Creditors (as defined below) that has been agreed to and accepted by the Secured Creditors; and
 - (d) seek the approval of this Honourable Court of the conduct, actions and activities of the Receiver set out in the Twenty-Fourth Report of the Receiver dated 15 February 2013 and this Twenty-Fifth Report.

TERMS OF REFERENCE

4. In preparing this Twenty-Fifth Report, the Receiver has been provided with, and has relied upon unaudited historical financial statements, other unaudited financial information and projections prepared by the Respondents, the books and records of the Respondents, discussions with the management and employees of the Respondents, and other information from various sources. The Receiver has assumed that the information it has been provided is accurate and complete. Except as noted in the body of this Twenty-Fifth Report, the Receiver did not audit, review or otherwise attempt to verify the accuracy or completeness of the information. Accordingly, the Receiver expresses no opinion or other form of assurance with respect to the information provided to the Receiver and presented in the Twenty-Fifth Report or relied upon by the Receiver in preparing the Twenty-Fifth Report. Further, the nature of the Receiver's work completed in these proceedings will not necessarily disclose errors, misstatements, irregularities or illegal acts, if such exist, on the part of the Respondents, or its officers or employees or in the information.

5. All references to monetary amounts in this Twenty-Fifth Report are in Canadian dollars unless otherwise noted.
6. Capitalized terms not defined in this Twenty-Fifth Report are as defined in the Receivership Order.
7. Copies of Court materials in these proceedings may be obtained from the Receiver's website established in connection with the Respondents (www.ey.com/ca/atcon).

Deh Cho Bridge Project

8. The Deh Cho bridge project involved the construction of a bridge over the MacKenzie River near Fort Providence, Northwest Territories (the "**Deh Cho Bridge Project**"). The Deh Cho Bridge Corporation Ltd. ("**DCBC**") was incorporated by the Deh Gah Got'ie First Nation and the Fort Providence Metis Council so that they could enter into a concession agreement with the Government of the Northwest Territories ("**GNWT**") to develop, design, construct, operate, manage, maintain and rehabilitate the bridge (the "**Concession Agreement**").
9. As previously reported, DCBC retained Atcon Construction to provide engineering, design, bridge fabrication and construction services pursuant to a \$133,628,450 guaranteed maximum fixed price contract dated 22 February 2008 (the "**Deh Cho Contract**").
10. On 30 December 2009, DCBC provided written notice of the termination of the Deh Cho Contract to Atcon Construction. A copy of the notice of termination is attached as **Appendix "A"**.
11. The Receiver understands that the GNWT terminated its Concession Agreement with DCBC following a "Project Company Event of Default" under the terms of the Concession Agreement, effective 1 April 2010. As a result of this termination, the GNWT assumed ownership of the Deh Cho Bridge Project.
12. The Deh Cho Contract contained a termination provision which stipulated how the parties would determine the final contract payment to Atcon Construction, if any, in the event the Deh Cho Contract was terminated prior to the completion of the bridge. Pursuant to the terms of the termination provision, Atcon Construction was entitled to recover all reasonable and proper amounts actually expended or legally payable by Atcon Construction, together with a specified

mark-up percentage to cover profit and all other expenditures or costs incurred by Atcon Construction.

13. Following its appointment in March 2010, the Receiver, with the assistance of Atcon Construction accounting personnel, undertook to assemble a complete project accounting with supporting documentation in relation to the Deh Cho Contract as administered by Atcon Construction between 22 February 2008 and 30 December 2009. As a result of the Receiver's review, a termination claim in the amount of \$5,329,728 was calculated and delivered by the Receiver to the GNWT on 19 October 2010 (the "**Termination Claim**"). A copy of the Termination Claim (without attachments) is attached as **Appendix "B"**.
14. Following the delivery of the Termination Claim, the Receiver and GNWT engaged in a series of meetings and exchanges of correspondence and additional supporting documentation with respect to the Termination Claim. GNWT retained its own financial consultant to perform a detailed review of the supporting materials assembled by the Receiver with respect to the Termination Claim. GNWT challenged a number of the assumptions underlying the Receiver's analysis and expressed concern over the inclusion of certain costs in the Termination Claim. GNWT's position was that a large number of costs in the Termination Claim were not properly claimable as a result of, among other things:
 - (a) inadequate supporting documentation not having been provided;
 - (b) concerns that items claimed were not delivered to the project site;
 - (c) fundamental differences between the parties' interpretations on cost eligibility requirements;
 - (d) differences of opinion on the quantum of certain mark-up values;
 - (e) differences of opinion with respect to the inclusion of a mark-up on the settlement that was entered into with a sub-contractor that provided services in connection with the project; and
 - (f) differences of opinion with respect to the ability of the receivership estate to claim certain equity contributions previously advanced by Atcon Construction to DCBC.

Deh Cho Settlement Agreement

15. Notwithstanding the differences between the positions of the parties, both sides remained committed to negotiating a reasonable and fair settlement. On 6 November 2012, the Receiver, representatives from the GNWT, and their respective counsel met in Toronto, Ontario to discuss, on a without prejudice basis, the merits of each parties' respective position, with a view to reaching a settlement.
16. The Receiver reports that, as a result of the without prejudice discussions, a settlement of the Termination Claim has been reached between the Receiver and GNWT, subject to the Receiver obtaining this Honourable Court's approval of the settlement. Attached hereto and marked as **Appendix "C"** is a copy of the minutes of settlement and accompanying releases effective 6 November 2012 between the Receiver and GNWT (the "**Deh Cho Settlement Agreement**").
17. The Deh Cho Settlement Agreement provides that, subject to the approval of this Honourable Court, GNWT will pay \$1,300,000 (the "**Deh Cho Settlement Agreement Funds**") to the Receiver and will release the Receiver and Atcon Construction with respect to all potential claims held by DCBC in connection with the Deh Cho Contract.
18. The Receiver is of the view that the Deh Cho Settlement Agreement represents a fair and reasonable settlement of the matters relating to the Termination Claim, on the basis that:
 - (a) the Bank, which has valid, perfected and enforceable security against the property of Atcon Construction and is the party with the proprietary interest in any amounts recovered by the Receiver in connection with the Termination Claim, supports the terms of the Deh Cho Settlement Agreement and the quantum of the Deh Cho Settlement Agreement Funds to be paid by GNWT; and
 - (b) in the event that the Deh Cho Settlement Agreement is not approved by this Honourable Court, time consuming and costly litigation would be necessary to resolve the issues between the parties, perhaps in both the Province of New Brunswick and the Northwest Territories, and there is no guarantee that the Receiver would be successful in realizing as much or more for the Atcon Construction receivership estate as it will pursuant to the Deh Cho Settlement Agreement as a result of such litigation.

19. For the foregoing reasons, the Receiver recommends the approval by this Honourable Court of the Deh Cho Settlement Agreement.

PROPERTY REALIZATIONS

Property of the Respondents Realized Post 25 July 2012

20. On 25 July 2012, the Receiver issued its Twenty-Third Report (the “**Twenty-Third Report**”), which provided a summary of asset realizations generated by the Receiver to that date. Since the filing of the Twenty-Third Report, the following additional amounts, which are more fully detailed below, have been realized:

<u>Property/Transaction</u>	<u>Cash Proceeds</u>
1 Whalen Street	\$13,094.20
Nelson Street and St. Patrick’s Drive Properties	\$8,978.01
CNRL Contract Funds	\$86,212.86

1 Whalen Street

21. The Property of Atcon Construction includes property municipally known as 1 Whalen Street, Miramichi, New Brunswick, bearing PAN 2811122 and PID 40179715 (“**1 Whalen Street**”). 1 Whalen Street is an approximately 2.55 acre vacant lot in the upper industrial park in Newcastle, Miramichi.
22. The Receiver sought and received approval from this Honourable Court to sell 1 Whalen Street to Hitchman Construction Inc. Additional details associated with the 1 Whalen Street transaction and the Receiver’s efforts to sell the property are contained within the Receiver’s Twenty-Second Report to this Honourable Court dated 13 July 2012.
23. The Receiver successfully closed the 1 Whalen Street property sale which generated \$13,094.20 after all closing adjustments.

Nelson Street Properties and St. Patrick’s Drive Property

24. Atcon Management Services Inc. (“**AMSI**”) was the registered owner of parcels of real property located on Nelson Street in Miramichi, New Brunswick and identified as PID 40221426, PID 40219941, and PID 40221434 (collectively, the “**Nelson Street Properties**”). AMSI was also the registered owner of a parcel of real property located on St. Patrick’s Drive in Miramichi, New Brunswick and identified as PID 40466039 (the “**St. Patrick’s Drive Property**”).
25. The Nelson Street Properties and the St. Patrick’s Drive Property were sold in conjunction with the larger Atcon Plywood sale facilitated by PricewaterhouseCoopers acting in its capacity as Receiver of Atcon Plywood Inc., as approved by this Court on 18 February 2013. The proposed allocation of the \$15,000 gross selling price between the four land parcels was described in the Receiver’s Twenty-Fourth Report as being:
- | | | |
|-------|--------------|----------------|
| (i) | PID 40221426 | \$1,745 |
| (ii) | PID 40219941 | \$5,580 |
| (iii) | PID 40221434 | \$4,185 |
| (iv) | PID 40466039 | <u>\$3,490</u> |
| | | \$15,000 |
26. The tax arrears outstanding and payable in respect of the St. Patrick’s Drive Property (PID 40466039) exceeded the amount of the purchase price allocated to that property. Consequently, the entire net recovery realized from these land sales totaling \$8,978.01 has been fully attributed to the Nelson Street Properties.

CNRL Contract Funds

27. Atcon Construction provided a variety of contractor services to Canadian Natural Resources Ltd. (“**CNRL**”) in the Province of Alberta. Gowling Lafleur Henderson LLP (“**Gowlings**”), in its capacity as counsel to Atcon Construction, received certain funds from CNRL to be held in trust in connection with the services provided by Atcon Construction to CNRL (the “**CNRL Contract Funds**”). Gowlings released \$129,843.55 of CNRL Contract Funds to the Receiver on 19 April 2012.

28. Gowlings continued to hold the remaining balance of approximately \$175,000 of the CNRL Contract Funds in its trust account (the "**Remaining CNRL Funds**") which Gowlings claimed a priority interest over in relation to unpaid legal fees.
29. The Receiver previously reported that settlement discussions with respect to the Remaining CNRL Funds had not been successful and that a motion would be brought before this Honourable Court to settle the dispute between the parties. Subsequent to filing the Receiver's Twenty-Third Report settlement discussions resumed between the parties and a satisfactory agreement was reached between Gowlings, the Receiver and the Bank being the secured creditor with a beneficial interest in the Remaining CNRL Funds, which resulted in \$86,212.86 of additional proceeds being paid to the Receiver and the balance being retained by Gowlings to be applied against its unpaid legal fees.

PROPOSED DISTRIBUTIONS

30. Subject to this Honourable Court approving the Deh Cho Settlement Agreement and upon receipt of the Deh Cho Settlement Agreement Funds in the amount of \$1,300,000, the Receiver proposes to make a second interim distribution (the "**Second Interim Distribution**") to certain Secured Creditors (as defined below) of the Respondents on account of their respective security interests over the property of the Respondents.
31. As reported in the Receiver's Twenty-Third Report, a distribution methodology was negotiated and agreed amongst the primary secured creditors of the Estate (the "**Distribution Methodology**") and an interim distribution calculated using the Distribution Methodology was approved by Order of this Honourable Court dated 31 July 2012.
32. The Receiver has engaged in discussions with representatives of and/or counsel for the primary secured creditors of the Respondents including the Bank, the Province of New Brunswick (the "**Province**"), Aviva Insurance Company of Canada and its affiliated entities ("**Aviva**"), and GE Canada Equipment Financing G.P. and its affiliated entities ("**G.E.**", and together with the Bank, the Province and Aviva, the "**Secured Creditors**") regarding the proposed Second Interim Distribution.
33. As a result of those discussions, the Secured Creditors have agreed to the distributions set out below. The proposed distributions, which have been calculated in accordance with the Distribution Methodology, are as follows:

- (a) the sum of \$1,300,000.00 to the Bank, as the beneficial security holder over proceeds arising from the Deh Cho Settlement Agreement Funds, the sale of the Nelson Street Properties and the settlement with respect to the Remaining CNRL Funds;
 - (b) the sum of \$7,871.86 to the Province, as the beneficial security holder over proceeds arising from the sale of 1 Whalen Street;
 - (c) the sum of \$18,048.51 to G.E. in relation to a reduced allocation of its CRA Deemed Trust Holdback (as defined below), arising from the increased realizations generated for the benefit of the Bank and the Province; and
 - (d) the sum of \$7,551.09 to Aviva in relation to a reduced allocation of its CRA Deemed Trust Holdback (as defined below), arising from the increased realizations generated for the benefit of the Bank and the Province.
34. The Bank and the Province hold beneficial interests in the net proceeds generated from the assets which are subject to this distribution motion. As noted above, the increase in the net proceeds for the direct benefit of the Bank and the Province correspondingly reduce the amount of the holdback allocated to G.E. and Aviva on a pro-rata basis in connection with the claim of the Canada Revenue Agency against Atcon Construction for alleged unremitted employee source deductions (the “**CRA Deemed Trust Holdback**”).
35. Attached as **Appendix “D”** is the Receiver’s Statement of Receipts and Disbursements for the period ending 11 March 2013 which summarizes all receivership transactions to that date and, for illustrative purposes, includes a forecasted receipt of the \$1,300,000 Deh Cho Settlement Agreement Funds. Attached as **Appendix “E”** is a Proceed Allocation summary allocating all receipts (including the forecasted Deh Cho Settlement Agreement Funds) amongst beneficial security holders. In addition, attached as **Appendix “F”** is a Net Proceed Allocation Summary which allocates all receipts (including the forecasted Deh Cho Settlement Agreement Funds) and calculates each beneficial security holder’s pro rata share of the CRA Deemed Trust Holdback.

RELIEF SOUGHT BY THE RECEIVER

36. The Receiver respectfully requests that this Honourable Court grant an Order in the form submitted by the Receiver:
- (a) approving the Deh Cho Settlement Agreement and the execution of the Deh Cho Settlement Agreement by the Receiver;
 - (b) authorizing and empowering the Receiver to make the Second Interim Distribution to the Bank, G.E., Aviva and the Province in the amounts indicated above; and

- (c) approving the conduct, actions and activities of the Receiver in administering these receivership proceedings as described in the Twenty-Fourth Report and in this Twenty-Fifth Report.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of April 2013.

ERNST & YOUNG INC.
in its capacity as the Court-appointed
Receiver of the Respondents and not in its
personal or corporate capacity

By:

A handwritten signature in black ink, appearing to be 'G. Kinsman', written over a horizontal line.

George C. Kinsman, CA•CIRP
Senior Vice President

APPENDIX “A”



P.O. Box 299 Fort Providence, NT X0E 0L0

Via email, fax and mail

NOTICE OF TERMINATION

Atcon Construction Inc.
626 Newcastle Blvd.
Miramichi, New Brunswick,
Canada E1V 2L3

Fax: (506) 627-1225

Attn: Mr Robert Tozer, President

December 30, 2009

Dear Mr. Tozer:

Re: NOTICE OF TERMINATION: Construction Contract for Deh Cho (Mackenzie River) Bridge Construction, Yellowknife Highway (No. 3) NT, KM 24, Near Fort Providence, NT (the "Construction Contract"), made between the Deh Cho Bridge Corporation (the "Corporation") and Atcon Construction Inc. ("Atcon"), February 22, 2008

This notice of termination is delivered in accordance with GC 11 of the Construction Contract.

Pursuant to GC 41.1 of the Construction Contract, the Corporation hereby terminates the Construction Contract effective as of today's date.

Please cease all Atcon work on the Project as soon as practical. Please contact Mr. Andrew Gamble to discuss logistics for Atcon to wind up its work on the Project in an orderly manner.

Pursuant to GC 41.3, the Corporation must, upon termination, make a termination payment to Atcon in accordance with the process set out in the Construction Contract. The parties should discuss and attempt to achieve agreement as to the quantum of termination payment. The Corporation proposes a meeting in this regard at a mutually convenient time in January. If the parties cannot agree, we will proceed to the costs calculation process in GC 50, as dictated by GC 41.4 of the Construction Contract.

Sincerely,

Michael Vandell

Michael Vandell
President

- c Hon. Michael Meleod
Minister of Transportation
- Mr. Greg Sooley
Sun Life Assurance Company of Canada
- Mr. Greg Yearwood
Ontario Teachers' Pension Plan Board
- Mr. Henry G. Hamilton II
BNY Trust Company of Canada
- Mr. Russell Neudorf, Deputy Minister
Department of Transportation
- Mr. Andrew Gamble
Project Developer

APPENDIX “B”



Ernst & Young Inc.
 1959 Upper Water Street
 13th Floor
 Halifax, Nova Scotia B3J 3N2
 Tel: 902 420 1080
 Fax: 902 420 0503
 ey.com/ca

McCarthy Tétrault LLP
 Barrister & Solicitors
 #5300 Toronto Dominion Bank Tower
 66 Wellington Street West
 Toronto ON M5K 1E6

19 October 2010

Attention: Awanish Sinha

Construction Contract for Deh Cho (Mackenzie River) Bridge Construction Yellowknife Highway (No. 3), NT, km 24 near Fort Providence, NT between Atcon Construction Inc. ("Atcon") and Deh Cho Bridge Corporation Ltd. ("Deh Cho") dated February 2008 (the "Contract")

Further to Deh Cho's Notice of Termination dated December 30, 2009, we have now had the opportunity to calculate the Termination costs in accordance with GC 41.3 in respect of the above captioned Contract.

The Termination costs payable are \$5,329,728. Attached as Schedule 1 is a Summary of Supporting Information showing the line items and the method of calculation. Also attached as Tabs A through H are the materials supporting each line item.

In brief, the Termination costs were calculated based on the following:

Item	Value
Total paid under the Contract by Deh Cho to Atcon [Tab A]	-\$36,110,918
Total paid to Ruskin [Tab C]	\$11,826,806
Total paid to Rows [Tab D]	\$5,698,611
10% Mark up on amounts in Tabs C and D	\$1,752,542
Total subcontractors spend apart from Ruskin and Rows [Tab E]	\$457,966
10% mark up items on subcontractors spend apart from Ruskin and Rows	\$45,797
Total suppliers spend apart from Ruskin and Rows [Tab F]	\$16,579,053
20% mark up items on suppliers spend apart from Ruskin and Rows	\$3,315,811
Atcon's costs of leased equipment not included in the general ledger [Tab G]	\$504,906
20% mark up on leased equipment costs	\$100,981

Item	Value
Atcon's mark-up on the Ruskin settlement	\$500,000
Atcon's equity (retainage) [Tab H]	\$658,174
TOTAL	\$5,329,728

Note that for the purposes of calculating the Termination costs, it has been assumed that DCBC settled Ruskin's action against it by payment of \$5,000,000. Please provide a copy of the settlement agreement for confirmation of the settlement amount (which will be adjusted accordingly).

Pursuant to clause TP8.1 of the Contract, this amount is due as soon as is practicable. Please remit this amount on or before 5 November 2010.

We look forward to your reply.

Yours very truly,

ERNST & YOUNG INC.

Per:



George Kinsman, CA•CIRP
Senior Vice President

enclosure

APPENDIX “C”

**ATCON/DCBC
DEH CHO (MACKENZIE RIVER) BRIDGE CONSTRUCTION
MINUTES OF SETTLEMENT**

WHEREAS the Deh Cho Bridge Corporation Ltd. (the "Corporation") and Atcon Construction Inc. (the "Contractor") were parties to the Construction Contract for Deh Cho (MacKenzie River) Bridge Construction Yellowknife Highway (No. 3), NT, KM 24 Near Fort Providence, NT, dated February 22, 2008 (the "Construction Contract");

AND WHEREAS following the termination of the Construction Contract pursuant to the Corporation's Notice of Termination dated December 30, 2009, the Contractor advised the Corporation that the Contractor had outstanding claims arising from the Construction Contract and related or in reference to the bridge construction project contemplated therein (the "Project"), including, but not limited to the termination payment pursuant to GC 41 of the Construction Contract (the "Termination Payment") and the anticipated Equity Investment by the Contractor in the capital stock of the Corporation (the "Equity Participation Agreement") (collectively, the "Contractor's Claims");

AND WHEREAS, subsequent to the termination of the Construction Contract, the Government of the Northwest Territories (the "GNWT") has assumed management of the Project pursuant to a private agreement between the Corporation and the GNWT;

AND WHEREAS, in lieu of calling upon a Letter of Credit provided by the Contractor for the Project, the GNWT negotiated an agreement with the Government of New Brunswick ("GNB") whereby the GNB provided a fund (the "LOC Fund") through which the GNWT could address the Contractor's deficiencies under the Construction Contract (the "Deficiencies");

AND WHEREAS, subsequent to the termination of the Construction Contract, the Contractor is now in a receivership proceeding before the Court of Queen's Bench of New Brunswick, and Ernst & Young Inc. ("E&Y") was appointed as receiver and manager of the property, assets and undertakings of the Contractor with the ability to settle, extend or compromise any indebtedness owing to the Contractor and execute, assign, issue and endorse documents of whatever nature in respect of any of the property of the Contractor, whether in the name of E&Y as receiver or in the name and on behalf of the Contractor, for any purpose pursuant to the receivership order;

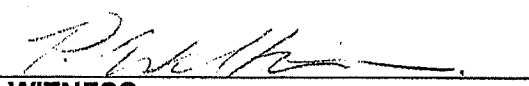
AND WHEREAS the parties wish to fully and finally resolve all matters between them arising out from, related to, or in reference to the Construction Contract and all of the claims that the parties have had, have, or may have with respect to the Construction Contract and the Equity Participation Agreement, with the exceptions set out in these Minutes of Settlement below;

NOW THEREFORE the Corporation and the Contractor agree as follows:

1. **Recitals:** The parties represent, warrant, acknowledge and agree that the Recitals set out herein are true and accurate.
2. **Court Approval:** The terms of these Minutes of Settlement will be subject to and contingent upon approval by the Court of Queen's Bench of New Brunswick in the receivership proceeding regarding the Contractor (the "Court Approval").

3. **Settlement Payment:** The GNWT, through counsel for the Corporation, (McCarthy Tétrault LLP) will pay to counsel for E&Y, acting in its capacity as receiver for the Contractor (Gowlings LLP), in trust, the all-inclusive amount of \$1,300,000.00, payable within 15 days of the Court Approval, in full satisfaction of all the Contractor's Claims.
4. **Full and Final Releases:** E&Y, acting in its capacity as Court-appointed receiver for the Contractor and on behalf of the Contractor shall execute the Full and Final Release attached as Schedule "A" and provide executed copies to E&Y's counsel to be held in trust; the Corporation and the GNWT shall execute the Full and Final Release attached as Schedule "B" and provide executed copies to the Corporation's counsel to be held in trust; once counsel to the parties have confirmed receipt of payment and satisfaction of the payment obligation in these Minutes of Settlement, and the granting of Court Approval, counsel shall release the respective Full and Final Releases from trust.
5. **No Admission:** The parties agree that this settlement and these Minutes of Settlement are not, and shall not be deemed to be, any admission of liability whatsoever on the part of the Corporation and/or the GNWT.
6. **Confidentiality:** The parties agree to maintain strict confidentiality of this settlement and the terms contained in these Minutes of Settlement, and shall not disclose same to any third-party (except their respective legal or financial advisors), except as required by law, or for the purposes of enforcing any obligation under these Minutes of Settlement as against another party. Notwithstanding the foregoing, E&Y as receiver of the Contract shall file a copy of these Minutes of Settlement with the Court of Queen's Bench of New Brunswick and serve it on the parties on the service list in the receivership proceeding as part of its motion for Court Approval.
7. **Counterparts:** These Minutes of Settlement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be exchanged either in original, electronic transmission or faxed form and the parties adopt any signatures received by electronic transmission and/or a receiving fax machine as original signatures of the parties.
8. **Governing Law:** These Minutes of Settlement shall be governed by, interpreted and construed and enforced in accordance with the laws of the Northwest Territories, including the federal laws of Canada applicable in such territory.

In witness whereof the parties have caused these Minutes of Settlement to be executed by their duly authorized representatives at various locations, effective as of November 6, 2012.

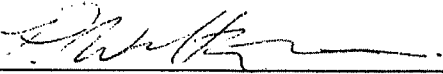

WITNESS

ATCON CONSTRUCTION INC., by its Court-appointed receiver Ernst & Young Inc.

Per: 

Title: *Senior Vice President*

I have authority to bind the Corporation.



WITNESS

ERNST & YOUNG INC. in its capacity as
Court-appointed receiver of ATCON
CONSTRUCTION INC. and not in its personal
or corporate capacity

Per:

Title: *Senior Vice President*

I have authority to bind the Corporation.

WITNESS

DEH CHO BRIDGE CORPORATION LTD.

Per:

Title:

I have authority to bind the Corporation.

WITNESS

GOVERNMENT OF THE NORTHWEST
TERRITORIES

Per:

Title:

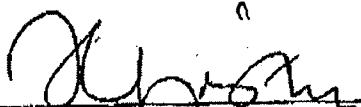
WITNESS

**ERNST & YOUNG INC. in its capacity as
Court-appointed receiver of ATCON
CONSTRUCTION INC. and not in its personal
or corporate capacity**

Per:

Title:

I have authority to bind the Corporation.



WITNESS



DEH CHO BRIDGE CORPORATION LTD.

Per:

Title:
I have authority to bind the Corporation.

WITNESS

**GOVERNMENT OF THE NORTHWEST
TERRITORIES**

Per:

Title:

WITNESS

ERNST & YOUNG INC. in its capacity as
Court-appointed receiver of ATCON
CONSTRUCTION INC. and not in its personal
or corporate capacity

Per:

Title:

I have authority to bind the Corporation.

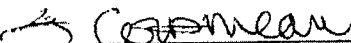
WITNESS

DEH CHO BRIDGE CORPORATION LTD.

Per:

Title:

I have authority to bind the Corporation.


WITNESS


GOVERNMENT OF THE NORTHWEST
TERRITORIES

Per: RUSSELL NEUBERG

Title: DEPUTY MINISTER

Schedule "A"

FULL AND FINAL RELEASE (Atcon release of DCBC and GNWT)

IN CONSIDERATION OF the receipt of payment of the sum of ONE MILLION AND THREE HUNDRED THOUSAND CANADIAN DOLLARS (\$1,300,000.00) and, subject to the paragraph below, the abandonment of any and all existing or potential actions, causes of action, choses in action, suits, proceedings, debts, sums of money, accounts, bonds, covenants, contracts, liabilities, damages, grievances, executions, judgments, demands, injunctive relief or other claims of any kind whatever, in law and in equity and whether actual or potential, known or unknown, anticipated or possible (collectively, "**Claims**") that the Deh Cho Bridge Corporation Ltd. and/or the Government of the Northwest Territories has had, now has, or may hereafter have against Atcon Construction Inc. and/or Ernst & Young Inc. in its capacity as Court-appointed receiver of the property, assets and undertaking of Atcon Construction Inc., arising from, related to, or with respect to: (a) the Construction Contract for Deh Cho (MacKenzie River) Bridge Construction Yellowknife Highway (No. 3), NT, KM 24 Near Fort Providence, NT, between the Deh Cho Bridge Corporation Ltd. and Atcon Construction Inc., dated February 22, 2008 (the "Construction Contract"); and (b) the Proposed Equity Investment by Atcon Construction Inc. in the capital stock of the Deh Cho Bridge Corporation Ltd., material terms agreed to in principle (the "Equity Participation Agreement"), as set out in the Full and Final Release (DCBC Release of Atcon and E&Y) dated _____, 2013, all of which constitutes good and valuable consideration, the receipt of which is hereby acknowledged, ATCON CONSTRUCTION INC. and ERNST & YOUNG INC., in its capacity as a Court-appointed receiver of the property, assets and undertaking of Atcon Construction Inc. and not in its personal or corporate capacity (collectively hereinafter the "**Releasers**"), do hereby release, remise and forever discharge the DEH CHO BRIDGE CORPORATION LTD., the GOVERNMENT OF THE NORTHWEST TERRITORIES, and their respective officers, directors, employees, servants, affiliates, agents administrators, successors and assigns as the case may be (collectively hereinafter the "**Releasees**") from any and all Claims that the Contractor and E&Y as receiver of the Contractor has had, now has, or may hereafter can, shall or may have on account of, in relation to, based on, connected with, by reason of or arising out of or with respect to any matters dealing with, the Construction Contract and the Equity Participation Agreement.

IT IS FURTHER UNDERSTOOD AND AGREED that the Government of the Northwest Territories is not abandoning or releasing its claim for the costs of identifying and remedying construction deficiencies, or other costs that the Government of the Northwest is entitled to recover, from a fund established by the Government of New Brunswick in substitution for a letter of credit issued by Atcon Construction Inc. (the "LOC Fund") in connection with the Construction Contract. For greater certainty, the Government of the Northwest Territories is abandoning any right to claim directly from the Releasers for construction deficiencies, including any right to claim against the Releasers for costs that exceed the amount in the LOC Fund.

IT IS FURTHER UNDERSTOOD AND AGREED that for the said consideration, the Releasers will not make claim or take any proceedings in connection with the Claims released herein against any other person or party who may claim contribution or indemnity from the Releasees by virtue of said claim or proceedings; and that in the event the Releasers breach this covenant the Releasers will indemnify and hold harmless the Releasees in respect of any such claim for contribution or indemnity.

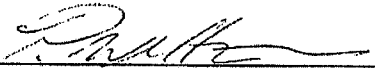
IT IS FURTHER UNDERSTOOD AND AGREED that the provision of said consideration is deemed to be no admission whatsoever of any liability on the part of the said Releasees with respect to any Claims.

IT IS FURTHER UNDERSTOOD AND AGREED that this Full and Final Release may be signed in counter-part.

THE PROVISIONS of this Release shall enure to the benefit of and shall be binding upon each of the Releasors' respective heirs, executors, administrators, legal personal representatives, successors and permitted assigns.

THIS RELEASE shall be governed by, interpreted and construed and enforced in accordance with the laws of the Northwest Territories, including the federal laws of Canada applicable in such territory.

IN WITNESS WHEREOF the Releasors have hereunto executed this Release, by the hand of a duly authorized signing officer, this 30th day of January, 2013.



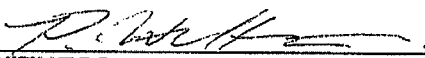
WITNESS

**ATCON CONSTRUCTION INC., by its
Court-appointed receiver Ernst &
Young Inc.**

Per: 

Title: Senior Vice President

**I have authority to bind the
Corporation.**



WITNESS

**ERNST & YOUNG INC., in its capacity
as Court-appointed receiver of Atcon
Construction Inc. and not in its
personal or corporate capacity**

Per: 

Title: Senior Vice President

**I have authority to bind the
Corporation.**

Schedule "B"

FULL AND FINAL RELEASE (DCBC Release of Atcon and E&Y)

IN CONSIDERATION OF the abandonment of any and all existing or potential actions, causes of action, choses in action, suits, proceedings, debts, sums of money, accounts, bonds, covenants, contracts, liabilities, damages, grievances, executions, judgments, demands, injunctive relief or other claims of any kind whatever, in law and in equity and whether actual or potential, known or unknown, anticipated or possible (collectively, "Claims") that Atcon Construction Inc. or Ernst & Young Inc. in its capacity as court-appointed receiver for Atcon Construction Inc. and not in its personal or corporate capacity has had, now has, or may hereafter have arising from, related to, or with respect to: (a) the Construction Contract for Deh Cho (MacKenzie River) Bridge Construction Yellowknife Highway (No. 3), NT, KM 24 Near Fort Providence, NT, between the Deh Cho Bridge Corporation Ltd. and Atcon Construction Inc., dated February 22, 2008 (the "Construction Contract"); and (b) the Proposed Equity Investment by Atcon Construction Inc. in the capital stock of the Deh Cho Bridge Corporation Ltd., material terms agreed to in principle (the "Equity Participation Agreement"), as set out in the Full and Final Release (Atcon release of DCBC and GNWT) dated _____, 2013, all of which constitutes good and valuable consideration, the receipt of which is hereby acknowledged, the DEH CHO BRIDGE CORPORATION LTD., the GOVERNMENT OF THE NORTHWEST TERRITORIES and their respective officers, directors, employees, servants, affiliates, agents, administrators, successors and assigns as the case may be (collectively hereinafter the "Releasers"), do hereby release, remise and forever discharge ATCON CONSTRUCTION INC., ERNST & YOUNG INC. in its capacity as court-appointed receiver of Atcon Construction Inc., and their respective officers, directors, employees, servants, affiliates, agents administrators, successors and assigns as the case may be (collectively hereinafter the "Releasees") from any and all Claims that any of the Releasers has had, now has, or may hereafter can, shall or may have on account of, in relation to, based on, connected with, by reason of or arising out of or with respect to any matters dealing with the Construction Contract and the Equity Participation Agreement, except as indicated in the paragraph immediately following this paragraph.

IT IS FURTHER UNDERSTOOD AND AGREED that the Government of the Northwest Territories is not abandoning or releasing its claim for the costs of identifying and remedying construction deficiencies, or other costs that the Government of the Northwest is entitled to recover, to the extent that these costs can be recovered from a fund established by the Government of New Brunswick in substitution for a letter of credit issued by Atcon Construction Inc. (the "LOC Fund") in connection with the Construction Contract. For greater certainty, the Releasers are hereby abandoning any right to claim directly from the Releasees for construction deficiencies, including any right to claim against the Releasees for costs that exceed the amount in the LOC Fund.

IT IS FURTHER UNDERSTOOD AND AGREED that for the said consideration, and subject to the paragraph immediately above, the Releasers will not make claim or take any proceedings in connection with the Claims released herein against any other person or party who may claim contribution or indemnity from the Releasees by virtue of said claim or proceedings; and that in the event the Releasers breach this covenant the Releasers will indemnify and hold harmless the Releasees in respect of any such claim for contribution or indemnity.

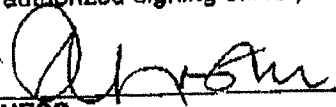
IT IS FURTHER UNDERSTOOD AND AGREED that the provision of said consideration is deemed to be no admission whatsoever of any liability on the part of the said Releasees with respect to any Claims.

IT IS FURTHER UNDERSTOOD AND AGREED that this Full and Final Release may be signed in counter-part.

THE PROVISIONS of this Release shall enure to the benefit of and shall be binding upon each of the Releasors' respective heirs, executors, administrators, legal personal representatives, successors and permitted assigns.

THIS RELEASE shall be governed by, interpreted and construed and enforced in accordance with the laws of the Northwest Territories, including the federal laws of Canada applicable in such territory.

IN WITNESS WHEREOF the Releasors have hereunto executed this Release, by the hand of a duly authorized signing officer, this _____ day of _____, 2012.


WITNESS


DEH CHO BRIDGE CORPORATION
LTD.

Per: Michael Vandell

Title: President

I have authority to bind the
Corporation.

WITNESS

GOVERNMENT OF THE NORTHWEST
TERRITORIES

Per:

Title:

IT IS FURTHER UNDERSTOOD AND AGREED that this Full and Final Release may be signed in counter-part.

THE PROVISIONS of this Release shall enure to the benefit of and shall be binding upon each of the Releasors' respective heirs, executors, administrators, legal personal representatives, successors and permitted assigns.

THIS RELEASE shall be governed by, interpreted and construed and enforced in accordance with the laws of the Northwest Territories, including the federal laws of Canada applicable in such territory.

IN WITNESS WHEREOF the Releasors have hereunto executed this Release, by the hand of a duly authorized signing officer, this day of , 2013.

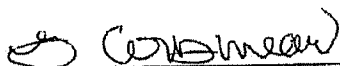
WITNESS

DEH CHO BRIDGE CORPORATION
LTD.

Per:

Title:

I have authority to bind the
Corporation.



WITNESS



GOVERNMENT OF THE NORTHWEST
TERRITORIES

Per: *RUSSELL NEUDORF*

Title: *DEPUTY MINISTER*

APPENDIX “D”

IN THE MATTER OF THE RECEIVERSHIP OF
THE ATCON GROUP OF COMPANIES (as defined in Note 1)
RECEIVER'S CONSOLIDATED STATEMENT OF RECEIPTS AND DISBURSEMENTS
FOR THE PERIOD 01 MARCH 2010 TO 11 MARCH 2013

RECEIPTS	GENERAL ACCOUNT	SEGREGATED ACCOUNTS	TOTAL
1. Cash on hand	9,863.13		
Transfer from BNS re:CCAA accounts	Note 2 2,226,504.00		
Proceeds of Receiver certificate borrowings	<u>1,200,000.00</u>		
		3,436,367.13	
2. Realization of assets			
Eastern Canadian tender sale proceeds	3,443,442.49		
Western Canadian tender sale proceeds	541,606.12		
Shell accounts receivable	Note 3 924,314.94		
Pennecon Settlement	Note 4 3,139,859.53		
Suncor Settlement	2,500,000.00		
CNRL Settlement	86,212.86		
Deh Cho Settlement	1,300,000.00		
Sale proceeds - 67-89 General Manson Way	Note 5 699,072.82		
058545 NB Inc. sale proceeds - Trust 1	Note 6 4,235,238.93		
058545 NB Inc. sale proceeds - Trust 2	Note 6 26,923.05		
Funding received from Envirem Organics to fund obligations	140,876.99		
Miscellaneous accounts receivable	897,231.25		
Miscellaneous asset sales	<u>1,083,467.47</u>		
		19,015,246.45	
3. Miscellaneous			
HST collected	358,940.67		
HST refund	462,326.47		
Interest	<u>109,623.45</u>		
		930,890.59	
4. Funds held in trust			
Shell accounts receivable - CRA deemed trust holdback		Note 3 3,814,364.93	
Shell accounts receivable - CRA non-deemed trust holdback		Note 3 1,004,241.00	
Shell accounts receivable - Builder's lien holdback		Note 3 4,012,477.26	
		8,831,083.19	
TOTAL RECEIPTS	<u>23,382,504.17</u>	<u>8,831,083.19</u>	<u>32,213,587.36</u>
DISBURSEMENTS			
1. Fees paid			
Fees paid to official receiver			770.00
2. Operational disbursements			
Utilities	96,365.07		
Rent	102,086.03		
Security	3,777.50		
Equipment leasing	909,368.41		
Repairs and maintenance	89,867.31		
Wages and benefits	1,645,316.62		
Insurance	259,748.04		
Telephone	60,273.68		
Other expenses	<u>69,321.19</u>		
		3,216,123.85	
3. Miscellaneous			
HST input tax credit	864,192.09		
HST remitted	116,047.04		
CCAA period HST	551,747.15		
CRA - HST requirement to pay	Note 7 268,223.77		
Bank charges and interest	<u>79,772.50</u>		
		1,879,982.55	
4. Receiver's Remuneration			
Receiver fees and costs			3,032,955.95
5. Legal fees and costs			2,573,125.48
6. Other professional fees			421,684.71
7. Distribution to Deemed Trust Claimants and Secured Creditors			
Deemed Trust Claim - Revenu Quebec	6,205.20		
Repayment of Receivers Certificate	1,200,000.00		
Bank of Nova Scotia	7,314,321.14	Note 8 2,576,577.04	
Caterpillar Financial Services Limited	808,629.63	Note 8 1,200,000.00	
GE	418,074.87		
Province of New Brunswick	340,879.90		
Aviva	174,076.42		
Emeco Canada	-	Note 8 235,900.22	4,012,477.26
TOTAL DISBURSEMENTS	<u>21,384,829.70</u>	<u>4,012,477.26</u>	<u>25,397,306.96</u>
Excess of receipts over disbursements	<u>1,997,674.47</u>	<u>4,818,605.93</u>	<u>6,816,280.40</u>

Note 1 - Refer to the 246(2) report for list of companies included in this consolidated statement of receipts & disbursements.

Note 2 - See Court Order dated 23 April 2010.

Note 3 - See Court Order dated 18 June 2010.

Note 4 - See Court Order dated 30 June 2010.

Note 5 - See Court Order dated 28 July 2010.

Note 6 - See Court Order dated 22 March 2010.

Note 7 - Distribution of proceeds received from Pennecon settlement to CRA relating to HST Requirement to Pay. See Court Order dated 30 June 2010.

Note 8 - Distribution of funds held in trust related to Shell accounts receivable - Builder's lien holdback. See Court Order dated 28 October 2010.

APPENDIX “E”

Real Estate

Parcel # (if applicable)	Company	Receipt Detail	Receipt Amount
		Envirom Funding	140,877
		Interest	106,623
		HST Collected	358,941
		CCAA Refund	1,200,000
		CCAA Transfer - Allocate to BNS (funded via AR collections - subject to BNS security)	2,226,594
		HST Refund	244,722
		HST Refund	217,604
			33,213,557
			1,135,805
		Realizations NON-ACI assets included above (See Appendix F)	

APPENDIX “F”

REALIZATIONS TO DATE	BNS	PMB	CAT	GE	Aviva	CRA	Eneco	Environ	HST	Receivers Certificate	TOTAL
Proceed received (prior to cost allocations)	26,281,068.56	485,218.66	2,023,577.34	696,072.82	300,960.24	721.95	235,900.22	167,800.04	821,267.14	1,200,000.00	32,213,587.36
Less: proceeds which offset costs								(167,800.04)	(821,267.14)	(1,200,000.00)	(2,189,067.18)
Less: proceeds generated - Asset determined not to be an estate asset			(1,200,000.00)				(235,900.22)				(1,435,900.22)
Less: cash proceeds Environ - see Environ Distribution Schedule (non ACI assets)	(3,371,630.79)		(723,925.95)			(721.95)					(4,096,278.69)
Proceeds from asset realization - available for secured creditor distribution (excluding Environ)	22,909,438.17	485,218.66	99,651.38	696,072.82	300,960.24	-	-	-	-	-	24,492,341.27
Less: Realization from assets not subject CRA Claims (non ACI assets)	(587,381.48)	(448,771.93)	(86,651.38)								(1,135,804.79)
Proceeds From ACI Asset Realizations - Subject to CRA Claims	22,322,056.69	37,446.73	-	696,072.82	300,960.24	-	-	-	-	-	23,356,536.48
Net operating disbursements allocated between Secured Creditors - subject to CRA Claims	(9,396,348.44)	(5,617.01)		(34,803.64)	(24,300.00)	-	-	-	-	-	(9,421,069.09)
Net recovery before CRA Claim Provisions, Environ Allocation and Non ACI Net Realizations	12,925,708.25	31,829.72		661,269.18	276,660.24	-	-	-	-	-	13,835,467.39
Deemed Trust Claims Paid	(5,773.38)	(14.71)		(294.45)	(123.19)						(6,205.20)
Deemed Trust holdback provision for CRA Claims	(4,447,944.17)	(10,919.33)		(228,851.35)	(84,909.53)						(4,760,624.38)
Net balance available for distribution before Environ and non ACI net proceed realizations	8,511,950.69	20,886.22	-	434,123.38	181,627.51	-	-	-	-	-	9,149,637.81
Add back Environ Distribution (non ACI related)	3,371,630.79	-	723,925.95	-	-	721.95	-	-	-	-	4,096,278.69
Add back: realization from assets not subject to CRA Claims (non ACI assets)	587,381.48	448,771.93	99,651.38	-	-	-	-	-	-	-	1,135,804.79
Less: costs applicable to assets not subject to CRA Claims (non ACI assets)	(587,381.48)	(327,855.54)	84,703.67	-	-	-	-	-	-	-	(959,940.69)
Costs funded by BNS secured receivables - to be recovered from AIS Estate Creditors	(250,110.52)										(250,110.52)
Costs funded by BNS secured receivables - included in Environ net distribution	(135,151.55)										(135,151.55)
Less interim distribution previously funded	(9,880,858.09)	(340,979.99)	(898,629.63)	(416,074.87)	(174,076.42)						(11,630,559.00)
Amount Available for Distribution - pending CRA Deemed Trust and Non Deemed Trust claim appeals	2,001,452.61	7,871.86	(0.00)	18,048.51	7,551.09	721.95	-	-	-	-	2,035,556.02
										Deemed Trust holdback	4,760,624.38
										Per R&D	6,816,280.40
										Difference	6,816,280.40