THIS IS EXHIBIT "C", referred to in the Affidavit of Peter A.M. Kalins, sworn on March 2, 2012.

Commissioner for Taking Affidavits

Yusuf Yannick Katirai, a
Commissioner etc., Province of Ontario,
while a student-at-law.
Expires April 12, 2013.

APPENDIX "C"

CITATION: Timminco Limited (Re), 2012 ONSC 948
COURT FILE NO.: CV-12-9539-00CL
DATE: 20120209

SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)

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

RE: **IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TIMMINCO LIMITED AND BÉCANCOUR SILICON INC., Applicants**

BEFORE: **MORAWETZ J.**

COUNSEL: **A. J. Taylor and M. Konyukhova, for the Applicants**

K. Stuebing and D. Wray, for Communications, Energy and Paperworkers' Union of Canada ("CEP")

L. Rogers, for FTI Consulting Canada Inc.

D. Bish, for QSI Partners Ltd.

C. Sinclair, for United Steelworkers' Union ("USW")

S. Scharbach and D. McPhail, for FSCO

H. Meredith, for AMG Advance Metallurgical Group NV

B. Boake, for Dow Corning

A. Kauffman, for Investissement Quebec

J. Orr and M. Spencer, for Class Action Plaintiffs

HEARD: **January 27 and February 6, 2012**

ENDORSEMENT

[1] Timminco Limited and Bécancour Silicon Inc. (together, the "Timminco Entities") brought this motion for an order approving the DIP Facility (defined below) and granting a

priority charge on the current and future assets, undertakings and properties of the Timminco Entities in favour of the DIP Lender (defined below).

[2] CEP and USW opposed the motion, especially the request to grant super priority to the DIP Lender.

[3] By way of background, the Timminco Entities stated that they attempted to secure DIP financing prior to commencing the CCAA proceeding, but were unable to do so. The affidavit of Mr. Kalins sworn January 20, 2012 states that the Timminco Entities had approached their existing stakeholders and third-party financing lenders in order to obtain a suitable DIP facility. Investissement Quebec ("IQ"), Bank of America, N.A. ("Bank of America"), AMG Advanced Metallurgical Group NV ("AMG") and two third-party lenders declined to advance any funds to the Timminco Entities. The affidavit also states that negotiations with another third-party lender failed to result in a DIP facility with mutually agreeable terms.

[4] Mr. Kalins went on to state that in light of the Timminco Entities precarious cash position, it was imperative that the Timminco Entities secured DIP financing as soon as possible after commencement of the CCAA proceedings. Following the grant of the stay of proceedings, the Timminco Entities, with the assistance of the Monitor, expanded their efforts to secure DIP financing by contacting parties who could not be contacted in advance of the filing.

[5] Mr. Kalins stated that the Timminco Entities pursued the arrangement of a DIP facility with a number of parties and five parties submitted indicative terms for a DIP facility. Following further discussion and negotiations, the Timminco Entities negotiated a DIP Agreement with QSI Partners Ltd. ("QSI" or the "DIP Lender") dated January 18, 2012 (the "DIP Agreement").

[6] The DIP Agreement is conditional, among other things, upon the issuance of a court-order approving the DIP Facility and granting the DIP Lender a priority charge in favour of the DIP Lender (the "DIP Lenders' Charge") over all of the assets, property and undertaking of the Timminco Entities (the "Property"), ranking ahead in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, the "Encumbrances") in favour of any person, notwithstanding the order of perfection or attachment, including without limitation any deemed trust created under the *Ontario Pension Benefits Act* ("OPBA"), or the *Quebec Supplemental Pension Plans Act* ("QSPPA"), other than the Administration Charge and the KERP Charge (as granted by my order dated January 16, 2012), and any valid purchase money security interests.

[7] Mr. Kalins stated that the DIP Lender was specifically asked whether it would advance under the DIP Facility if the DIP Lenders' Charge was not granted priority over the Encumbrances (other than any valid purchase money security interest), including without limitation any deemed trust created under the OPBA or the QSPPA. The DIP Lender indicated that they would not advance under the DIP Facility; and further, the DIP Lenders' Charge is not intended to secure obligations incurred prior to the CCAA proceeding.

[8] The DIP Agreement provides for a period of exclusivity during which the Timminco Entities may not negotiate with or accept any proposal of any person other than the DIP Lender for the acquisition of substantially all of the assets of the Timminco Entities until January 31,

2012 (the "Exclusivity Period") in order to provide the DIP Lender with an opportunity to prepare a "stalking horse bid" for consideration by the Timminco Entities.

[9] Mr. Kalins went on to state that, if the order approving the DIP Facility was not granted in a form and substance satisfactory to the DIP Lender and the Timminco Entities, or if the DIP obligations are declared to be immediately due and payable, the Exclusivity period shall immediately terminate.

[10] Mr. Kalins also stated that the financial terms of the DIP Agreement are better than or not materially worse than those proposed in the competing term sheets. Some of the other term sheets provided were for an inadequate amount of funding, contained other disadvantageous terms or would not be available in a timely manner. Mr. Kalins states that, in the opinion of management, the DIP Agreement is the best available option. The special committee of the board has approved the execution of the DIP Agreement and the seeking of court approval.

[11] The Monitor filed its Third Report which addresses the request for approval of the DIP Agreement and the DIP Lenders' Charge. The Monitor has been providing the Timminco Entities with assistance in their attempts to obtain DIP financing. The Monitor reported that four of the indications of interests with respect to a DIP facility were either for an amount that was insufficient to provide the necessary liquidity, added more onerous financial terms than those contained in the DIP Agreement, or contained terms and conditions that, in the opinion of the Timminco Entities and the Monitor, made it unlikely that a binding agreement could successfully be negotiated within the time frame necessary to be able to access the funding when required, or a combination of these factors.

[12] The Monitor reports that the DIP Lender is a Cayman Islands company that the Monitor has been informed is a subsidiary of a major company with a strategic interest in the business and assets of the Timminco Entities. Pursuant to a non-disclosure agreement entered into between the Timminco Entities and the DIP Lender, neither the Timminco Entities nor the Monitor is at liberty to disclose the name of the ultimate parent company of QSI, although that information is known to the Timminco Entities and the Monitor. However, the Monitor does report that the DIP Lender has confirmed that the corporate group of which it is part is neither a shareholder nor a creditor of the Timminco Entities.

[13] The Monitor also reports that subject to the terms and conditions of the DIP Agreement, the DIP Lender has agreed to lend up to U.S. $4.25 million (the "Maximum Amount"). The Maximum Amount will be deposited in a segregated interest-bearing account of the Monitor within one business day of the granting of this order, with advances to draw from the Maximum Amount in accordance with the terms of the DIP Agreement.

[14] The DIP Facility is to bear interest at the Bank of Canada prime rate plus 5% per annum payable monthly in arrears. A commitment fee of U.S. $100,000 is payable from the first DIP advance. In addition, the Timminco Entities are obligated to pay all reasonable out of pocket expenses.

[15] The Timminco Entities' obligations under the DIP Facility (the "DIP Obligations") are repayable in full on the earlier of:

(a) the occurrence of an event of default which is continuing and has not been cured; and

(b) June 20, 2012.

[16] The DIP Agreement does provide for the mandatory repayment of the DIP Obligations from the net proceeds of any sale of collateral, subject to the first $1,269,000 of such net proceeds being paid to and held by the Monitor as the Priority Charge reserve.

[17] The Monitor is of the view that the DIP Agreement contains affirmative covenants, negative covenants, events of default and conditions customary for this type of financing, including the granting of the DIP Lenders' Charge having priority over all other Encumbrances against the assets of the Timminco Entities other than the Administration Charge, the KERP charge and purchase money security interests that are permitted Encumbrances.

[18] The Monitor specifically notes that the DIP Agreement provides that DIP advances cannot be used to make special payments in respect of pension plans. During the negotiation of the DIP Agreement, the Monitor reports that the DIP Lender was asked whether it would allow DIP advances to be used to pay special payments and whether it would allow DIP advances to be used for claims in respect of pension plans ranked in priority to the DIP Lenders' Charge. The Monitor states that the DIP Lender was not prepared to do so.

[19] The revised Cash Flow Forecast filed in the Second Report indicates that the Timminco Entities become cash flow negative during the third week of February 2012. Mr. Kalins states that without additional funding, the Timminco Entities will be forced to cease operating in February.

[20] Further, Mr. Kalins states that the DIP Facility is expected to provide sufficient liquidity to conduct an orderly marketing process of the Timminco Entities' business following expiry of the Exclusivity Period, whether or not a "stalking horse bid" is negotiated.

[21] The motion materials have been served on, among others:

(a) IQ, Bank of America, Dow Corning, all registrants shown on searches of the personal property security and real property registers in Ontario and in Quebec;

(b) the members of the pension plan committees for the Bécancour Union Pension Plan and the Bécancour Non-Union Pension Plan, Financial Services Commission of Ontario; Régie de rentes du Québec, the USW and the Bécancour Union; and

(c) various government entities, including Ontario and Quebec environmental agencies and federal and provincial taxing authorities.

[22] In addition, all of the directors and officers of the Timminco Entities were served with the motion record in connection with the request for the DIP Lenders' Charge to rank ahead of, among other things, the D&O Charge.

[23] The Monitor recommended that the requested relief be granted. The motion was not opposed by IQ or any other secured creditor.

[24] The motion was opposed by CEP and the USW.

[25] The financial positions of the various pension plans for the benefit of members of CEP and USW have been set out in previous decisions and are not repeated here.

[26] Mr. Simoneau, President of CEP, Local 184, states in his affidavit that since the commencement of the CCAA proceedings, CEP and the pension committee have been excluded from all aspects of the Applicant's restructuring activities, details of which are contained at paragraphs 7 – 15 of his affidavit.

[27] The CEP also takes the position that neither the pension committee nor the CEP were consulted during the negotiation of the DIP Agreement and that the Applicants have not disclosed specific reasons for their electing not to pursue negotiations with any of the other parties that expressed interest in entering into a DIP agreement.

[28] The issue on this motion is whether the court should approve the DIP Facility and grant the DIP Lenders' Charge.

[29] In respect of this issue, counsel to the Timminco Entities submits that to the extent that the request for the DIP Lenders' Charge is a request for the court to override the provisions of the QSPPA or the OPBA, the court has the jurisdiction to do so. I agree with this submission. This issue was analyzed in *Timminco Limited (Re)* 2012 ONSC 506, which considered the court's jurisdiction to grant super priority to the Administration Charge and D&O Charge, and is incorporated by reference to this decision and attached as Appendix A. The analysis of the court's jurisdiction in that case is also applicable here.

[30] The Timminco Entities seek approval of the DIP Facility in the amount of U.S. $4,250,000. The Timminco Entities also seek a granting of the DIP Lenders' Charge securing the DIP Facility ranking immediately behind the Administration Charge and the KERP Charge.

[31] Section 11.2 of the CCAA provides the court with the express jurisdiction to grant a DIP financing charge and provides, in part, as follows:

> 11.2(1) Interim Financing – on application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge – in an amount that the court considers appropriate – in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.
>
> 11.2(2) Priority – Secured Creditors – the court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

[32] Subsection 11.2(4) sets out the factors to be considered by the court in deciding whether to grant a DIP Financing Charge:

11.2(4) – Factors to be Considered – in deciding whether to make an order, the court is to consider, among other things:

> (a) the period during which the company is expected to be subject to proceedings under the CCAA;
>
> (b) how the company's business and financial affairs are to be managed during the proceedings;
>
> (c) whether the company's management has the confidence of its major creditors;
>
> (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
>
> (e) the nature and value of the company's property;
>
> (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
>
> (g) the monitor's report.

[33] Counsel to the Timminco Entities referenced *Canwest Global Communications Corp. (Re)* (2009), 59 C.B.R. (5th) 72 (Ont. S.C.J.) (Commercial List)), where Pepall J. stressed the importance of meeting the criteria set out in s. 11.2(1), namely:

> (a) whether notice has been given to secured creditors likely to be affected by the security charge or charge;
>
> (b) whether the amount to be granted under the DIP Facility is appropriate and required having regard to the debtor's cash-flow statement; and
>
> (c) whether the DIP Charge secures an obligation that existed before the order was made (which it should not).

[34] Counsel to the Timminco Entities submits that a number of factors support the granting of the DIP Lenders' Charge and satisfy the criteria set out in s. 11.2(1) of the CCAA and the factors to be considered as outlined in s. 11.2(4) of the CCAA:

> (a) the Timminco Entities expect to continue operating during the term of the DIP Facility and attempt to negotiate a "stalking horse bid" and complete a bidding procedure or, if a "stalking horse bid" cannot be negotiated, complete a stand-alone sales process and return to court for approval, which the Timminco Entities expect to complete before June 2012;
>
> (b) the management of the Timminco Entities' business will be overseen by the Monitor. In this respect, counsel submits that neither IQ nor any other major

creditor has expressed any concern in respect of the Timminco Entities' management;

(c) without the DIP Facility, the Timminco Entities will not have the funding necessary to meet their obligations and will have to cease operations by the third week of February. Counsel further submits that the Timminco Entities and the Monitor are of the view that the continuation of operations would likely enhance the prospects of the sales process succeeding and would maximize recoveries for stakeholders;

(d) secured creditors have been given notice of the motion and IQ is not opposed to the granting of the DIP Lenders' Charge;

(e) directors and officers of Timminco, as beneficiaries of the D&O Charge, received notice of the request for an order granting the DIP Lenders' Charge ranking in priority to the D&O Charge;

(f) the Monitor is supportive of the requested relief and is of the view that any potential detriment caused to the Timminco Entities' creditors by the DIP Lenders' Charge should be outweighed by the benefits that it creates;

(g) the DIP Lender indicated that it will not provide the DIP Facility if the DIP Lenders' Charge is not granted; and

(h) the DIP Lenders' Charge does not secure an obligation that existed before the granting of the Initial Order.

[35] Counsel to IQ does not oppose the requested relief, but did make submissions to oppose the outcome sought by CEP, on the basis that such an outcome would provide enhanced priority to CEP and USW, at the expense of IQ.

[36] Not surprisingly, counsel for CEP takes a different approach and submits that in order to resolve the issue, consideration must be given to whether the evidentiary record discloses that the DIP Agreement is the result of a negotiation process that was fair and reasonable and that satisfies the statutory and common law obligations to act in the best interests of the union pension plans and their beneficiaries.

[37] Counsel to CEP submits that in addition to the listed factors noted above, it is incumbent upon the court to consider whether the Applicants, as members of the pension committee, have satisfied their fiduciary duties to the union pension plans both under the statute and at common law during the negotiation of the DIP Agreement. Counsel submits that a failure of the Timminco Entities in this regard would render the DIP Agreement itself unfair and unreasonable and the product of an unlawful process in which the Timminco Entities breached their duties to the union pension plans.

[38] Counsel to CEP submits that the Applicants, as members of the pension committee, are subject to fiduciary obligations in respect of the plan members and beneficiaries and that these obligations arise both at common law and by virtue of the QSPPA.

[39] Counsel to CEP contends that at the time the Applicants initiated the CCAA proceedings, the evidence confirmed that the union pension plans and the Haley pension plan were underfunded. The decisions that the Timminco Entities have made since the commencement of the CCAA proceedings have the potential to affect the plan members and beneficiaries at a time when they are peculiarly vulnerable. Counsel contends that the Timminco Entities have failed to consider their fiduciary obligations or consider the best interests of the plan members or beneficiaries and that this includes the negotiation of the DIP Agreement.

[40] A key component of the argument is the contention that the Timminco Entities were not at liberty to resolve the conflict by simply ignoring their role as a fiduciary to the pension plan. Counsel argues that when the Applicants' duty to the corporation conflicted with their fiduciary duties, including the negotiation of the DIP Agreement, it was incumbent on the Applicants to take steps to address the conflict and they failed to do so.

[41] Counsel to CEP also submits that there was insufficient evidence to justify the requested order.

[42] There is no doubt that the position of those represented by CEP and USW is impaired. However, the effect of acceding to the arguments put forth by counsel to CEP and supported by USW will do nothing, in my view, to improve the position of the members they represent.

[43] The stark reality of the situation facing the Timminco Entities is that without the approval of the DIP Facility and the granting of the DIP Charge, there simply will be no money available.

[44] The uncontradicted evidence is clear:

(i) in the third week of February 2012, the Timminco Entities will become cash flow negative;

(ii) without additional funding, the Timminco Entities will be forced to cease operating;

(iii) the Timminco Entities, with the assistance of the Monitor, have attempted to secure DIP financing, both prior to and after commencement of CCAA proceedings;

(iv) there was insufficient liquidity or unfavourable terms associated with the rejected DIP proposals;

(v) the DIP Lender will not permit DIP advances to be used to pay special payments or for claims in respect of pension plans ranked in priority to the DIP Lenders' Charge;

(vi) the DIP Facility is expected to provide sufficient liquidity to conduct an orderly marketing process of the Timminco Entities' business.

[45] I have taken the above findings into consideration, as well as the factors set out at [34] above. A review of these factors leads to the conclusion that the DIP Facility is necessary. The requirements of s. 11.2 of the CCAA have, in my view, been satisfied.

[46] It is unrealistic to expect that any commercially motivated DIP Lender will advance funds without receiving the priority that is being requested on this motion. It is also unrealistic to expect that any commercially motivated party would make advances to the Timminco Entities for the purpose of making special payments or other payments under the pension plans.

[47] The alternative proposed by CEP – of a DIP Charge without super priority – is not, in my view, realistic, nor is directing the Monitor to investigate alternative financing without providing super priority. If there is going to be any opportunity for the Timminco Entities to put forth a restructuring plan, it seems to me that it is essential and necessary for the DIP Financing to be approved and the DIP Charge granted. The alternative is a failed CCAA process.

[48] This underscores the lack of other viable options that was fully considered in the first Timminco endorsement (*Timminco Limited (Re)* 2012 ONSC 506). The situation has not changed. The reality, in my view, is that there is no real alternative. The position being put forth by CEP does not, in my view, satisfactorily present any viable alternative. In this respect, it seems to me that the challenge of the unions to the position being taken by the Timminco Entities is suspect, as the only alternative is a shutdown. It is impossible for me to reach any conclusion other than the fact that there simply is no other viable alternative.

[49] In the absence of the court granting the requested super priority, the objectives of the CCAA would be frustrated. It is neither reasonable nor realistic to expect a commercially motivated DIP lender to advance funds in a DIP facility without super priority. The outcome of a failure to grant super priority would, in all likelihood, result in the Timminco Entities having to cease operations, which would likely result in the CCAA proceedings coming to an abrupt halt, followed by bankruptcy proceedings. Such an outcome would be prejudicial to all stakeholders, including CEP and USW.

[50] The analysis in the present motion is the same as that set out in *Timminco Limited (Re)*, 2012 ONSC 506. The outcome of this motion is consistent with that analysis. I am satisfied that bankruptcy is not the answer and, in order to ensure that the objectives of the CCAA are fulfilled, it is necessary to invoke the doctrine of paramountcy such that the provisions of the CCAA override those of the QSPPA and the OPBA.

[51] On the facts before me, I am satisfied that it is both necessary and appropriate to approve the DIP Facility. It is also, in my view, both necessary and appropriate to grant the D&O Charge and to provide that the D&O Charge has priority over the Encumbrances, including without limitation any deemed trust created under the OPBA or the QSPPA.

[52] The motion is, therefore, granted. The DIP Facility is approved and the DIP Charge is granted with the requested super priority.

"G. B. Morawetz J."

MORAWETZ J.

Date: February 9, 2012

APPENDIX A

CITATION: Timminco Limited (Re), 2012 ONSC 506
COURT FILE NO.: CV-12-9539-00CL
DATE: 20120202

SUPERIOR COURT OF JUSTICE – ONTARIO

(COMMERCIAL LIST)

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

RE: **IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TIMMINCO LIMITED AND BÉCANCOUR SILICON INC., Applicants**

BEFORE: **MORAWETZ J.**

COUNSEL: **A. J. Taylor, M. Konyukhova and K. Esaw, for the Applicants**

D.W. Ellickson, for Communications, Energy and Paperworkers' Union of Canada

C. Sinclair, for United Steelworkers' Union

K. Peters, for AMG Advance Metallurgical Group NV

M. Bailey, for Superintendent of Financial Services (Ontario)

S. Weisz, for FTI Consulting Canada Inc.

A. Kauffman, for Investissement Quebec

HEARD: **January 12, 2012**
RELEASED: **January 16, 2012**
REASONS: **February 2, 2012**

ENDORSEMENT

[1] This motion was heard on January 12, 2012. On January 16, 2012, the following endorsement was released:

Motion granted. Reasons will follow. Order to go subject to proviso that the Sealing Order is subject to modification, if necessary, after reasons provided.

[2] These are those reasons.

Background

[3] On January 3, 2012, Timminco Limited ("Timminco") and Bécancour Silicon Inc. ("BSI") (collectively, the "Timminco Entities") applied for and obtained relief under the *Companies' Creditors Arrangement Act* (the "CCAA").

[4] In my endorsement of January 3, 2012, (*Timminco Limited (Re)*, 2012 ONSC 106), I stated at [11]: "I am satisfied that the record establishes that the Timminco Entities are insolvent and are 'debtor companies' to which the CCAA applies".

[5] On the initial motion, the Applicants also requested an "Administration Charge" and a "Directors' and Officers' Charge" ("D&O Charge"), both of which were granted.

[6] The Timminco Entities requested that the Administration Charge rank ahead of the existing security interest of Investissement Quebec ("IQ") but behind all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise, including any deemed trust created under the *Ontario Pension Benefit Act* (the "PBA") or the *Quebec Supplemental Pensions Plans Act* (the "QSPPA") (collectively, the "Encumbrances") in favour of any persons that have not been served with this application.

[7] IQ had been served and did not object to the Administration Charge and the D&O Charge.

[8] At [35] of my endorsement, I noted that the Timminco Entities had indicated their intention to return to court to seek an order granting super priority ranking for both the Administration Charge and the D&O Charge ahead of the Encumbrances.

[9] The Timminco Entities now bring this motion for an order:

(a) suspending the Timminco Entities' obligations to make special payments with respect to the pension plans (as defined in the Notice of Motion);

(b) granting super priority to the Administration Charge and the D&O Charge;

(c) approving key employee retention plans (the "KERPs") offered by the Timminco Entities to certain employees deemed critical to a successful restructuring and a charge on the current and future assets, undertakings and properties of the Timminco Entities to secure the Timminco Entities' obligations under the KERPs (the "KERP Charge"); and

(d) sealing the confidential supplement (the "Confidential Supplement") to the First Report of FTI Consulting Canada Inc. (the "Monitor").

[10] If granted, the effect of the proposed Court-ordered charges in relation to each other would be:

- first, the Administration Charge to the maximum amount of $1 million;
- second, the KERP Charge (in the maximum amount of $269,000); and
- third, the D&O Charge (in the maximum amount of $400,000).

[11] The requested relief was recommended and supported by the Monitor. IQ also supported the requested relief. It was, however, opposed by the Communications, Energy and Paperworkers' Union of Canada ("CEP"). The position put forth by counsel to CEP was supported by counsel for the United Steelworkers' Union ("USW").

[12] The motion materials were served on all personal property security registrants in Ontario and in Quebec: the members of the Pension Plan Committees for the Bécancour Union Pension Plan and the Bécancour Non-Union Pension Plan; the Financial Services Commission of Ontario; the Regie de Rentes du Quebec; the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Works International Union; and La Section Locale 184 de Syndicat Canadien des Communications, De L'Energie et du Papier; and various government entities, including Ontario and Quebec environmental agencies and federal and provincial taxing authorities.

[13] Counsel to the Applicants identified the issues on the motion as follows:

(a) Should this court grant increased priority to the Administration Charge and the D&O Charge?

(b) Should this court grant an order suspending the Timminco Entities' obligations to make the pension contributions with respect to the pension plans?

(c) Should this court approve the KERPs and grant the KERPs Charge?

(d) Should this court seal the Confidential Supplement?

[14] It was not disputed that the court has the jurisdiction and discretion to order a super priority charge in the context of a CCAA proceeding. However, counsel to CEP submits that this is an extraordinary measure, and that the onus is on the party seeking such an order to satisfy the court that such an order ought to be awarded in the circumstances.

[15] The affidavit of Peter A.M. Kalins, sworn January 5, 2012, provides information relating to the request to suspend the payment of certain pension contributions. Paragraphs 14-28 read as follows:

> 14. The Timminco Entities sponsor the following three pension plans (collectively, the "**Pension Plans**"):
>
> (a) the Retirement Pension Plan for The Haley Plant Hourly Employees of Timminco Metals, A Division of Timminco Limited (Ontario Registration Number 0589648) (the "**Haley Pension Plan**");

(b) the Régime de rentes pour les employés non syndiqués de Silicium Bécancour Inc. (Québec Registration Number 26042) (the "**Bécancour Non-Union Pension Plan**"); and

(c) the Régime de rentes pour les employés syndiqués de Silicium Bécancour Inc. (Québec Registration Number 32063) (the "**Bécancour Union Pension Plan**").

Haley Pension Plan

15. The Haley Pension plan, sponsored and administered by Timminco, applies to former hourly employees at Timminco's magnesium facility in Haley, Ontario.

16. The Haley Pension Plan was terminated effective as of August 1, 2008 and accordingly, no normal cost contributions are payable in connection with the Haley Pension Plan. As required by the Ontario *Pension Benefits Act* (the "**PBA**"), a wind-up valuation in respect of the Haley Pension Plan was filed with the Financial Services Commission of Ontario ("**FSCO**") detailing the plan's funded status as of the wind-up date, and each year thereafter. As of August 1, 2008, the Haley Pension Plan was in a deficit position on a wind-up basis of $5,606,700. The PBA requires that the wind-up deficit be paid down in equal annual installments payable annually in advance over a period of no more than five years.

17. As of August 1, 2010, the date of the most recently filed valuation report, the Haley Pension Plan had a wind-up deficit of $3,922,700. Contributions to the Haley Pension Plan are payable annually in advance every August 1. Contributions in respect of the period from August 1, 2008 to July 31, 2011 totalling $4,712,400 were remitted to the plan. Contributions in respect of the period from August 1, 2011 to July 31, 2012 were estimated to be $1,598,500 and have not been remitted to the plan.

18. According to preliminary estimates calculated by the Haley Pension Plan's actuaries, despite Timminco having made contributions of approximately $4,712,400 during the period from August 1, 2008 to July 31, 2011, as of August 1, 2011, the deficit remaining in the Haley Pension Plan is $3,102,900.

Bécancour Non-Union Pension Plan

19. The Bécancour Non-Union Pension Plan, sponsored by BSI, is an on-going pension plan with both defined benefit ("**DB**") and defined contribution provisions. The plan has four active members and 32 retired and deferred vested members (including surviving spouses).

20. The most recently filed actuarial valuation of the Bécancour Non-Union Pension Plan performed for funding purposes was performed as of September 30, 2010. As of September 30, 2010, the solvency deficit in the Bécancour Non-Union Pension Plan was $3,239,600.

21. In 2011, normal cost contributions payable to this plan totaled approximately $9,525 per month (or 16.8% of payroll). Amortization payments owing to this plan totaled approximately $41,710 per month. All contributions in respect of the plan were paid when due in accordance with the Québec *Supplemental Pension Plans Act* (the "**QSPPA**") and regulations.

Bécancour Union Pension Plan

22. The BSI-sponsored Bécancour Union Pension Plan is an on-going DB pension plan with two active members and 98 retired and deferred vested members (including surviving spouses).

23. The most recently filed actuarial valuation performed for funding purposes was performed as of September 30, 2010. As of September 30, 2010, the solvency deficit in the Bécancour Union Pension Plan was $7,939,500.

24. In 2011, normal cost contributions payable to the plan totaled approximately $7,083 per month (or 14.7% of payroll). Amortization payments owing to this plan totaled approximately $95,300 per month. All contributions in respect of the plan were paid when due in accordance with the QSPPA and regulations.

25. BSI unionized employees have the option to transfer their employment to QSLP, under the form of the existing collective bargaining agreement. In the event of such transfer, their pension membership in the Bécancour Union Pension Plan will be transferred to the Quebec Silicon Union Pension Plan (as defined and described in greater detail in the Initial Order Affidavit). Also, in the event that any BSI non-union employees transfer employment to QSLP, their pension membership in the Bécancour Non-Union Pension Plan would be transferred to the Quebec Silicon Non-Union Pension Plan (as defined and described in greater detail in the Initial Order Affidavit). I am advised by Andrea Boctor of Stikeman Elliott LLP, counsel to the Timminco Entities, and do verily believe that if all of the active members of the Bécancour Union Pension Plan and the Bécancour Non-Union Pension Plan transfer their employment to QSLP, the Régie des rentes du Québec would have the authority to order that the plans be wound up.

Pension Plan Deficiencies and the Timminco Entities' CCAA Proceedings

26. The assets of the Pension Plans have been severely impacted by market volatility and decreasing long-term interest rates in recent years, resulting in increased deficiencies in the Pension Plans. As a result, the special payments payable with respect to the Haley Plan also increased. As at 2010, total annual special payments for the final three years of the wind-up of the Haley Pension Plan were $1,598,500 for 2010, $1,397,000 for 2011 and $1,162,000 for 2012, payable in advance annually every August 1. By contrast, in 2011 total annual special payments to the Haley Pension Plan for the remaining two years of the wind-up increased to $1,728,700 for each of 2011 and 2012.

Suspension of Certain Pension Contributions

27. As is evident from the Cashflow Forecast, the Timminco Entities do not have the funds necessary to make any contributions to the Pension Plans other than (a) contributions in respect of normal cost, (b) contributions to the defined contribution provision of the BSI Non-Union Pension Plan, and (c) employee contributions deducted from pay (together, the "**Normal Cost Contributions**"). Timminco currently owes approximately $1.6 million in respect of special payments to the Haley Pension Plan. In addition, assuming the Bécancour Non-Union Pension Plan and the Bécancour Union Pension Plan are not terminated, as at January 31, 2012, the Timminco Entities will owe approximately $140,000 in respect of amortization payments under those plans. If the Timminco Entities are required to make the pension contributions other than Normal Cost Contributions (the "**Pension Contributions**"), they will not have sufficient funds to continue operating and will be forced to cease operating to the detriment of their stakeholders, including their employees and pensioners.

28. The Timminco Entities intend to make all normal cost contributions when due. However, management of the Timminco Entities does not anticipate an improvement in their cashflows that would permit the making of Pension Contributions with respect to the Pension Plans during these CCAA proceedings.

The Position of CEP and USW

[16] Counsel to CEP submits that the super priority charge sought by the Timminco Entities would have the effect of subordinating the rights of, *inter alia*, the pension plans, including the statutory trusts that are created pursuant to the QSPPA. In considering this matter, I have proceeded on the basis that this submission extends to the PBA as well.

[17] In order to grant a super priority charge, counsel to CEP, supported by USW, submits that the Timminco Entities must show that the application of provincial legislation "would frustrate the company's ability to restructure and avoid bankruptcy". (See *Indalex (Re)*, 2011 ONCA 265 at para. 181.)

[18] Counsel to CEP takes the position that the evidence provided by the Timminco Entities falls short of showing the necessity of the super priority charge. Presently, counsel contends that the Applicants have not provided any plan for the purpose of restructuring the Timminco Entities and, absent a restructuring proposal, the affected creditors, including the pension plans, have no reason to believe that their interests will be protected through the issuance of the orders being sought.

[19] Counsel to CEP takes the position that the Timminco Entities are requesting extraordinary relief without providing the necessary facts to justify same. Counsel further contends that the Timminco Entities must "wear two hats" and act both in their corporate interest and in the best interest of the pension plan and cannot simply ignore their obligations to the pension plans in favour of the corporation. (See *Indalex (Re), supra*, at para. 129.)

[20] Counsel to CEP goes on to submit that, where the "two hats" gives rise to a conflict of interest, if a corporation favours its corporate interest rather than its obligations to its fiduciaries,

there will be consequences. In *Indalex (Re), supra*, the court found that the corporation seeking CCAA protection had acted in a manner that revealed a conflict with the duties it owed the beneficiaries of pension plans and ordered the corporation to pay the special payments it owed the plans (See *Indalex (Re), supra,* at paras. 140 and 207.)

[21] In this case, counsel to CEP submits that, given the lack of evidentiary support for the super priority charge, the risk of conflicting interests and the importance of the Timminco Entities' fiduciary duties to the pension plans, the super priority charge ought not to be granted.

[22] Although counsel to CEP acknowledges that the court has the discretion in the context of the CCAA to make orders that override provincial legislation, such discretion must be exercised through a careful weighing of the facts before the court. Only where the applicant proves it is necessary in the context and consistent with the objects of the CCAA may a judge make an order overriding provincial legislation. (*See Indalex (Re), supra,* at paras. 179 and 189.)

[23] In the circumstances of this case, counsel to CEP argues that the position of any super priority charge ordered by the court should rank after the pension plans.

[24] CEP also takes the position that the Timminco Entities' obligations to the pension plans should not be suspended. Counsel notes that the Timminco Entities have contractual obligations through the collective agreement and pension plan documents to make contributions to the pension plans and, as well, the Timminco Entities owe statutory duties to the beneficiaries of the pension funds pursuant to the QSPPA. Counsel further points out that s. 49 of the QSPPA provides that any contributions and accrued interest not paid into the pension fund are deemed to be held in trust for the employer.

[25] In addition, counsel takes the position that the Court of Appeal for Ontario in *Indalex (Re), supra*, confirmed that, in the context of Ontario legislation, all of the contributions an employee owes a pension fund, including the special payments, are subject to the deemed trust provision of the PBA.

[26] In this case, counsel to CEP points out that the special payments the Timminco Entities seek to suspend in the amount of $95,300 per month to the Bécancour Union Pension Plan, and of $47,743 to the Silicium Union Pension Plan, are payments that are to be held in trust for the beneficiaries of the pension plans. Thus, they argue that the Timminco Entities have a fiduciary obligation to the beneficiaries of the pension plans to hold the funds in trust. Further, the Timminco Entities' request to suspend the special payments to the Bécancour Union Pension Plan and the Quebec Silicon Union Pension Plan reveals that its interests are in conflict.

[27] Counsel also submits that the Timminco Entities have not pointed to a particular reason, other than generalized liquidity problems, as to why they are unable to make special payments to their pension plans.

[28] With respect to the KERPs, counsel to CEP acknowledges that the court has the power to approve a KERP, but the court must only do so when it is convinced that it is necessary to make such an order. In this case, counsel contends that the Timminco Entities have not presented any meaningful evidence on the propriety of the proposed KERPs. Counsel notes that the Timminco Entities have not named the KERPs recipients, provided any specific information regarding their

involvement with the CCAA proceeding, addressed their replaceability, or set out their individual bonuses. In the circumstances, counsel submits that it would be unfair and inequitable for the court to approve the KERPs requested by the Timminco Entities.

[29] Counsel to CEP's final submission is that, in the event the KERPs are approved, they should not be sealed, but rather should be treated in the same manner as other CCAA documents through the Monitor. Alternatively, counsel to CEP submits that a copy of the KERPs should be provided to the Respondent, CEP.

The Position of the Timminco Entities

[30] At the time of the initial hearing, the Timminco Entities filed evidence establishing that they were facing severe liquidity issues as a result of, among other things, a low profit margin realized on their silicon metal sales due to a high volume, long-term supply contract at below market prices, a decrease in the demand and market price for solar grade silicon, failure to recoup their capital expenditures incurred in connection with the development of their solar grade operations, and the inability to secure additional funding. The Timminco Entities also face significant pension and environmental remediation legacy costs, and financial costs related to large outstanding debts.

[31] I accepted submissions to the effect that without the protection of the CCAA, a shutdown of operations was inevitable, which the Timminco Entities submitted would be extremely detrimental to the Timminco Entities' employees, pensioners, suppliers and customers.

[32] As at December 31, 2011, the Timminco Entities' cash balance was approximately $2.4 million. The 30-day consolidated cash flow forecast filed at the time of the CCAA application projected that the Timminco Entities would have total receipts of approximately $5.5 million and total operating disbursements of approximately $7.7 million for net cash outflow of approximately $2.2 million, leaving an ending cash position as at February 3, 2012 of an estimated $157,000.

[33] The Timminco Entities approached their existing stakeholders and third party lenders in an effort to secure a suitable debtor-in-possession ("DIP") facility. The Timminco Entities existing stakeholders, Bank of America NA, IQ, and AMG Advance Metallurgical Group NV, have declined to advance any funds to the Timminco Entities at this time. In addition, two third-party lenders have apparently refused to enter into negotiations regarding the provision of a DIP Facility.[1]

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[1] In a subsequent motion relating to approval of a DIP Facility, the Timminco Entities acknowledged they had reached an agreement with a third-party lender with respect to providing DIP financing, subject to court approval. Further argument on this motion will be heard on February 6, 2012.

[34] The Monitor, in its Second Report, dated January 11, 2012, extended the cash forecast through to February 17, 2012. The Second Report provides explanations for the key variances in actual receipts and disbursements as compared to the January 2, 2012 forecast.

[35] There are some timing differences but the Monitor concludes that there are no significant changes in the underlying assumptions in the January 10, 2012 forecast as compared to the January 2, 2012 forecast.

[36] The January 10 forecast projects that the ending cash position goes from positive to negative in mid-February.

[37] Counsel to the Applicants submits that, based on the latest cash flow forecast, the Timminco Entities currently estimate that additional funding will be required by mid-February in order to avoid an interruption in operations.

[38] The Timminco Entities submit that this is an appropriate case in which to grant super priority to the Administration Charge. Counsel submits that each of the proposed beneficiaries will play a critical role in the Timminco Entities' restructuring and it is unlikely that the advisors will participate in the CCAA proceedings unless the Administration Charge is granted to secure their fees and disbursements.

[39] Statutory Authority to grant such a charge derives from s. 11.52(1) of the CCAA. Subsection 11.52(2) contains the authority to grant super-priority to such a charge:

> 11.52(1) Court may order security or charge to cover certain costs — On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of
>
> > (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
> >
> > (b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
> >
> > (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.
>
> 11.52(2) Priority — This court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

[40] Counsel also submits that the Timminco Entities require the continued involvement of their directors and officers in order to pursue a successful restructuring of their business and/or finances and, due to the significant personal exposure associated with the Timminco Entities'

liabilities, it is unlikely that the directors and officers will continue their services with the Timminco Entities unless the D&O Charge is granted.

[41] Statutory authority for the granting of a D&O charge on a super priority basis derives from s. 11.51 of the CCAA:

> 11.51(1) Security or charge relating to director's indemnification — On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.
>
> (2) Priority — The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.
>
> (3) Restriction — indemnification insurance — The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.
>
> (4) Negligence, misconduct or fault — The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

Analysis

(i) Administration Charge and D&O Charge

[42] It seems apparent that the position of the unions' is in direct conflict with the Applicants' positions.

[43] The position being put forth by counsel to the CEP and USW is clearly stated and is quite understandable. However, in my view, the position of the CEP and the USW has to be considered in the context of the practical circumstances facing the Timminco Entities. The Timminco Entities are clearly insolvent and do not have sufficient reserves to address the funding requirements of the pension plans.

[44] Counsel to the Applicants submits that without the relief requested, the Timminco Entities will be deprived of the services being provided by the beneficiaries of the charges, to the company's detriment. I accept the submissions of counsel to the Applicants that it is unlikely that the advisors will participate in the CCAA proceedings unless the Administration Charge is granted to secure their fees and disbursements. I also accept the evidence of Mr. Kalins that the role of the advisors is critical to the efforts of the Timminco Entities to restructure. To expect

that the advisors will take the business risk of participating in these proceedings without the security of the charge is neither reasonable nor realistic.

[45] Likewise, I accept the submissions of counsel to the Applicants to the effect that the directors and officers will not continue their service without the D&O Charge. Again, in circumstances such as those facing the Timminco Entities, it is neither reasonable nor realistic to expect directors and officers to continue without the requested form of protection.

[46] It logically follows, in my view, that without the assistance of the advisors, and in the anticipated void caused by the lack of a governance structure, the Timminco Entities will be directionless and unable to effectively proceed with any type or form of restructuring under the CCAA.

[47] The Applicants argue that the CCAA overrides any conflicting requirements of the QSPPA and the BPA.

[48] Counsel submits that the general paramountcy of the CCAA over provincial legislation was confirmed in *ATB Financial v. Metcalf & Mansfield Alternative Investment II Corp.*, (2008), 45 C.B.R. (5th) 163 (Ont. C.A.) at para. 104. In addition, in *Nortel Networks Corporation (Re)*, the Court of Appeal held that the doctrine of paramountcy applies either where a provincial and a federal statutory position are in conflict and cannot both be complied with, or where complying with the provincial law will have the effect of frustrating the purpose of the federal law and therefore the intent of Parliament. See *Nortel Networks Corporation (Re)*, (2009), 59 C.B.R. (5th) 23 (Ont. C.A.).

[49] It has long been stated that the purpose of the CCAA is to facilitate the making of a compromise or arrangement between an insolvent debtor company and its creditors, with the purpose of allowing the business to continue. As the Court of Appeal for Ontario stated in *Stelco Inc., (Re)* (2005), 75 O.R. (3d) 5, at para. 36:

> In the CCAA context, Parliament has provided a statutory framework to extend protection to a company while it holds its creditors at bay and attempts to negotiate a compromised plan of arrangement that will enable it to emerge and continue as a viable economic entity, thus benefiting society and the company in the long run, along with the company's creditors, shareholders, employees and other stakeholders. The s. 11 discretion is the engine that drives this broad and flexible statutory scheme...

[50] Further, as I indicated in *Nortel Networks Corporation (Re)*, (2009), 55 C.B.R. (5th) 229 (Ont. S.C.J.), this purpose continues to exist regardless of whether a company is actually restructuring or is continuing operations during a sales process in order to maintain maximum value and achieve the highest price for the benefit of all stakeholders. Based on this reasoning, the fact that Timminco has not provided any plan for restructuring at this time does not change the analysis.

[51] The Court of Appeal in *Indalex Ltd. (Re)* (2011), 75 C.B.R. (5th) 19 (Ont. C.A.) confirmed the CCAA court's ability to override conflicting provisions of provincial statutes where the application of the provincial legislation would frustrate the company's ability to

restructure and avoid bankruptcy. The Court stated, *inter alia*, as follows (beginning at paragraph 176):

> The CCAA court has the authority to grant a super-priority charge to DIP lenders in CCAA proceedings. I fully accept that the CCAA judge can make an order granting a super-priority charge that has the effect of overriding provincial legislation, including the PBA. ...
>
> ...
>
> What of the contention that recognition of the deemed trust will cause DIP lenders to be unwilling to advance funds in CCAA proceedings? It is important to recognize that the conclusion I have reached does not mean that a finding of paramountcy will never be made. That determination must be made on a case by case basis. There may well be situations in which paramountcy is invoked and the record satisfies the CCAA judge that application of the provincial legislation would frustrate the company's ability to restructure and avoid bankruptcy.

[52] The Timminco Entities seek approval to suspend Special Payments in order to maintain sufficient liquidity to continue operations for the benefit of all stakeholders, including employees and pensioners. It is clear that based on the January 2 forecast, as modified by the Second Report, the Timminco Entities have insufficient liquidity to make the Special Payments at this time.

[53] Counsel to the Timminco Entities submits that where it is necessary to achieve the objective of the CCAA, the court has the jurisdiction to make an order under the CCAA granting, in the present case, super priority over the Encumbrances for the Administration Charge and the D&O Charge, even if such an order conflicts with, or overrides, the QSPPA or the PBA.

[54] Further, the Timminco Entities submit that the doctrine of paramountcy is properly invoked in this case and that the court should order that the Administration Charge and the D&O Charge have super priority over the Encumbrances in order to ensure the continued participation of the beneficiaries of these charges in the Timminco Entities' CCAA proceedings.

[55] The Timminco Entities also submit that payment of the pension contributions should be suspended. These special (or amortization) payments are required to be made to liquidate a going concern or solvency deficiency in a pension plan as identified in the most recent funding valuation report for the plan that is filed with the applicable pension regulatory authority. The requirement for the employer to make such payments is provided for under applicable provincial pension minimum standards legislation.

[56] The courts have characterized special (or amortization) payments as pre-filing obligations which are stayed upon an initial order being granted under the CCAA. (See *AbitibiBowater Inc.*, (Re) (2009) 57 C.B.R. (5th) 285 (Q.S.C.); *Collins & Aikman Automotive Canada Inc.* (2007), 37 C.B.R. (5th) 282 (Ont. S.C.J.) and *Fraser Papers Inc. (Re)* (2009), 55 C.B.R. (5th) 217 (Ont. S.C.J.).

[57] I accept the submission of counsel to the Applicants to the effect that courts in Ontario and Quebec have addressed the issue of suspending special (or amortization) payments in the

context of a CCAA restructuring and have ordered the suspension of such payments where the failure to stay the obligation would jeopardize the business of the debtor company and the company's ability to restructure.

[58] The Timminco Entities also submit that there should be no director or officer liability incurred as a result of a court-ordered suspension of payment of pension contributions. Counsel references *Fraser Papers*, where Pepall J. stated:

> Given that I am ordering that the special payments need not be made during the stay period pending further order of the Court, the Applicants and the officers and directors should not have any liability for failure to pay them in that same period. The latter should be encouraged to remain during the CCAA process so as to govern and assist with the restructuring effort and should be provided with protection without the need to have recourse to the Director's Charge.

[59] Importantly, *Fraser Papers* also notes that there is no priority for special payments in bankruptcy. In my view, it follows that the employees and former employees are not prejudiced by the relief requested since the likely outcome should these proceedings fail is bankruptcy, which would not produce a better result for them. Thus, the "two hats" doctrine from *Indalex (Re), supra*, discussed earlier in these reasons at [20], would not be infringed by the relief requested. Because it would avoid bankruptcy, to the benefit of both the Timminco Entities and beneficiaries of the pension plans, the relief requested would not favour the interests of the corporate entity over its obligations to its fiduciaries.

[60] Counsel to the Timminco Entities submits that where it is necessary to achieve the objective of the CCAA, the court has the jurisdiction to make an order under the CCAA suspending the payment of the pension contributions, even if such order conflicts with, or overrides, the QSPPA or the PBA.

[61] The evidence has established that the Timminco Entities are in a severe liquidity crisis and, if required to make the pension contributions, will not have sufficient funds to continue operating. The Timminco Entities would then be forced to cease operations to the detriment of their stakeholders, including their employees and pensioners.

[62] On the facts before me, I am satisfied that the application of the QSPPA and the PBA would frustrate the Timminco Entities ability to restructure and avoid bankruptcy. Indeed, while the Timminco Entities continue to make Normal Cost Contributions to the pension plans, requiring them to pay what they owe in respect of special and amortization payments for those plans would deprive them of sufficient funds to continue operating, forcing them to cease operations to the detriment of their stakeholders, including their employees and pensioners.

[63] In my view, this is exactly the kind of result the CCAA is intended to avoid. Where the facts demonstrate that ordering a company to make special payments in accordance with provincial legislation would have the effect of forcing the company into bankruptcy, it seems to me that to make such an order would frustrate the rehabilitative purpose of the CCAA. In such circumstances, therefore, the doctrine of paramountcy is properly invoked, and an order

suspending the requirement to make special payments is appropriate (see *ATB Financial* and *Nortel Networks Corporation (Re)*).

[64] In my view, the circumstances are such that the position put forth by the Timminco Entities must prevail. I am satisfied that bankruptcy is not the answer and that, in order to ensure that the purpose and objective of the CCAA can be fulfilled, it is necessary to invoke the doctrine of paramountcy such that the provisions of the CCAA override those of QSPPA and the PBA.

[65] There is a clear inter-relationship between the granting of the Administration Charge, the granting of the D&O Charge and extension of protection for the directors and officers for the company's failure to pay the pension contributions.

[66] In my view, in the absence of the court granting the requested super priority and protection, the objectives of the CCAA would be frustrated. It is not reasonable to expect that professionals will take the risk of not being paid for their services, and that directors and officers will remain if placed in a compromised position should the Timminco Entities continue CCAA proceedings without the requested protection. The outcome of the failure to provide these respective groups with the requested protection would, in my view, result in the overwhelming likelihood that the CCAA proceedings would come to an abrupt halt, followed, in all likelihood, by bankruptcy proceedings.

[67] If bankruptcy results, the outcome for employees and pensioners is certain. This alternative will not provide a better result for the employees and pensioners. The lack of a desirable alternative to the relief requested only serves to strengthen my view that the objectives of the CCAA would be frustrated if the relief requested was not granted.

[68] For these reasons, I have determined that it is both necessary and appropriate to grant super priority to both the Administrative Charge and D&O Charge.

[69] I have also concluded that it is both necessary and appropriate to suspend the Timminco Entities' obligations to make pension contributions with respect to the Pension Plans. In my view, this determination is necessary to allow the Timminco Entities to restructure or sell the business as a going concern for the benefit of all stakeholders.

[70] I am also satisfied that, in order to encourage the officers and directors to remain during the CCAA proceedings, an order should be granted relieving them from any liability for the Timminco Entities' failure to make pension contributions during the CCAA proceedings. At this point in the restructuring, the participation of its officers and directors is of vital importance to the Timminco Entities.

(ii) <u>The KERPs</u>

[71] Turning now to the issue of the employee retention plans (KERPs), the Timminco Entities seek an order approving the KERPs offered to certain employees who are considered critical to successful proceedings under the CCAA.

[72] In this case, the KERPs have been approved by the board of directors of Timminco. The record indicates that in the opinion of the Chief Executive Officer and the Special Committee of

the Board, all of the KERPs participants are critical to the Timminco Entities' CCAA proceedings as they are experienced employees who have played central roles in the restructuring initiatives taken to date and will play critical roles in the steps taken in the future. The total amount of the KERPs in question is $269,000. KERPs have been approved in numerous CCAA proceedings where the retention of certain employees has been deemed critical to a successful restructuring. See *Nortel Networks Corporation (Re)*, (2009) O.J. No. 1044 (S.C.J.), *Grant Forest Products Inc. (Re)*, (2009) 57 C.B.R. (5th) 128 (Ont. S.C.J.) [Commercial List], and *Canwest Global Communications Corp. (Re)*, (2009) 59 C.B.R. (5th) 72 (Ont. S.C.J.).

[73] In *Grant Forest Products*, Newbould J. noted that the business judgment of the board of directors of the debtor company and the monitor should rarely be ignored when it comes to approving a KERP charge.

[74] The Monitor also supports the approval of the KERPs and, following review of several court-approved retention plans in CCAA proceedings, is satisfied that the KERPs are consistent with the current practice for retention plans in the context of a CCAA proceeding and that the quantum of the proposed payments under the KERPs are reasonable in the circumstances.

[75] I accept the submissions of counsel to the Timminco Entities. I am satisfied that it is necessary, in these circumstances, that the KERPs participants be incentivized to remain in their current positions during the CCAA process. In my view, the continued participation of these experienced and necessary employees will assist the company in its objectives during its restructuring process. If these employees were not to remain with the company, it would be necessary to replace them. It is reasonable to conclude that the replacement of such employees would not provide any substantial economic benefits to the company. The KERPs are approved.

[76] The Timminco Entities have also requested that the court seal the Confidential Supplement which contains copies of the unredacted KERPs, taking the position that the KERPs contain sensitive personal compensation information and that the disclosure of such information would compromise the commercial interests of the Timminco Entities and harm the KERPs participants. Further, the KERPs participants have a reasonable expectation that their names and salary information will be kept confidential. Counsel relies on *Sierra Club of Canada v. Canada (Minister of Finance)* [2002] 2 S.C.R. 522 at para. 53 where Iacobucci J. adopted the following test to determine when a sealing order should be made:

> A confidentiality order under Rule 151 should only be granted when:
>
> (a) such an order is necessary in order to prevent serious risk to an important interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent the risk; and
>
> (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh the deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

[77] CEP argues that the CCAA process should be open and transparent to the greatest extent possible and that the KERPs should not be sealed but rather should be treated in the same manner as other CCAA documents through the Monitor. In the alternative, counsel to the CEP submits that a copy of the KERPs should be provided to the Respondent, CEP.

[78] In my view, at this point in time in the restructuring process, the disclosure of this personal information could compromise the commercial interests of the Timminco Entities and cause harm to the KERP participants. It is both necessary and important for the parties to focus on the restructuring efforts at hand rather than to get, in my view, potentially side-tracked on this issue. In my view, the Confidential Supplement should be and is ordered sealed with the proviso that this issue can be revisited in 45 days.

Disposition

[79] In the result, the motion is granted. An order shall issue:

(a) suspending the Timminco Entities' obligation to make special payments with respect to the pension plans (as defined in the Notice of Motion);

(b) granting super priority to the Administrative Charge and the D&O Charge;

(c) approving the KERPs and the grant of the KERP Charge;

(d) authorizing the sealing of the Confidential Supplement to the First Report of the Monitor.

"G. B. Morawetz J."

MORAWETZ J.

Date: February 2, 2012

THIS IS EXHIBIT "D", referred to in the Affidavit of Peter A.M. Kalins, sworn on March 2, 2012.

Yusuf Yannick Katirai

Commissioner for Taking Affidavits

Yusuf Yannick Katirai, a
Commissioner etc., Province of Ontario,
while a student-at-law.
Expires April 12, 2013.

APPENDIX "D"

AGREEMENT OF PURCHASE AND SALE

This Agreement of Purchase and Sale (this "**Agreement**") is made and entered into as of this 1st day of March, 2012, between BECANCOUR SILICON INC., a corporation subject to the *Business Corporations Act* (Québec) ("**BSI**"), TIMMINCO LIMITED, a corporation incorporated under the *Canada Business Corporations Act* ("**Timminco**" and together with BSI, the "**Vendors**"), QSI PARTNERS LTD., a corporation incorporated under the laws of the Cayman Islands (the "**Purchaser**") and GLOBE SPECIALTY METALS, INC., a corporation incorporated under the laws of Delaware (the "**Guarantor**").

RECITALS:

(A) Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated January 3, 2012 (as amended and as may be further amended or restated from time to time, the "**Initial Order**"), the Vendors are subject to proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**");

(B) The Vendors desire to sell certain of their assets and the Purchaser has agreed (i) to act as a "stalking horse bidder" in connection therewith and (ii) in the absence of the Vendors' acceptance of a superior proposal to the Transaction in accordance with the Bidding Procedures, to purchase certain assets of the Vendors, subject to the terms and conditions set forth in this Agreement and in accordance with section 36 and other provisions of the CCAA and the Bidding Procedures Order; and

(C) The Vendors will obtain the Bidding Procedures Order to authorize the Vendors to enter into this Agreement and authorize the sales process with respect to the Purchased Assets pursuant to the Bidding Procedures.

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

SECTION 1
INTERPRETATION

1.1 Definitions

In this Agreement:

(a) "**April 30 Draft Statement of QSLP Working Capital**" has the meaning set forth in Section 3.9(a);

(b) "**April 30 Statement of QSLP Working Capital**" has the meaning set forth in Section 3.9(d) or 3.9(e), as applicable;

(c) "**Affiliate**" has the meaning ascribed to that term under National Instrument 45-106 - Prospectus and Registration Exemptions of the Canadian Securities Administrators;

(d) "**Agreement**" has the meaning set out in the recitals hereto;

(e) "**Applicable Law**" means, in respect of any Person, property, transaction or event, any domestic or foreign statute, law (including the common law), ordinance, rule, regulation, treaty, restriction, regulatory policy, standard, code or guideline, by-law or order, in each case, having the force of law, that applies in whole or in part to such Person, property, transaction or event;

(f) "**Approval and Vesting Order**" means an order by the Court approving this Agreement, authorizing the Transaction and vesting in the Purchaser all the right, title and interest of the Vendors in and to the Purchased Assets free and clear of all Encumbrances, other than Permitted Encumbrances, in form and substance acceptable to the Parties, acting reasonably;

(g) "**Assignment and Assumption Agreement**" means an agreement to be entered into between the Purchaser and the Vendors to be effective as of the Closing Time wherein the Vendors shall assign the Contracts to the Purchaser and the Purchaser shall thereafter assume the Assumed Obligations;

(h) "**Assignment Order**" means an order or orders of the Court pursuant to Section 11.3 and other applicable provisions of the CCAA, in form and substance satisfactory to the Purchaser, acting reasonably, authorizing and approving (i) the assignment of any Contract for which a Consent and Approval has not been obtained (including the DCC Consent) and preventing any counterparty to the Contract from exercising any right or remedy under the Contract by reason of any defaults arising from the CCAA Proceedings or the insolvency of the Vendors and (ii) where no DCC Consent has been obtained, the vesting in the Purchaser of all right, title and interest of BSI in and to the QSLP Equity free and clear of any rights of DCC arising under any QSLP Contract in connection with the transfer of the QSLP Equity contemplated hereunder;

(i) "**Assumed Obligations**" has the meaning set out in Section 2.4;

(j) "**Back-Up Bid**" has the meaning set out in the Bidding Procedures;

(k) "**Benefit Plans**" means all oral or written plans, arrangements, agreements, programs, policies, practices or undertakings of each Vendor with respect to some or all of the Employees and which provide for or relate to:

(i) bonus, profit sharing or deferred profit sharing, performance compensation, deferred or incentive compensation, supplemental retirement arrangements, share compensation, share purchase or share option, share appreciation rights, phantom stock, vacation or

vacation pay, sick pay, employee loans, or any other compensation in addition to salary; or

(ii) insured or self-insured benefits for or relating to income continuation or other benefits during absence from work (including short term disability, long term disability and workers compensation), hospitalization, health, welfare, legal costs or expenses, medical or dental treatments or expenses, life insurance, accident, death or survivor's benefits, supplementary employment insurance, day care, tuition or professional commitments or expenses and perquisites or similar employment benefits;

(l) "**Bidding Procedures**" means the bidding procedures substantially in the form attached hereto as Schedule "D" or such other form as the Vendors and the Purchaser may agree;

(m) "**Bidding Procedures Order**" has the meaning set out in Section 7.1;

(n) "**Books and Records**" means all files, documents, instruments, papers, books and records (whether stored or maintained in hard copy, digital or electronic format or otherwise), including tax and accounting books and records, used or intended for use by, and in the possession of, either Vendors, in connection with the ownership, or operation of the Purchased Assets, including the Contracts, customer lists, customer information and account records, sales records, computer files, data processing records, employment and personnel records, sales literature, advertising and marketing data and records, credit records, records relating to suppliers and other data, in each case, relating to the Purchased Assets;

(o) "**BSI Owned Property**" means the real property referred to under the heading "**Owned Property**" in Schedule "B";

(p) "**BSI Working Capital**" means the Silicon Metals Accounts Receivable, the Solar Accounts Receivable, inventory and prepaid expenses of BSI set out in Schedule "L";

(q) "**Business Day**" means a day on which banks are open for business in Toronto, Montreal and New York but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario, or the Province of Québec or the State of New York;

(r) "**C$**" and "**$**" means the lawful currency of Canada;

(s) "**CCAA**" has the meaning set out in the recitals hereto;

(t) "**CCAA Proceedings**" has the meaning set out in the recitals hereto;

(u) "**Claims**" means any claim of any nature or kind (including any cross-claim or counterclaim), demand, investigation, chose in or cause of action, suit, default, assessment, litigation, third party action, arbitral proceeding or proceeding by or before any Person;

(v) "**Closing**" means the successful completion of the Transaction;

(w) "**Closing Cash Payment**" has the meaning set out in Section 3.2;

(x) "**Closing Cash Purchase Price**" has the meaning set out in Section 3.2;

(y) "**Closing Date**" means the fifth (5th) Business Day following the date on which the Approval and Vesting Order is granted or such other date as agreed to in writing by the Parties;

(z) "**Closing Date Draft Statement of QSLP Working Capital**" has the meaning set out in Section 3.10(a);

(aa) "**Closing Date Statement of QSLP Working Capital**" has the meaning set out in Sections 3.10(d) and 3.10(e);

(bb) "**Closing Time**" means 2:00 p.m. (Toronto time) on the Closing Date;

(cc) "**Collective Agreements**" means all collective bargaining or similar agreements with any type of Employee representative applying or relating to any Employee of either of the Vendors, including the Convention Collective de Travail between BSI, QSLP and La Section Locale 184 du Syndicat Canadien des Communications, de l'Énergie et du Papier dated February 28, 2011 relating to BSI's hourly employees;

(dd) "**Competition Act**" means the *Competition Act* (Canada) as amended, and includes the regulations promulgated thereunder;

(ee) "**Consents and Approvals**" means the consents, approvals, notifications or waivers from, and filings with, third parties (including any Governmental Authority) as may be required to complete the Transaction, in form and substance (including without limitation the quantum of the Consent Costs) satisfactory to the Purchaser, acting reasonably, as set forth in Schedule "K", as such Schedule may be amended by the Purchaser and delivered to the Vendors on or before the Phase I Bidding Deadline, and which are effective as of the Closing Time;

(ff) "**Consent Cost**" has the meaning set out in Section 1.1(ii), for greater certainty and without limitation, Consent Costs do not include any amounts owing to or incurred by the Monitor or its or the Vendors' advisors;

(gg) "**Contracts**" means all of the contracts and other written agreements to which the Vendors or either one of them are parties constituting part of the Purchased Assets;

(hh) "**Court**" has the meaning set forth in the recitals hereto;

(ii) "**Cure Costs**" means amounts that must be paid, if any, in connection with the assignment and assumption of the Purchased Assets, including costs to cure any monetary defaults thereunder that are required to be cured as a condition of such assignment, subject to the CCAA as applicable, together with such other reasonable costs required to obtain any Consent and Approval (such reasonable costs required to obtain any Consent and Approval, the "**Consent Cost**");

(jj) "**DCC**" means Dow Corning Canada, Inc.;

(kk) "**DCC Consent**" means the consent to the transfer to the Purchaser (or its permitted assigns in accordance with Section 9.11) of the QSLP Equity hereunder and waiver by DCC (and any of its applicable Affiliates) of any and all rights it has or will become entitled to under any QSLP Contract due to (i) the transfer of the QSLP Equity hereunder, or (ii) the Vendors' insolvency or CCAA Proceedings, such consent and waiver to be in form and substance satisfactory to the Purchaser, acting reasonably;

(ll) "**Deposit**" has the meaning set forth in Section 3.3;

(mm) "**DIP Amendment**" means the amendment dated the date hereof to the DIP agreement dated January 18, 2012 between the Vendors and the DIP Lender pursuant to which the parties thereto agree, *inter alia*, that if either (i) the Closing takes place, or (ii) the Closing does not occur solely as a result of the failure by the Purchaser to perform any of its obligations hereunder, then the outstanding DIP Obligations (as defined therein) owing by the Vendors under the DIP Facility and the obligation of the Monitor to return the remaining balance, if any, of the Maximum Amount (as defined therein) (and interest earned thereon) to the Purchaser on the Maturity Date (as defined therein) shall be reduced by an aggregate amount equal to the Deposit;

(nn) "**DIP Facility**" means the super-priority credit facility provided to the Vendors by the Purchaser pursuant to the DIP agreement dated January 18, 2012 between the Vendors and the DIP Lender (as may be amended), and approved by the DIP Order;

(oo) "**DIP Lender**" means QSI Partners Ltd., in its capacity as lender under the DIP Facility;

(pp) "**DIP Lender's Charge**" has the meaning set out in the DIP Order;

(qq) "**DIP Order**" means the Order of the Court dated February 8, 2012, authorizing the DIP Facility, as amended from time to time;

(rr) "**Disclosure Letter**" means the disclosure letter executed by the Vendors and delivered to the Purchaser prior to the execution of this Agreement;

(ss) "**Draft Statement of BSI Working Capital**" has the meaning set forth in Section 3.6(a);

(tt) "**Employee**" means an individual who is employed by either Vendor, whether on a full-time or a part-time basis, whether active or inactive as of the Closing Date, and includes an employee on short term or long term disability leave;

(uu) "**Encumbrances**" means any security interest, lien, claim, charge, hypothec, reservation of ownership, pledge, encumbrance, mortgage, adverse claim or right of a third party of any nature or kind whatsoever and any agreement, option or privilege (whether by law, contract or otherwise) capable of becoming any of the foregoing, (including any conditional sale or title retention agreement, or any capital or financing lease);

(vv) "**Estimated BSI Working Capital Statement**" means the forecasted working capital balances set forth in Schedule "L";

(ww) "**Excise Tax Act**" means the *Excise Tax Act* (Canada), as amended;

(xx) "**Excluded Assets**" means any and all properties, rights, assets and undertakings of the Vendors that do not constitute the Purchased Assets;

(yy) "**Excluded Equipment**" means any equipment or machinery and any parts and components thereof, that are Excluded Assets;

(zz) "**Expense Reimbursement**" has the meaning set forth in Section 7.2;

(aaa) "**Governmental Authority**" means any domestic or foreign government, whether federal, provincial, state, territorial or municipal; and any governmental agency, ministry, department, court (including the Court), tribunal, commission, stock exchange, bureau, board or other instrumentality exercising or purporting to exercise legislative, judicial, regulatory or administrative functions of, or pertaining to, government or securities market regulation;

(bbb) "**Guaranteed Obligations**" has the meaning set forth in Section 8.1(a);

(ccc) "**HP2 Severance Transaction Documents**" means, collectively, (i) a deed of servitude by which QSGP shall establish by destination of proprietor, mutual and reciprocal real servitudes against and in favour of the

property located at 6400 Yvon-Trudeau, Bécancour, Quebec (the "**HP2 Property**") and the property located at 6500 Yvon-Trudeau, Bécancour, Quebec (the "**Facility**"), in order to address operational, maintenance, cost sharing, access and other related matters between the Facility and the HP2 Property, including servitudes for illegal views, optical fibres, internet, telephone lines and systems, parking, access to Yvon-Trudeau Street, passage, locker room, security, shared equipment, water, sewer, natural gas, electricity, fire safety systems and equipment, spur lines, shipping and receiving doors and/or compressed air; (ii) a lease agreement between BSI as lessor and QSGP, acting as general partner of QSLP, as lessee, concerning the lease to QSLP of dust collector No. 21 located on the HP2 Property and the related duct connecting Furnaces No. 2 located on the Facility; (iii) a deed of sale under which QSGP, the registered owner of the HP2 Property, shall transfer legal title to the HP2 Property to BSI, its current beneficial owner; and (iv) following the registration in the land register of the deeds referred to in above paragraphs (i) and (iii), a termination agreement of the nominee agreement concerning the HP2 Property entered into on September 30, 2010 between BSI, as owner, and QSGP, as nominee; in each case, in substantially the form provided by BSI to the Purchaser under cover of letter of even date herewith or such other form agreed between the Vendors and the Purchaser, acting reasonably.

(ddd) "**IFRS**" means the International Financial Reporting Standards, namely the standards, interpretations and the framework for the preparation and presentation of financial statements (in the absence of a standard or an interpretation) adopted by the International Accounting Standards Board(IASB), consistently applied;

(eee) "**Income Tax Act**" means the *Income Tax Act* (Canada), as amended;

(fff) "**Initial Order**" has the meaning set out in the recitals hereto;

(ggg) "**Intellectual Property**" means, any interest in any and all intellectual and industrial property of any kind in any jurisdiction throughout the world, including: (i) all software, computer programs, layouts, interfaces, templates, applications and tools, and code of all types, including object and source code, and including ephemeral aspects, "look and feel", graphic design and user interface design ("**Software**"); (ii) all information and data, databases, database layouts and data structures (whether or not subject to copyright protection) ("**Databases**"); (iii) all literary, graphical, pictorial, artistic, audio-visual and other works, including webpages and webpage designs, templates, scripts, and similar material, and all compilations of any of the foregoing (collectively, together with Software and Databases, "**Works**"); (iv) all trade-marks, trade names, service marks, trade dress, logos and other marks and associated goodwill ("**Marks**"); (v)all domain names, patents, inventions, discoveries, arts, systems, methods, processes, machines, manufactures, developments and

improvements ("**Inventions**"); (vi) all industrial designs; all formulae, confidential information, proprietary information, trade secrets and know how ("**Know-How**"); and (vii) any other works or other subject-matter that is subject to intellectual or industrial property protection under the laws of any jurisdiction throughout the world; in all cases of the foregoing whether or not registrable, registered or the subject of applications for registration, including Intellectual Property Rights;

(hhh) "**Intellectual Property Rights**" means: (i) any and all statutory, common law or other intellectual and industrial property rights and interests of any kind or nature in and to Intellectual Property, including all copyrights and other rights in and to Works, moral rights and benefits in all waivers of moral rights, patents, patent rights and other rights in and to Inventions, rights to Marks, rights and benefits in and to domain name registrations, industrial design and design patent rights, trade secret rights and other rights in and to Know-How, (ii) all registrations, pending applications for registration, and rights to file applications, and rights of priority, renewal, extensions, divisionals, continuations (in whole or in part) or other derivative applications and registrations, for any of the foregoing; (iii) all licenses or other contractual rights in and to any of the foregoing (including third party software licenses) and all licenses granted in respect of any of the foregoing Intellectual Property, rights and interests; (iv) all future income and proceeds from any of the foregoing Intellectual Property, rights, interests or licenses; and (v) all rights of enforcement and to obtain remedies, including to damages and profits, by reason of past, present or future infringement of any of the foregoing Intellectual Property, rights, interests or licenses;

(iii) "**Investment Canada Act**" means *Investment Canada Act*, R.S.C. 1985, c. 28 (1st Supp.), as amended;

(jjj) "**Litigation Claims**" means, collectively, (i) any and all rights of actions or claims whatsoever of either Vendor against third parties arising by reason of any facts or circumstances that occurred or existed before the Closing but excluding any such rights of actions or claims of either Vendor against counterparties to any Contract, and (ii) all amounts owing or received in respect of any such rights of actions or claims;

(kkk) "**Material Adverse Change**" means any one or more changes, effects, events or occurrences that, individually or in the aggregate:

(i) is, or would reasonably be expected to be, material and adverse to the business, properties, assets, liabilities (contingent or otherwise), condition (financial or otherwise), capitalization, operations or results of operations of QSLP and the Purchased Assets, taken as a whole; or

(ii) prevents or materially delays or would reasonably be expected to prevent or materially delay the Vendors from consummating the Transaction;

other than, in the case of clause (a) or (b), any change, effect, event or occurrence (i) in or relating to the CCAA Proceedings, (ii) in or relating to general political, economic or financial conditions in Canada, or (iii) in or relating to the industry involving the mining, processing and sale of silicon, in general, and which in the case of paragraph (i), (ii) and (iii) does not have a materially disproportionate effect on QSLP and the Purchased Assets, taken as a whole;

(lll) "**Monitor**" means FTI Consulting Canada Inc. in its capacity as Monitor of the Vendors in the CCAA Proceedings;

(mmm) "**Monitor's Certificate**" means the certificate filed with the Court by the Monitor certifying that the Monitor has received written confirmation in form and substance satisfactory to the Monitor from the Parties that all conditions of Closing have been satisfied or waived by the applicable Parties and that the Monitor has received the Closing Cash Purchase Price;

(nnn) "**Ordinary Course of Business**" means the ordinary course of business of the Vendors with respect to the Purchased Assets consistent with the conduct of such business on the date hereof and consistent with the Orders of the Court in the CCAA Proceedings;

(ooo) "**Output and Supply Agreement**" means the output and supply agreement among QSLP, BSI and DCC dated October 1, 2010, as amended;

(ppp) "**Parties**" means, collectively, the Purchaser, the Guarantor and each of the Vendors, and "**Party**" means any one of them;

(qqq) "**Pension Plans**" means any registered or unregistered pension plans of or sponsored by the Vendors, including the following: (i) the Retirement Pension Plan for the Hourly Employees of Timminco Metals, a Division of Timminco, at the Haley Plant (Ontario Registration Number 0589648), (ii) the Régime de Rentes pour les Employés Non Syndiqués de Silicium Bécancour Inc. (Québec Registration Number 26042), (iii) the Régime de Rentes pour les Employés Syndiqués de Silicium Bécancour Inc. (Québec Registration Number 32063) and (iv) the Pension Plan for the Timminco Salaried Employees (Ontario Registration Number 1039312);

(rrr) "**Permitted Encumbrances**" means only those Encumbrances related to the Purchased Assets listed on Schedule "E" hereto, which the Purchaser, in connection with the Approval and Vesting Order, shall be entitled to seek to further limit or narrow; provided that, any refusal by the Court to grant the Approval and Vesting Order in respect of any such further limited or narrowed list of Permitted Encumbrances shall not constitute a

failure to satisfy the condition in Section 5.3(c) hereof so long as the Court grants the Approval and Vesting Order in respect of the Permitted Encumbrances listed on Schedule "E" hereto;

(sss) "**Person**" means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, governmental authority or other entity however designated or constituted;

(ttt) "**Personal Information**" means information about an identifiable individual as defined in Privacy Law;

(uuu) "**Phase I Bidding Deadline**" has the meaning set forth in the Bidding Procedures;

(vvv) "**Post-Filing Costs**" means any amounts owing or incurred and not paid under the Contracts arising from and after the commencement of the CCAA Proceedings to but excluding the Closing Date that are permitted to be paid pursuant to the Initial Order;

(www) "**Post-Retirement Liabilities**" mean: (i) with respect to Employees whose employment is governed by a Collective Agreement and retirees, all liabilities and obligations for the post-retirement benefits provided under the Collective Agreements; and (ii) with respect to non-unionized Employees, all liabilities and obligations for the post-retirement benefits provided under the Benefit Plans, as applicable;

(xxx) "**Privacy Law**" means the *Personal Information Protection and Electronic Documents Act* (Canada) and if and to the extent applicable *An Act Respecting the Protection of Personal Information in the Private Sector* (Québec), and any comparable Applicable Law of any other jurisdiction related or applicable to the Transferred Employees and the Unionized Employees transferred from the Vendors to the Purchaser pursuant to this Agreement;

(yyy) "**Purchase Price**" has the meaning set out in Section 3.1;

(zzz) "**Purchased Assets**" means, collectively, the Purchased Silicon Metal Assets, and the Purchased Solar Grade Silicon Assets;

(aaaa) "**Purchased Silicon Metal Assets**" means all of BSI's right, title and interest, in and to those assets and rights set forth in Schedule "A" including the following: the QSLP Equity, the QSLP Contracts, the Silicon Metal Contracts and the ancillary assets and other property set forth in Schedule "A";

(bbbb) "**Purchased Solar Grade Silicon Assets**" means all of BSI's right, title and interest, in and to all of the tangible and intangible assets, properties, rights and Claims, wherever located, used, intended for use or arising in connection with BSI's currently inactive business of producing solar grade silicon through a division of BSI, Timminco Solar, but only to the extent set forth in Schedule "B", including the Solar Grade Silicon Contracts, Solar Equipment and the Solar Intellectual Property;

(cccc) "**QSGP**" means Québec Silicon General Partner Inc., a corporation formed under the laws of Québec, and its successors and assigns;

(dddd) "**QSLP**" means Québec Silicon Limited Partnership, a limited partnership formed under the laws of Québec, and its successors and assigns;

(eeee) "**QSLP Contracts**" means the Contracts relating to the formation, transfer of assets into, and governance of, QSLP set forth in Schedule "F";

(ffff) "**QSLP Current Assets**" means, at any date, all current assets of QSLP, determined on a consolidated basis as of such date in accordance with IFRS, plus the aggregate amount of capital expenditures or other expenditures made from the date of this Agreement to such date on account of loss or damage to assets of QSLP or interruption of business of QSLP but only to the extent such amounts are recoverable under insurance policies of QSLP but not yet received by QSLP, and provided however that any such add back of any such capital expenditures or other expenditures will (i) be subject to providing the Purchaser with evidence satisfactory to it, acting reasonably, that such loss or damage is insured and such amounts will be recovered under such insurance policies and (ii) will not be included if the insurance proceeds are otherwise included as a current asset under IFRS;

(gggg) "**QSLP Current Liabilities**" means, at any time, all current liabilities of QSLP, determined on a consolidated basis as of such time in accordance with IFRS;

(hhhh) "**QSLP Equity**" means, collectively, 51,000 units in the capital of QSLP and 51 Class A Shares in the capital of QSGP, in each case, registered in the name of BSI;

(iiii) "**QSLP Mineral Rights**" means the Mining Lease BM674 issued by the Ministry of Natural Resources and Wildlife to BSI (then called Électro-métallurgie S.K.W. Canada ltée) on January 13, 1976, as renewed, extended and amended;

(jjjj) "**QSLP Real Property**" means the real property municipally known as 6500 Yvon-Trudeau Street, Bécancour Québec,, known and designated as being lot number 4 702 498 of the Cadastre of Québec, Registration Division of Nicolet (Nicolet 2);

(kkkk) "**QSLP Working Capital**" means as at any date the amount of the QSLP Current Assets minus the QSLP Current Liabilities in each case as of such date;

(llll) "**Qualified Bid**" has the meaning set out in the Bidding Procedures;

(mmmm) "**Representative**" means, in respect of a Party, each director, officer, employee, agent, Affiliate, manager, lender, solicitor, accountant, professional advisor, consultant, contractor and other representative of such Party or such Party's Affiliates;

(nnnn) "**Sales Tax**" means all taxes, interest, penalties and fines imposed under Part IX of the *Excise Tax Act* and *An Act Respecting the Québec Sales Tax* (Québec) and the regulations made thereunder and "**Sales Tax Legislation**" means all such acts and regulations;

(oooo) "**Sample QSLP Working Capital Statement**" means the sample QSLP working capital statement provided by BSI to the Purchaser under cover of letter of even date herewith;

(pppp) "**Shortfall**" means that certain amount of silicon metal to be sold by QSLP to DCC on a monthly basis from January 1, 2011 to December 31, 2012, in order to replace that certain amount of silicon metal that was part of the QSLP production allocation that DCC was entitled to receive but was instead sold to by QSLP to BSI pursuant to Section 2.2(b) of the Output and Supply Agreement;

(qqqq) "**Silicon Metal Accounts Receivable**" means all accounts receivable (net of doubtful accounts) owing to BSI in respect of the silicon metals business of BSI except for (i) any tax refunds or credits or (ii) any Litigation Claims;

(rrrr) "**Silicon Metal Contracts**" means the Contracts relating solely to the Purchased Silicon Metal Assets set forth in Schedule "G";

(ssss) "**Solar Accounts Receivable**" means all accounts receivable (net of doubtful accounts) owing to BSI in respect of the Timminco Solar division of BSI except for (i) any tax refunds or credits or (ii) any Litigation Claims;

(tttt) "**Solar Equipment**" means the machinery, equipment, supplies and accessories, and any of the parts and components thereof, relating to the Purchased Solar Grade Silicon Assets set forth in Schedule "H";

(uuuu) "**Solar Grade Silicon Contracts**" means the Contracts relating solely to the Purchased Solar Grade Silicon Assets set forth in Schedule "J";

(vvvv) "**Solar Intellectual Property**" means the Intellectual Property and Intellectual Property Rights of BSI relating to Purchased Solar Grade

Silicon Assets including the Intellectual Property set forth under the heading "Solar Intellectual Property" in Schedule "B";

(wwww) "**Specific Conveyances**" means all conveyances, deeds of transfer, share transfers, bills of sale, assignments and transfers that are reasonably required to transfer the Purchased Assets to the Purchaser in customary form consistent with Section 2.2;

(xxxx) "**Stalking Horse Bid**" has the meaning set out in Section 7.1;

(yyyy) "**Statement of BSI Working Capital**" has the meaning set forth in Section 3.6(d) or 3.6(e), as applicable;

(zzzz) "**Successful Bid**" has the meaning set out in the Bidding Procedures;

(aaaaa) "**Successful Bidder**" has the meaning set out in the Bidding Procedures;

(bbbbb) "**Termination Date**" means June 20, 2012 or, in the event the Agreement is the Back Up Bid, July 20, 2012.

(ccccc) "**Threshold Amount**" has the meaning set out in Section 5.1(f);

(ddddd) "**Transaction**" means the transaction of purchase and sale contemplated by this Agreement;

(eeeee) "**Transfer Taxes**" means all present and future transfer taxes, sales taxes, use taxes, production taxes, value-added taxes, goods and services taxes, land transfer taxes, registration and recording fees, and any other similar or like taxes and charges imposed by a Governmental Authority in connection with the sale, transfer or registration of the transfer of the Purchased Assets, including Sales Tax but excluding any taxes imposed or payable under the Income Tax Act and any other applicable income tax legislation;

(fffff) "**Vendors**" has the meaning set out in the recitals hereto.

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. The terms "this Agreement", "hereof", "herein" and "hereunder" and similar expressions refer to this Agreement and not to any particular section hereof. The expression "Section" or reference to another subdivision followed by a number mean and refer to the specified Section or other subdivision of this Agreement.

1.3 Extended Meanings

Words importing the singular include the plural and vice versa and words importing gender include all genders. The term "including" means "including, without limitation," and such terms as "includes" have similar meanings.

1.4 Schedules

The following Schedules are incorporated in and form part of this Agreement:

Schedule "A"	-	Purchased Silicon Metal Assets
Schedule "B"	-	Purchased Solar Grade Silicon Assets
Schedule "C"	-	Intentionally Deleted
Schedule "D"	-	Bidding Procedures Order
Schedule "E"	-	Permitted Encumbrances
Schedule "F"	-	QSLP Contracts
Schedule "G"	-	Silicon Metal Contracts
Schedule "H"	-	Solar Equipment
Schedule "I"	--	Monthly Reimbursement
Schedule "J"	-	Solar Grade Silicon Contracts
Schedule "K"	-	Consents and Approvals
Schedule "L"	-	Estimated BSI Working Capital Statement

SECTION 2
SALE AND PURCHASE AND ASSIGNMENT

2.1 Sale and Purchase of Assets

Subject to the terms and conditions hereof, at the Closing Time, the Vendors hereby agree to sell, assign and transfer to the Purchaser and the Purchaser agrees to purchase from the Vendors, all of the Vendors' right, title and interest in and to the Purchased Assets free and clear of all Encumbrances other than Permitted Encumbrances. At any time prior to the Phase I Bidding Deadline and thereafter with the consent of the Vendors, Purchaser may remove any property, asset, right or Contract as a Purchased Asset, upon notification to the Vendors in writing together with the applicable amended Schedule reflecting such removal; provided, however, that there shall be no reduction in the Purchase Price as a result of such removal.

2.2 Assignment of Purchased Assets

Subject to the conditions and terms hereof, at the Closing Time, the Vendors shall assign to the Purchaser all of the Vendors' rights, benefits and interests in and to the Contracts and the Purchaser shall assume the obligations and liabilities of the Vendors under the Contracts at the Closing Time (including Cure Costs but excluding Post-Filing Costs). Notwithstanding the foregoing, this Agreement and any document delivered under this Agreement shall not constitute an assignment or an attempted assignment of any Purchased Asset contemplated to be assigned to the Purchaser under this Agreement that is

not assignable without the Consent and Approval of a third party unless (i) such Consent and Approval has been obtained or (ii) the assignment has been ordered by the Court.

Prior to the application for the Approval and Vesting Order, the Vendors shall use their commercially reasonable efforts to obtain any Consent and Approval necessary for the assignment of any Contract to the Purchaser, including the DCC Consent. The Purchaser shall provide its reasonable cooperation to assist the Vendors in obtaining any such Consents and Approvals.

To the extent any Consent and Approval, including the DCC Consent, necessary for the assignment of any Contract to the Purchaser is not obtained prior to the application for the Approval and Vesting Order, the Vendors shall bring an application to the Court for approval of the Assignment Order.

2.3 "As is, Where is"

The Purchaser acknowledges that the Vendors are selling the Purchased Assets on an "as is, where is" basis as they shall exist at the Closing Time. Except as otherwise provided in Section 4.2(c) and 4.2(d), the Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendors do not guarantee title to the Purchased Assets. No representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for purpose, merchantability, condition, quantity or quality or in respect of any other matter or thing whatsoever concerning the Purchased Assets or the right of the Vendors to sell or assign same save and except as expressly represented or warranted herein. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario), as amended, the Civil Code of Québec or similar legislation do not apply hereto and have been waived by the Purchaser. The description of the Purchased Assets contained in the Schedules is for purpose of identification only. Except as otherwise provided in Section 4.2, no representation, warranty or condition has or will be given by the Vendors concerning completeness or accuracy of such descriptions.

2.4 Assumed Obligations

The Purchaser shall assume and perform, discharge and pay when due the following obligations and liabilities of the Vendors (the "**Assumed Obligations**") after the Closing:

(a) all debts, liabilities and obligations under the Contracts (to the extent assigned or transferred to the Purchaser on Closing) for the period from and after the Closing Date and all Cure Costs (other than Post-Filing Costs);

(b) all debts, liabilities and obligations for Transfer Taxes payable in connection with the Transaction;

(c) all debts, liabilities and obligations for realty taxes in respect of the Purchased Assets attributable to the period from and after the Closing Date; and

(d) all debts, liabilities and obligations arising from ownership and use of the Purchased Assets for the period from and after the Closing Date.

2.5 Excluded Obligations

Other than the Assumed Obligations, the Purchaser shall not assume and shall not be liable, directly or indirectly, or otherwise responsible for any debts, liabilities or other obligations of the Vendors, including, without limiting the generality of the foregoing:

(a) all debts, liabilities, obligations or Claims related to any Benefit Plans, Collective Agreements, Employees, Pension Plans, Post-Retirement Liabilities or any Excluded Asset;

(b) all debts, liabilities and obligations related to any Purchased Asset (including Contracts but excluding Cure Costs) arising out of or related to the period prior to the Closing Time;

(c) all obligations and liabilities owing by either Vendor to the other Vendor or any Affiliate thereof (for greater certainty other than Cure Costs excluding Post-Filing Costs);

(d) all debts, liabilities and obligations for or related to any obligation for any taxes that are not expressly assumed by the Purchaser pursuant to Sections 2.4(a) and 3.5;

(e) all taxes imposed on or relating to the Purchased Assets that are attributable to any pre-Closing tax period whether or not any such period ends on or before the Closing Date (other than any Transfer Taxes); and

(f) all debts, liabilities and obligations of the Vendors arising under this Agreement.

SECTION 3
PURCHASE PRICE

3.1 Purchase Price

The aggregate purchase price (the "**Purchase Price**") payable by the Purchaser to the Vendors for the Purchased Assets is: (i) the sum of C$20,000,000 payable in cash plus (ii) the assumption by the Purchaser of the Assumed Obligations; subject to the adjustment, if any, in accordance with Section 3.7.

3.2 Satisfaction of Purchase Price

Provided that all conditions of Closing have been satisfied or waived in accordance with Section 5, the Purchase Price shall be paid and satisfied on Closing as follows:

(a) the crediting and set off of the Deposit against outstanding amounts owing to the DIP Lender under the DIP Facility pursuant to the DIP Amendment;

(b) the application of all outstanding amounts owing to the DIP Lender under the DIP Facility (including any accrued interest thereon and any expenses and other amounts owing thereunder) in excess of the Deposit to the Purchase Price;

(c) the balance of the cash portion of the Purchase Price (the "**Closing Cash Payment**" and together with the Deposit and the amount referred to in clause (b) above, the "**Closing Cash Purchase Price**") shall be paid on the Closing Date by wire transfer in immediately available funds payable to the Monitor pending further Order of the Court; and

(d) the assumption by the Purchaser of the Assumed Obligations.

Any adjustment required to be made to the Purchase Price in accordance with Section 3.7 shall be satisfied by the payment of the appropriate amount by the Party owing such payment to the other Party entitled thereto in the manner and at the time contemplated therein.

3.3 Deposit

Effective upon entry of the Bidding Procedures Order, the Vendors acknowledge receipt from the Purchaser of a deposit (the "**Deposit**") of 15% of the Closing Cash Purchase Price (excluding any adjustment contemplated under Section 3.7) pursuant to the credit and set off arrangement contemplated under the DIP Amendment. If the Closing takes place, the Deposit shall be credited and set off against the outstanding amounts owing to the DIP Lender under the DIP Facility pursuant to the DIP Amendment. The Deposit shall be credited and set off against outstanding amounts owing to the DIP Lender under the DIP Facility pursuant to the DIP Amendment in the event that Closing does not occur solely as a result of the failure by the Purchaser to perform any of its obligations hereunder. Notwithstanding any provision herein, there will be no credit or set off of the amount of the Deposit to outstanding amounts owing to the DIP Lender under the DIP Facility on the Business Day following the occurrence of the earliest of any of the following (and the Vendors shall acknowledge the same in writing to the Purchaser):

(a) if this Agreement is not the Successful Bid or the Back-Up Bid (as determined pursuant to the Bidding Procedures);

(b) if this Agreement is the Back-Up Bid and the transaction contemplated by the Successful Bid is closed; or

(c) if the Transaction is not completed for any other reason other than solely as a result of the failure of the Purchaser to perform any of its obligations hereunder.

If a bid (other than the Stalking Horse Bid) is accepted as the Successful Bid and this Agreement is the Back-Up Bid, the credit and set off arrangement of the Deposit contemplated under the DIP Amendment shall continue until the closing of the Successful Bid. If the Successful Bid does not close and this Agreement is the Back-Up Bid, the Vendors shall immediately provide written notice to the Purchaser of this fact pursuant to the Bidding Procedures. Upon receipt by the Purchaser of such notice at least 5 Business Days prior to the Termination Date, the Purchaser shall be required to close the Transaction on the same terms set out herein or in the Purchaser's revised bid, as applicable, by no later than the Termination Date and the Deposit shall be credited and set off as provided in Section 3.2.

3.4 Allocation of Purchase Price

The Purchase Price is allocated among the Purchased Assets as follows: (i) the amount of C$18,800,000 as purchase price for the QSLP Equity; (ii) the amount of C$25,000 for the QSLP Contracts; (iii) the amount of C$25,000 for the Silicon Metal Contracts; (iv) the amount of C$950,000 for the ancillary assets and other property set forth in Schedule "A"; and (v) the amount of C$200,000 as purchase price for the Purchased Solar Grade Silicon Assets. The Vendors and the Purchaser agree that the allocation of the Purchase Price for tax purposes among each of the classes of Purchased Assets of each of the Vendors shall be determined and agreed upon on a date no later than five (5) Business Days before the Closing Date. Each of the Vendors and the Purchaser shall report the sale and purchase of the Purchased Assets for all tax purposes in a manner consistent with such allocation, and will complete all tax returns, designations and elections in a manner consistent with such allocation and otherwise follow such allocation for all tax purposes on and subsequent to the Closing Date and may not take any position inconsistent with such allocation.

3.5 Transfer Taxes

The Parties agree that:

(a) the Purchase Price is exclusive of all Transfer Taxes and the Purchaser shall be liable for and shall pay any and all applicable Transfer Taxes pertaining to the Purchaser's acquisition of the Purchased Assets or the registration of any Specific Conveyance necessitated hereby;

(b) the Purchaser shall indemnify the Vendors for any Transfer Taxes (including any interest or penalties imposed by a Governmental Authority) for which the Vendors may become liable as a result of any failure by the Purchaser to pay or remit such Transfer Taxes; and

(c) if applicable, they shall jointly elect that no Sales Tax be payable pursuant to the Sales Tax Legislation with respect to the purchase and sale of the Purchased Assets under this Agreement and the Purchaser will file an election pursuant to section 167 of the Excise Tax Act and s. 75 of *An Act Respecting the Québec Sales Tax* (Québec), prepared by the Purchaser and made jointly by the Purchaser and each Vendor, in compliance with the requirements of the Sales Tax Legislation.

3.6 Preparation of BSI Working Capital Statement

(a) Within 20 Business Days following the Closing Date (or such other date as is mutually agreed to by the Vendors and the Purchaser in writing), the Purchaser will prepare and deliver to the Vendors and the Monitor a draft statement of BSI Working Capital (the "**Draft Statement of BSI Working Capital**") prepared as of the Closing Date. The Draft Statement of BSI Working Capital will be prepared in accordance with IFRS consistent with the Estimated BSI Working Capital Statement referred to in Schedule "L", provided that it is consistent with IFRS.

(b) The Vendors will have 5 Business Days to review the Draft Statement of BSI Working Capital following receipt of it and the Vendors must notify the Purchaser in writing if they have any objections to the Draft Statement of BSI Working Capital within such 5 Business Day period. The notice of objection must contain a statement of the basis of the Vendors' objections.

(c) If the Vendors send a notice of objection of the Draft Statement of BSI Working Capital in accordance with Section 3.6(b), the Parties will work expeditiously and in good faith in an attempt to resolve such objections following the date of notification by the Vendors to the Purchaser of such objections. Failing resolution of any objection to the Draft Statement of BSI Working Capital raised by the Vendors, the Vendors or the Purchaser may bring a motion before the Court for a determination of such objections with respect to the Draft Statement of BSI Working Capital.

(d) If the Vendors do not notify the Purchaser of any objection in accordance with Section 3.6(b), the Parties are deemed to have accepted and approved the Draft Statement of BSI Working Capital and such Draft Statement of BSI Working Capital will be final, conclusive and binding upon the Parties, and will not be subject to appeal, absent manifest error. The Draft Statement of BSI Working Capital will become the "**Statement of BSI Working Capital**" on the next Business Day following the end of such 5 Business Day period.

(e) If the Vendors send a notice of objection within the 5 Business Day period, the Parties will revise the Draft Statement of BSI Working Capital to reflect the final resolution amongst the Vendors and the Purchaser or final determination by the Court of such objections under Section 3.6(c) within two Business Days following such final resolution amongst the Vendors and the Purchaser or determination by the Court, as applicable. Such revised Draft Statement of BSI Working Capital will be final, conclusive and binding upon the Parties, and will not be subject to appeal, absent manifest error. The Draft Statement of BSI Working Capital will become the "**Statement of BSI Working Capital**" on the next Business Day following revision of the Draft Statement of BSI Working Capital under this Section 3.6(e).

(f) The Purchaser and the Vendors will each bear their own fees and expenses, in preparing or reviewing, as the case may be, the Draft Statement of BSI Working Capital.

3.7 BSI Working Capital Purchase Price Adjustment

(a) Subject to Section 3.7(c), the Purchase Price will be increased or decreased, as the case may be, dollar-for-dollar, to the extent that the BSI Working Capital, as determined from the Statement of BSI Working Capital, is more or less than C$5,799,000.

(b) Subject to Section 3.7(c), if the BSI Working Capital, as determined from the Statement of BSI Working Capital, is more than C$5,799,000, the Purchaser will pay to the Vendor the amount of such difference as an increase to the Purchase Price. If the BSI Working Capital as determined from the Statement of BSI Working Capital is less than C$5,799,000, the Vendors shall pay to the Purchaser the amount of the difference. Any amounts to be paid by the Purchaser to the Vendors, or by the Vendors to the Purchaser, under this Section will be paid within 2 Business Days after the Draft Statement of BSI Working Capital becomes the Statement of BSI Working Capital in accordance with Section 3.6(d) or Section 3.6(e), as the case may be.

(c) If the adjustment arising from BSI Working Capital, as determined from the Statement of BSI Working Capital, would increase or decrease the Purchase Price by an amount of less than C$150,000, then there shall be no adjustment to the Purchase Price; provided, however that any such adjustment of C$150,000 or more shall increase or decrease the Purchase Price, dollar for dollar, for the entire amount of the adjustment.

3.8 Sufficiency of Funds

The Vendors will not distribute an amount of the Purchase Price equal to C$5,799,000 (or, after preparation of the Draft Statement of BSI Working Capital, such lesser amount equal to the difference between C$5,799,000 and the BSI Working Capital amount shown on the Draft Statement of BSI Working Capital) until the Statement of BSI Working Capital is determined in accordance with Section 3.6.

3.9 Preparation of QSLP Working Capital Statement

(a) On or before May 7, 2012 (or such other date as is mutually agreed to by the Vendors and the Purchaser in writing), the Vendors will prepare in good faith and deliver to the Purchaser and the Monitor a draft statement of QSLP Working Capital (the "**April 30 Draft Statement of QSLP Working Capital**") prepared as of April 30, 2012 (or such other date as is mutually agreed to by the Vendors and the Purchaser in writing). The April 30 Draft Statement of QSLP Working Capital will be prepared in accordance with IFRS and the Sample QSLP Working Capital Statement.

(b) The Purchaser will have 5 Business Days to review the April 30 Draft Statement of QSLP Working Capital following receipt of it and the Purchaser must notify the Vendors in writing if they have any objections to the April 30 Draft Statement of QSLP Working Capital within such 5 Business Day period. The notice of objection must contain a statement of the basis of the Purchaser's objections.

(c) If the Purchaser sends a notice of objection of the April 30 Draft Statement of QSLP Working Capital in accordance with Section 3.9(b), the Parties will work expeditiously and in good faith in an attempt to resolve such objections following the date of notification by the Purchaser to the Vendors of such objections. Failing resolution of any objection to the April 30 Draft Statement of QSLP Working Capital raised by the Purchasers, the Vendors or the Purchaser may bring a motion before the Court for a determination of such objections with respect to the April 30 Draft Statement of QSLP Working Capital.

(d) If the Purchaser does not notify the Vendors of any objection in accordance with Section 3.9(b), the Parties are deemed to have accepted and approved the April 30 Draft Statement of QSLP Working Capital and such April 30 Draft Statement of QSLP Working Capital will be final, conclusive and binding upon the Parties, and will not be subject to appeal, absent manifest error. The April 30 Draft Statement of QSLP Working Capital will become the "**April 30 Statement of QSLP Working Capital**" on the next Business Day following the end of such 5 Business Day period.

(e) If the Purchaser sends a notice of objection within the 5 Business Day period, the Parties will revise the April 30 Draft Statement of QSLP Working Capital to reflect the final resolution amongst the Vendors and the Purchaser or final determination by the Court of such objections under Section 3.9(c) within two Business Days following such final resolution amongst the Vendors and the Purchaser or determination by the Court, as applicable. Such revised April 30 Draft Statement of QSLP Working Capital will be final, conclusive and binding upon the Parties, and will not be subject to appeal, absent manifest error. The Draft Statement of QSLP Working Capital will become the "**April 30 Statement of QSLP Working Capital**" on the next Business Day following revision of the April 30 Draft Statement of QSLP Working Capital under this Section 3.9.

(f) The Purchaser and the Vendors will each bear their own fees and expenses, in preparing or reviewing, as the case may be, the Draft Statement of QSLP Working Capital.

(g) The Vendors will provide the Purchaser full access to its Books and Records and such other information necessary reasonably for it to evaluate the April 30 Draft Statement of QSLP Working Capital.

3.10 Roll Forward QSLP Working Capital

(a) Subject to Section 3.10(h), 2 Business Days prior to the expected Closing Date (or such other date as is mutually agreed to by the Vendors and the Purchaser in writing), the Vendors will prepare in good faith and deliver to the Purchaser and the Monitor a draft statement of QSLP Working Capital (the "**Closing Date Draft Statement of QSLP Working Capital**") as of May 31, 2012 (or such other date as mutually agreed by the Vendors and Purchaser in writing). The Closing Date Draft Statement of QSLP Working Capital will be prepared in accordance with IFRS and the Sample QSLP Working Capital Statement.

(b) The Purchaser will have 2 Business Days to review the Closing Date Draft Statement of QSLP Working Capital following receipt of it and the Purchaser must notify the Vendors in writing if they have any objections to the Closing Date Draft Statement of QSLP Working Capital within such 2 Business Day period. The notice of objection must contain a statement of the basis of the Purchaser's objections.

(c) If the Purchaser sends a notice of objection of the Closing Date Draft Statement of QSLP Working Capital in accordance with Section 3.10(b), the Vendors or the Purchaser may bring a motion before the Court for a determination of such objections with respect to the Closing Date Draft Statement of QSLP Working Capital.

(d) If the Purchaser does not notify the Vendors of any objection in accordance with Section 3.10(b), the Parties are deemed to have accepted and approved the Closing Date Draft Statement of QSLP Working Capital and such Closing Date Draft Statement of QSLP Working Capital will be final, conclusive and binding upon the Parties, and will not be subject to appeal, absent manifest error. The Closing Date Draft Statement of QSLP Working Capital will become the "**Closing Date Statement of QSLP Working Capital**" on the next Business Day following the end of such 2 Business Day period.

(e) If the Purchaser sends a notice of objection within the 2 Business Day period, the Parties will revise the Closing Date Draft Statement of QSLP Working Capital to reflect the final resolution amongst the Vendors and the Purchaser or final determination by the Court of such objections under Section 3.10(c) within two Business Days following such final resolution amongst the Vendors and the Purchaser or determination by the Court, as applicable. Such revised Closing Date Draft Statement of QSLP Working Capital will be final, conclusive and binding upon the Parties, and will not be subject to appeal, absent manifest error. The Draft Statement of QSLP Working Capital will become the "**Closing Date Statement of QSLP Working Capital**" on the next Business Day following revision of the

Closing Date Draft Statement of QSLP Working Capital under this Section 3.10.

(f) The Purchaser and the Vendors will each bear their own fees and expenses, in preparing or reviewing, as the case may be, the Draft Statement of QSLP Working Capital.

(g) The Vendors will provide the Purchaser full access to its Books and Records and other such information reasonably necessary for it to evaluate the Closing Date Draft Statement of QSLP Working Capital.

(h) This Section 3.10 only applies if the Closing is expected to occur after June 8, 2012.

SECTION 4
REPRESENTATIONS AND WARRANTIES

4.1 Purchaser's Representations

The Purchaser represents and warrants to the Vendors as of the date hereof and as of the Closing Time that and acknowledges that the Vendors are relying on such representations and warranties in connection with entering into this Agreement and performing their obligations hereunder:

(a) the Purchaser is a corporation duly incorporated, organized and subsisting under the laws of the Cayman Islands and has the requisite power and authority to enter into this Agreement and to complete the transactions contemplated hereunder;

(b) the Purchaser has taken all necessary corporate action to authorize the entering into and performance by it of this Agreement and completion of the transactions contemplated herein will not breach its constating documents, any agreement binding upon the Purchaser or any Applicable Laws with respect to the Purchaser;

(c) other than the Bidding Procedures Order, the Approval and Vesting Order, the Assignment Order (if applicable) and any Specific Conveyances, execution, delivery and performance of this Agreement by the Purchaser does not and will not require any consent, approval, authorization or other order of, action by, filing with or notification to, any Governmental Authority;

(d) this Agreement and all other documents contemplated hereunder to which the Purchaser is or will be a party have been or will be, as at the Closing Time, duly and validly executed and delivered by the Purchaser and constitute or will, as at the Closing Time, constitute legal, valid and binding obligations of the Purchaser enforceable in accordance with the terms hereof or thereof;

(e) except in connection with the CCAA Proceedings, there are no proceedings before or pending before any Governmental Authority, or threatened to be brought by or before any Governmental Authority by or against the Purchaser affecting the legality, validity or enforceability of this Agreement or the consummation of the transactions contemplated hereby by the Purchaser;

(f) the Purchaser is not subject to any order of any Governmental Authority, nor are there any such orders threatened to be imposed by any Governmental Authority, which could affect the legality, validity or enforceability of this Agreement or the consummation of the transactions contemplated hereby by the Purchaser;

(g) the Purchaser has or will have made adequate arrangements to have sufficient funds available to satisfy its obligations to pay the Purchase Price as set forth in Section 3.2;

(h) the Purchaser is controlled by a WTO Investor, within the meaning of the Investment Canada Act; and

(i) the Purchaser and its affiliates do not have assets in Canada that exceed $100 million or gross revenues from sales in, from or into Canada that exceed $100 million, all as determined in accordance with Part IX of the Competition Act and the Notifiable Transactions Regulations thereunder.

4.2 Vendors' Representations

The Vendors, jointly and severally, represent and warrant to the Purchaser as of the date hereof and as of the Closing Time as follows and acknowledge that the Purchaser is relying on such representations and warranties in connection with entering into this Agreement and performing its obligations hereunder:

(a) Timminco is a corporation duly incorporated, organized and subsisting under the *Canada Business Corporations Act*;

(b) BSI is a corporation duly organized and subject to and subsisting under the *Business Corporations Act* (Québec);

(c) except as disclosed in the Disclosure Letter, BSI has good and marketable title to the QSLP Equity, free and clear of Encumbrances other than the Permitted Encumbrances. The total issued and outstanding securities of QSLP consist of 100,010 units. The total issued and outstanding capital of QSGP consists of 51 Class A Shares and 49 Class B Shares. Except as set forth in the QSLP Contracts, there are no existing rights or privileges to acquire any unissued securities of QSLP or QSGP or any of such outstanding securities held by BSI or QSGP;

(d) except as disclosed in the Disclosure Letter and as of the file currency date specified therein, BSI is the sole and unconditional legal and beneficial owner of and has good and marketable title to the BSI Owned Property and the material personal property purported to be owned by BSI including the Solar Equipment, but excluding Contracts and Intellectual Property, free and clear of Encumbrances other than Permitted Encumbrances;

(e) except as disclosed in the Disclosure Letter and as of the file currency date specified therein, (i) QSLP has good and marketable title to all of the material personal property purported to be owned by QSLP and the QSLP Real Property and has a valid leasehold interest in the QSLP Mineral Rights; (ii) the QSLP Mineral Rights are in good standing and in full force and effect; and (iii) the QSLP Mineral Rights and product derived from the QSLP Mineral Rights are not subject to or bound by any royalty, royalty interest or similar payment or interest or other Encumbrances;

(f) except as would not result in a Material Adverse Change and except as disclosed in the Disclosure Letter, to the best of the Vendors' knowledge: (i) the use of the BSI Owned Property by BSI is in compliance with and not subject to any liability under Applicable Laws related to environmental protection, restoration and rehabilitation, occupational health and safety or natural resources matters and (ii) QSLP's operations are in compliance with and not subject to any liability under Applicable Laws related to environmental protection, restoration and rehabilitation, natural resource or occupational health and safety matters;

(g) except as disclosed in the Disclosure Letter, the Vendors have not licensed their rights in any Intellectual Property held by the Vendors, including the Solar Intellectual Property, to any Person. As of the date hereof, the Vendors have not received from any Person any notice (written or oral) that any of the Vendor's registered Intellectual Property is invalid or defective, or the use of such registered Intellectual Property is or would be infringing, misappropriating or violating in any way any Intellectual Property of such Person;

(h) the Vendors and their management are unaware of any pending challenge to the validity of Silicon Metal Contracts or the transactions contemplated thereunder and has not received any written notice threatening any such challenge;

(i) the aggregate amount of the Shortfall at its highest was 5,440 metric tons. As at January 30, 2012, QSLP had produced and delivered to DCC no less than 2,500 metric tons of silicon metal at BSI's request in satisfaction of BSI's obligation to DCC in respect of the Shortfall;

(j) excluding the CCAA Proceedings, the Vendors are not subject to any order of any Governmental Authority, nor are there any such orders threatened to be imposed by any Governmental Authority, which could affect the legality, validity or enforceability of this Agreement or the consummation of the transactions contemplated hereby by the Vendors;

(k) subject to obtaining the Bidding Procedures Order and the Approval and Vesting Order, the Vendors have the requisite power and authority to enter into this Agreement and to complete the transactions contemplated hereunder;

(l) subject to obtaining Bidding Procedures Order and the Approval and Vesting Order, each of the Vendors has taken all necessary corporate action to authorize the entering into and performance by it of this Agreement and the entering into of this Agreement and completion of the transactions contemplated herein will not breach its constating documents;

(m) other than the CCAA Proceedings, there are no proceedings before or pending before any Governmental Authority, or threatened to be brought by or before any Governmental Authority by or against the Vendors or affecting any of the Purchased Assets, the legality, validity or enforceability of this Agreement or the consummation of the transactions contemplated hereby by the Vendors;

(n) subject to obtaining the Bidding Procedures Order and the Approval and Vesting Order, this Agreement and all other documents contemplated hereunder to which the Vendors are or will be a party have been or will be, as at the Closing Time, duly and validly executed and delivered by each of the Vendors and constitute or will, as at the Closing Time, constitute legal, valid and binding obligations of each of the Vendors enforceable in accordance with the terms hereof or thereof;

(o) neither Vendor is a non-resident of Canada for purposes of section 116 of the *Income Tax Act;*

(p) the aggregate book value of the Purchased Assets does not exceed $330 million, as calculated in accordance with the Investment Canada Act and the regulations thereto;

(q) the Vendors and their affiliates do not have assets in Canada that exceed $300 million or gross revenues from sales in, from or into Canada that exceed $300 million, all as determined in accordance with Part IX of the Competition Act and the Notifiable Transactions Regulations thereunder;

(r) each of the Vendors is a registrant for the purposes of tax imposed under (A) *An Act Respecting the Québec Sales Tax* (Québec) with the following registration numbers for Timminco and BSI, respectively, 1000873612 and

100829788, and (B) Part IX of the Excise Tax Act with the following registration numbers for Timminco and BSI, respectively, 105289094 RT0002 and 104881412 RT0001;

(s) each of QSLP and QSGP has paid all material taxes which are due and payable by it to all applicable Governmental Authorities and has remitted all material amounts that it withheld or collected on account of amounts that it was required by Applicable Law to have withheld or collected, including for all Canada Pension Plan contributions, provincial pension plan contributions, employment insurance premiums, employer health taxes, Sales Tax and any other material taxes to the appropriate Governmental Authority within the time required under Applicable Law; and

(t) no finder, broker or similar intermediary acting on behalf of the Vendors or any of their Affiliates is entitled to a commission, fee or other compensation from the Purchaser in connection with the negotiation, execution or delivery of this Agreement or the consummation of the Transaction.

4.3 Limitations

With the exception of the Vendors' representations and warranties in Section 4.2 and the Purchaser's representations and warranties in Section 4.1, neither the Vendors nor the Purchaser, nor their respective Representatives, nor any of their respective officers, directors or employees make, have made or shall be deemed to have made any other representation or warranty, express or implied, at law or in equity, in respect of the Vendors, the Purchaser, or the Purchased Assets or the sale and purchase of the Purchased Assets pursuant to this Agreement.

SECTION 5
CONDITIONS

5.1 Conditions - Purchaser

The obligation of the Purchaser to complete the Transaction is subject to the following conditions being fulfilled or performed:

(a) all representations and warranties of the Vendors contained in this Agreement shall be true in all material respects as of the Closing Time with the same effect as though made on and as of that date;

(b) the Vendors shall have performed in all material respects each of their obligations under this Agreement to the extent required to be performed at or before the Closing Time;

(c) all stays of proceedings contained in the Initial Order shall have remained in effect as at the Closing Time except where any such stay is terminated

or lifted or amended in a manner which is not prejudicial to the Purchaser or which does not adversely affect the Purchaser's rights under this Agreement or the Purchased Assets and the exercise of rights contained in the Initial Order has not been amended or modified in any manner prejudicial to the Purchaser as at the Closing Time;

(d) each Consent and Approval including the DCC Consent, shall have been obtained as at the Closing Time or, in the absence of any such Consent and Approval, the Court shall have approved the Assignment Order in respect of such Consent and Approval and it shall not have been stayed, varied, vacated or appealed (or any such appeal shall have been dismissed with no further appeal therefrom) as at the Closing Time;

(e) after the date of this Agreement and before the Closing Time, there shall not have occurred any Material Adverse Change;

(f) the April 30 Statement of QSLP Working Capital shall have been determined on or before May 15, 2012 in accordance with Section 3.9(d) or Section 3.9(e) and the QSLP Working Capital shown on the April 30 Statement by QSLP Working Capital shall not be less than $7,500,000 (the "**Threshold Amount**");

(g) BSI shall have delivered to the Purchaser evidence, reasonably satisfactory to the Purchaser, that the minimum aggregate amount of silicon metal that QSLP shall have produced and delivered to DCC at BSI's request in satisfaction of BSI's obligation to DCC in respect of the Shortfall shall be no less than the amount set forth in Schedule "I";

(h) if the Closing occurs after June 8, 2012, the Closing Date Statement of QSLP Working Capital shall have been determined in accordance with Section 3.10(d) or 3.10(e) and the QSLP Working Capital shown on the Closing Date Statement of QSLP Working Capital shall not be less than the Threshold Amount; and

(i) the Vendors shall deliver a certificate, in form and substance satisfactory to the Purchaser, acting reasonably, to the Purchaser certifying that all Post-Filing Costs and taxes payable in respect of the transactions contemplated under the HP2 Severance Transaction Documents in accordance with the valuation specified therein, that are due, have been paid or provided for, and for those incurred but not yet due, provided for.

The foregoing conditions are for the exclusive benefit of the Purchaser. Any condition in this Section 5.1 may be waived by the Purchaser in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver shall be binding on the Purchaser only if made in writing. If any condition set out in Section 5.1 (other than Section 5.1(f)) is not satisfied or performed on or prior to the date specified therefor, the Purchaser may elect on written notice to the Vendors to terminate this Agreement.

If the condition set out in Section 5.1(f) is not satisfied on or prior to the date specified then the Purchaser may, within three (3) Business Days following the date specified therefor, elect to terminate this Agreement by notice in writing to the Vendor. If the Purchaser fails to deliver any such notice of termination, then it shall be deemed to have waived the condition.

5.2 Conditions – Vendors

The obligation of the Vendors to complete the Transaction is subject to the following conditions being fulfilled or performed:

(a) all representations and warranties of the Purchaser contained in this Agreement shall be true in all material respects as of the Closing Time with the same effect as though made on and as of that date; and

(b) the Purchaser shall have performed in all material respects each of its obligations under this Agreement to the extent required to be performed at or before the Closing Time.

The foregoing conditions are for the exclusive benefit of the Vendors. Any condition in this Section 5.2 may be waived by the Vendors in whole or in part, without prejudice to any of their rights of termination in the event of non-fulfilment of any other condition in whole or in part. Any such waiver shall be binding on the Vendors only if made in writing. If any condition set forth in Section 5.2 is not satisfied or performed on or prior to the date specified therefor, the Vendors may elect on written notice to the Purchaser to terminate the Agreement.

5.3 Conditions – Purchaser and Vendors

The obligations of the Vendors and the Purchaser to complete the Transaction are subject to the following conditions being fulfilled or performed:

(a) the Bidding Procedures Order shall have been obtained and shall not have been stayed, varied, vacated or appealed (or any such appeal shall have been dismissed with no further appeal therefrom);

(b) this Agreement is the Successful Bid (for greater certainty, in accordance with the Bidding Procedures, to the extent any Portion Bid or an Aggregated Bid is the Successful Bid (each such capitalized term as defined in the Bidding Procedures), the Purchaser shall not be obliged to complete the Transaction or purchase any subset of assets or assume any subset of liabilities which are not covered by such Portion Bid or Aggregated Bid);

(c) the Approval and Vesting Order shall have been obtained and shall not have been stayed, varied, vacated or appealed (or any such appeal shall have been dismissed with no further appeal therefrom);

(d) no order shall have been issued by a Governmental Authority which restrains or prohibits the completion of the Transaction; and

(e) no motion, action or proceedings shall be pending by or before a Governmental Authority to restrain or prohibit the completion of the Transaction contemplated by this Agreement.

The Parties hereto acknowledge that the foregoing conditions are for the mutual benefit of the Vendors and the Purchaser. If the conditions set out in this Section 5.3 are not satisfied performed or mutually waived on or before the Termination Date, any Party shall have the option to terminate this Agreement upon written notice to the other Parties.

SECTION 6
CLOSING

6.1 Closing

Subject to the conditions set out in this Agreement, the completion of the Transaction shall take place at the Closing Time at the offices of Stikeman Elliott LLP, Commerce Court West, 199 Bay Street, Toronto, Ontario, M5L 1B9, or as otherwise determined by mutual agreement of the Parties in writing, but, in any event, shall take place prior to the Termination Date.

6.2 Purchaser's Deliveries on Closing

At or before the Closing Time, the Purchaser shall execute and deliver, or arrange for the delivery, as the case may be, to the Vendors the following, each of which shall be in form and substance satisfactory to the Vendors, acting reasonably:

(a) the Closing Cash Payment;

(b) a payoff letter by the DIP Lender in respect of amounts outstanding under the DIP Facility including outstanding amounts advanced to the Vendors, interest accrued and unpaid thereon and any expenses and other amounts owing thereunder;

(c) the Assignment and Assumption Agreement and any Specific Conveyance requiring execution by the Purchaser;

(d) payment of Transfer Taxes required by Applicable Law to be collected by any Vendor, or alternatively, if applicable, the election(s) referred to in Section 3.5(c) executed by the Purchaser;

(e) joinders to the applicable QSLP Contracts, as required thereunder;

(f) a document specifying the Purchase Price allocation for tax purposes provided for in Section 3.4;

(g) a certificate dated as of the Closing Date confirming that all of the representations and warranties of the Purchaser contained in this Agreement are true in all material respects as of the Closing Time, with the same effect as though made at and as of the Closing Time, and that the Purchaser has performed in all respects the covenants to be performed by it prior to the Closing Time;

(h) an acknowledgement dated as of the Closing Date that each of the conditions precedent in Section 5.1 of this Agreement have been fulfilled, performed or waived as of the Closing Time; and

(i) such further and other documentation as is referred to in this Agreement or as the Vendors may reasonably require to give effect to this Agreement.

6.3 Vendors' Deliveries on Closing

At or before the Closing Time, the Vendors shall execute and deliver, or arrange for the delivery, as the case may be, to the Purchaser the following, each of which shall be in form and substance satisfactory to the Purchaser, acting reasonably:

(a) an executed copy of each Specific Conveyance;

(b) all Consents and Approvals, or with respect to any Consent and Approval which is not obtained, a notarial copy of an Assignment Order in lieu of such Consent and Approval;

(c) the Assignment and Assumption Agreement and the Books and Records relating to the Purchased Assets;

(d) a notarial copy of the Approval and Vesting Order;

(e) a certificate dated as of the Closing Date confirming that there has been no Material Adverse Change; that all of the representations and warranties of the Vendors contained in this Agreement are true in all material respects as of the Closing Time, with the same effect as though made at and as of the Closing Time, and that the Vendors have performed in all material respects the covenants to be performed by them prior to the Closing Time;

(f) an acknowledgement dated as of the Closing Date that each of the conditions precedent in Section 5.2 of this Agreement have been fulfilled, performed or waived as of the Closing Time;

(g) an executed copy of the Monitor's Certificate;

(h) stock/unit certificates or similar documents representing the QSLP Equity;

(i) if applicable, the election(s) referred to in Section 3.5(c) executed by the Vendors; and

(j) such further and other documentation as is referred to in this Agreement or as the Purchaser may reasonably require to give effect to this Agreement.

6.4 Possession of Assets

(a) The Vendors shall remain in possession of the Purchased Assets until Closing. Until Closing and subject to the last sentence of this Section 6.4(a), the Vendors shall (i) subject to the Orders of the Court in the CCAA Proceedings, use the Purchased Assets only in the Ordinary Course of Business and use commercially reasonable efforts to maintain, preserve and protect the Purchased Assets in the condition in which they exist on the date hereof, other than ordinary wear and tear and other than replacements, dispositions, modifications or maintenance in the Ordinary Course of Business, (ii) not dispose of any of the Purchased Assets other than sale of inventory in the Ordinary Course of Business, and (iii) not enter into any material contract or agreement in respect of any of the Purchased Assets other than in the Ordinary Course of Business; except, in each case, with the prior written consent of the Purchaser, not to be unreasonably withheld, and provided that any failure to respond to any such request for consent within two (2) Business Days of receipt by the Purchaser of such request shall be deemed to be consent hereunder. Until Closing, and subject to the last sentence of this Section 6.4(a), BSI shall, to the extent it is empowered to do so pursuant to the QSLP Contracts and the rights attached to the QSLP Equity, (i) cause the business of QSLP to be conducted in the ordinary course consistent with the conduct of such business on the date hereof and (ii) cause QSLP not to make any distributions to the limited partners of QSLP. BSI and QSLP may enter into the HP2 Severance Transaction Documents after the date of this Agreement and before Closing and in connection therewith BSI shall provide updated Schedules "B" and "F" and an updated Disclosure Letter to reflect the transactions contemplated under the HP2 Severance Transaction Documents and such updated Schedules and the Disclosure Letter shall be accepted by the Purchaser as Schedule "B", "F" and the Disclosure Letter, as the case may be, hereunder, provided that the Vendors shall only enter into a HP2 Severance Transaction Document if all HP2 Severance Transaction Documents are entered into on or before Closing.

(b) On Closing, the Purchaser shall take possession of the Purchased Assets where situate at Closing. The Purchaser acknowledges that the Vendors have no obligation to deliver physical possession of the Purchased Assets to the Purchaser other than as set forth in Section 6.3(h). In no event shall the Purchased Assets be sold, assigned, transferred or set over to the Purchaser until the conditions set out in the Approval and Vesting Order have been satisfied and the Purchaser has satisfied all delivery requirements outlined in Section 6.2. The Purchaser shall promptly notify

the Vendors of any Excluded Assets which may come into the possession or control of the Purchaser shall promptly release such Excluded Assets to the Vendors, or to such other Person as the Vendors may direct in writing, for greater certainty, title shall not be deemed to vest to the Purchaser in respect of any Excluded Assets. The Vendors shall have no obligation to remove any Excluded Equipment from any premises that constitute part of Purchased Assets. The Purchaser shall permit the Vendors and their agents and representatives to have reasonable access to such premises to prepare for sale, sell and remove any such Excluded Equipment for a period of three (3) months after the Closing Date. All right, title and interest in any such Excluded Equipment which is not sold or removed from such premises after three (3) months following Closing shall vest in the Purchaser unless the Purchaser objects to such title transfer in which case, right, title and interest shall continue to vest in the applicable Vendor but the Purchaser shall be entitled to dispose of such Excluded Equipment at the Purchaser's expense.

6.5 Material Adverse Change

The Vendors shall notify the Purchaser upon the occurrence of a Material Adverse Change or the occurrence of any material loss or damage to the Purchased Assets.

6.6 Access Rights

Upon at least two (2) Business Days' prior notice by the Purchaser to the Vendors and at any time (i) prior to the Phase I Bidding Deadline, (ii) after the Purchaser has become the Successful Bidder, or (iii) after notice to the Purchaser from the Vendors of the occurrence of an event or circumstance referred to in Section 6.5, the Purchaser may have reasonable access to the Purchased Assets during normal business hours and in each case prior to Closing for the purpose of enabling the Purchaser to conduct such inspections of the Purchased Assets as it deems appropriate, acting reasonably. Such inspection shall only be conducted in the presence of a representative of the Vendors, if so required at the discretion of the Vendors. The Purchaser shall not conduct any tests, drilling or other invasive action with respect to the Purchased Assets without the prior written consent of the Vendors, which consent may be withheld in the Vendors' sole and absolute discretion. The Purchaser agrees to indemnify and save the Vendors harmless from and against all claims, demands, losses, actions and costs incurred or arising from or in any way directly related to physical harm to property or people caused by the Purchaser's inspection of the Purchased Assets or the attendance of the Purchaser, its employees or agents at properties comprising part of the Purchased Assets. For greater certainty, the Purchaser shall not be responsible to indemnify and save the Vendors harmless from and against the findings of the Purchaser's inspection.

The Vendors shall continue to make the online data room available to the Purchaser, its employees and advisors. To the extent that any information relating to the Vendors, their Affiliates or the Purchased Assets is made available to any Phase I Bidder or Qualified Bidder (each as defined in the Bidding Procedures), such information will be added to the

data room as soon as possible and not later than one (1) Business Day after disclosure to the Phase I Bidder or Qualified Bidder.

6.7 Risk

The Purchased Assets shall be and remain at the risk of the Vendors to the extent of their interest until Closing and at the risk of the Purchaser from and after Closing. If, prior to Closing, the Purchased Assets shall be substantially damaged or destroyed by fire or other casualty, then, at its option, the Purchaser may decline to complete the Transaction. Such option shall be exercised within fifteen (15) days after notification to the Purchaser by the Vendors of the occurrence of damage or destruction (or prior to the Closing Date if such occurrence takes place within fifteen (15) days of the Closing Date) in which event this Agreement shall (for greater certainty and without limitation subject to Section 6.10) be terminated automatically. If the Purchaser does not exercise such option, it shall complete the Transaction and shall be entitled to an assignment of the proceeds of insurance referable to such damage or destruction. Where any damage or destruction is not substantial (or if it is substantial but the Purchaser declines its option to terminate), the Purchaser shall complete the Transaction and shall be entitled to an assignment of the proceeds of insurance referable to such damage or destruction provided that such damage or destruction is insured or, otherwise, to an agreed abatement. If any dispute arises under this section as to whether damage or destruction is substantial or with respect to the amount of any abatement, such dispute will be determined in accordance with Section 6.8.

6.8 Dispute Resolution

If any dispute arises:

(a) under Section 6.7 as to whether any damage or destruction is substantial or with respect to the amount of any abatement; or

(b) with respect to any other matter related to the Transaction or the interpretation or enforcement of this Agreement;

such dispute will be determined by the Court, or by such other Person or in such other manner as the Court may direct.

6.9 Termination

This Agreement shall automatically terminate at any time prior to the Closing Time upon the occurrence of any of the following:

(a) by mutual written agreement of the Vendors and the Purchaser;

(b) if the Agreement is not the Successful Bid or the Back-Up Bid (as determined pursuant to the Bidding Procedures); or

(c) if the Agreement is the Back-Up Bid and the transaction contemplated by the Successful Bid is closed.

This Agreement may be terminated at any time prior to the Closing Time upon the occurrence of any of the following:

(d) as provided in Section 5 (provided that the terminating Party has not breached its obligations under the Agreement in such a manner as to cause a closing condition not to be fulfilled) or Section 6.7; or

(e) by any of the Parties (provided that the terminating Party has not breached its obligations under the Agreement in such a manner as to cause a closing condition not to be fulfilled) if Closing shall not have occurred on or prior to the Termination Date in accordance with Section 5.3.

If this Agreement is terminated in the circumstances set out in this Section, all further obligations of the Parties under this Agreement will terminate and neither Party shall have any liability or further obligations hereunder, except as contemplated in Section 6.10, which shall survive such termination.

6.10 Effects of Termination and Closing

(a) If this Agreement is terminated pursuant to Section 5, 6.7 or 6.9, all further obligations of the Parties under or pursuant to this Agreement shall terminate without further liability of any Party to the other except for the provisions of: (i) Section 3.3 (Deposit); (ii) Section 6.10 (Effects of Termination and Closing); and (iii) Section 7.2 (Expense Reimbursement).

(b) If the Transaction is not completed solely as a result of Purchaser's failure to perform any of its obligations hereunder, then the Deposit shall be forfeited to the Vendors as liquidated damages and the Vendors shall have no other rights and remedies against the Purchaser available at law or in equity.

(c) Under no circumstance shall any of the Parties, their Representatives or their respective directors, officers, employees or agents be liable for any special, punitive, exemplary, consequential or indirect damages (including loss of profits) that may be alleged to result, in connection with, arising out of, or relating to this Agreement or the transactions contemplated herein.

SECTION 7
BIDDING PROCEDURES

7.1 Bidding Procedures

The Parties acknowledge and agree that the Vendors shall apply to the Court by no later than March 12, 2012, for an order (the "**Bidding Procedures Order**") recognizing this Agreement, and in particular the Purchase Price, as a baseline or "stalking horse bid" (the "**Stalking Horse Bid**") and approving the Bidding Procedures, the payment of the Expense

Reimbursement in the circumstances set out in Section 7.2, the entering into the DIP Amendment and the amendment of the DIP Order to conform to the terms of the DIP Amendment, and all Parties will use best efforts to have the Bidding Procedures Order issued. The Purchaser acknowledges and agrees that the Bidding Procedures are in contemplation of determining whether a superior bid can be obtained for the Purchased Assets.

7.2 Expense Reimbursement

In consideration for the Purchaser's expenditure of time and money and agreement to act as the initial bidder through the Stalking Horse Bid and the preparation of this Agreement, and in performing due diligence pursuant to this Agreement and subject to Court approval, the Purchaser shall be entitled to an expense reimbursement for the Purchaser's legal and other costs incurred in connection with the Stalking Horse Bid in an amount of C$500,000 (the "**Expense Reimbursement**"), payable only by the Vendors to the Purchaser in the event that a Successful Bid other than the Stalking Horse Bid is accepted and the transaction contemplated thereby is completed. The payment of the Expense Reimbursement shall be approved in the Bidding Procedures Order and shall be made in priority to amounts secured by existing security other than amounts secured by the various charges approved by the Court in the Initial Order. The Expense Reimbursement shall be payable to the Purchaser out of the sale proceeds derived from and upon completion of the Successful Bid. Each of the Parties hereto acknowledges and agrees that the Expense Reimbursement represents a fair and reasonable estimate of the costs and damages which will be incurred by the Purchaser as a result of non-completion of this Agreement, and is not intended to be punitive in nature nor to discourage competitive bidding for the Purchased Assets.

SECTION 8
PERFORMANCE GUARANTEE

8.1 Performance Guarantee

(a) The Guarantor irrevocably and unconditionally guarantees the timely and complete performance of, and compliance with the Purchaser's obligations under Sections 3.1, 3.2 (excluding 3.2(d)), 3.4, 3.5, 3.6, 3.7, 9.1 and 9.10 (collectively, the "**Guaranteed Obligations**").

(b) If for any reason the Purchaser fails at any time to perform or comply with any Guaranteed Obligation that is to be performed or complied with by the Purchaser under this Agreement, then the Guarantor shall perform or comply with such Guaranteed Obligation in accordance with and subject to the provisions of this Agreement. Such performance or compliance by the Guarantor is deemed to be performance or compliance by the Purchaser under this Agreement.

(c) The Guarantor is jointly and severally liable with the Purchaser for the performance of, and compliance with, the Guaranteed Obligations. The Vendors are not bound to proceed against the Purchaser or to pursue any

rights or remedies against the Purchaser before being entitled to pursue its rights against the Guarantor.

(d) The obligation of the Guarantor in this Section 8 shall terminate immediately upon Closing or a termination of this Agreement that is not solely as a result of a failure of the Purchaser to perform any of its obligations hereunder except, in the case of a Closing, for the Guaranteed Obligations in respect of (i) the determination of the Statement of BSI Working Capital in accordance with Section 3.6, (ii) the payment of the Purchase Price adjustment, if any, pursuant to Section 3.7 and (iii) the indemnity obligation of the Purchaser in Section 9.10 which shall survive until satisfaction of the matters referred to in paragraphs (i) and (ii) above have been completed and thereafter shall terminate (except in respect of any amounts that have become due under Section 9.10 prior to such date).

(e) The guarantee shall be in favour of the Vendors and no other party shall be considered a third party beneficiary.

8.2 Absolute Liability

The liability of the Guarantor is absolute and unconditional irrespective of: (i) any lack of validity or enforceability of any Guaranteed Obligation against the Purchaser (other than the termination of any Guaranteed Obligations in accordance with the terms hereof); (ii) any change in the time or times for, or place or manner of performance or any other indulgences which the Vendors may grant to the Purchaser; (iii) any amendment, restatement, replacement, supplement, modification or renewal of this Agreement; (iv) any assignment of all or any part of this Agreement; (v) any limitation of status or power, disability, incapacity or other circumstance relating to the Purchaser, including any bankruptcy, insolvency, winding-up, dissolution, liquidation, restructuring or other creditors' proceedings involving or affecting the Purchaser; or (vi) any change in the ownership, control, name, objects, businesses, assets, capital structure or constitution of the Purchaser or any reorganization, amalgamation or other change in the existence of the Purchaser.

8.3 Defences

The liabilities and obligations of the Guarantor under this Section 8 are subject to the terms of this Agreement and will not exceed any liability or obligation of the Purchaser to the Vendors under this Agreement. The Guarantor is entitled to all rights, privileges and defences available to the Purchaser with respect to any obligation or liability, including without limitation all provisions of this Agreement relating to limitation of liability and the resolution of disputes.

8.4 Payment on Demand

The Guarantor will pay and perform its liabilities and obligations under this Section 8 immediately after demand for such payment and performance is made in writing to it. Under no circumstances shall the Guarantor's obligation hereunder exceed the

Purchase Price, as it may be adjusted pursuant to Section 3.7. For the avoidance of doubt, upon the payment of the Purchase Price by the Guarantor, the Guarantor shall be subrogated to the rights of the Purchaser and subject to the obligations of the Purchaser, all in accordance with the terms of this Agreement.

SECTION 9
GENERAL

9.1 Access to Books and Records

(a) For a period of 6 years from the Closing Date or for such longer period as may be required by law, the Purchaser will retain all original Books and Records that are transferred to the Purchaser under this Agreement. So long as any such Books and Records are retained by the Purchaser pursuant to this Agreement and subject to Section 9.1(c), each Vendor (and any representative, agent, former director or officer or trustee in bankruptcy of the estate of either Vendor) has the right to inspect and to make copies (at its own expense) of them at any time upon reasonable request during normal business hours and upon reasonable notice for any proper purpose and without undue interference to the business operations of the Purchaser.

(b) Subject to Section 9.1(c), for a period of the lesser of (x) 6 years from the Closing Date and (y) so long as the Purchaser together with any Affiliate thereof controls QSLP or QSGP, the Purchaser shall cause QSGP to permit each Vendor (and any representative, agent or trustee in bankruptcy of the estate of either Vendor) to inspect the books and records of the Vendors maintained by QSGP and QSLP and to make copies (at its own expense) of them at any time upon reasonable request during normal business hours and upon reasonable notice for any proper purpose and without undue interference to the business operations of the Purchaser. Any information received by the Purchaser or its representatives pursuant to this Section 9.1 shall be held in strict confidence except as may be required by Applicable Law (including disclosure required in connection with any tax returns or bankruptcy and insolvency proceedings).

(c) If a Vendor or its affiliates are engaged in any business that competes, directly or indirectly, with the business carried on by QSLP, then the Purchaser shall only be required to provide the right to inspect as contemplated in Section 9.1(a) or (b) to such Vendor if the sole purpose is of evaluating or preparing any of its tax returns, the sale of the remaining assets of either Vendor, in respect of any third party claim against such Person or in connection with any bankruptcy and insolvency proceeding. For greater certainty, the right of Monitor, any former director or officer or any trustee in bankruptcy of the estate of either Vendor to inspect books and records and make copies thereof shall not be restricted under this Section 9.1(c).

9.2 Notice

Any notice or other communication under this Agreement shall be in writing and may be delivered personally or transmitted by fax or e-mail, addressed:

in the case of the Purchaser, as follows:

QSI Partners Ltd.
1st Floor - Windward 1
Regatta Office Park
PO BOX 10338
Grand Cayman KY1-1003
Cayman Islands

Attention: **Desiree Mercer**
Fax: (345) 949-7230
Telephone: (345) 949-7232

with a copy to:

Torys LLP
79 Wellington Street West
Suite 3000
Toronto, Ontario
M5K 1N2

Attention: **David Bish**
Fax: (416) 865-7380
Email: dbish@torys.com

and in the case of the Guarantor, as follows:

Globe Specialty Metals, Inc.
One Penn Plaza
250 West 34th Street, Suite 4125
New York, NY 10119

Attention: **Stephen Lebowitz**
Fax: (212) 798-8137
Telephone: (212) 798-8122

with a copy to:

Torys LLP
79 Wellington Street West
Suite 3000
Toronto, Ontario
M5K 1N2

Attention: **David Bish**
Fax: (416) 865-7380
Email: dbish@torys.com

and in the case of the Vendors, as follows:

Timminco Limited
150 King Street West, 2401
Toronto, Ontario
M5H 1J9

Attention: **Peter Kalins,**
President, General Counsel and Corporate Secretary
Fax: (416) 364-3451
Email: PKalins@timminco.com

with a copy to:

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

Attention: **Daphne MacKenzie**
Fax: (416) 947-0866
Email: dmackenzie@stikeman.com

with a copy to the Monitor:

FTI Consulting Canada Inc.
TD Waterhouse Tower, Suite 2010
79 Wellington Street
Toronto, Ontario
M5K 1G8

Attention: **Nigel Meakin**
Fax: (416) 649-8101
Email: nigel.meakin@fticonsulting.com

with a copy to:

Blake, Cassels & Graydon LLP
199 Bay Street
Suite 4000, Commerce Court West
Toronto, Ontario
M5L 1A9

Attention: **Linc Rogers**
Fax: (416) 863-2653
Email: Linc.Rogers@blakes.com

Any such notice or other communication, if given by personal delivery, will be deemed to have been given on the day of actual delivery thereof and, if transmitted by fax or e-mail before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on such Business Day, and if transmitted by fax or e-mail 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 the transmission.

9.3 Time

Time shall, in all respects, be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendors and the Purchaser or by their respective solicitors.

9.4 Currency

Except where otherwise indicated, all references herein to money amounts are in Canadian currency.

9.5 Survival

The representations and warranties of the Parties contained in this Agreement shall merge on Closing and the covenants of the Parties contained herein to be performed after the Closing shall survive Closing and remain in full force and effect.

9.6 Benefit of Agreement

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Each Party intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person other than the Parties and their successors and permitted assigns, and no Person, other than the Parties and their successors and their permitted assigns, shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum.

9.7 Entire Agreement

This Agreement, the attached Schedules hereto, the letter contemplated in Sections 1.1 (ccc) and (oooo), the Disclosure Letter and the confidentiality and standstill agreement dated as of January 6, 2012 between Timminco and the Purchaser, as supplemented by the addendum thereto dated as of January 11, 2012, and the DIP Amendment constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior negotiations, understandings and agreements. This Agreement may not be amended or modified in any respect except by written instrument executed by all of the Parties.

9.8 Paramountcy

In the event of any conflict or inconsistency between the provisions of this Agreement, and any other agreement, document or instrument executed or delivered in connection with this Transaction or this Agreement, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

9.9 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the Parties irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

9.10 Commission

The Purchaser agrees to indemnify the Vendors against any claim for compensation or commission by any third party or agent retained by the Purchaser in connection with, or in contemplation of, the Transaction and the Vendors shall jointly and severally indemnify the Purchaser for any third party or agent or broker fees or other commissions payable by the Vendors on the Purchase Price or otherwise in connection with the Transaction.

9.11 Assignment by Purchaser

This Agreement may not be assigned by the Purchaser without the prior written consent of the Vendors, which consent may be withheld in the Vendors' sole and absolute discretion; provided, however that the Purchaser shall be permitted to assign the benefit of all or a portion of this Agreement prior to or after Closing to an Affiliate thereof in circumstances where (i) prior notice of such assignment is provided to the Vendors, (ii) such assignee agrees to be bound by the terms of this Agreement to the extent of the assignment, and (iii) such assignment shall not release the Purchaser or the Guarantor (in the case of the Guarantor during the existence of the Guarantee) from any obligation or liability hereunder in favour of the Vendors and the Purchaser and the Guarantor (in the case of the Guarantor during the existence of the Guarantee) shall acknowledge and confirm their continuing obligations and liabilities in favour of the Vendors in form and substance satisfactory to the Vendors; for greater certainty, the Purchaser shall be permitted to assign the right to buy all or a portion of the Purchased Assets to one or more Affiliates and such assignment shall be

permitted so long as the requirements of this Section 9.11 are complied with. This Agreement may not be assigned by the Vendors without the consent of the Purchaser.

9.12 Further Assurances

Each of the Parties shall, at the request and expense of the requesting party, take or cause to be taken such action and execute and deliver or cause to be executed and delivered to the other such documents (including registrations and removal of Encumbrances (other than Permitted Encumbrances)) and further assurances as may be reasonably necessary or desirable to give effect to this Agreement.

9.13 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by facsimile or by e-mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

9.14 Severability

Notwithstanding any provision herein, if a condition to complete the Transaction, or a covenant or an agreement herein, other than those contained in Section 3.1, Section 3.5, Section 6 or Section 8, is prohibited or unenforceable pursuant to applicable law, then such condition, covenant or agreement shall be ineffective to the extent of such prohibition or unenforceability without invalidating the other provisions hereof.

[THE REMAINDER OF THIS PAGE HAS BEEN LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

BECANCOUR SILICON INC.

By: _____

Name: Peter A.M. Kalkos

Title: President, General Counsel and Corporate Secretary

TIMMINCO LIMITED

By: _____

Name: Douglas Eastman

Title: Chief Executive Officer

QSI PARTNERS LTD.

By: _____

Name:

Title:

GLOBE SPECIALTY METALS, INC.

By: _____

Name:

Title:

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

BECANCOUR SILICON INC.

By: _____

Name:

Title:

TIMMINCO LIMITED

By: _____

Name:

Title:

QSI PARTNERS LTD.

By: _____

Name: JEFF BRADLEY

Title: AUTH'D REP

GLOBE SPECIALTY METALS, INC.

By: _____

Name: JEFF BRADLEY

Title: CEO

Schedule A
Purchased Silicon Metal Assets

All of BSI's right, title and interest, in the QSLP Equity, the QSLP Contracts, the Silicon Metal Contracts and ancillary assets to the extent set forth in these Schedules.

1. Intellectual Property

   (a) See attached Silicium Bécancour Inc. Non-Solar IP Portfolio Summary regarding patents and patent applications.

   (b) Intellectual Property License Agreement among Québec Silicon Limited Partnership as Licensor and Bécancour Silicon Inc. and Dow Corning Corporation as Licensees, dated October 1, 2010.

   (c) Intellectual Property License Agreement among Québec Silicon as Licensee and Bécancour Silicon Inc. and Dow Corning Corporation as Licensors, dated October 1, 2010.

   (d) Intellectual property owned by Bécancour Silicon Inc. relating to the Composite Electrode Technology as such term is defined in the Intellectual Property Assignment Agreement dated September 30, 2010 between Bécancour Silicon Inc. and Québec Silicon Limited Partnership.

2. Silicon Metals Accounts Receivables

3. All Prepaid Expenses

4. All Inventory - Silicon Metals

5. All Inventory - Packing Supplies

Schedule B
Purchased Solar Grade Silicon Assets

All of BSI's right, title and interest, in and to all of the tangible and intangible assets, properties, rights and Claims, wherever located, used, intended for use or arising in connection with BSI's currently inactive business of producing solar grade silicon through a division of BSI, Timminco Solar, including the Solar Grade Silicon Contracts, Solar Equipment and the Solar Intellectual Property.

1. Owned Property

HP1 PROPERTY:

Legal (registered) and beneficial owner: BSI

DESCRIPTION OF IMMOVABLE

An immovable situated in the City of Bécancour, Province of Québec, known and designated as being composed of the following lots, namely:

lot number THREE MILLION TWO HUNDRED AND NINETY-FOUR THOUSAND AND FIFTY-FOUR (3 294 054) of the Cadastre of Québec, Registration Division of Nicolet (Nicolet 2); and

lot number FOUR MILLION ONE HUNDRED AND TEN THOUSAND FIVE HUNDRED AND NINETY-EIGHT (4 110 598) of the Cadastre of Québec, Registration Division of Nicolet (Nicolet 2);

With the buildings and all other structures, fixtures, equipment and ancillary improvements located thereon (other than Excluded Assets), including the building bearing the civic address 5500 Yvon-Trudeau Street, City of Bécancour, Province of Québec, G9H 0G1.

The whole as it is currently found with all that is or will be incorporated, attached, joined or united by accession to this immovable and that is considered an immovable under the law.

HP2 PROPERTY:

Registered (legal) owner: QSGP (as nominee for BSI)

Beneficial owner: BSI

DESCRIPTION OF IMMOVABLE

An immovable situated in the City of Bécancour, Province of Québec, known and designated as being lot number FOUR MILLION SEVEN HUNDRED AND TWO THOUSAND FOUR HUNDRED NINETY-SEVEN (4 702 497) of the Cadastre of Québec, Registration Division of Nicolet (Nicolet 2).

With the buildings and all other structures, fixtures, equipment and ancillary improvements located thereon (other than Excluded Assets), including the building bearing the civic address 6400 Yvon-Trudeau Street, City of Bécancour, Province of Québec, G9H 2V8.

The whole as it is currently found with all that is or will be incorporated, attached, joined or united by accession to this immovable and that is considered an immovable under the law.

2. Leased Property

Lease dated September 30, 2010 between Québec Silicon General Partner Inc. and Bécancour Silicon Inc., in respect of office premises at 6500 Yvon Trudeau, Bécancour, Québec, for a term expiring September 30, 2040.

3. Solar Intellectual Property

(a) See attached Silicium Bécancour Inc. IP Portfolio Summary regarding patents and patent applications.

(b) Rights contained in Joint Development Agreement by and between Bécancour Silicon Inc. and AMG Conversion Ltd., dated July 20, 2009.

(c) Rights contained in the Exclusive Marketing Agreement entered into by and between Timminco Limited and Major Furnace International Pty Ltd, dated January 1, 2009.

(d) Intellectual Property developed by Bécancour Silicon Inc. relating to: (i) melting and casting of solar grade silicon; (ii) casting of solar grade silicon with gallium doping; (iii) blending of solar grade silicon with polysilicon; (iv) processing of solar grade silicon wafers into cells; and (v) theoretical and empirical relationships between solar grade silicon dopant concentration as measured by resistivity and solar grade silicon dopant concentration as measured by ICP-MS.

4. Solar Accounts Receivables

5. All Inventory - Solar

6. See Schedule H - Solar Equipment

For greater certainty, no personal property or movable property leased by BSI or subject to a registered movable hypothec created thereon under Article 2954 of the Civil Code of Québec upon the acquisition of such movable asset or subject to a title retention arrangement in favour of the vendor thereof shall be included in the Purchased Assets.

Schedule C
Intentionally Deleted

Schedule D
Bidding Procedures

On January 3, 2012, Timminco Limited ("**Timminco**") and Bécancour Silicon Inc. ("**BSI**", and together with Timminco, the "**Debtors**") commenced proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") before the Ontario Superior Court of Justice (Commercial List) (the "**Court**") pursuant to an order granted by the Court on January 3, 2012 (as amended, the "**Initial Order**").

On ●, 2012, the Debtors filed a motion (the "**Bidding Procedures Motion**") with the Court seeking, among other things, approval of (a) the Debtors' entry into a certain agreement of purchase and sale for certain assets of the Debtors (the "**Stalking Horse Assets**") between the Debtors, QSI Partners Ltd. (the "**Stalking Horse Bidder**") and Globe Specialty Metals, Inc. dated February ●, 2012 (the "**Stalking Horse Agreement**") so as to set a minimum floor price in respect of the Debtors' sales process; (b) certain protections granted to the Stalking Horse Bidder pursuant to the Stalking Horse Agreement; and (c) certain bidding procedures for the solicitation of offers or proposals (each a "**Bid**") for the acquisition of the Debtors' property, assets and undertakings (collectively, the "**Assets**") or some portion thereof.

On ●, 2012, the Court entered an order (the "**Bidding Procedures Order**") granting the relief requested in the Bidding Procedures Motion including approval of these Bidding Procedures. Accordingly, the following procedures (the "**Bidding Procedures**") shall govern the proposed sale of all or substantially all of the Stalking Horse Assets pursuant to one or more Bids. These Bidding Procedures shall govern the Debtors' sales process relating to the solicitation by the Debtors of one or more Bids for the Assets, including the Stalking Horse Assets, that are superior to that contemplated by the Stalking Horse Agreement.

All denominations are in Canadian Dollars.

1. **Assets for Sale**

The Debtors are soliciting superior offers for all or a portion of the Stalking Horse Assets.

2. **Bidding Deadlines**

All Phase I Bids (as defined below) must be submitted in accordance with the terms of these Bidding Procedures so that they are actually received by each of the Notice Parties (as defined below) no later than 10:00 a.m. (Eastern time) on **[March 26, 2012]**, 2012 (the "**Phase I Bid Deadline**"). All Phase II Bids (as defined below) must be submitted in accordance with the terms of these Bidding Procedures so that they are actually received no later than 10:00 a.m. (Eastern time) on **[April 16, 2012]** (the "**Phase II Bid Deadline**"). Written copies of the Bids shall be delivered by the applicable deadline to: (a) the Debtors, 150 King Street West, 2401, Toronto, Ontario, M5H 1J9, Attn: Peter Kalins, President, General Counsel and Corporate Secretary, PKalins@timminco.com; (b) counsel to the Debtors, Stikeman Elliott LLP, 199 Bay Street, 5300 Commerce Course West, Toronto, Ontario, M5L 1B9, Attn: Daphne MacKenzie, dmackenzie@stikeman.com; (c) the Court-

appointed monitor of the Debtors, FTI Consulting Canada Inc. (the "**Monitor**"), TD Waterhouse Tower, 79 Wellington Street, Suite 2100, Toronto, Ontario M5K 1G8 Attn.: Nigel Meakin, nigel.meakin@fticonsulting.com; and (d) counsel to the Monitor, Blake, Cassels & Graydon LLP, 199 Bay Street, Suite 2800, Toronto, Ontario M5L 1A9, Attn.: Linc Rogers, linc.rogers@blakes.com (collectively, the "**Notice Parties**"). A Bid received after the Phase I Bid Deadline shall not constitute a Phase I Bid and a Phase II Bid received after the Phase II Bid Deadline shall not constitute a Qualified Bid (as defined below). A Bid shall be delivered to all Notice Parties at the same time. Interested bidders requesting information about the qualification process, including a copy of the Stalking Horse Agreement, and information in connection with their due diligence, should contact the Monitor, FTI Consulting Canada Inc., Attention: Nigel Meakin, Senior Managing Director, TD Waterhouse Tower, 79 Wellington Street, Suite 2100, Toronto, Ontario, M5K 1G8, (416) 649-8065.

3. Participant Requirements

To participate in the process detailed by these Bidding Procedures and to otherwise be considered for any purpose hereunder, an interested party must submit an initial Bid (a "**Phase I Bid**") and each bidder submitting a Phase I Bid (a "**Phase I Bidder**") must be determined by the Debtors, with the assistance of their advisors and in consultation with the Monitor, to have satisfactorily provided the Debtors and the Monitor with each of the following on or before the Phase I Bid Deadline (collectively, the "**Participant Requirements**"):

(a) Identification of Phase I Bidder. Identification of the Phase I Bidder and any Principals (defined below), and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;

(b) Non-Binding Expression of Interest. An executed non-binding indication of interest satisfactory to the Debtors that must reasonably identify the contemplated transaction, including the assets proposed to be acquired, the proposed purchase price, and any contingencies, and conditions precedent to closing;

(c) Corporate Authority. Written evidence of the Phase I Bidder's chief executive officer or other appropriate senior executive's approval of the contemplated transaction; provided, however, that, if the Phase I Bidder is an entity specially formed for the purpose of effectuating the contemplated transaction (an "**Acquisition Entity**"), then the Phase I Bidder must furnish written evidence reasonably acceptable to the Debtors of the approval of the contemplated transaction by the equity holder(s) of such Phase I Bidder and any guarantor of the Bid (the "**Principals**");

(d) Confidentiality Agreement. An executed confidentiality and standstill agreement (the "**Confidentiality Agreement**") in form and substance acceptable to the Debtors and their counsel, and in any event a confidentiality and standstill agreement on substantially the same terms as the

confidentiality and standstill agreement executed by the Stalking Horse Bidder; and

(e) Proof of Financial Ability to Perform. Written evidence upon which the Debtors may reasonably conclude that the Phase I Bidder has the necessary financial ability to close the contemplated transaction and provide adequate assurance of future performance of all obligations to be assumed in such contemplated transaction. Such information should include, among other things, the following:

(i) the Phase I Bidder's or, in the case of an Acquisition Entity, the Principals', current financial statements (audited if they exist);

(ii) contact names and numbers for verification of financing sources;

(iii) evidence of the Phase I Bidder's or Principals' internal resources and proof of any debt or equity funding commitments that are needed to close the contemplated transaction; and

(iv) any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors demonstrating that such Phase I Bidder has the ability to close the contemplated transaction;

provided, however, that the Debtors shall determine, in their reasonable discretion, in consultation with their advisors, whether the written evidence of such financial wherewithal is reasonably acceptable, and shall not unreasonably withhold acceptance of a Phase I Bidder's financial qualifications.

4. Designation as Qualified Bidder

A "**Qualified Phase I Bidder**" is a Phase I Bidder that delivers the documents described in paragraphs (a) through (e) in Section 3 above, and that the Debtors, with the assistance of their advisors and in consultation with the Monitor, determine is reasonably likely to submit a binding bona fide offer that would result in greater value being received for the Stalking Horse Assets for the benefit of the Debtors' creditors than under the Stalking Horse Agreement and would be able to consummate a sale if selected as a Successful Bidder (as defined below).

A party who does not wish to purchase all or substantially all of the Stalking Horse Assets (a "**Portion Bidder**") may submit a Bid (a "**Portion Bid**") in respect of a smaller subset of such assets and shall constitute a Qualified Phase I Bidder if such Portion Bid satisfies the requirements in paragraphs (a) through (e) in Section 3 above.

Upon receipt from a Phase I Bidder of the information required under paragraphs (a) through (e) in Section 3 above the Debtors shall notify the Phase I Bidder with respect to whether it is a Qualified Phase I Bidder as soon as practicable after the Phase I Bid Deadline.

For greater certainty, the Stalking Horse Bidder is and is deemed to be a Qualified Phase I Bidder and a Qualified Phase II Bidder (as defined below) for all purposes of these Bidding Procedures.

5. **Access to Due Diligence Materials**

Only parties that execute the Confidentiality Agreement are eligible to receive due-diligence access or additional non-public information. If the Debtors determine that a Phase I Bidder who has satisfied the Participant Requirements does not constitute a Qualified Phase I Bidder, then such Phase I Bidder's right to receive due-diligence access or additional non-public information shall terminate. The Debtors will designate an employee or other representative to coordinate all reasonable requests for additional information and due-diligence access from such Qualified Phase I Bidders. The Debtors shall not be obligated to furnish any due diligence information after the Phase II Bid Deadline. The Debtors are not responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the sale of the Assets.

6. **Due Diligence From Bidders**

Each Qualified Phase I Bidder and each Qualified Phase II Bidder (each, a "**Bidder**") shall comply with all reasonable requests for additional information by the Debtors or the Monitor regarding such Bidder and its contemplated transaction. Failure by a Bidder to comply with requests for additional information will be a basis for the Debtors to determine that the Bidder is not a Qualified Phase I Bidder or Qualified Phase II Bidder, as applicable.

7. **Bidding Procedures**

The Debtors, with the assistance of their advisors and in consultation with the Monitor, shall: (a) determine whether a Phase I Bidder is a Qualified Phase I Bidder; (b) coordinate the efforts of Bidders in conducting their due-diligence investigations, as permitted by the provisions herein; (c) receive offers from Qualified Phase I Bidders and Qualified Phase II Bidders, as applicable; and (d) negotiate offers made in accordance with these Bidding Procedures to purchase Assets. Subject to these Bidding Procedures and the Bidding Procedures Order, the Debtors, after consultation with the Monitor, shall have the right to adopt such other rules for these Bidding Procedures (including rules that may depart from those set forth herein), that in their reasonable business judgement will better promote the goals of these Bidding Procedures; provided that the adoption of any rule that materially deviates from these Bidding Procedures shall require the prior consent of the Stalking Horse Bidder or an order of the Court.

8. **Bid Requirements**

Only Qualified Phase I Bidders shall be entitled to submit a Phase II Bid (as defined below). To participate in the Auction (as defined below) a Qualified Phase I Bidder (including a Portion Bidder) must submit a Bid (a "**Phase II Bid**") that is determined by the Debtors, with the assistance of their advisors and in consultation with the Monitor, to satisfy each of the following conditions (a "**Qualified Phase II Bid**", and any party making such a Qualified Phase II Bid, a "**Qualified Phase II Bidder**"):

(a) Written Submission of Modified APA and Commitment to Close. Qualified Phase I Bidders (other than the Stalking Horse Bidder) must submit a Phase II Bid by the Phase II Bid Deadline in the form of an executed mark-up of the Stalking Horse Agreement (each a "**Modified APA**") reflecting such Qualified Phase I Bidder's proposed changes to the Stalking Horse Agreement (together with a blackline of the Modified APA against the Stalking Horse Agreement), and a written and binding commitment to close on the terms and conditions set forth therein.

(b) Irrevocable. A Phase II Bid must be irrevocable until (i) June 20, 2012; or (ii) in the event the Phase II Bid is determined to be the Back-up Bid, July 20, 2012;

(c) Contingencies. A Phase II Bid may not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence. Any other contingencies associated with a Phase II Bid may not, in aggregate, be more burdensome than those set forth in the Stalking Horse Agreement;

(d) Financing Sources. A Phase II Bid must contain written evidence of a commitment for financing or other evidence of the ability to consummate the sale satisfactory to the Debtors with appropriate contact information for such financing sources;

(e) No Fees payable to Qualified Phase II Bidder. A Phase II Bid may not request or entitle the Qualified Phase II Bidder, other than the Stalking Horse Bidder, to any break-up fee, expense reimbursement or similar type of payment;

(f) Good-Faith Deposit. Each Phase II Bid must be accompanied by a cash deposit (the "**Good Faith Deposit**") equal to fifteen (15) percent of the total purchase price contemplated under the Modified APA that shall be paid to the Monitor, to be held by the Monitor in trust in accordance with these Bidding Procedures; and

(g) Minimum Overbid. The aggregate consideration in a Phase II Bid must have a cash purchase price of at least the amount of the cash purchase price payable to the Debtors under the Stalking Horse Agreement of $●, plus the Expense Reimbursement of $500,000, plus $250,000 for a total minimum consideration of $● (the "**Minimum Overbid**"); provided that any Portion Bidder shall not be subject to the Minimum Overbid; provided further that any "Aggregated Bid" (as defined below) shall be subject to the Minimum Overbid.

9. Auction

Only if a Qualified Phase II Bid (other than the Stalking Horse Bid) is received by the Phase II Bid Deadline shall the Debtors conduct an auction (the "**Auction**") to determine the highest and/or best Bid with respect to the Stalking Horse Assets. The Auction shall

commence on **[April 24, 2012]**, at 10:00 a.m. (Eastern Time) at the offices of Stikeman Elliott LLP, 199 Bay Street, 5300 Commerce Course West, Toronto, Ontario, M5L 1B9.

If no such Qualified Phase II Bid is received by the Phase II Bid Deadline, then the Auction shall not take place, the Stalking Horse Bidder shall be declared the Successful Bidder (as defined below), the Debtors shall seek approval of, and authority to consummate, the Stalking Horse Agreement and the transactions provided for therein at the Sale Hearing (as defined below) and the Monitor shall post notice of such facts on its website established in connection with the CCAA Proceedings.

If a Qualified Phase II Bid is received in accordance with these Bidding Procedures, the Auction shall be conducted according to the following procedures:

(a) Participation At The Auction. Only a Qualified Phase II Bidder that has submitted a Qualified Phase II Bid is eligible to participate at the Auction; provided that the Debtors may allow any or all Portion Bidders that are Qualified Phase II Bidders to participate in the Auction. For greater certainty, the Stalking Horse Bidder is a Qualified Phase II Bidder and eligible to participate at this Auction. Only the authorized representatives (including counsel and other advisors) of each of the Qualified Phase II Bidders, the Debtors and the Monitor shall be permitted to attend at the Auction. Subject to Section 9(c)(v), during the Auction, the bidding shall begin with the highest Qualified Phase II Bid (the "**Opening Bid**") and each subsequent round of bidding shall continue in minimum increments of at least the Minimum Overbid Increment (as defined below). For greater certainty, a combination of Portion Bids that do not overlap for the Stalking Horse Assets sought to be purchased, and which, when totaled, exceed the Minimum Overbid (an "**Aggregated Bid**") may be determined to be the Opening Bid.

(b) Debtors Shall Conduct The Auction. The Debtors and their professionals, in consultation with the Monitor, shall direct and preside over the Auction. At the start of the Auction, the Debtors shall provide the terms of the Opening Bid to all participating Qualified Phase II Bidders at the Auction and a blackline of such Opening Bid to the Stalking Horse Agreement. The determination of which Qualified Phase II Bid constitutes the Opening Bid shall take into account any factors the Debtors, with the assistance of their advisors and in consultation with the Monitor, reasonably deem relevant to the value of the Qualified Phase II Bid to the Debtors, including, among other things, the following: (i) the amount and nature of the consideration; (ii) the proposed assumption of any liabilities, if any; (iii) the ability of the Qualified Phase II Bidder to close the proposed transaction; (iv) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (v) any purchase-price adjustments; (vi) the impact of the contemplated transaction on any actual or potential litigation; (vii) the net economic effect of any changes from the Stalking Horse Agreement, if any, contemplated by the contemplated transaction documents (the "**Contemplated Transaction Documents**"), (viii) the net after-tax consideration to be received by the

Debtors; and (ix) such other considerations as the Debtors deem relevant in their reasonable business judgement (collectively, the "**Bid Assessment Criteria**"). All Bids made after the Opening Bid shall be Overbids (as defined below), and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all other Qualified Phase II Bidders that are participating in the Auction. The Debtors shall maintain a transcript of the Opening Bid and all Overbids made and announced at the Auction, including the Successful Bid and the Back-up Bid (as defined below).

(c) Terms of Overbids. An "**Overbid**" is any Bid made at the Auction subsequent to the Debtors' announcement of the Opening Bid. To submit an Overbid, in any round of the Auction, a Qualified Phase II Bidder must comply with the following conditions:

(i) Minimum Overbid Increment

Any Overbid shall be made in increments of at least $250,000 or such lower amount (such lower amount not to be less than $100,000) as the Debtors may determine in order to facilitate the Auction (the "**Minimum Overbid Increment**"). When considering whether the Minimum Overbid Increment has been satisfied, the Debtors shall compare the Bids (including Aggregated Bids) only as they relate to the Stalking Horse Assets. The amount of the cash purchase price consideration of any Overbid shall not be less than the cash purchase price consideration of the Opening Bid; provided, that, without duplication, application of any amounts advanced to the Debtors under the DIP Facility between the Debtors and the Stalking Horse Bidder shall be considered as cash purchase price consideration in connection with any Overbid by the Stalking Horse Bidder.

(ii) Remaining terms are the same as for Qualified Phase II Bids

Except as modified herein, an Overbid must comply with the conditions for a Qualified Phase II Bid set forth above, provided, however, that the Phase II Bid Deadline shall not apply.

Any Overbid made by a Qualified Phase II Bidder must provide that it remains irrevocable and binding on the Qualified Phase II Bidder until (A) in the event such Qualified Phase II Bid is declared the Successful Bid, June 20, 2012; and (B) in the event such Qualified Phase II Bid is declared the Back-up Bid, July 20, 2012.

The Debtors shall credit the amount of the Expense Reimbursement to each and every Overbid submitted by the Stalking Horse Bidder at the Auction, meaning that if the Stalking Horse Bidder's subsequent Overbid is the then highest and/or best Overbid at the Auction, any subsequent Overbid must exceed the Stalking Horse Bidder's Overbid

by the amount of the Expense Reimbursement and Minimum Overbid Increment.

To the extent not previously provided (which shall be determined by the Debtors), a Qualified Phase II Bidder submitting an Overbid must submit, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors) demonstrating such Qualified Phase II Bidder's ability to close the transaction proposed by such Overbid.

(iii) Announcing Overbids

At the end of each round of bidding, the Debtors shall announce the material terms of the then highest and/or best Overbid, the basis for calculating the total consideration offered in such Overbid, and the resulting benefit to the Debtors' based on, among other things, the Bid Assessment Criteria. For greater certainty, an Aggregated Bid may be determined to be the highest and/or best Overbid.

(iv) Consideration of Overbids

The Debtors reserve the right, in their reasonable business judgement, to make one or more adjournments in the Auction to, among other things: (A) facilitate discussions between the Debtors and individual Qualified Phase II Bidders; (B) allow individual Qualified Phase II Bidders to consider how they wish to proceed; (C) consider and determine the current highest and/or best Overbid at any given time during the Auction; and (D) give Qualified Phase II Bidders the opportunity to provide the Debtors and the Monitor with such additional evidence as they may require, in their reasonable business judgement, that the Qualified Phase II Bidder has obtained all required internal corporate approvals, has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount.

(v) Portion Bids

Notwithstanding the forgoing, each Portion Bidder entitled to participate in the Auction shall be entitled to submit an Overbid (in a minimum increment to be determined by the Debtors) with respect to the Assets it is bidding on without being required to submit an Overbid with respect to all Assets subject to the Stalking Horse Agreement or the applicable Opening Bid; provided that any Aggregated Bid that is an Overbid shall be subject to these Auction procedures as any other Overbid, including that such Aggregated Bid that is an Overbid shall be subject to the Minimum Overbid Increment

described in section 9(c)(i). As part of any Overbid, the Stalking Horse Bidder shall be entitled to make a Portion Bid.

For greater certainty, to the extent any Portion Bid or an Aggregated Bid is the Successful Bid (including through the deeming of the Back-up Bid as the Successful Bid), including any Portion Bid or Aggregated Bid where the Stalking Horse Bidder is also a Portion Bidder, the Stalking Horse Bidder shall not be obliged to complete the transactions under the Stalking Horse Agreement or purchase any subset of assets or assume any subset of liabilities which are not covered by such Portion Bid or Aggregated Bid.

(vi) Failure to Bid

If at the end of any round of bidding a Qualified Phase II Bidder (other than a Portion Bidder, or the Qualified Phase II Bidder that submitted the then highest and/or best Overbid or Opening Bid, as applicable) fails to submit an Overbid, then such Qualified Phase II Bidder shall not be entitled to continue to participate in the next round of the Auction.

(d) Additional Procedures. The Debtors may, with the assistance of their advisors and in consultation with the Monitor, adopt rules for the Auction at or prior to the Auction that will better promote the goals of the Auction and that are not inconsistent with any of the provisions of these Bidding Procedures or the Bidding Procedures Order; provided that no such rules may change the requirement that all Overbids shall be made and received in one room, within a defined period, on an open basis, and all other Qualified Phase II Bidders (that have not failed to make an Overbid in a prior round of bidding) shall be entitled to be present for all bidding with the understanding that the true identity of each Qualified Phase II Bidder - i.e., Principals submitting the Bid - shall be fully disclosed to all other Qualified Phase II Bidders and that all material terms of the then highest and/or best Overbid at the end of each round of bidding will be fully disclosed to all other Qualified Phase II Bidders provided further that the adoption of any rule that materially deviates from the Auction procedures set forth herein shall require the prior written consent of the Stalking Horse Bidder or an Order of the Court.

(e) Closing the Auction. Upon conclusion of the bidding, the Auction shall be closed, and the Debtors shall, with the assistance of their advisors and in consultation with the Monitor, (i) immediately review the final Overbid of each Qualified Phase II Bidder on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the proposed sale, and (ii) identify the highest and/or best Overbid or Opening Bid (the "**Successful Bid**" and the entity or entities submitting such Successful Bid, the "**Successful Bidder**"), and the next highest and/or best Overbid, Opening Bid, or Stalking

Horse Agreement after the Successful Bid (the "**Back-up Bid**" and the entity or entities submitting such Back-up Bid, the "**Back-Up Bidder**"), and advise the Qualified Phase II Bidders of such determination. One or more Portion Bid(s) can form part of a Successful Bid and Back-up Bid so long as such Portion Bid(s) do not overlap in respect of the Assets sought to be purchased and in such case, such Portion Bidder(s) shall be included in the definition of Successful Bidder or Back-up Bidder, as applicable.

(f) Consent to Jurisdiction as Condition to Bid. All Qualified Phase II Bidders at the Auction shall be deemed to have consented to the jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction, and the construction and enforcement of the Bidder's Contemplated Transaction Documents, as applicable.

(g) Expense Reimbursement. In the event that the Stalking Horse Bidder is not the Successful Bidder (or in the event the Stalking Horse Bidder is the Back-up Bidder but does not become the Successful Bidder in accordance with section 13 hereof), the Stalking Horse Agreement shall be terminated pursuant to Section ● of the Stalking Horse Agreement, and the Expense Reimbursement (in the amount of $500,000) shall be immediately paid to the Stalking Horse Bidder from the proceeds received upon closing of the Successful Bid or the Back-up Bid. The obligation to pay the Expense Reimbursement under the Stalking Horse Agreement shall be absolute and unconditional and shall not be subject to any defense, claim, counterclaim, offset, recoupment or reduction of any kind whatsoever. Section ● of the Stalking Horse Agreement and the rights and obligations created thereunder shall survive termination of the Stalking Horse Agreement.

10. Acceptance of Successful Bid

The Debtors shall complete the sale transaction or transactions with the Successful Bidder following approval of the Successful Bid by the Court. The Debtors will be deemed to have accepted a Successful Bid only when the Successful Bid has been approved by the Court. The Debtors will be deemed to have accepted a Back-up Bid only when it has been approved by the Court and has been deemed to be a Successful Bid.

11. "As Is, Where Is"

The sale of Assets pursuant to these Bidding Procedures shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Debtors, their agents or estates except to the extent set forth in the Stalking Horse Agreement or the purchase agreement of another Successful Bidder. The Stalking Horse Bidder and each Qualified Phase II Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer, that it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid, and that it did not rely on any written or oral statements, representations, promises, warranties, conditions or guaranties whatsoever, whether express, implied, by operation of law or

otherwise, regarding the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or (a) as to the Stalking Horse Bidder, the terms of the sale of the Assets shall be set forth in the Stalking Horse Agreement, or (b) as to another Successful Bidder, the terms of the sale of the Assets shall be set forth in the applicable purchase agreement

12. Free Of Any And All Encumbrances

Except as otherwise provided in the Stalking Horse Agreement or another Successful Bidder's purchase agreement, all of the Debtors' right, title, and interest in and to the Assets subject thereto shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against (collectively, and other than any permitted encumbrances under the Stalking Horse Agreement or another Successful Bidder's purchase agreement, the "**Encumbrances**") in accordance with a vesting order of the Court, with such Encumbrances to attach to the net proceeds of the sale of the Assets.

13. Sale Hearing

A hearing to approve the sale of Assets to the Successful Bidder shall be conducted by the Court within **[28 days]** of the conclusion of the Auction at 330 University Avenue, Toronto, Ontario (the "**Sale Hearing**"). Following the approval of the sale to the Successful Bidder at the Sale Hearing, if such Successful Bidder fails to consummate the sale in accordance with the terms and conditions of the purchase agreement of the Successful Bidder, the Debtors shall be authorized, but not required, to deem the Back-up Bid, as disclosed at the Sale Hearing, the Successful Bid and the Debtors shall be authorized, but not required, to consummate the sale with the Back-up Bidder and upon so doing the Back-up Bidder shall be deemed to be the Successful Bidder, subject to approval by the Court, which approval may be sought by the Debtors on a conditional basis at the Sale Hearing, at the Debtors' discretion.

14. Return of Good Faith Deposit

Good Faith Deposits of all Qualified Phase II Bidders shall be held in an interest-bearing account. Good Faith Deposits of all Qualified Phase II Bidders, other than the Successful Bidder and the Back-Up Bidder shall be returned to such Qualified Phase II Bidders two (2) business days after the selection of the Successful Bidder and Back-Up Bidder. Good Faith Deposits of the Successful Bidder shall be applied to the purchase price of such transaction at closing. The Good Faith Deposit of the Back-Up Bidder shall be held in an interest-bearing account until two (2) business days after the closing of the transactions contemplated by the Successful Bid, and thereafter returned to the Back-Up Bidder. If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Debtors shall be entitled to retain the Good Faith Deposit of the Successful Bidder as part of their damages resulting from the breach or failure to perform by the Successful Bidder. If the Successful Bidder fails to consummate an approved sale for any reason, and a transaction is completed with the Back-Up Bidder, the Good Faith Deposit of the Back-Up Bidder shall be applied to the purchase

price of the transactions contemplated by the purchase agreement of the Back-Up Bidder at closing.

15. Modifications and Reservations

These Bidding Procedures may be modified or amended only upon the express written consent of the Debtors, after consultation with the Monitor, and, if such modification or amendment materially deviates from these Bidding Procedures, with the written consent of the Stalking Horse Bidder, or by order of the Court.

The Debtors may, after consultation with the Monitor, reject at any time before entry of an order of the Court approving a Successful Bid, any Bid (except the Stalking Horse Agreement, other than in accordance with its terms) that is (a) inadequate or insufficient, (b) not in conformity with the requirements of the CCAA, these Bidding Procedures, or the terms and conditions of sale, or (c) contrary to the best interests of the Debtors, their estates and creditors thereof.

16. Investment Bid

Notwithstanding any other provision of these Bidding Procedures, if a Qualified Phase II Bidder submits an investment bid involving a restructuring, recapitalization or other form of reorganization of the business and affairs of the Debtors, or either one of them, as a going concern or a plan of compromise and arrangement concerning the Debtors, or either one of them, which the Debtors, after consultation with the Monitor, consider would result in a greater value being received for the benefit of the Debtors' creditors than the Qualified Phase II Bids, then the Debtors may consider such investment bid a Qualified Phase II Bid and allow such Qualified Phase II Bidder to participate in the Auction, notwithstanding that such investment bid does not otherwise comply with the terms of Section 8 of these Bidding Procedures. In such case, the Debtors, with the assistance of their advisors and in consultation with the Monitor, may adopt appropriate rules to facilitate such Qualified Phase II Bidder's participation in the Auction.

Schedule E
Permitted Encumbrances

1. Other than for any restriction in respect of any of the transactions contemplated by this Agreement, the transfer restrictions on the shares in the capital of Québec Silicon General Partner Inc. pursuant to the Articles of Incorporation of Québec Silicon General Partner Inc.

2. Other than for any restriction in respect of any of the transactions contemplated by this Agreement, the transfer restrictions on the shares in the capital of Québec Silicon General Partner Inc. pursuant to the Shareholders Agreement between all the Shareholders of Québec Silicon General Partner Inc. dated October 1, 2010.

3. Other than for any restriction in respect of any of the transactions contemplated by this Agreement, the transfer restrictions on the units of Québec Silicon Limited Partnership pursuant to the Amended and Restated Limited Partnership Agreement between Dow Corning Corporation and Québec Silicon General Partners Inc. dated October 1, 2010.

4. Any limitation to the right of ownership associated with the nominee agreement between BSI and Québec Silicon General Partner Inc. relating to the HP2 property located at 6400 Yvon-Trudeau, Bécancour, Québec.

5. The right reserved to or vested in any municipality or government, or to any statutory or public authority, by the terms of any grant or permit acquired by the Vendors or any statutory provision to terminate any such grant or permit, or to require annual or other periodic payments as a condition to the continuance thereof.

6. The reservations, limitations, provisos and conditions (if any) expressed in any original grant from the Crown.

7. Servitudes, easements, rights of way or similar rights in land granted to or reserved by other persons, including without limitation:

    a. a servitude of passage by foot and vehicles against lot 3 417 110 of the Cadastre of Québec, Registration Division of Nicolet (Nicolet 2), in favour of the HP1 Property, the HP2 Property and the Facility, created by virtue of a Deed of Transfer registered at the Registry Office for the Registration Division of Nicolet 1 (Bécancour) under number 94 002;

    b. a servitude in favour of the HP1 Property, the HP2 Property and the Facility (with greater extent) to construct railroad tracks on lot 708-30, now known as lot 3 294 053 of the Cadastre of Québec, Registration Division of Nicolet (Nicolet 2) to connect railroad lines to the main lines of the Canadian National Railway Company situated on lot 708-12, now known as lot 3 417 065 of the Cadastre of Québec, Registration Division of Nicolet (Nicolet 2) created by virtue of a Deed of Transfer registered at the Registry Office for the Registration Division of Nicolet 1 (Bécancour) under number 94 002;

c. rights and obligations resulting from the Deed of Transfer registered at the Registry Office for the Registration Division of Nicolet 1 (Bécancour) under number 94 002, including, without limitation, a right of access to and use of all roadways and other public facilities of the infrastructure of the Central Quebec Industrial Park at Bécancour, rights of access and use of the harbour and dock facilities and the right of storage on the dock facilities in the Central Quebec Industrial Park at Bécancour, a right to erect a fence, a right to extend a private set of railroad tracks and a right to make available by means of water mains a supply of water sufficient to meet the needs;

d. a servitude in favour of Hydro-Québec against the HP1 Property registered at the Registry Office for the Registration Division of Nicolet 1 (Bécancour) under numbers 108 397 and 110 709; and

e. any and all servitudes to be granted in favour of and against the HP2 Property and the Facility by destination of proprietor and to be registered once executed.

8. Encroachments disclosed by and any errors or omissions existing in surveys of the Purchased Solar Grade Silicon Assets - Owned Property (described in Schedule B) or neighbouring properties and any title defect, encroachment or breach of a zoning, land-use or building by-law or any other Applicable Law, by-law or regulation which might be disclosed by a more up-to-date survey of the Purchased Solar Grade Silicon Assets - Owned Property (described in Schedule B) and survey matters generally, provided that the same does not materially impair the use or materially affect the value of the Purchased Solar Grade Silicon Assets - Owned Property (described in Schedule B) for the purposes of the Ordinary Course of Business.

9. Title defects or irregularities which are of minor nature, encroachments, easements, rights-of-way, rights to use, servitudes or similar interests, including, without restricting the generality of the foregoing, any remarks, comments, reserves, information, comments, issues, errors or omissions contained in title opinions, summaries of limited subsearch and/or ``note de service`` of the Purchased Solar Grade Silicon Assets - Owned Property (described in Schedule B) or which might be disclosed by more up-to-date title opinions, which are of minor nature provided that same does not materially impair the use or materially affect the value of the Purchased Solar Grade Silicon Assets - Owned Property (described in Schedule B) for the purposes of the Ordinary Course of Business.

10. Statutory or inchoate liens which relate to obligations not yet due on account of taxes, local improvement rates or utilities.

Schedule F
QSLP Contracts

The Contracts relating to the formation, transfer of assets into and governance of QSGP and QSLP:

1. Framework Agreement dated as of August 10, 2010 entered into by and among Dow Corning Corporation, Timminco Limited and Bécancour Silicon Inc. as amended by (i) a letter agreement dated March 31, 2011; and (ii) Amendment No. 1 dated November 1, 2011.

2. Business Transfer Agreement dated September 30, 2010 among Bécancour Silicon Inc. and Québec Silicon Limited Partnership, by its general partner, Québec Silicon General Partner Inc.

3. Intellectual Property Assignment Agreement dated September 30, 2010 between Bécancour Silicon Inc. and Québec Silicon Limited Partnership.

4. Pension Transfer Agreement dated September 30, 2010 among Bécancour Silicon Inc., Québec Silicon Limited Partnership, by its general partner Québec Silicon General Partner Inc., and Dow Corning Corporation.

5. Amended and Restated Limited Partnership Agreement dated October 1, 2010 by and between Bécancour Silicon Inc., Dow Corning Canada Inc. and Québec Silicon General Partner Inc., as amended by the First Amendment thereto dated October 14, 2010.

6. Shareholders Agreement dated October 1, 2010 by and between Bécancour Silicon Inc., Dow Corning Netherlands, B.V. (now known as DC Global Holdings S.a.r.l.) and Québec Silicon General Partner Inc.

Schedule G
Silicon Metal Contracts

Contracts relating solely to the Purchased Silicon Metal Assets:

1. Long-Term Supply Agreement dated June 1, 2011, and effective January 1, 2011, between Bécancour Silicon Inc. and Wacker Chemie AG, as amended by Amendment No. 1 thereto dated September 6, 2011.

2. Output and Supply Agreement among Québec Silicon Limited Partnership, Bécancour Silicon Inc. and Dow Corning Corporation dated October 1, 2010, as amended by: (i) Amendment No. 1 dated November 16, 2010, effective as of October 1, 2010; (ii) Amendment No. 2 dated November 1, 2011, effective as of October 1, 2010; and (iii) Amendment No. 3 dated November 1, 2011, effective as of October 20, 2011.

3. Shared Services Agreement between Bécancour Silicon Inc. and Québec Silicon Limited Partnership dated September 30, 2010.

4. Shared Expenses Agreement dated October 1, 2010 between Québec Silicon General Partner Inc. and Québec Silicon Limited Partnership and Bécancour Silicon Inc. This agreement was amended on November 1, 2011.

5. Agency Services Agreement among Bécancour Silicon Inc. and Québec Silicon Limited Partnership dated September 30, 2010.

6. Purchase Agreement dated September 6, 2011 between Sudamin HOLDING SPRL and Bécancour Silicon Inc.

7. Purchase Order dated September 20, 2011 between Environmental Materials Corp. and Bécancour Silicon Inc. for the sale and delivery of silicon metal.

8. Purchase Order dated November 17, 2011 between Alliages Zabo Inc. and Silicium Bécancour Inc. for the sale and delivery of silicon metal.

9. Purchase Order dated December 13, 2011 between Cable Alcan and Bécancour Silicon Inc. for the sale and delivery silicon metal.

10. Purchase Order dated December 13, 2011 received from Novelis Corp. and Bécancour Silicon Inc. for silicon metal.

11. Purchase Order dated January 9, 2012 between GNP Ceramics, LLC and Bécancour Silicon Inc. for the sale and delivery of silicon metal.

Schedule H
Solar Equipment

1. The machinery, equipment, supplies and accessories, and any of the parts and components thereof, relating to the Purchased Solar Grade Silicon Assets, and all other machinery equipment, supplies and accessories including parts and components thereof, in each case relating to the Timminco Solar division of BSI and located at the HP1 Property or at the HP2 Property or servicing the HP1 Property or the HP2 Property (described in Schedule B), which for greater certainty shall not include the equipment owned by AMG Conversion Ltd. located in the ingoting facility on the HP1 Property or at the HP2 Property or servicing the HP2 Property and/or the HP1 Property.

2. See attached Bécancour Silicon Inc. Schedule of Solar Fixed Assets.

Schedule I
Monthly Reimbursement

The minimum aggregate amount of silicon metal that QSLP shall have produced and delivered to DCC at BSI's request in satisfaction of BSI's obligations to DCC in respect of the Shortfall shall be no less that the amount set forth in the table below that corresponds to the month end period that is no less than fifteen (15) days prior to the Closing.

Month	Amount (in metric tons)
March 31, 2012	3,000
April, 30, 2012	3,250
May 31, 2012	3,500
June 30, 2012*	3,750
July 31, 2012*	4,167
August 31, 2012*	4,584
September 30, 2012*	4,941
October 31, 2012*	5,108
November 30, 2012*	5,275
December 31, 2012*	5,440

*Closing can only occur in the month following this date if agreed in writing by the Parties hereto

Schedule J
Solar Grade Silicon Contracts

The Contracts relating solely to the Purchased Solar Grade Silicon Assets:

1. Purchase Order dated November 17, 2011 between Alliages Zabo Inc. and Silicium Bécancour Inc. for the sale and delivery of silicon metal.

2. Transport Agreement (Entente de Transport) dated September 13, 2011 between Silicium Québec S.E.C. and N. Simard et Frères Inc.

3. Service Agreement dated October 16, 2007 between Gardium Sécurité and Silicium Bécancour Inc.

4. Janitorial Service Agreement Renewal dated September 20, 2011 between Silicium Bécancour Inc. and Les Services d'entretien Bécancour.

5. Supply Agreement dated May 28, 2008, as amended on January 1, 2011 between Prodair Canada Ltée. and Silicium Bécancour Inc.

6. Supply Agreement dated September 24, 2008 between Prodair Canada Ltée. and Silicium Bécancour Inc., as amended on September 27, 2010 and January 1, 2011.

7. Lease Agreement Re: Dust Collector No. 21 and Duct (44") connecting the Furnaces No. 2 located on the Facility to the Duct Collector No. 21 dated **[February 28, 2012]** between Québec Silicon Limited Partnership and Bécancour Silicon Inc.

8. Exclusive Marketing Agreement between Timminco Limited and Major Furnace International Pty Ltd. dated January 1, 2009.

9. Lease listed under "Leased Property" heading in Schedule B hereto.

10. Lease Agreement No. B-18517 Re: Trailer and Accessories between Clément & Frère Ltée and Silicium Bécancour Inc. dated January 31, 2008.

11. Lease Agreement No. 387425 Re: ModSpace Equipment between Services Financiers Modspace Canada Ltée and Silicium Bécancour Inc. dated November 30, 2008.

12. Lease Agreement No. 387386 Re: ModSpace Equipment between Services Financiers Modspace Canada Ltée and Silicium Bécancour Inc. dated November 30, 2008.

13. Lease Agreement No. 387384 Re: ModSpace Equipment between Services Financiers Modspace Canada Ltée and Silicium Bécancour Inc. dated November 30, 2008.

14. Lease Agreement No. 029247 Re: ModSpace Equipment between Services Financiers Modspace Canada Ltée and Silicium Bécancour Inc. dated April 14, 2008.

15. Lease Agreement No. 023816 Re: ModSpace Equipment between Services Financiers Modspace Canada Ltée and Silicium Bécancour Inc. dated August 25, 2010.

16. Lease Agreement No. 064643 Re: ModSpace Equipment between Services Financiers Modspace Canada Ltée and Silicium Bécancour Inc. dated October 16, 2008.

Schedule K
Consents and Approvals

The consents, approvals, notifications or waivers from, and filings with, third parties (including any Governmental Authority) which are effective as of the Closing Time.

Consents and Approvals related to the Purchased Silicon Metal Assets

1. DCC Consent

2. Long-Term Supply Agreement dated June 1, 2011, and effective January 1, 2011, between Bécancour Silicon Inc. and Wacker Chemie AG, as amended by Amendment No. 1 thereto dated September 6, 2011. This agreement is not assignable by either party without the prior written consent of the other.

Consents and Approvals related to the Purchased Solar Grade Silicon Assets

1. Lease dated September 30, 2010 between Québec Silicon General Partner Inc. and Bécancour Silicon Inc., in respect of office premises at 6500 Yvon Trudeau, Bécancour, Québec, for a term expiring September 30, 2040.

2. Nominee Agreement dated September 30, 2010 between Bécancour Silicon Inc. and Québec Silicon General Partner Inc., in respect of the HP2 Property.

3. Service Agreement dated October 16, 2007 between Gardium Sécurité and Silicium Bécancour Inc. The Agreement cannot be assigned or transferred without the prior written consent of Gardium Sécurité.

4. Supply Agreement dated May 28, 2008, as amended on January 1, 2011 between Prodair Canada Ltée. and Silicium Bécancour Inc. The Agreement cannot be assigned without the prior written consent of Prodair Canada Ltée.

5. Supply Agreement dated September 24, 2008, as amended on September 27, 2010 and January 1, 2011 between Prodair Canada Ltée. and Silicium Bécancour Inc. The Agreement cannot be assigned without the prior written consent of Prodair Canada Ltée.

6. Certificates of Authorization and Authorizations for the HP1 Property and the HP2 Property issued by the Quebec Ministry of Sustainable Development, Environment and Parks ("**MSDEP**") pursuant to the *Environment Quality Act* cannot be assigned without the approval and issuance by the MSDEP of a certificate of assignment or modification.

Schedule L
Estimated BSI Working Capital Statement

WC Assets (CAD 000s)	5/31/2012
Accounts Receivable - Si Metal	933
Accounts Receivable - Solar	-
Prepaid Expenses	10
Inventory - Si Metal	2,060
Inventory - Solar	1,290
Inventory - Packing Supplies	1,506
WC Assets	5,799

THIS IS EXHIBIT "E", referred to in the Affidavit of Peter A.M. Kalins, sworn on March 2, 2012.

Commissioner for Taking Affidavits

Yusuf Yannick Katirai, a
Commissioner etc., Province of Ontario,
while a student-at-law.
Expires April 12, 2013.

APPENDIX "E"

AMENDING AGREEMENT

Amending Agreement dated as of March 1, 2012 among Timminco Limited and Becancour Silicon Inc., as Borrowers, and QSI Partners Inc., as DIP Lender.

RECITALS:

(a) QSI Partners Inc. (in its capacity as DIP lender, together with its successors and permitted assigns, the "**DIP Lender**") has agreed to provide funding in order to fund certain obligations of Timminco Limited ("**Timminco**") and Becancour Silicon Inc. ("**BSI**", and together with Timminco, the "**Borrowers**") in the context of their proceedings under the *Companies' Creditors Arrangement Act* (Canada) upon the terms and conditions contained in a DIP agreement dated January 18, 2012 among the Borrowers and the DIP Lender (the "**DIP Agreement**");

(b) The Borrowers desire to sell certain of their assets and QSI Partners Inc. (in its capacity as purchaser, the "**Purchaser**") has agreed to (i) act as a "stalking horse bidder" in connection therewith, and (ii) in the absence of the Borrowers' acceptance of a superior bid, purchase certain assets of the Borrowers, subject to the terms and conditions of an agreement of purchase and sale made and entered into as of March 1, 2012 among the Borrowers and the Purchaser (as such agreement may be amended, amended and restated, modified or supplemented from time to time, the "**Purchase Agreement**");

(c) Pursuant to the Purchase Agreement, the Purchaser is required to provide a Deposit (as such term is defined in the Purchase Agreement) to the Vendors; and

(d) The DIP Lender has requested amendments to the DIP Agreement to provide for the credit and set off of an amount equal to the Deposit against the DIP Obligations (including the Maximum Amount held by the Monitor), and the Borrowers have agreed to permit such arrangements on the terms and conditions set forth in this Amending Agreement.

In consideration of the foregoing and the mutual agreements contained herein (the receipt and adequacy of which are acknowledged), the parties agree as follows:

Section 1 Defined Terms.

Capitalized terms used in this Amending Agreement and not otherwise defined have the meanings specified in the DIP Agreement.

Section 2 Headings.

Section headings in this Amending Agreement are included for convenience of reference only and shall not constitute a part of this Amending Agreement for any other purpose.

Section 3 Amendments to the DIP Agreement.

(a) The following two paragraphs shall be added as two new paragraphs at the end of Section 5 of the DIP Agreement:

"Notwithstanding any other provision of this DIP Agreement, if a Set-Off Event occurs, then an amount equal to the Deposit shall be applied in reduction of, and set off against, the outstanding DIP Obligations owing by the Borrowers to the DIP Lender under the DIP Facility and, if the amount of the Deposit exceeds such outstanding DIP Obligations owing by the Borrowers, then such excess amount shall be applied in reduction of, and set off against, the obligation of the Monitor to return the remaining balance, if any, of the Maximum Amount (and any interest earned thereon) to the DIP Lender hereunder and under the DIP Order. The Borrowers and the DIP Lender agree that the set off and application of the Deposit against any and all outstanding DIP Obligations and any remaining balance of the Maximum Amount contemplated hereunder will occur immediately upon occurrence of any event referred to in clause (i) of the definition of Set-Off Event without any further action or notice by the Borrowers, the Monitor or any other person and will occur immediately upon the delivery of a notice by the Borrowers to the DIP Lender and the Monitor upon the occurrence of any event referred to in clause (ii) of the definition of Set-Off Event and without any further action by the Borrowers, the Monitor or any other person. Any balance remaining in the Monitor Account after the set-off contemplated by this Section has been applied shall be dealt with in accordance with paragraph 7 of the DIP Order.

For the purposes hereof, a "Set-Off Event" shall occur if if either (i) Closing (as such term is defined in the Purchase Agreement) occurs, or (ii) Closing does not occur solely as a result of the failure by the Purchaser to perform any of its obligations under the Purchase Agreement where it is required to do so pursuant to and in accordance with the terms thereof provided that there will be no right of the Borrowers to credit or set off of the amount of the Deposit to outstanding amounts owing to the DIP Lender under the DIP Facility on the Business Day following the occurrence of the earliest of any of the following:

(i) if the Purchase Agreement is not the "Successful Bid" or the "Back-Up Bid" (as determined pursuant to the "Bidding Procedures") (as such terms are defined in the Purchase Agreement) unless the Purchase Agreement is not the Successful Bid or the Back-Up Bid solely as a result of the failure by the Purchaser to perform any of its obligations under the Purchase Agreement where it is required to do so pursuant to and in accordance with the terms thereof;

(ii) if the Purchase Agreement is the Back-Up Bid and the transaction contemplated by the Successful Bid is closed; or

(iii) if the Transaction (as defined in the Purchase Agreement) is not completed for any other reason other than solely as a result of the failure of the Purchaser to perform any of its obligations under the Purchase Agreement where it is required to do so pursuant to and in accordance with the terms thereof.

If a dispute arises between the Purchaser and the Borrowers as to whether the Deposit should be credited and set off against the outstanding DIP Obligations (including the obligation of the Monitor to return the Maximum Amount) in accordance with the above paragraph and Section 3.3 of the Purchase Agreement (a "**Deposit Dispute**"), then the Borrowers, the Purchaser and the DIP Lender shall work expeditiously and in good faith in an attempt to resolve such Deposit Dispute. If the parties are unable to resolve the Deposit Dispute then the Monitor, the DIP Lender, the Purchaser or the Borrowers may bring a motion before the Court for a determination of the Deposit Dispute on four (4) days notice to the other parties. In the event of (i) a Deposit Dispute, (ii) repayment by or on behalf of the Borrowers to the DIP Lender of an amount equal to all outstanding DIP Obligations less the amount of the Deposit, and (iii) the Monitor holding an amount equal to the Deposit in trust ("**Disputed Funds**") pending resolution of the Deposit Dispute and further Order of the Court, the DIP Charge shall be released."

(b) Section 7 of the DIP Agreement will be revised by deleting the 3rd last paragraph thereof and replacing it with the following paragraph:

"The Borrowers may issue a drawdown certificate once each week with the amount of each drawdown to be a drawing of Cdn.$50,000.00 or a multiple of Cdn.$50,000.00, and for certainty, not be in an amount greater than the amount shown on the applicable Cash Flow Projections."

(c) Section 13 of the DIP Agreement will be revised by deleting subsection (b) in its entirety and replacing it with the following subsection (b):

"(b) Deliver to the DIP Lender (i) the Cash Flow Projections as set out herein, (ii) as soon as practicable after the filing thereof with the Court, each report of the Monitor to the Court, and (iii) such other reporting and other information (including without limitation financial information of the Borrowers and such financial information that either of the Borrowers is entitled to in respect of Québec Silicon Limited Partnership as a result of its interest in Québec Silicon Limited Partnership) from time to time reasonably requested by the DIP Lender except for any confidential information reasonably designated by the Borrowers as Sensitive Confidential Information pursuant to the Confidentiality Agreement."

Section 4 Representations and Warranties.

Each of the Borrowers represent to the DIP Lender, and the DIP Lender represents and warrants to the Borrowers, that, subject to the entry of the Bidding Procedures Order (as such term is defined in the Purchase Agreement):

(a) All necessary action has been taken by it to authorize the execution, delivery and performance of this Amending Agreement. This Amending Agreement has been duly executed and delivered by it and constitutes legal, valid and binding obligations of it enforceable against it in accordance with its terms; and

(b) The execution and delivery by it and the performance by it of its obligations under this Amending Agreement will not conflict with or result in a breach of any of the terms or conditions of its constating documents or by-laws or any Applicable Law.

Section 5 Reference to and Effect on the DIP Agreement.

Upon this Amending Agreement becoming effective, each reference in the DIP Agreement to "this DIP Agreement" and each reference to the DIP Agreement in any and all other agreements, documents and instruments delivered by the DIP Lender, any Borrower or any other person shall mean and be a reference to the DIP Agreement, as amended by this Amending Agreement. Except as specifically amended by this Amending Agreement, the DIP Agreement shall remain in full force and effect.

Section 6 Effectiveness.

This Amending Agreement shall become effective upon the following conditions precedent being satisfied:

(a) duly executed signature pages for this Amending Agreement signed by each of the Borrowers shall have been delivered to the DIP Lender, and the DIP Lender shall have duly executed this Amending Agreement; and

(b) the Bidding Procedures Order shall have been obtained.

Section 7 Governing Law.

This Amending Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

Section 8 Time is of the Essence.

Time is of the essence in this Amending Agreement.

Section 9 Counterparts.

This Amending Agreement may be executed in any number of counterparts, each of which is deemed to be an original, and such counterparts together constitute one and the same instrument. Transmission of an executed signature page by facsimile, e-mail or other electronic means is as effective as a manually executed counterpart of this Agreement.

IN WITNESS WHEREOF the parties have executed this Amending Agreement.

TIMMINCO LIMITED

Per: _____
Name: Douglas Eastman
Title: Chief Executive Officer

BECANCOUR SILICON INC.

Per: _____
Name: Pete A.M. Kalivas
Title: President, General Counsel and Corporate Secretary

QSI PARTNERS LTD.

Per: _____
Name:
Title:

IN WITNESS WHEREOF the parties have executed this Amending Agreement.

TIMMINCO LIMITED

Per: _____
Name:
Title:

BECANCOUR SILICON INC.

Per: _____
Name:
Title:

QSI PARTNERS LTD.

Per: _____
Name: JEFF BRADLEY
Title: AUTH'D REP

TAB 3

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.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

MOTION RECORD
(RETURNABLE MARCH 9, 2012)

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