

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

**Applicants**

**MOTION RECORD  
(re Amendment of Bidding Procedures)  
(Returnable April 10, 2012)**

April 9, 2012

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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OF TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.

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(as at April 5, 2012)**

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# TAB 1

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(re Amendment of Bidding Procedures)  
(Returnable April 10, 2012)**

Timminco Limited and Bécancour Silicon Inc. (together, the "**Timminco Entities**") will make a motion to a judge presiding over the Commercial List on Tuesday, April 10, 2012 at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:**

The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An Order, substantially in the form attached to the Motion Record at Tab 3:
  - (a) Extending the Phase II Bid Deadline (as defined below) by three days;  
and
  - (b) Such further and other relief as this Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

1. On January 3, 2012, the Timminco Entities were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pursuant to the Initial Order, with FTI Consulting Canada



Inc. appointed as Court-appointed monitor (the “**Monitor**”) of the Timminco Entities.

2. On March 9, 2012, this Court granted an Order (the “**Sales Process Order**”): (a) authorizing and directing the Timminco Entities to enter into an Agreement of Purchase and Sale (the “**Stalking Horse Agreement**”) with QSI Partners Ltd. (in such role, the “**Stalking Horse Bidder**”), (b) approving certain protections granted to the Stalking Horse Bidder pursuant to the Stalking Horse Agreement, and (c) approving the bidding procedures attached as Schedule “A” of the Sales Process Order (the “**Bidding Procedures**”).

3. The timeline of events as dictated by the Bidding Procedures<sup>1</sup> is as follows:

<u>Event</u>	<u>Date</u>
Phase I Bids Due	March 26, 2012 (10 a.m.)
Phase II Bids Due	April 16, 2012 (10 a.m.)
Auction (if necessary)	April 24, 2012
Court Approval	T.B.D.
Transaction to Close	By June 20, 2012

4. The Bidding Procedures provide that any material modification or amendment of the Bidding Procedures may only be modified or amended with the written consent of the Stalking Horse Bidder or by order of the Court.

5. Pursuant to the deadlines contained in the Bidding Procedures, a number of Phase I Bids were submitted by the Phase I Bid Deadline, all of which were

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<sup>1</sup> All terms not defined herein are as defined in the Bidding Procedures, found at Tab 2(a) of the Motion Record.

determined by the Timminco Entities (in consultation with the Monitor) to be Qualified Phase I Bids.

6. A number of Qualified Phase I Bidders requested to meet with certain stakeholders of the Timminco Entities. Some indicated that they would not submit a Phase II Bid unless they had such an opportunity in advance of the Phase II Bid Deadline.

7. To ensure fairness, the Timminco Entities invited all Qualified Phase I Bidders, including the Stalking Horse Bidder, to inform the Timminco Entities if they wished to meet with any stakeholders. A number of Qualified Phase I Bidders (including the Stalking Horse Bidder) indicated that they wished to meet with certain stakeholders.

8. The Monitor has attempted to arrange the necessary meetings between the parties; however a key stakeholder has only limited availability prior to the Phase II Bid Deadline. The stakeholder has informed the Timminco Entities and the Monitor that it could make itself available for further meetings on either April 17 and 18 or April 18 and 19 (after the Phase II Bid Deadline).

9. In order to allow all interested Phase I Qualified Bidders to complete their requested stakeholder meetings and thereby provide a level playing field and fair bidding process, the Timminco Entities proposed an extension of the Phase II Bid Deadline from 10 a.m. (Eastern Time) on April 16, 2012 to 5 p.m. (Eastern Time) on April 19, 2012 (the "**Amended Phase II Bid Deadline**"). No other deadlines in the Bidding Procedures will be extended.

10. The Timminco Entities and the Monitor requested the Stalking Horse Bidder's consent to the Amended Phase II Bid Deadline, but it was refused. Therefore, the Timminco Entities are requesting the Court's approval of an order amending the Bidding Procedures to extend the Phase II Bid Deadline by three days.

11. The Timminco Entities and the Monitor believe that facilitating the stakeholder meetings will likely bring in more Qualified Phase II Bids and increase the chances of maximizing the realization of the Stalking Horse Assets, which benefits the Timminco Entities' stakeholders.

12. The Timminco Entities and the Monitor believe that approving the Amended Phase II Bid Deadline will not prejudice the Stalking Horse Bidder.

13. Section 11 and other provisions of the CCAA and the inherent and equitable jurisdiction of this Court.

14. Rules 2.03, 3.02 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.

15. Such further and other grounds as counsel may advise and this court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The Affidavit of Peter A.M. Kalins sworn April 9, 2012, and the exhibits attached thereto; and

2. Such further and other materials as counsel may advise and this Court may permit.

April 9, 2012

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Lawyers for the Timminco Entities

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

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

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

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

Proceeding commenced at Toronto

**NOTICE OF MOTION  
(RETURNABLE APRIL 10, 2012)**

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# TAB 2

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

(Applicants)

**AFFIDAVIT OF PETER A.M. KALINS  
(Sworn April 9, 2012 re Amendment of Bidding Procedures)**

I, PETER A.M. KALINS, of the City of Toronto, in the Province of Ontario,  
MAKE OATH AND SAY:

1. I am the President, General Counsel and Corporate Secretary of the Applicant Timminco Limited ("**Timminco**") and the President, General Counsel and Corporate Secretary, as well as a director of the Applicant Bécancour Silicon Inc. ("**BSI**" and, together with Timminco, the "**Timminco Entities**") and as such have knowledge of the matters to which I hereinafter depose, except where otherwise stated.

2. This affidavit is sworn in support of a motion brought by the Timminco Entities seeking an order extending the Phase II Bid Deadline (as defined below) by three days. It is the view of the Timminco Entities and the Monitor that a short extension will likely increase the realizations available for the Timminco Entities' Stakeholders from the sale of BSI's assets without prejudicing the Stalking Horse Bidder (as defined below).

## STATUS OF CCAA PROCEEDINGS

3. The Timminco Entities were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, (the "CCAA") pursuant to the Initial Order of the Ontario Superior Court of Justice dated January 3, 2012 (the "Initial Order"). FTI Consulting Canada Inc. was appointed as monitor of the Timminco Entities (the "Monitor") in the CCAA proceedings. A copy of the Initial Order is available, together with all other filings in the CCAA proceedings, on the Monitor's website (the "Monitor's Website") at: <http://cfcanada.fticonsulting.com/timminco>.

4. By Order dated January 27, 2012, Justice Morawetz extended the stay of proceedings granted under the Initial Order to and including April 30, 2012.

5. Further details regarding the background to this CCAA proceedings are set out in the Initial Order Affidavit and, unless relevant to the present motion, are not repeated herein. Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the Initial Order Affidavit.

## DIP FINANCING

6. As a result of their efforts to secure debtor-in-possession ("DIP") financing, the Timminco Entities successfully negotiated a DIP agreement with QSI Partners Ltd. (in such role, the "DIP Lender") dated January 18, 2012 (the "DIP Agreement") pursuant to which the DIP Lender agreed to extend to the Timminco Entities a DIP facility in the maximum amount of US\$4,250,000.

7. On January 27, 2012 (and continued on February 6, 2012), the Timminco Entities brought a motion for an Order (the "DIP Order"): (a) approving the DIP Agreement, and (b) granting a super-priority charge in favour of the DIP Lender. This motion was granted on February 8, 2012 by Justice Morawetz with reasons released on February 9, 2012.



## SALES PROCESS ORDER

8. The Timminco Entities, in consultation with the Monitor, determined that it was in the best interests of the Timminco Entities and their stakeholders to commence a marketing process for the potential sale of all or substantially all of their assets forthwith.

9. It was a condition of the DIP Agreement that the DIP Lender be granted a period of exclusivity during which the Timminco Entities could not, directly or indirectly through any representative, solicit or entertain offers from, 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 the opportunity to prepare a “stalking horse bid” for consideration by the Timminco Entities by January 31, 2012. The Timminco Entities were not obligated to accept any such bid and failure to execute an agreement in respect of any “stalking horse bid” would have no effect on the availability of the DIP Facility.

10. The DIP Lender (in such role, the “**Stalking Horse Bidder**”) submitted a non-binding “stalking horse bid” (the “**Stalking Horse Bid**”) for certain assets (the “**Stalking Horse Assets**”) on January 31, 2012 in form and substance that the Timminco Entities were willing to consider and the Exclusivity Period was extended to February 7, 2012, and again to February 13, 2012. Following expiration of the Exclusivity Period, the parties continued negotiations on a non-exclusive basis.

11. Following expiration of the Exclusivity Period, several other parties expressed interest in acquiring the Timminco Entities’ assets and, following delivery of executed non-disclosure agreements, were granted access to the on-line data room set up by the Timminco Entities for the purposes of a sales process.

### *Approval of Stalking Horse Agreement<sup>1</sup>*

12. Following negotiations with the Stalking Horse Bidder, on March 2, 2012, the Timminco Entities entered into an Agreement of Purchase and Sale (the “**Stalking Horse Agreement**”) with the Stalking Horse Bidder as purchaser and Globe Specialty Metals Inc. as guarantor, subject to Court approval.

13. The Timminco Entities, in consultation with the Monitor and the Stalking Horse Bidder, developed bidding procedures to govern the Timminco Entities’ sales process relating to solicitation by the Timminco Entities of one or more superior bid(s) for their Stalking Horse Assets to that contemplated by the Stalking Horse Agreement.

14. On March 9, 2012, the Timminco Entities brought a motion for an Order (the “**Sales Process Order**”): (a) authorizing and directing the Timminco Entities to enter into the Stalking Horse Agreement, (b) approving certain protections granted to the Stalking Horse Bidder pursuant to the Stalking Horse Agreement, and (c) approving the bidding procedures. This motion was granted on the same day. A copy of the bidding procedures approved by the Court (the “**Bidding Procedures**”) is attached hereto as Exhibit “A”.

15. The Bidding Procedures set out the following requirements and deadlines:

- (a) To participate in the process detailed by these Bidding Procedures, an interested party must submit an initial Bid (a “**Phase I Bid**”) on or before March 26, 2012 at 10 a.m. (the “**Phase I Bid Deadline**”);
- (b) To be a “**Qualified Phase I Bidder**”, the Phase I Bidder must submit a bid that meets the requirements set out in the Bidding Procedures.

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<sup>1</sup> All capitalized terms used and not defined in this section of the Affidavit shall have the meaning ascribed to them in the Stalking Horse Agreement or the Bidding Procedures.

- (c) Any Qualified Phase I Bidder wishing to continue in the sales process must submit by April 16, 2012 at 10 a.m. (the "**Phase II Bid Deadline**") a Bid (a "**Phase II Bid**") that is determined to satisfy the conditions set out in the Bidding Procedures (a "**Qualified Phase II Bid**").
- (d) If a Qualified Phase II Bid (other than the Stalking Horse Bid) is received by the Phase II Bid Deadline, the Timminco Entities shall 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;
- (e) If no Qualified Phase II Bid is received by the Phase II Bid Deadline, then the Auction will be cancelled; and
- (f) The Timminco Entities will seek Court approval of the Successful Bid (as defined in the Bidding Procedures) and the transaction will close by June 20, 2012.

16. The Timminco Entities received a number of Phase I Bids by the Phase I Bid Deadline. Each of these Bids was determined by the Timminco Entities, in consultation with the Monitor, to constitute a Qualified Phase I Bid and each of the Qualified Phase I Bidders was so notified.

17. The Bidding Procedures further provide that they may be modified or amended only upon the express written consent of the Timminco Entities, after consultation with the Monitor, and, if such modification or amendment materially deviates from the Bidding Procedures, with the written consent of the Stalking Horse Bidder, or by order of the Court.

## AMENDMENTS TO THE BIDDING PROCEDURES

18. A number of Qualified Phase I Bidders requested to meet with certain stakeholders of the Timminco Entities, including representatives of CEP (BSI's Quebec based union), IQ (BSI's senior secured lender), and Dow Corning Corporation (BSI's joint venture partner), prior to making their Phase II Bids. In fact, some Qualified Phase I Bidders indicated that they would not submit a Phase II Bid unless they had such an opportunity in advance of the Phase II Bid Deadline. In order to ensure a level playing field and thus a fair and transparent bidding process, on March 27, 2012, the Timminco Entities sent a notice to each Qualified Phase I Bidder, including the Stalking Horse Bidder, informing them that such requests had been made and requesting that such Bidders notify the Monitor if they wished to meet with representatives of any stakeholders. On April 2, 2012, the Timminco Entities sent a follow up notice to those Qualified Phase I Bidders who had not responded to the March 27 notice setting a deadline of noon on April 3, 2012, for requesting a meeting with stakeholders.

19. A number of additional Qualified Phase I Bidders, including the Stalking Horse Bidder, responded to the Monitor indicating that they wished to meet with certain stakeholders. The Monitor has attempted to arrange meetings between all Qualified Phase I Bidders who have requested meetings and those stakeholders they wished to meet with. A number of meetings have taken place already. Unfortunately, one of the key stakeholders had only limited availability prior to the Phase II Bid Deadline and originally stated that it was only available on April 4, 2012. Some Qualified Phase I Bidders were able to meet with this stakeholder on that day but others were not. Subsequently, that stakeholder informed the Timminco Entities and the Monitor that it could make itself available for further meetings on either April 17 and 18 or April 18 and 19 (after the Phase II Bid Deadline).

20. Certain Qualified Phase I Bidders requested a two week extension of the Phase II Bid Deadline and the Auction date. Such an extension would have required restricting the time period between the Auction and the closing, which was a time period negotiated with the Stalking Horse Bidder, in order that the Timminco Entities had adequate funding pursuant to the DIP to get to closing. I am informed by Nigel Meakin and do verily believe that the Monitor discussed the request with the Stalking Horse Bidder who was not willing to consent without the payment of an additional fee of \$300,000 for reimbursement of its expenses. The Timminco Entities do not have adequate funds to pay such reimbursement and none of the Bidders who requested the extension was interested in paying the requested amount.

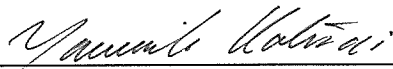
21. In order to allow all interested Phase I Qualified Bidders to complete their requested stakeholder meetings and thereby provide a level playing field and fair bidding process, the Timminco Entities proposed an extension of the Phase II Bidding Deadline to 5 p.m. on April 19, 2012 (the "**Amended Phase II Bid Deadline**"), while leaving the date of the Auction and all subsequent dates unchanged. The Timminco Entities and, as I am informed by Nigel Meakin, the Monitor believe that facilitating the stakeholder meetings will likely result in more and better Qualified Phase II Bids being submitted and thus increase the realization on the Stalking Horse Assets to the benefit of the Timminco Entities' stakeholders.

22. A three day extension of the Phase II Bid Deadline will not affect the date of the Auction or any subsequent events, including the date by which the transaction is expected to close, and therefore will not affect the availability of the DIP or prejudice the Stalking Horse Bidder.

23. Pursuant to the terms of the Bidding Procedures, such an amendment requires either the consent of the Stalking Horse Bidder or a Court order. The Timminco Entities and the Monitor requested the Stalking Horse Bidder's consent, but the Stalking Horse Bidder refused. Therefore, the Timminco Entities are requesting the Court's approval of an order amending the Bidding Procedures.

24. This affidavit is sworn in support of the Timminco Entities' motion for the relief described in paragraph 2 hereof and for no improper purpose.

SWORN BEFORE ME at the City of Toronto, Province of Ontario, on April 9, 2012.


  
\_\_\_\_\_  
Commissioner for Taking Affidavits

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

  
\_\_\_\_\_  
Peter A.M. Kalins

**TAB A**

This is Exhibit "A"  
to the affidavit of Peter A.M. Kalins,  
sworn before me on the 9<sup>th</sup> day  
of April, 2012

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

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



## Schedule "A"

### 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 March 2, 2012, the Debtors served a motion returnable on March 9, 2012 (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 March 1, 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, including a 51% interest in a joint venture with Dow Corning Canada, Inc. operated through Quebec Silicon Limited Partnership (collectively, the "**Assets**"), or some portion thereof.

On March 9, 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 (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 Phase I Bid; 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 Phase I Bid by the equity holder(s) of such Phase I Bidder and any guarantor of the Bid (the "Principals");

- (d) Confidentiality Agreement. If not already executed, 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 \$20,000,000, plus the Expense Reimbursement of \$500,000, plus \$250,000 for a total minimum consideration of \$20,750,000 (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. As soon as practicable prior to the start of the Auction, the Debtors shall distribute a copy of the Opening Bid (as defined below) to all Qualified Phase II Bidders. 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 identity of the Qualified Bidder and the material terms of the then highest and/or best Overbid, including the assets proposed to be acquired and the obligations proposed to be assumed, 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 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; and provided further 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.

- (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 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 7.2 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.

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

Court File No. CV12-9539-00C1

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

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

Proceeding commenced at Toronto

**AFFIDAVIT OF PETER A.M. KALINS  
(SWORN APRIL 9, 2012)**

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Lawyers for the Timminco Entities

# TAB 3

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) TUESDAY, THE 10<sup>TH</sup>  
JUSTICE MORAWETZ ) DAY OF APRIL, 2012

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.

**Applicants**

**ORDER  
(Re Amendment of Bidding Procedures)**

**THIS MOTION**, made by Timminco Limited ("**Timminco**") and Bécancour Silicon Inc. ("**BSI**" and, together with Timminco, the "**Timminco Entities**"), for an order amending the Bidding Procedures (defined below) to extend the Phase II Bid Deadline by three days was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Peter A.M. Kalins sworn April 9, 2012, and the Exhibits attached thereto (the "**April 9 Affidavit**"), and on being advised that those parties disclosed on the Service List attached to the Notice of Motion as Schedule "A" were served with the Notice of Motion and Motion Record, and on hearing the submissions of counsel for the Timminco Entities, the Monitor, Investissement Quebec, QSI Partners Inc. (in its capacity as the Stalking Horse Bidder), Dow Corning Canada, La Section Locale 184 De Syndicat Canadien des Communciations, de l'Énergie et du Papier, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied

Industrial and Service Workers International Union, AMG Advanced Metallurgical Group N.V., the Financial Services Commission of Ontario and Mercer (Canada) Limited, in its capacity as the administrator of the Retirement Pension Plan for the Haley Plant Hourly Employees of Timminco Metals, A Division of Timminco Limited (Ontario Registration Number 0589648), no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of Kathryn Esaw sworn April 9, 2012, filed,

### **SERVICE**

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

### **BIDDING PROCEDURES**

2. **THIS COURT ORDERS** that the bidding procedures attached as Schedule "A" to the Order of the Honourable Mr. Justice Morawetz dated March 9, 2012 (the "**Bidding Procedures**") are hereby amended by extending the Phase II Bid Deadline (as defined in section 2 of the Bidding Procedures) from 10 a.m. (Eastern Time) on April 16, 2012 to 5:00 p.m. (Eastern Time) on April 19, 2012.

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

Court File No. CV12-9539-00CL

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

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

Proceeding commenced at Toronto

**ORDER**

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Lawyers for the Timminco Entities

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

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

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

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

Proceeding commenced at Toronto

**MOTION RECORD  
(RETURNABLE APRIL 10, 2012)**

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