

**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  
TACORA RESOURCES INC.**

**Applicant**

**RESPONDING RECORD OF TACORA RESOURCES INC.  
(Disclaimer Motion Returnable June 26, 2024)**

June 14, 2024

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto ON M5L 1B9

**Ashley Taylor** (LSO #39932E)  
Tel: (416) 869-5236  
Email: [ataylor@stikeman.com](mailto:ataylor@stikeman.com)

**Lee Nicholson** (LSO #66412I)  
Tel: (416) 869-5604  
Email: [leenicholson@stikeman.com](mailto:leenicholson@stikeman.com)

**Natasha Rambaran** (LSO #80200N)  
Tel: (416) 869-5504  
Email: [nrambaran@stikeman.com](mailto:nrambaran@stikeman.com)

**Philip Yang** (LSO #82084O)  
Tel: (416) 869-5593  
Email: [pyang@stikeman.com](mailto:pyang@stikeman.com)

Lawyers for the Applicant

**TO: THE SERVICE LIST**

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**I N D E X**

<b>TAB</b>	<b>DOCUMENT</b>
1.	Affidavit of Heng Vuong sworn June 14, 2024
A.	2023 Cargill Annual Report
B.	Reasons for the Disclaimer of the Offtake Agreement and the Stockpile Agreement
2.	Affidavit of Michael Nessim sworn June 14, 2024

**TAB 1**

Court File No. CV-23-00707394-00CL

**ONTARIO  
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**(Applicant)**

**AFFIDAVIT OF HENG VUONG  
(Sworn June 14, 2024)**

I, **HENG VUONG**, of the City of Toronto, in the Province of Ontario, MAKE OATH  
AND SAY:

1. I am the Chief Financial Officer of Tacora Resources Inc. ("**Tacora**" or the "**Company**" or the "**Applicant**"). I have been the Chief Financial Officer of Tacora since September 2022. I was also appointed to the Company's Board of Directors (the "**Board**") on May 23, 2024.
2. Together with other members of management, I am responsible for overseeing the Company's operations, liquidity management and restructuring efforts. As such, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated. I have also reviewed the records, press releases, and public filings of the Company and have spoken with certain of the directors, officers and/or employees of the Company, as necessary. Where I have relied upon such information, I believe such information to be true.
3. Capitalized terms used herein and not otherwise defined have the meanings ascribed to them in the affidavits of Joe Broking sworn on October 9, 2023 (the "**First Broking Affidavit**") and February 2, 2024 (the "**Fourth Broking Affidavit**"), and my affidavit sworn on May 31, 2024. All references to currency in this affidavit are references to United States dollars, unless otherwise indicated.
4. The Company issued a notice of intention to disclaim the Offtake Agreement and the Stockpile Agreement on May 16, 2024, with the consent of the Monitor (the "**Disclaimer**"). I swear this affidavit in opposition to Cargill's motion for an order that the Offtake Agreement and the Stockpile Agreement are not to be disclaimed.

## I. BACKGROUND

### A. Tacora

5. Tacora operates the Scully Mine which produces high-grade and quality iron ore products. The Company is the second largest employer in the Labrador West region, employing approximately 460 employees, and is an important part of the local and provincial economy of Newfoundland.

6. Since restarting mining operations in 2019, Tacora has been attempting to ramp up production of iron ore concentrate to the Scully Mine's nameplate capacity of approximately 6.0 Mtpa. Tacora has suffered losses of over \$450 million since restarting the Scully Mine. Tacora needs to implement its capital expenditure plan as soon as possible.

7. Despite the significant efforts of the Company, during the Pre-Filing Strategic Process and the Solicitation Process to identify parties who could potentially provide Tacora with new money financing, no third-party investors have been willing to invest in Tacora without significant changes to both its capital structure and the Offtake Agreement.

8. These two fundamental obstacles need to be solved to maximize the Company's chances of raising the capital necessary to ramp up production at the Scully Mine, which has become increasingly challenging given the length of time Tacora has remained in these CCAA Proceedings. As described in the Fourth Broking Affidavit, any additional debt incurred by Tacora will very likely result in less available funds for Tacora's capital expenditure plan. Tacora already had an overleveraged capital structure, with approximately \$298 million in secured debt when it commenced these CCAA Proceedings. As of the date of this affidavit, Tacora has borrowed an additional \$115 million of super-priority debt pursuant to the DIP Facility, and the Offtake Agreement in its current form remains in place.

9. As described in the First Broking Affidavit, since the successful re-start of operations at the Scully Mine in 2019, several factors, including capital constraints, human resources constraints, equipment failures, operational challenges, and other issues have led to Tacora reaching average production levels of around 3.0 Mtpa from 2020 to 2022, and 3.5 Mtpa in 2023, which is well below its nameplate production capacity of 6.0 Mtpa. This has resulted in high operating cash cost per tonne due to the high fixed-cost nature of Tacora's business.

10. The capital investments contemplated by the Company's capital expenditure plan to ramp

up production at the Scully Mine are therefore critical to the sustainability and stability of Tacora's operations moving forward. Without these capital investments being made as soon as possible and production ramping up, the high fixed-cost nature of Tacora's business will result in the Company continuing to operate at a loss. The Company's significant losses from operations without the necessary ramp up in production is evidenced by the \$115 million of DIP financing drawn since October 2023 used primarily to fund operations.

11. Tacora sells 100% of its iron ore concentrate production at the Scully Mine to Cargill pursuant to its "life of mine" Offtake Agreement. The sale of iron ore concentrate is also subject to the Stockpile Agreement, which works in conjunction with the Offtake Agreement. Mr. Broking provided detailed summaries of these agreements in the First Broking Affidavit and the Fourth Broking Affidavit, certain portions of which are reproduced below.

## **B. Cargill<sup>1</sup>**

12. Cargill, Incorporated ("**Cargill Inc.**") is a privately-held Delaware company. It has been in operation for 150 years and currently operates in 70 countries with over 155,000 employees. It provides food, agriculture, financial and industrial products and services throughout the world.

13. Cargill International Trading Pte Ltd. ("**CITPL**") is a Singapore company. Singapore is the headquarters of Cargill's metals business, which has more than 40 years of experience in the ferrous industry. Each year, Cargill moves around 50 million tonnes of physical iron ore and 6 million tonnes of physical steel globally.

14. According to the 2023 Cargill Annual Report, a copy of which is attached hereto as **Exhibit "A"**, Cargill generated approximately \$177 billion in revenue in 2023.

## **II. OFFTAKE AGREEMENT & STOCKPILE AGREEMENT**

15. The Scully Mine was shut down in 2014 by its former owner, Cliffs Natural Resource, and was subsequently for sale under a court-supervised CCAA sales process.

16. I understand from Mr. Joe Broking, Tacora's former CEO, that between January and April 2017, Tacora and Cargill negotiated the Offtake Agreement. Tacora's objective in the negotiation

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<sup>1</sup> Note: Cargill Inc. is the DIP Lender and an affiliate of CITPL, the counterparty to the Offtake Agreement and the Stockpile Agreement. All references to "Cargill" throughout this affidavit refer to CITPL and/or Cargill Inc.

was to secure an offtaking arrangement with an established offtaker who would be able to promote and sell a fledgling brand of iron ore concentrate.

17. Ultimately, the Offtake Agreement was entered into on April 5, 2017, was restated on November 9, 2018, and has been amended from time to time. The Offtake Agreement initially had a six-year term. In March 2020, the Offtake Agreement was amended to oblige Tacora to sell 100% of the iron ore concentrate production at the Scully Mine to Cargill for the life of the Scully Mine. Since December 2019, Tacora's sale of iron ore concentrate to Cargill has also been subject to the Stockpile Agreement, which works in conjunction with the Offtake Agreement.

#### **A. Process of Shipment & Stockpile Agreement**

18. The iron ore concentrate from the Scully Mine is loaded onto a train that travels to the Port and then is unloaded from the train and placed into a stockpile. Pursuant to the Stockpile Agreement, Tacora sends Cargill an invoice at the end of each seven-day period (typically on Monday) for the iron ore that was shipped to the stockpile during the prior week. Cargill pays Tacora a provisional purchase price within three working days of receiving the invoice (typically on Wednesday). Subject to the specific terms of the Stockpile Agreement, the iron ore purchased by Cargill becomes Cargill's property upon delivery by Tacora to the stockpile.

19. While the stockpile comprises up to 400,000 dry metric tonnes ("**DMT**") of iron ore, title to the same transfers from Tacora to Cargill at the time of delivery by Tacora to the stockpile. Pursuant to the Amended DIP Agreement, this limit was temporarily increased from 400,000 DMT to 500,000 DMT through June 24, 2024. While the stockpile is above such limits, Cargill is not obliged to immediately pay for any such excess iron ore delivered to the stockpile, as Tacora continues to retain title to such excess iron ore.

#### **B. Payments**

20. Payment by Cargill to Tacora under the Offtake Agreement proceeds in three stages:

- (a) First, by three business days prior to the first laycan (i.e., the first day a vessel may arrive at the terminal port to pick-up iron ore), the provisional purchase price is calculated. Tacora sends an invoice to Cargill once the iron ore concentrate is loaded on a vessel at the Port and Cargill pays Tacora the provisional price for the iron ore concentrate shortly thereafter. While the Stockpile Agreement is effective the provisional price is compared to the average stockpile provisional price that

was already paid with a true-up payment paid as appropriate. If the Stockpile Agreement is no longer in force, no true-up payment occurs as no prior payments will have been made for the iron ore concentrate delivered to the stockpile;

- (b) Second, for tonnes on the ocean, Tacora and Cargill calculate and agree on mark-to-market amounts twice a week on Monday and Wednesday based on the average of the last five pricing days for Platts 62% Index, which is a benchmark index used by S&P Global Commodity Insights and based on standard specifications for iron ore fines (i.e., powders). If the mark-to-market exceeds certain threshold amounts, a Margin Payment is made either by Cargill or Tacora. In general, Margin Payments are due from Cargill to Tacora if iron ore prices rise from the date on which the vessel is loaded at the Port, and Margin Payments are due to Cargill from Tacora if iron ore prices fall from the date of which the vessel was loaded at the Port; and
- (c) Third, Tacora and Cargill calculate the final purchase price, which is the commodity price, less freight costs plus a profit share. The commodity price is calculated using the arithmetic mean of the Platts 62% Index from the third calendar month after the vessel sails. The freight costs are calculated using the BECI-C3 index (Baltic Exchange Capesize Index for routes from Tubarao, Brazil to Qingdao, China) and other provisions. The profit share (as defined in the Offtake Agreement) is based on the final sales price for the final customer over a base index (which is the Platts 62% Index). Cargill and Tacora split the Profit Share based on a formula, as outlined in the Offtake Agreement. The final sales price which flows into the profit share is negotiated between Cargill and the final customer based on a third-party contract. Tacora and Cargill determine who is owed a payment in respect of a shipment after the final purchase price can be calculated and compared to the provisional purchase price and true-up sums paid for that shipment.

### **C. Side Letters**

21. At various stages following the inception of the Offtake Agreement, when the Company determined in its good faith business judgement to mitigate the risk of price fluctuations of the Platts 62% Index, the Company would enter into side letters with Cargill to change the pricing mechanism under the Offtake Agreement for specific periods of time and specified quantities of



iron ore to be sold under the Offtake Agreement. The Company entered into thirteen side letters prior to the commencement of the CCAA Proceedings. When the Company sold iron ore to Cargill pursuant to the Offtake Agreement without any side letters in place, the Company was exposed to all price fluctuations in the Platts 62% Index following the date of delivery of the iron ore to Cargill under the Stockpile Agreement and the Offtake Agreement until the arithmetic mean of the Platts 62% Index from the third calendar month after the vessel sails is known.

22. These pre-filing side letters were designed to supplement and provide risk-sharing arrangements for specific transactions that were executed under the Offtake Agreement. As an example, the amendment dated March 10, 2022, has the concept of a “Fixed Price” per dry metric ton, which impacts the calculation of the final purchase price by replacing the Platts 62% Index value with the Fixed Price.

23. None of the side letters fixed the final price received by Tacora under the Offtake Agreement, which always continued to include a profit share component based on Cargill’s sales to end customers of the iron ore.

#### **D. Issues with the Offtake Agreement**

24. The Offtake Agreement contains various terms which are onerous for the Company that I would consider “off-market” relative to marketing or offtake agreements that could be available to the Company today. These problematic terms of the Offtake Agreement were communicated by the Company to Cargill during the Solicitation Process and detailed in Tacora’s written reasons for the Disclaimer (the “**Reasons**”) delivered to Cargill in conjunction with the Disclaimer. The key issues with the Offtake Agreement include:

- (a) **Term.** As set forth above, the Offtake Agreement has a “life of mine” term. Tacora has no termination rights under the Offtake Agreement. The “life of mine” term limits the Company’s flexibility to engage in future transactions and limits optionality with respect to its operations. The limitation on future transactions makes Tacora a less attractive investment for new investors as they cannot realize on their investment through a sale to a party that may want to use the ore in its own operations such as the interested party that entered into the Executed LOI in the Pre-Filing Strategic Process, or a steel producer that would use Tacora’s ore;

- (b) **Profit Share.** The profit share attributable to Cargill under the Offtake Agreement is higher than a market offtake or marketing agreement that the Company could negotiate today. The above-market profit share reduces Tacora's realized price for every tonne of iron ore concentrate sold and limits its ability to generate sufficient profits to invest in the Scully Mine and to attract investors.
- (c) **Profit Share Structure.** The amounts paid to Tacora under the Offtake Agreement is based on the Platts 62% Index though Tacora's ore has quality aligned with the Platts 65% Index. The profit share structure within the Offtake Agreement allows Cargill to capture a disproportionate amount of the premium of high-grade iron ore (i.e. >65% Fe) versus standard-grade iron ore (i.e. <62% Fe), which is expected to increase in the future.
- (d) **Quotation Period.** The Offtake Agreement contains a quotational period whereby Tacora bears price risk related to the Platts 62% Index for a period of three months from loading of the iron ore onto vessels arranged by Cargill. The quotational period is excessively long and does not necessarily relate to the timing of when Cargill delivers the iron ore to an end-customer. The long quotation period negatively impacts Tacora by exposing Tacora's revenue to significant iron ore price risk and volatility and, in the past, has caused Tacora's cash and liquidity position to rapidly deteriorate with limited notice. For example, iron ore prices traded down from approximately \$130/tonne in June 2022, to approximately \$76/tonne in October 2022. Following this rapid deterioration of the price of iron ore, Tacora owed Cargill significant margin payments which resulted in a corresponding rapid deterioration in Tacora's cash position. The same occurred recently from January 2024 to April 2024 when iron ore prices fell rapidly necessitating additional borrowings under the DIP Facility and resulted in Tacora being unable to fulfill the net debt condition in the Successful Bid. If the quotational period was shorter, Tacora's exposure to the price and liquidity risk created by the current Offtake Agreement would be limited.

25. I have reviewed the perceived benefits of the Offtake Agreement set out at paragraph 6 of the affidavit of Mathew Lehtinen sworn June 11, 2024. I believe that most of these benefits would be associated with any replacement offtake and/or marketing agreement and such benefits do not outweigh the other prohibitive terms of the Offtake Agreement.

### III. THE DISCLAIMER

#### A. Need for the Disclaimer

26. It is critical that Tacora raises the capital necessary to ramp up production at the Scully Mine and exit the CCAA Proceedings as a going concern, as soon as possible. The market feedback since 2022 has been that the Offtake Agreement has been a significant impediment to Tacora's ability to raise the new capital it needs. Without a disclaimer of the Offtake Agreement, the Company will not be able to raise the new capital it needs to ramp up production. As the second largest employer in the Labrador West region with approximately 460 employees, a liquidation of Tacora would have a devastating impact on this major stakeholder group, Tacora's numerous other trade creditors (many of which are small businesses), as well as Cargill.

27. Accordingly, given the Offtake Agreement being a significant impediment to Tacora's restructuring, on May 16, 2024, the Board of Tacora determined that the disclaimer of the Offtake Agreement and the Stockpile Agreement was in the best interests of the Company and its stakeholders as it would enhance the Company's prospects of successfully identifying a going-concern transaction through the Sale Process. The Disclaimer was delivered to Cargill together with the Reasons. A redacted copy the Reasons is attached hereto as **Exhibit "B"**.

28. The details regarding Tacora's previous solicitation efforts and market feedback on the Offtake Agreement is set out in the affidavit of Michael Nessim sworn June 14, 2024 (the "**Nessim Affidavit**")

#### B. Effective Date of Disclaimer

29. I am informed by Mr. Lee Nicholson of Stikeman Elliott LLP, counsel to the Company, that if the Court dismisses Cargill's motion opposing the Disclaimer, the Court can fix the effective date of disclaimer as the day that is 30 days after delivery of the Disclaimer (i.e. June 15) or a later day. Tacora is requesting that this Court order the disclaimer of the Offtake Agreement and the Stockpile Agreement become effective on a later date to be fixed by the Court, or a mutually agreed date between Tacora and Cargill.

30. The Company is conducting the Sale Process approved by the Court on June 5, 2024. The Company will know on or shortly after July 12, 2024, the bid deadline, who is the successful bidder. If Cargill, alone or as part of a consortium, is the successful bidder, it will not be necessary

to transition to a new offtake party. If Cargill is not going to be the offtake party going forward, it will be logical and most efficient operationally to transition from the Offtake Agreement to the new offtake or marketing arrangement in connection with the successful bid from the Sales Process.

31. As described in the Nessim Affidavit, the Company has explored the possibility of alternative offtake and/or marketing agreements for the sale of Tacora's iron ore in the event Cargill did not oppose the Disclaimer or the Court ordered the Offtake Agreement should be immediately disclaimed. However, transitioning to a new offtake or marketing arrangement for an interim period prior to the bid deadline in the Sale Process would require significant operational changes to Tacora's shipping, logistics, and back-office administration, and risk causing undue disruptions. In addition, such an interim arrangement is likely to cause confusion in the marketplace amongst the ultimate customers of Tacora's iron ore concentrate. Transitioning from the Offtake Agreement once in connection with a long-term solution (i.e., following selection of the successful bid in the Sale Process) would provide practical advantages and greater stability to the Company in the near term.

32. Additionally, I do not believe that setting a later date for the disclaimer to become effective will cause any prejudice to Cargill. Cargill earns significant profits from the purchase and sale of iron ore pursuant to the Offtake Agreement and the Stockpile Agreement. Tacora intends to honour the delivery of iron ore for any agreed future vessel that Cargill arranges for the shipping of iron ore.


33. If required, the Company believes that it could enter into a new offtake and/or marketing agreement within 30 days. Accordingly, the Company's view is that, to the extent the Court dismisses Cargill's motion opposing the Disclaimer, it should order the effective date of the Disclaimer to be the earlier of (a) August 12, 2024, and (b) the Company providing Cargill with 30 calendar days written notice.

#### **IV. CONCLUSION**

34. For all the reasons set out above and in the Nessim Affidavit, the Company is of the view that a disclaimer of the Offtake Agreement and the Stockpile Agreement is necessary in order for Tacora to be able to raise the new capital required to successfully restructure and exit the CCAA Proceedings as a going concern business.

35. I swear this affidavit in support of Tacora's opposition to Cargill's motion seeking an order that the Offtake Agreement and the Stockpile Agreement are not disclaimed, despite the Disclaimer issued by Tacora, and for no other or improper purpose.

SWORN remotely via videoconference, by Heng Vuong, stated as being located in the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in Province of Ontario, this 14<sup>th</sup> day of June, 2024, in accordance with O. Reg 431/20, *Administering Oath or Declaration Remotely*.

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Commissioner for Taking Affidavits, etc.  
Philip Yang | LSO #820840

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
**HENG VUONG**

**EXHIBIT "A"**

referred to in the Affidavit of

**HENG VUONG**

Sworn June 14, 2024

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A Commissioner for Taking Affidavits  
Philip Yang | LSO #820840

# 2023



Reimagine  
what's possible





## How we work to change the world

At Cargill, we provide food, ingredients, agricultural solutions, and industrial products to nourish the world in a safe, responsible, and sustainable way. We connect farmers with markets, customers with ingredients, and families with daily essentials.

## We lead with our values

We put people first. We reach higher. We do the right thing — so our customers can succeed, and our communities *thrive*.

**160K+**  
employees

operating in  
**70**  
countries

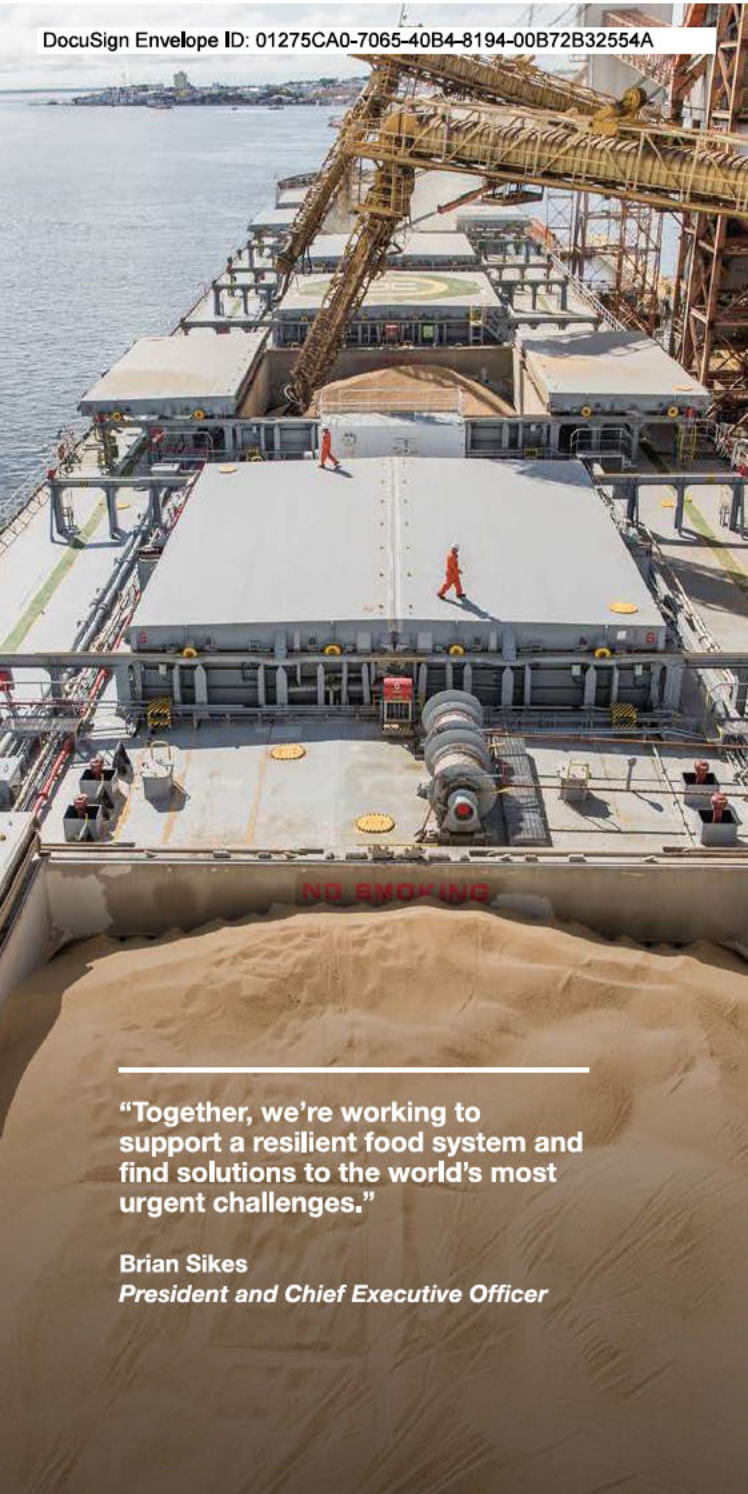
selling to  
**125**  
markets

**158**  
years of  
experience

**\$177B**  
annual revenues







“Together, we’re working to support a resilient food system and find solutions to the world’s most urgent challenges.”

Brian Sikes  
President and Chief Executive Officer

## LETTER TO OUR STAKEHOLDERS

# Reimagining what’s possible

## Helping transform the food system with vision and partnerships for a more resilient, prosperous, and sustainable future

Seeing things from a different perspective is something Cargill has always done best. That’s because our place at the center of the food system gives us a unique vantage point — one that connects the insights of farmers, food workers, customers, and partners across our supply chains as we work together to nourish the world in a safe, responsible, and sustainable way.

For 158 years, Cargill has been proud to build a purpose-driven network of global and local partnerships that get food from where it’s produced to where it’s needed. This year, as the world faced more complex challenges and near constant disruption, we drew on the strength of those connections to deliver for our customers and reimagine what’s possible for food and agriculture.

## Focusing on people first

With a world-class team, anything is possible. From the heroes who work on the front lines of the food system in our plants, ports, and facilities in 70 countries, to our business teams who facilitate global trading, manage complex supply chains, and more — it’s our people that set Cargill apart.

Every day, our more than 160,000 employees deliver on our purpose and drive innovative solutions that connect the world to an abundant, safe, and quality food supply. Their expertise and relationships with our customers inform the work we do to keep the world fed. That’s why we’re investing deeply in our workers’ safety, skills, and success.

For example, we’re undertaking global initiatives to make our production facilities safer and more efficient for our frontline teams — using their input and technology solutions to drive greater productivity and prevent exposure to injuries. That includes significantly reducing the need for our people to work in confined or elevated spaces, improving vehicle safety, enhancing safety controls, and strengthening our contractor safety efforts to ensure third parties are aligned to the same world-class standards and procedures we use ourselves.

We’re also [building more inclusive teams](#), from the frontlines of our operations to our company’s leadership. With this year’s appointments of [Joanne Knight](#) as Chief Financial Officer and [Philippa Purser](#) as head of strategy and global process leader, Cargill has an even more diverse executive team. Together, our top leaders bring a variety of perspectives — culturally, geographically, and from their past business experiences — that are making Cargill better.

Our commitment to equity is embedded in everything we do, including the investments we’re making in our communities. For example, we’re supporting [students](#) and [farmers](#) of color, prioritizing supplier diversity, and more. These efforts aren’t just the right thing to do — they’re essential for the success of Cargill and our customers.

## Seeking growth with and for our customers

As we care for our people, they in turn care for our customers. Today, Cargill is more customer-driven than ever. That didn’t happen by chance; it’s a result of our intentional efforts to put our customers’ success at the core of Cargill’s strategy for growth.

Working together as one Cargill — across regions, enterprises, and functions — we help our customers navigate challenging market conditions, bring insights and solutions that enable their growth,



and connect them to a world of expertise and capabilities no one else can match.

We're grateful for the trust our customers place in us and energized by the growth we're achieving together. Thanks to our teams' excellent execution and our customers' partnership, Cargill recorded \$177 billion<sup>1</sup> in revenues this fiscal year<sup>2</sup>, a 7% increase from one year ago. As our customers have rewarded us with their business, we've also been honored by their recognition, including numerous awards this year highlighting our teams' performance.

Still, we set our sights higher in fiscal year 2023 with investments that will enhance the value we bring to our customers. They included our new joint venture in [Wayne-Sanderson Farms](#), which is positioning us to capture growth in North American poultry; our acquisition of [Owensboro Grain Company](#), which will expand our oilseed crush capacity to meet rising demand; and completing our acquisition of [Croda's](#) bio-based performance technologies business, expanding our portfolio of nature-based solutions for industrial manufacturers.

**"From our unique vantage point at the center of the food system, Cargill is better positioned than ever to reimagine what's possible. With the best teams in the world, a winning strategy, powerful global partnerships, and a relentless commitment to our purpose, that's exactly what we're doing."**

## Finding solutions to big global challenges

By partnering with Cargill, our customers and communities don't have to face tough headwinds alone. Together, we're working to support a resilient food system and find solutions to the world's most urgent challenges, including rising food insecurity that's rippled around the world since the war in Ukraine began, climate change, inflation, supply chain disruptions, and more.

When it comes to climate change, we're embracing the opportunity — and responsibility — to drive real solutions. We're reformulating how we fuel the fleets that move the world's grain, investing in farmers who are regenerating the soil our crops depend on, accelerating efforts to eliminate deforestation, and enabling our customers to achieve their sustainability goals through our supply chains. We're [reporting our progress](#) and holding ourselves accountable to achieve results.

And we have big ambitions for the impact Cargill can make in people's lives. As 830 million people<sup>3</sup> go to bed hungry every night, we're doing our part to root out hunger locally and globally, build prosperous communities, support

youth and families, and protect the safety, rights, and dignity of people across our supply chains. This year, we invested more than \$115 million in partnerships to support these and other efforts, and we're committed to driving greater global impact in the years to come.

Cargill is doing all this from a position of strength. As we conclude a year of transition and begin a new one full of opportunity, I want to thank my friend, mentor, and Cargill's executive board chair, Dave MacLennan, for his nine years of extraordinary leadership as CEO. Cargill is a stronger, safer, more inclusive, and more sustainable company thanks to his leadership. As we lean into solving big challenges facing people and the planet, he's inspired all of us with the optimism to recognize this as a moment of extraordinary possibility — and it is.

From our unique vantage point at the center of the food system, Cargill is better positioned than ever to reimagine what's possible. With the best teams in the world, a winning strategy, powerful global partnerships, and a relentless commitment to our purpose, that's exactly what we're doing.



**Brian Sikes**  
President and Chief Executive Officer

<sup>1</sup>All financial amounts are presented in U.S. dollars  
<sup>2</sup>For the fiscal year beginning June 1, 2022, and ending May 31, 2023  
<sup>3</sup>World Food Programme, 2023



## Our commitment to transparency and reporting

Cargill is committed to transparency — in our own operations and across our global supply chains. You can find our 2022 Environmental, Social, and Governance (ESG) report [on our website](#). We will publish our 2023 ESG report later this year.





Photo: © 2023 WWW.MATTNICHOLS.COM

# Focusing on People

**Connections that drive  
equity, access, and  
impact**

## **Powered by Plants: Nourishing the employees who nourish our world**

Our ability to deliver nutrition to farm animals, ingredients to customers, and daily essentials to families is directly tied to the tens of thousands of colleagues working in our plants around the world. Powered by Plants is one way we're investing in attracting, retaining, and creating a meaningful work experience for this critical group of employees. Beginning with 135 pilots and focus groups across North America, we're learning what our teams value most — from flexible work to leadership development — so we can improve the employee experience, strengthen our plant culture, and increase our ability to nourish the world.



## Bridging the education divide

Typical **earnings**, **employment rates**, and **economic security** are much higher for U.S. bachelor's degree-holders than for those with only a high school diploma, while the gap between Black and Hispanic and white college graduation rates **continues to persist**. That's why over the past year, Cargill has donated around \$1 million to Minorities in Agriculture, Natural Resources, and Related Sciences, the Association of Latino Professionals for America, and the Thurgood Marshall College Fund — where our support will provide 60 scholarships over the next two years to women and historically underserved students.



## Women's work: 'I want women to see we are capable of doing any job'

Raised on a Honduran coffee farm, **Dunia Aguilar** now supports her three children as a forklift operator for Cargill — a profession in which women have historically been underrepresented. Fellow Honduran, **Nidia Garcia**, was one of only five women mechanical engineers in the country when she pursued her degree 30 years ago. Today, she leads a team of 500 as regional manager of engineering in our protein business in Latin America. Whether through inclusive uniforms, facilities, or sourcing, Cargill is removing barriers to support **equitable career progression**. Perhaps that's one of the reasons why Forbes has named Cargill one of "**America's Best Employers for Women**."



## HATCHING HOPE

### A chicken and egg (and prosperity) story

In India, participants saw their average net household income from livestock and animal products nearly triple. In Kenya, the annual household income of project members grew 21% and protein consumption also increased. These are just some of the results Cargill, Heifer International, and **Hatching Hope** partners achieved by expanding sustainable poultry production. Mexican egg producer and program participant **Eva Irineo** says this project "is helping our economy and our food supply."



## "We're growing more than cotton here. We're growing the future."

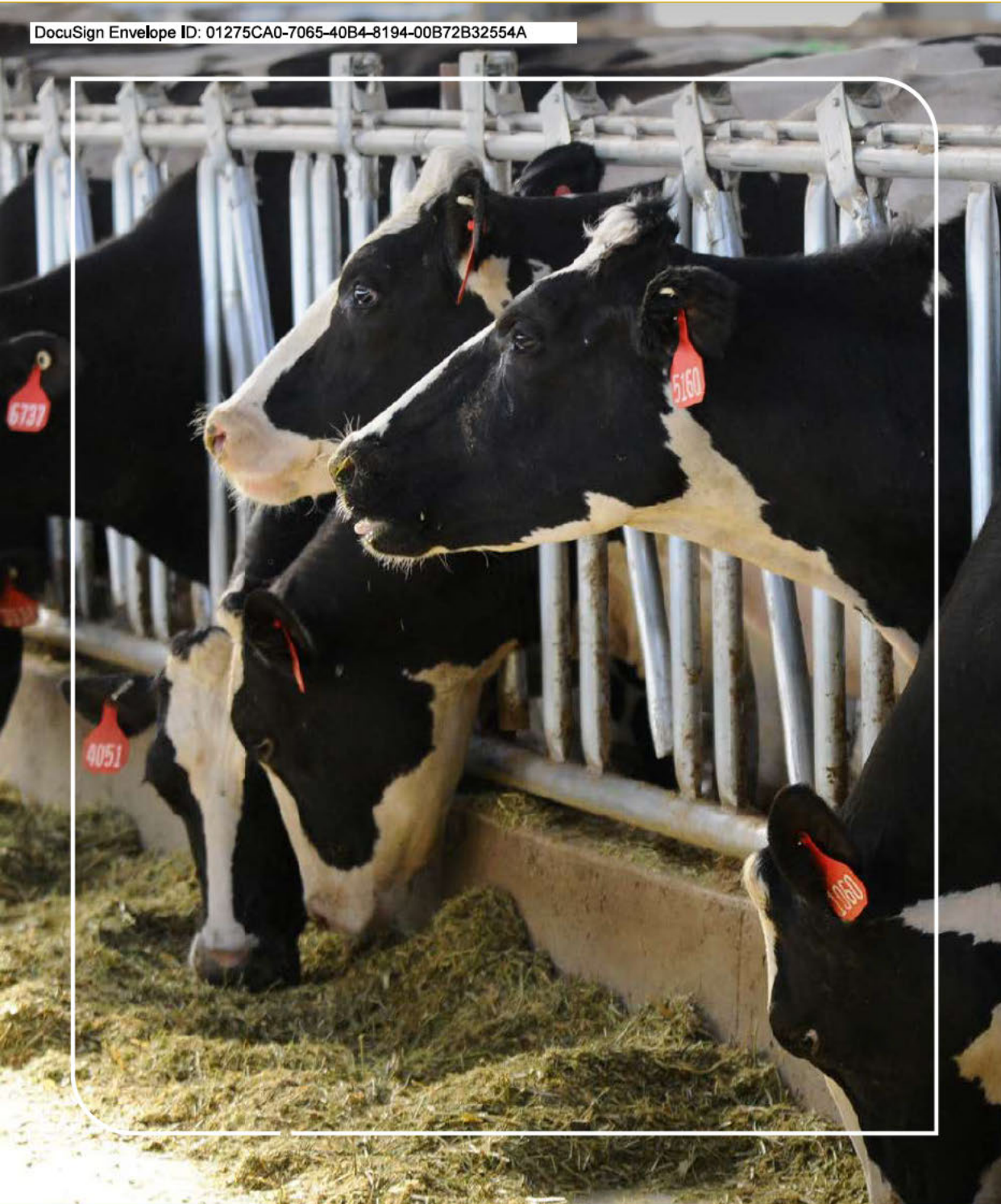
Black farmers like John Lee make up less than 2% of the 3.4 million farmers in the U.S. due to historic barriers. Cargill's **Black Farmer Equity Initiative** aims to help address this inequity. For John, one of the first farmers in the program, that means support to sustainably raise cotton, access new buyers, and increase his farm's profitability.



## When children learn, communities thrive

Cargill invests in educational opportunities in our communities around the world. We've built 111 schools in Vietnam, run 48 schools in Indonesia, and have donated \$26.8 million since 2000 to close the **education opportunity gap** in our hometown of Minneapolis in the U.S.





# Seeking Growth

**Connections that create customer value**

**Sweet! One company's waste is another's nutritious feed ingredient.**

The Hershey Company had something it needed to get rid of: leftovers from producing favorites like Reese's and Kit Kat®. Cargill had something it needed for its animal feed: the sugar, fat, and protein found in candy. So, when Hershey was looking for a partner to produce candy meal from its waste stream, Cargill "was the perfect fit," Hershey says, bringing trust, safety, and technology. Today, our dedicated plant in Pennsylvania, U.S., turns more than 64 million pounds of Hershey's chocolate waste per year into nutritious [feed ingredients for livestock](#) — while helping create a circular economy by diverting food from the landfill.



## Grazing for good: A 1.7-million-acre, \$30-million commitment

What do you get when you put Cargill, Nestlé, and the National Fish and Wildlife Foundation together to fight climate change? One of the largest [regenerative ranching commitments](#) in the U.S., expected to impact 1.7 million acres with up to \$30 million in grant funding. It's part of Cargill's [BeefUp Sustainability](#) initiative to cut greenhouse gas emissions in our North American beef supply chain by 30% by 2030.



## We're flexible so customers like Garudafood can be, too

When Garudafood, one of Indonesia's leading food companies, wanted to expand their product lines, they chose Cargill for our agility. But the rapidly growing maker of brands like Chocolatós, Garuda, and Gery gained a partner who could grow their agility, while expanding their business, too. Through our network of innovation expertise, Garudafood secured dynamic pricing models, product flexibility, and inventory forecasting — allowing it to adapt more quickly to changing market conditions and consumer needs.



## Taste? Nutrition? Innovative alternatives mean there's no need to choose.

With the growing global population, it will take all types of protein — animal-based and alternatives — to meet [rising consumer demand](#). To address our customers' need for choices, including alternatives that offer the right taste, texture, and price point, Cargill is investing in partners like [CUBIQ FOODS](#). The food-tech company's novel fats behave like animal fat, but with less calories, saturated fat, and oil.

## The sandwich perfected: A tasty triumph for McDonald's

It started with McDonald's vision to become as well known globally for chicken as it is for french fries. Following extensive global consumer insights research, Cargill and McDonald's chefs and development teams worked together to create the new McCrispy. Launched in multiple countries, it's already a best-selling item on menus across Canada, Europe, and the U.K. Due to its success, McCrispy has now become part of McDonald's global permanent chicken menu.

In 2023, the McDonald's "Team of the Year" award went to the U.K. and Ireland cross-industry McCrispy supply chain team, including Cargill.







Photo: Tom D'haenens

# Finding Solutions

Connections to meet global challenges

## Shrinking shipping's carbon footprint — one tank of waste at a time

Have you ever wondered if there was a better way to dispose of the oil left in the pan after you've cooked a meal? What if that oil — and similar residues — could be turned into fuel for ships and trucks? Cargill is making that possible at our [advanced biodiesel plant in Ghent, Belgium](#). This facility is producing 120,000 metric tons of renewable biodiesel for trucking and ocean transportation customers per year. That's enough to reduce transportation [emissions](#) by an estimated 418,000 metric tons, which is equivalent to removing roughly 90,000 cars from the road for a year.



## Putting people first in Ukraine

Throughout our 158-year history, two things have remained constant: We put people first and we nourish the world. That's why, amid the devastating war in Ukraine, [we're prioritizing the safety of our employees](#) as they keep food flowing. It's also why we've invested more than \$40 million to support humanitarian efforts in the region, including partnering with World Food Program USA to support the United Nations World Food Programme in providing food packages to people in Kharkiv, working with The HALO Trust to educate 5.3 million people about the risks of landmines in farmland, and supporting the Superhumans Center for rehabilitating victims of war.



Photo: WFP/Giulio d'Adamo



Photo: Laura Noel

## Empowering women farmers to grow a more sustainable food system

More than [50% of the world's food](#) is sown, grown, and harvested by women. Yet, these women aren't always recognized for their leadership in advancing a sustainable food system. Through the Promoting a Sustainable and Food Secure World Program, [Cargill and long-time partner CARE](#) are working to increase opportunities for women farmers, improving access to markets and productive agriculture resources, and building strategic partnerships to empower large-scale change. The latest phase aims to reach 1.6 million people across 11 countries throughout Africa, Latin America, and Asia.

## Ripple effects: Connecting farming communities with clean water

For cocoa farmer Stephen Akubila, finding safe, clean water was a big challenge. Most of the boreholes in his southwestern Ghana community had broken down. The few that remained didn't have enough supply. Water challenges like these are all too common in the world's farming communities. That's why we've teamed up with Global Water Challenge to [improve water access for more than 150,000 people](#) by 2024.

## Partnering with food banks to provide more sustenance, less waste

With about one in 10 people worldwide going hungry, the [need for sustenance from food banks](#) is clear. That's why Cargill provides tens of millions of meals per year to global and local food bank partners. Reducing food waste is another critical role for food banks — and for Cargill. To help reduce the [66 million tons](#) of food wasted by the food retail, food service, and residential sectors in the U.S. each year, we've launched [Reskued](#). This upcycling app connects food distributors with local buyers to circulate good products at a discounted price before they go to waste.

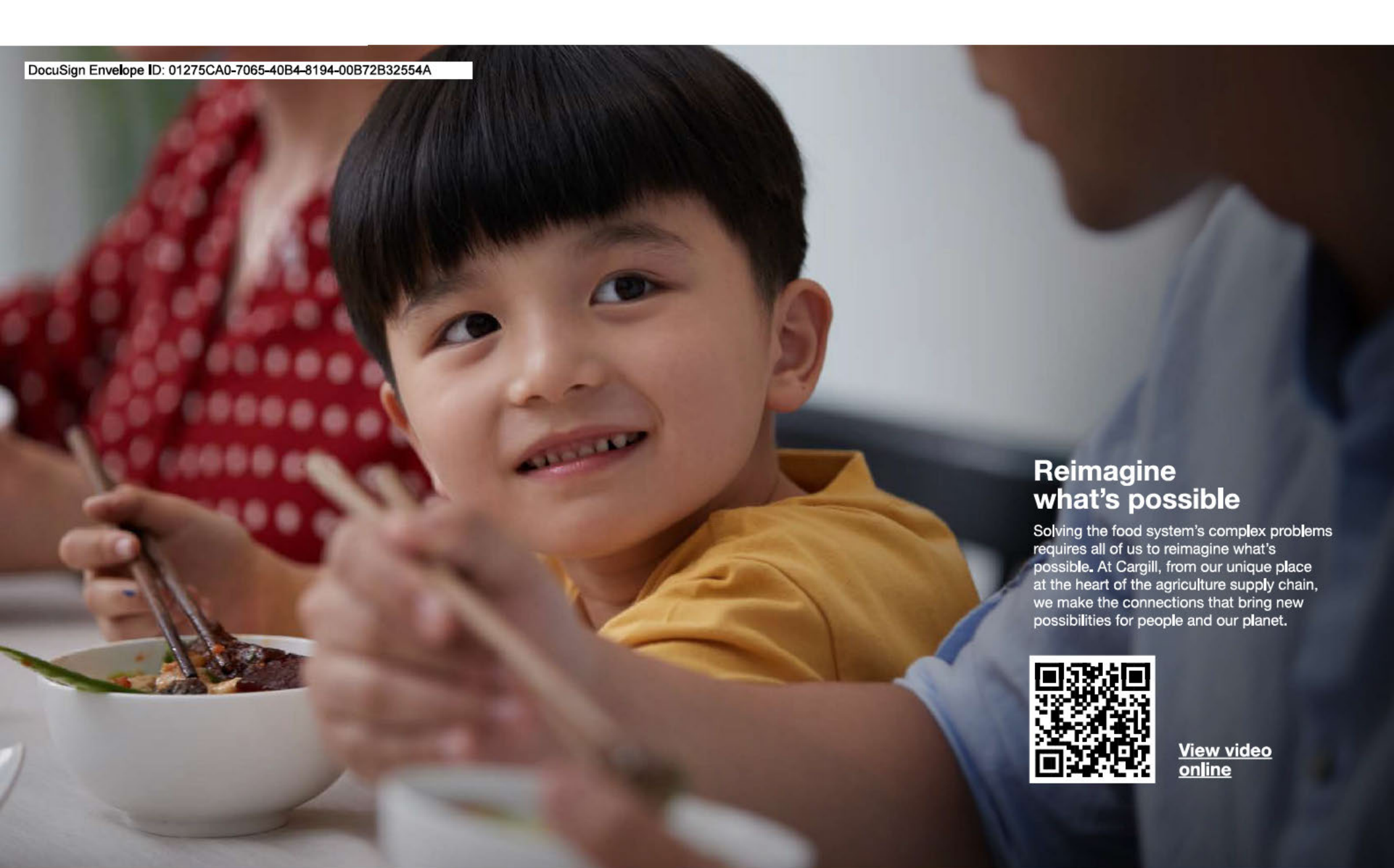
## 'Trees are our common heritage': How Cargill helps farmers protect them

Ouatara Shaka, a cocoa farmer from Côte d'Ivoire, understands the economic pressures farmers face to convert forests into farmland. That's why he joined a PUR and Cargill program promoting agroforestry — a practice that's planted 1.2 million trees since 2017 while helping 21,000 cocoa farmers supplement their incomes. From [cocoa to soy to palm](#), Cargill is partnering around the world to ensure sustainable agriculture, forest conservation, and farmer livelihoods can coexist.



Photo: Hussein Makke / ©Unforeseen Studio





## Reimagine what's possible

Solving the food system's complex problems requires all of us to reimagine what's possible. At Cargill, from our unique place at the heart of the agriculture supply chain, we make the connections that bring new possibilities for people and our planet.



[View video online](#)

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**Cargill, Incorporated**  
P.O. Box 9300  
Minneapolis, MN 55440

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**EXHIBIT "B"**

referred to in the Affidavit of

**HENG VUONG**

Sworn June 14, 2024

DocuSigned by:

A blue DocuSigned signature box containing a handwritten signature in blue ink that reads "Philip".

38124C4218DD47C...

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A Commissioner for Taking Affidavits  
Philip Yang | LSO #820840

# Stikeman Elliott

Stikeman Elliott LLP  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, ON Canada M5L 1B9

Main: 416 869 5500  
Fax: 416 947 0866  
www.stikeman.com

Ashley Taylor  
Direct: +1 416 869 5236  
ataylor@stikeman.com

May 16, 2024

**By Email**

Goodmans LLP  
Bay Adelaide Centre – West Tower  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7

## **Attention: Robert Chadwick and Caroline Descours**

Dear Rob and Caroline:

**Re: In the Matter of a Plan of Compromise or Arrangement of Tacora Resources Inc. (“Tacora” or the “Company”), Court File No. CV-23-00707394-00CL (the “CCA Proceedings”)**

**And Re: Disclaimer of offtake agreement between Tacora, as seller, and Cargill International Trading Pte Ltd. (“Cargill”), as buyer, dated April 5, 2017, and restated on November 9, 2018 (as amended from time to time, the “Offtake Agreement”) and iron ore stockpile purchase agreement between Tacora, as seller, and Cargill, as buyer, dated April 17, 2019 (as amended and restated from time to time, the “Stockpile Agreement”)**

Pursuant to Section 32 of the *Companies’ Creditors Arrangement Act* (Canada) (the “CCA”), Tacora is empowered to disclaim or resiliate any agreement to which it was a party when the CCA Proceedings commenced. The enclosed ‘Notice by Debtor Company to Disclaim or Resiliate an Agreement’ (the “**Disclaimer**”), constitutes notice of Tacora’s intention to disclaim the Offtake Agreement and the Stockpile Agreement pursuant to Section 32 of the CCA. The Monitor has approved the disclaimer of the Offtake Agreement and the Stockpile Agreement.

From previous discussions with you, we understand that Cargill intends to oppose the Disclaimer. As a courtesy, this letter sets forth the “reasons” for the Disclaimer, as contemplated by Subsection 32(8) of the CCA.

- 1. Disclaiming the Offtake Agreement will increase Tacora’s chances of successfully identifying a going-concern transaction for its business and exiting the CCA Proceedings.**

Since the restart of the Scully Mine and throughout the duration of the Offtake Agreement, Tacora has incurred cumulative losses of over \$415 million.

The Company requires significant capital investment in the Scully Mine for the Company to ramp up production and become profitable. Without this investment and corresponding capital improvements Tacora will continue to generate losses.



# Stikeman Elliott

As you know, the Company and Cargill have (both together and independently) attempted to solicit investments in Tacora from third party equity investors, since early 2022, without success. The Offtake Agreement has been a significant impediment to Tacora's ability to raise the new capital it needs to ramp up production at the Scully Mine. The market feedback to date is unequivocal – third party investors have advised that they will not provide new money to Tacora as long as the Offtake Agreement in its current form with the uneconomic and off-market terms described below remains in place.

In the Pre-Filing Strategic Process<sup>1</sup> conducted by Tacora in 2023, with the assistance of Greenhill & Co. Canada Ltd., the Company received several LOIs and term sheets in respect of potential transactions. Nearly all of the LOIs received contemplated significant concessions from Cargill on the Offtake Agreement. In May 2023, the Company entered into a non-binding LOI for the sale of the Company to a strategic party. However, in July 2023, the strategic party advised that it was no longer interested in the transaction contemplated by the LOI. One of the main reasons the transaction did not move forward, was the limit the Offtake Agreement imposed on the party's ability to use Tacora's iron ore in its own operations and prevent future realization of potential synergies.

In the Solicitation Process conducted by Tacora during these CCAA Proceedings, Greenhill contacted over 130 potential bidders and Cargill/Jefferies contacted over 43 financing parties directly, in an attempt to develop a consortium bid. Tacora received seven non-binding LOIs on the Phase 1 Bid Deadline of the Solicitation Process. Only one LOI, received from Cargill, contemplated the assumption of the Offtake Agreement. Cargill was also unable to attract any financing in connection with a potential consortium bid by the definitive bid deadline of January 19, 2024 in the Solicitation Process. As such, the bid submitted by Cargill had no committed new money financing and despite continuing efforts to raise capital, to date, Cargill has not presented an actionable transaction to the Company.

The Monitor has also reached the same conclusion as the Company.<sup>2</sup> In the Supplemental Report to the Fourth Report, the Monitor stated that it understood that Tacora viewed the Cargill Offtake Agreement as "off-market, significantly inhibits Tacora's ability to raise capital to fund the necessary ramp-up and that Tacora cannot be restructured with the current Cargill Offtake Agreement in place" and that "[t]he Monitor agrees with this conclusion."<sup>3</sup> In the Supplement to the Eighth Report, the Monitor states "[t]he Monitor agrees that the Offtake Agreement as currently structured is an impediment to a successful restructuring."<sup>4</sup>

Internal Cargill documents also recognize that the Offtake Agreement is an impediment to Tacora's ability to raise new equity financing. [REDACTED]

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<sup>1</sup> Details of the Pre-Filing Strategic Process are set forth in the Affidavit of Michael Nessim sworn February 2, 2024 (the "Nessim Affidavit").

<sup>2</sup> Fourth Report of the Monitor dated March 14, 2024 (the "Fourth Report") at paras. 34, 52 and 65; Supplemental Report to the Fourth Report of the Monitor dated March 26, 2024 (the "Supplemental Report to the Fourth Report") at para. 29.

<sup>3</sup> Supplemental Report to the Fourth Report at para. 29

<sup>4</sup> Supplement to the Eighth Report of the Monitor dated April 24, 2024 (the "Supplement to the Eighth Report") at para. 10.

[REDACTED]

[REDACTED] Cargill has not amended the Offtake Agreement to reflect feedback provided by the Company regarding the market terms it believes are needed to attract the necessary capital. [REDACTED]

[REDACTED]

Accordingly, the Company is of the view that a disclaimer of the Offtake Agreement will significantly improve its chances of successfully soliciting new capital and allow it to exit the CCAA Proceedings as a going concern with a stronger, well-capitalized business.

**2. The Offtake Agreement is significantly “off-market”.**

The Company believes the Offtake Agreement is uneconomic, “off-market” and is significantly prohibitive, compared to potential available replacement agreements. [REDACTED]

[REDACTED]

The Company has identified the following terms of the Offtake Agreement which it views as being “off-market” and an impediment to the Company’s ability to successfully restructure in the CCAA Proceedings:

- (a) **Term.** The market feedback during the Pre-Filing Strategic Process and the Solicitation Process was that the Offtake Agreement cannot have a “life of mine” term. The “life of mine” term limits the Company’s flexibility to engage in future transactions and limits optionality with respect to its operations. In the Pre-Filing Strategic Process, certain parties indicated that an inability to replace or renegotiate the Offtake Agreement with Cargill and to sell the iron ore concentrate for their own account was problematic in any acquisition of or investment into Tacora.

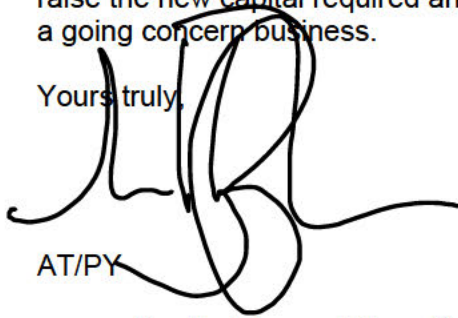
[REDACTED]



- (b) **Profit Share.** The profit share attributable to Cargill under the Offtake Agreement is “above market” as Cargill acknowledges. The above-market profit share increases Tacora’s cost structure and limits its ability to generate sufficient profits to attract investors.
- (c) **Profit Share Structure.** The profit share structure within the Offtake Agreement is overly complicated and allows Cargill to capture a disproportionate amount of the expected rising premium of high-grade iron ore (i.e. >65% Fe) versus standard-grade iron ore (i.e. <62% Fe). The profit share and/or fee structure related to the Offtake Agreement needs to align with the quality of the iron ore produced at the Scully Mine.
- (d) **Quotation Period.** The quotational period of M+3 for the P62 index, being the third calendar month after the month of the date of the bill or bills of lading, included within the Offtake Agreement is excessively long. The long quotation period negatively impacts Tacora by exposing Tacora’s revenue to significant iron ore price risk and volatility and in the past, has caused Tacora’s cash and liquidity position to rapidly deteriorate with limited notice. This problem will continue to exacerbate as Tacora ramps up production exposing Tacora and its stakeholders to continual price and liquidity risk.
- (e) **Transparency.** The Offtake Agreement does not provide Tacora with sufficient visibility on the transactions with end-customers.

Without a disclaimer of the Offtake Agreement and the Stockpile Agreement (which works in conjunction with the Offtake Agreement), Cargill continues to earn significant amounts of profit to the detriment of Tacora and its other stakeholders. The Company believes a disclaimer of the Offtake Agreement and the Stockpile Agreement is necessary in order for Tacora to be able to raise the new capital required and to successfully restructure and exit the CCAA Proceedings as a going concern business.

Yours truly,



AT/PY

cc: Joe Broking and Heng Vuong (*Tacora Resources Inc.*)  
Lee Nicholson, Philip Yang and Natasha Ramadan (*Stikeman Elliott LLP, counsel to Tacora Resources Inc.*)  
Paul Bishop and Jodi Porepa (*FTI Consulting Canada Inc., in its capacity as the Court-appointed Monitor of Tacora Resources Inc.*)  
Ryan Jacobs and Jane Dietrich (*Cassels Brock & Blackwell LLP, counsel to the Court-appointed Monitor of Tacora Resources Inc.*)

**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 TACORA  
RESOURCES INC.**

Applicant

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

Proceeding commenced at Toronto

**AFFIDAVIT OF HENG VUONG  
(SWORN JUNE 14, 2024)**

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Ashley Taylor (LSO #39932E)**  
Tel: (416) 869-5236  
Email: [ataylor@stikeman.com](mailto:ataylor@stikeman.com)

**Lee Nicholson (LSO #66412I)**  
Tel: (416) 869-5604  
Email: [leenicholson@stikeman.com](mailto:leenicholson@stikeman.com)

**Natasha Rambaran (LSO #80200N)**  
Tel: (416) 869-5504  
Email: [nrambaran@stikeman.com](mailto:nrambaran@stikeman.com)

**Philip Yang (LSO #82084O)**  
Tel : (416) 869-5593  
Email: [pyang@stikeman.com](mailto:pyang@stikeman.com)

Lawyers for the Applicant

**TAB 2**



Court File No. 23-00707394-00CL

**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  
TACORA RESOURCES INC.**

**(Applicant)**

**AFFIDAVIT OF MICHAEL NESSIM  
(Sworn June 14, 2024)**

I, **MICHAEL NESSIM**, of the City of Toronto, in the Province of Ontario, Canada,  
MAKE OATH AND SAY:

1. I am a Managing Director of Greenhill & Co. Inc. ("**Greenhill**" or the "**Financial Advisor**") and Head of Greenhill's Metals & Mining Group in North America. I have been working with Tacora Resources Inc. ("**Tacora**" or the "**Company**") since Greenhill's engagement in January 2023, and assisted with the Company's Pre-Filing Strategic Process and the Solicitation Process. As such, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated.

2. Capitalized terms used in this affidavit and not otherwise defined have the meanings given to them in my affidavits sworn on February 2, 2024, and March 14, 2024 (together, the "**Nessim Affidavits**"). All references to currency in this affidavit are references to United States dollars, unless otherwise indicated.

3. The Company gave notice of its intent to disclaim the Offtake Agreement and the Stockpile Agreement on May 16, 2024, with the consent of the Monitor (the "**Disclaimer**"). I have reviewed the affidavit of Heng Vuong sworn on June 14, 2024 (the "**Vuong Affidavit**"). I swear this affidavit in conjunction with the Vuong Affidavit in opposition to Cargill's motion for an order that the Offtake Agreement and the Stockpile Agreement are not to be disclaimed (the "**Disclaimer Motion**").

**A. Overview**

4. Tacora is conducting a sale process which was approved and ratified by the Court on June 5, 2024 (the "**Sale Process**").

5. I have been directly involved in the prior attempts to either sell Tacora or attract additional investment in Tacora through the Pre-Filing Strategic Process and Solicitation Process. The market feedback from those solicitation processes has been clear – potential third-party buyers and investors view the Offtake Agreement as an off-market agreement that is a significant impediment to investing new capital into Tacora. The pricing formula in the Offtake Agreement, which determines the sales price realized by Tacora in respect of the product sold to Cargill, allows Cargill to extract significant value from Tacora's ore which effectively increases Tacora's operating costs on a per tonne basis and generally makes Tacora a less valuable investment opportunity. In addition, the "life-of-mine" term, coupled with the pricing formula, significantly restricts potential exit transactions for investors and limits flexibility for the Company. Accordingly, as described further below, almost all third parties potentially interested in buying Tacora or making an investment in Tacora have indicated that the Offtake Agreement either needs to be significantly amended or terminated as a condition to them moving forward with a transaction.

6. As a result of this market feedback and the need for Tacora to achieve a restructuring transaction in an expedited manner, on May 14, 2024, the Board of the Company, with the benefit of advice from Greenhill and Stikeman, and input from the Monitor, determined that the Disclaimer of the Offtake Agreement and the Stockpile Agreement is in the best interests of the Company and its stakeholders as it will enhance the Company's prospects of successfully securing a going-concern transaction through this Sale Process.

7. Based on my previous experience in the Pre-Filing Strategic Process and Solicitation Process, which are described below, I agree with this conclusion. Tacora is more likely to attract sale and restructuring transactions and the new capital needed to ramp up production at the Scully Mine if Tacora can be marketed "free and clear" of the Offtake Agreement and without the prospect of protracted litigation and potential delay associated with a potential disclaimer of the Offtake Agreement following selection of the successful bid. Without terminating, significantly amending, or replacing the Offtake Agreement, I do not believe any third parties will be willing to buy or invest in Tacora.

8. In addition to the above, Greenhill has been leading the solicitation of a potential replacement interim offtake and/or marketing agreement in the event Cargill did not dispute the Disclaimer or the Court determines that the effective date of the Disclaimer will occur prior to Tacora closing a restructuring transaction. The results of the offtake solicitation process have reinforced my view that the Offtake Agreement is off-market and alternative superior options exist

for the Company as other potential buyers of Tacora's ore have provided proposals that offer significantly improved terms to Tacora compared to the Offtake Agreement.

## **B. Pre-Filing Strategic Process<sup>1</sup>**

9. The Company engaged Greenhill in January 2023 to undertake the Pre-Filing Strategic Process to explore, review, and evaluate a broad range of alternatives for the Company, including sale opportunities or additional investments into Tacora.

10. As part of the Pre-Filing Strategic Process, Greenhill prepared an approved outreach list of potential interested parties and, commencing in March 2023, reached out to 30 strategic and financial parties<sup>2</sup> in connection with a potential sale or financing transaction with respect to the Company. Eleven parties executed confidentiality agreements with the Company, and Greenhill and the Company facilitated due diligence for interested parties. I understand that both Cargill and the Ad Hoc Group also independently attempted to solicit new investment into the Company during 2023.

11. During the Pre-Filing Strategic Process, which commenced in or around March 2023 and continued until the commencement of the CCAA Proceedings, the Offtake Agreement was a focal point for investors. Each of the LOIs received by the Company as part of the Pre-Filing Strategic Process contemplated that the transaction was conditional upon significant concessions from Cargill in respect of the Offtake Agreement and/or the Senior Noteholders in respect of the Senior Secured Notes.

12. In May 2023, the Company executed a letter of intent (the "**Executed LOI**") for a sale of the Company that was supported by Cargill and the Ad Hoc Group and facilitated advanced due diligence for the interested party. In July 2023, the interested party advised it was no longer interested in advancing the transaction contemplated by the Executed LOI. I understand one of the reasons communicated by the interested party for no longer being interested in pursuing the transaction was that the Offtake Agreement would limit the party's ability to use Tacora's iron ore in its own operations preventing realization of potential synergies.

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<sup>1</sup> The Pre-Filing Strategic Process is also described in the Nessim Affidavits.

<sup>2</sup> For clarity, this figure does not include parties who were pre-existing stakeholders of the Company at that time.

### **C. The Solicitation Process<sup>3</sup>**

13. On October 30, 2023, this Court granted the Solicitation Order, which, among other things, authorized and directed Tacora to undertake the Solicitation Process to solicit interest in, and opportunities for: (a) a sale of all or substantially all, or certain portions of the Property or the Business; or (b) an investment in, restructuring, recapitalization, refinancing or other form of reorganization of Tacora or its Business as a going concern, or a combination thereof. The Solicitation Process and the SISP Procedures were designed to be broad in order to provide Tacora and interested parties with the flexibility to pursue a range of Opportunities and transaction structures.

14. The Company generally understood that replacing the Offtake Agreement may be required to complete a transaction and accordingly, the Solicitation Process provided the ability for interested parties to investigate and conduct due diligence regarding an opportunity to arrange an offtake, service or other agreement in respect of the Business and permitted the Company to market the Offtake Opportunity.

15. During the Solicitation Process, the Offtake Agreement continued to be a focal point for potential buyers and investors. Over 130 Potential Bidders were contacted by Greenhill following the commencement of the SISP and on December 1, 2023, being the Phase 1 Bid Deadline, Greenhill, Stikeman and the Monitor received seven non-binding Bids. Only one LOI (received from Cargill) contemplated the assumption of the Offtake Agreement. Each of the other Bids contemplated replacing the Offtake Agreement and/or operating the Scully Mine without an offtake and/or marketing agreement.

16. During Phase 2 of the SISP, Greenhill continued to engage with parties to facilitate due diligence and negotiations, which included site visits to the Scully Mine and access to management and Q&A sessions. Greenhill also provided regular guidance and feedback to the parties participating in the Solicitation Process.

17. In addition to the Company's process, Cargill identified 51 potential financing parties with whom they were interested in speaking in respect of a potential joint bid. Certain of these parties had previously been contacted by Greenhill during its initial outreach and were participants in Phase 1 of the SISP. Of the potential financing parties identified by Cargill, 19 informed Greenhill

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<sup>3</sup> The SISP is also described in the Nessim Affidavits.

that they were potentially interested in participating in a consortium bid with Cargill. The Company facilitated diligence with 18 of those financing parties who executed NDAs. The remaining 33 financing parties either: (a) did not respond to Greenhill or the Company to request an NDA; or (b) did not execute an NDA with the Company.

18. On January 8, 2024, Greenhill provided Phase 2 Bidders with a process letter, which reiterated the requirements under the SISP Procedures.

19. On January 19, 2024, the Phase 2 Bid Deadline, Greenhill received three Phase 2 Bids:

- (a) the Investors' Bid for all the shares of Tacora pursuant to a reverse vesting order;
- (b) a Bid from Cargill for all the assets of Tacora; and
- (c) a Bid from Bidder #3 for all the shares of Tacora pursuant to a reverse vesting order.

20. Only Cargill's Phase 2 Bid contemplated the assumption of the Offtake Agreement in its current form. The Investors' Phase 2 Bid contemplated a replacement of the Offtake Agreement with a new offtake agreement from another party and Bidder #3's Phase 2 Bid required certain key contracts of Tacora, including the Offtake Agreement, be renegotiated on terms acceptable to Bidder #3. Bidder #3's Phase 2 Bid contemplated that if the Offtake Agreement could not be renegotiated it would need to be excluded from the transaction.

21. The Phase 2 Bid submitted by Cargill had no committed new money financing to either close the contemplated transaction or make the required investments in the Scully Mine, and despite their efforts, Cargill could not find a co-investor to provide necessary financing for their contemplated transaction.

22. It is worth mentioning that over a year has passed since Cargill started looking for capital providers and Tacora commenced the Solicitation Process. Eight months have passed since Tacora commenced these CCAA Proceedings. Nearly five months have passed since the Phase 2 Bid Deadline in the Solicitation Process where Cargill submitted a Phase 2 Bid that did not include committed financing. Notwithstanding its continuing efforts, Cargill has still not secured any committed financing in connection with a viable transaction. The Offtake Agreement in its current form has remained in place throughout the history of Cargill's efforts looking for capital providers willing to invest in Tacora.

#### **D. Solicitation of Alternative Offtake and/or Marketing Agreements**

23. More recently, to address the risk that Cargill may not oppose the Disclaimer or seek to terminate the Offtake Agreement prior to the Company transitioning to a new long-term agreement for the sale of its iron ore, Greenhill has explored the possibility of alternative offtake and/or marketing agreements for the sale Tacora's iron ore.

24. Confidential discussions remain ongoing with a number of participants in the process, however, multiple potential buyers for Tacora's iron ore have provided proposals offering superior terms to the Offtake Agreement. The potential proposals have offered a higher price for Tacora's ore relative to the Offtake Agreement, including basing the purchase price formula on the Platts 65% index rather than the Platts 62% index. The alternatives have also proposed agreements that provide similar benefits to the Offtake Agreement without the same structural issues. For example, potential alternative agreements provide potential hedging and similar working capital benefits that the Stockpile Agreement provides, without requiring a long duration quotational period, as explained in the Vuong Affidavit.

25. This market check has reinforced my view that superior alternatives exist for the sale of Tacora's ore relative to the Offtake Agreement.

#### **E. Cargill's Evidence**

26. I have reviewed the affidavit of Matthew Lehtinen sworn June 11, 2024 (the "**Lehtinen Affidavit**") filed in support of Cargill's Disclaimer Motion. To the extent that this affidavit does not address any particular point that is raised in the Lehtinen Affidavit, it should not be taken as an acknowledgment or admission that I agree with them. However, I wish to address paragraphs 33 and 34 of the Lehtinen Affidavit, where Mr. Lehtinen asserts that the potential for the Offtake Agreement and the Stockpile Agreement to be disclaimed is: (a) disruptive to Cargill's discussions with parties that want to participate in a consensual resolution and; (b) limits Tacora's restructuring solutions.

27. Potential bidders in the Sale Process need to see a viable path forward for Tacora to exit the CCAA Proceedings as a going concern. The Disclaimer, if approved by the Court, will pave a clear path forward for the Company by demonstrating to potential bidders that they are not required to assume the Offtake Agreement in any transaction. Based on my discussions with potential bidders, I understand parties are concerned, based on the previous Sale Approval

Motion, that if the Offtake Agreement is not assumed as part of the proposed restructuring transaction, approval of their transaction could be subject to extensive and protracted litigation.

28. In addition, the Disclaimer is not a barrier to Cargill's discussions and negotiations with potential investors. Cargill and any potential investors that may submit a consortium bid in the Sale Process are free to do so, with any offtake arrangement being transitioned to Cargill's consortium if it is designated as the successful bid in the Sale Process.

29. Therefore, contrary to Mr. Lehtinen's assertion that the Disclaimer limits Tacora's restructuring solutions, I believe that the Disclaimer improves Tacora's restructuring options by increasing interest from potential bidders without negatively impacting Cargill's discussions with other third parties in relation to a potential consortium bid in the Sale Process.


#### **F. Conclusion**

30. Based on the Pre-Filing Strategic Process and the Solicitation Process, I believe the market feedback through these multiple, robust processes has been clear – third party investors are not interested in providing new capital to Tacora with the current Offtake Agreement in place. The Offtake Agreement results in significant value of Tacora's ore being paid to Cargill, rather than the Company. Third parties are not interested in making the necessary investments in the Scully Mine while a significant portion of the profits from the investments are paid to Cargill.

31. An inability to disclaim the Offtake Agreement will significantly impair Tacora's ability to find a value-maximizing transaction.

32. I am therefore of the view that, at this time, the disclaimer of the Offtake Agreement and the Stockpile Agreement is in the best interests of the Company and its stakeholders, as it will enhance the Company's prospects of successfully securing a going-concern transaction through the Sale Process.

SWORN remotely via videoconference, by Michael Nessim, stated as being located in the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in Province of Ontario, this 14<sup>th</sup> day of June, 2024, in accordance with O. Reg 431/20, *Administering Oath or Declaration Remotely*.

DocuSigned by:  
  
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Commissioner for Taking Affidavits, etc.  
Philip Yang | LSO #820840

DocuSigned by:  
  
AD29E578259A445

**MICHAEL NESSIM**



**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 TACORA  
RESOURCES INC.**

Applicant

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

Proceeding commenced at Toronto

**AFFIDAVIT OF  
MICHAEL NESSIM  
(SWORN JUNE 14, 2024)**

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Ashley Taylor (LSO #39932E)**  
Tel: (416) 869-5236  
Email: [ataylor@stikeman.com](mailto:ataylor@stikeman.com)

**Lee Nicholson (LSO #66412I)**  
Tel: (416) 869-5604  
Email: [leenicholson@stikeman.com](mailto:leenicholson@stikeman.com)

**Natasha Rambaran (LSO #80200N)**  
Tel: (416) 869-5504  
Email: [nrambaran@stikeman.com](mailto:nrambaran@stikeman.com)

**Philip Yang (LSO #82084O)**  
Tel : (416) 869-5593  
Email: [pyang@stikeman.com](mailto:pyang@stikeman.com)

Lawyers for the Applicant

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36,  
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**RESPONDING RECORD OF  
TACORA RESOURCES INC.  
(RETURNABLE JUNE 26, 2024)**

**STIKEMAN ELLIOTT LLP**

Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Ashley Taylor (LSO #39932E)**

Tel: (416) 869-5236  
Email: [ataylor@stikeman.com](mailto:ataylor@stikeman.com)

**Lee Nicholson (LSO #66412I)**

Tel: (416) 869-5604  
Email: [leenicholson@stikeman.com](mailto:leenicholson@stikeman.com)

**Natasha Rambaran (LSO #80200N)**

Tel: (416) 869-5504  
Email: [nrambaran@stikeman.com](mailto:nrambaran@stikeman.com)

**Philip Yang (LSO #82084O)**

Tel : (416) 869-5593  
Email: [pyang@stikeman.com](mailto:pyang@stikeman.com)

Lawyers for the Applicant