

I. OVERVIEW

1. Red Corporation ('Red') wishes to commence two projects with Blue Incorporated ('Blue'), its long-term partner since 2000 [*Record* ('R') ¶ 9]. The purpose of the negotiation on November 19, 2017 is to build on and formalise prior agreements [*R* ¶¶ 42-43, *Red Confidential Information* ('RCI') ¶ 3].
2. As a state-owned enterprise, Red has concurrent interests in 'nation-building' Negoland and securing profitable commercial returns [*R* ¶ 3]. Red aims to develop the country's resources and tourism sectors in partnership with Blue by:
 - (a) forming a joint venture to develop a negonium mine off the Negoland coast ('the JV') [*R* ¶ 39]; and
 - (b) developing the Nego Lake/Mount Negoland national park ('the Park') to attain UNESCO Geopark status [*R* ¶ 43].
3. Blue is Red's preferred partner for these projects due to its exceptional environmental record and experience [*R* ¶ 41]. However, if an agreement cannot be reached, Red will explore alternative partners, while maintaining a positive business relationship with Blue.

II. NEGONIUM MINE

A. Feasibility study

4. The parties will wait for the outcome of the feasibility study ('the Study') before commencing the operational phase of the JV [*R* ¶ 40; *RCI* ¶ 2]. The Study will cost \$US50m per year in 2018 and 2019. If the Study shows the mine will be profitable, the ratio of investment will extend to the operational phase [*R* ¶ 42]. If the Study shows the mine will be unprofitable, the JV will explore other potential sites for negonium mining or be terminated [*RCI* ¶ 2].
5. Red expects Blue will want to minimise its investment in the Study because of the risk the JV will not progress to the operational phase [*R* ¶ 42(1)]. Red requires Blue to fund between \$US20m and \$US40m of the Study's total cost to ensure Blue has sufficient responsibility for the project [*R* ¶ 42(1); *RCI* ¶ 4]. Further, Blue must contribute at least \$US15m in 2018 because of Red's temporary budget constraint [*RCI* ¶ 3]. To overcome Blue's anticipated concerns about risk, Red will emphasise the possibility to be a market leader in this new industry, reap substantial profits from the JV [*RCI* ¶ 2] and expand the JV to mine negonium on the Arbitrian coast [*R* ¶ 40, *Exhibit* 3].

B. Valuation of Blue's technology

6. Red wants to use Blue's deep-sea mining technology ('the Technology'). Red will enquire about the pending patent for the Technology [*R* ¶ 42(2)].

7. Red's initial offer will be to non-exclusively licence the Technology for US\$2m per year during the two-year Study, with an option to renew for 10 years [RCI ¶¶ 2, 4]. This arrangement offers price certainty, separates licencing from rights to negonium output, and reduces Blue's risk of sunk costs should the Study indicate the JV is not profitable.
8. Red expects Blue will insist the Technology is treated as an investment in kind [R ¶ 42(2)]. If Blue does not concede this point, Red can value the Technology up to US\$5m during the Study period [RCI ¶ 4]. This figure reflects the Technology's value when converted to an ownership share in the JV, and not the Technology's development cost.

C. Allocation of output

9. Red and Blue have agreed negonium output will be allocated in proportion to investment in the JV [R ¶ 42(3)]. However, Red has scope to leverage an offer to Blue for 5% additional negonium if Blue constructs Park accommodation by 2020, and a further 5% if Blue agrees to build a railway between the Park and Negoria before 2025 [RCI ¶ 6B].
10. If Blue is concerned the JV will not be profitable, Red will offer to delay Blue's obligation to invest in the railway until the conclusion of the Study. Red will use this as a concession to extract an agreement from Blue to invest in a bus link, securing a connection between the Park and Negoria, in the event the JV will not be profitable [RCI ¶ 6B]. The concession reduces Blue's overall risk profile by giving Blue up to 10% additional JV output, and links Blue's JV investment to the less speculative Park development, which offers more predictable returns.
11. Red wishes to retain negonium for use in Negoland for its nation-building objective [R ¶ 42(3); RCI ¶ 1]. Red will seek a yearly option to purchase up to 30% of Blue's share of negonium at a value above the market average [RCI ¶ 5]. Red will use this offer to encourage Blue to contribute to the Park's development [Red Memorandum ('RM') ¶ 9].

D. Offers

12. While remaining flexible, Red plans on making the following staged offers:

Offers		Initial Offer [R ¶ 42; RCI ¶ 4]	Offer 2	Offer 3	Offer 4	Limit of Instructions
Blue's Financial Contribution		\$40*	\$30*	\$40*	\$30*	≥\$20*
Valuation of Blue's Technology	If a licence fee	\$2 p.a.	\$2 p.a.	-	-	-
	If an investment in kind	-	-	≤\$5	\$5	\$5
Blue's investment ratio		40%	30%	40%	30%	20%
Blue's share of negonium		40%	30%	≤43%^	≤43.4%#^	≥33.8%#^

Note: All values in \$US millions

*in 2018 Blue must contribute a minimum of \$US15m

^total JV investment up to \$US105m

#including ≤10% bonus for Geopark cooperation

E. BATNA

13. If Red is unable to reach an agreement with Blue, it will negotiate with other shortlisted companies [R ¶ 41]. However, Red is conscious other candidates may have weaker environmental records and inferior technology to Blue [R ¶ 41].

III. GEOPARK DEVELOPMENT

A. Geopark grand design: “A boutique experience”

14. Red envisions a high-end eco-tourist destination physically and conceptually linked to both Negoria and the large resort in the Abu-Nea region of Arbitria (‘the Resort’) [R ¶¶ 4-5]. This requires construction of new accommodation, transport infrastructure and tourist facilities in the Park.
15. Red believes Blue’s involvement in the Park’s development will assist the bid for Geopark status by 2025. Blue has experience in resort construction [R ¶¶ 4-5], a superior environmental record [R ¶ 41], and potential as a significant investor [Exhibit 2]. However, to date, Blue has been hesitant to participate in the Park’s development [R ¶ 44]. As such, this part of the negotiation will be exploratory.

B. Geopark development

16. Red is open to either large or medium sized hotels being constructed [RCI ¶ 6B]. However, Red believes three medium hotels would be more in line with the boutique aesthetic it envisages for the Park, may also have a lower ecological impact and be more in keeping with UNESCO’s Geopark criteria [R ¶ 43]. Red will enquire about Blue’s information regarding the benefits of each hotel type. Blue must ensure the hotels are operational by 2020 for Red to offer the 5% additional negonium [RCI ¶ 6B; RM ¶ 9].
17. Red believes a fully integrated cross-border railway linking Negoria to the Park and Abu-Nea (costing \$US900m [RCI ¶ 6B-C]) will encourage tourism to the Park through efficient transportation [RCI ¶ 6]. The current downturn in Negoland’s economy [R ¶ 6; RCI ¶ 1] and depreciation in the Nego-Lira increases the purchasing power of foreign tourists and supports tourism to the Park in the short term. The increased tourism to the Park from the Resort’s comparatively wealthy Arbitrian patrons and other foreign tourists will assist the goal of achieving Geopark status [R ¶ 43].
18. If Blue is hesitant regarding the railway’s high cost, Red will emphasise the mutual benefit of increased tourism into both countries. For example, foreign tourists arriving into Negoria’s international airport could more easily reach both the Park and Resort than by existing infrastructures [R ¶ 43]. Further, as Arbitria is not endowed with natural resources, the railway would also allow Blue to capitalise on opportunities for freight importation into the industrial centre on the Arbitrian side of the Nego-Abu River [R ¶ 4].

19. In light of Red's \$US200m investment limit, Red will seek up to a \$US760m investment from Blue [RCI ¶ 6B]. Recognising Blue will want to ensure secure returns from the project, Red will propose to share profits with Blue in proportion to each party's financial investment in the Park in an unincorporated joint venture [RCI ¶ 6B]. Additionally, Red anticipates Blue would prefer to operate these assets on an ongoing basis. Red is happy to accept this provided it maintains enough control over the Park to ensure the Park achieves the objective of nation-building [RM ¶ 2] and maintains a Negoland spirit.
20. If Blue remains reluctant to invest substantially in the Park, Red will remain flexible and will propose alternative ways to link the regions through buses and the development of roads [RCI ¶ 6B], or through alternate funding arrangements [R ¶ 45]. However, should Blue show no interest, Red will continue JV negotiations with Blue [RCI ¶ 6].

C. Tourism ideas

21. Red hopes to capitalise on the attention the Resort has received as a destination where visitors can relax and reconnect with nature by aligning the Park's marketing with the Resort's [R ¶ 4]. Red will emphasise the potential for collaboration, such as stocking Park facilities with Blue's food and lifestyle products [Exhibit 2].
22. Red will explore joint eco-tourism programs between the Park and the Resort. These will emphasise the natural beauty of Nego Lake/Mount Negoland and foster visitors' understanding of the geological features of both the Park and the Resort [R ¶ 43]. Red will propose developing non-invasive tourist activities with Blue, such as volcanic hot springs, hiking trails and helicopter rides. These activities will also support the Park's bid for Geopark status [R ¶ 43].
23. The project must conserve the Park's environment and demonstrate a scientific research or educational aspect to attain Geopark status [R ¶ 43]. Red will offer Blue the opportunity to name and brand a facility or activity of its choice in the Park for a donation of \$US100,000 [R ¶ 44; RCI ¶ 6A]. For example, Blue could support joint studies into the volcanic zone Red has been commissioned to manage [R ¶ 43], or contribute to disaster prevention training facilities [R ¶ 43].

D. BATNA

24. Red's strong preference is to partner with Blue for the Park development. If Blue shows no interest, Red can develop the Park with domestic hotel chains and rail companies [RCI ¶ 6]. However, without Blue, Red may not be able to achieve Geopark status by 2025 because Red lacks the experience and required cash resources.