SUMMARY OF BLUE'S SUBMISSIONS

I. Red Corp. ('Red') must pay Blue Inc. ('Blue') US$5 million for breaching its contractual obligation to supply tungsten to Blue.

II. Red must pay Blue prescribed royalties for platinum refining in breach of Red's License Agreement obligation in Exhibit 7 ('License Agreement').

III. Blue does not owe any damages to Red under the Confidentiality Agreement in Exhibit 20 ('Confidentiality Agreement').

IV. Red's situation does not constitute hardship under UNIDROIT Principles of International Commercial Contracts 2016 ('UNIDROIT') Article 6.2.2.

V. Even if Red's situation constitutes hardship, proposed modifications and termination of the Requirements Contract in Exhibit 17 ('Requirements Agreement') must not be accepted.

RARE METALS CASE

I. RED MUST PAY BLUE US$5 MILLION FOR BREACHING ITS CONTRACTUAL OBLIGATION TO SUPPLY TUNGSTEN TO BLUE.

Blue submits that:

A. Red is obligated to supply Blue with tungsten under The Priority Supply of Rare Metals Agreement in Exhibit 6 ('Supply Agreement').

B. Red prioritized Black Negoland Corp. ('Black Negoland') which must be considered as a purchaser "in other countries than Negoland" that is not entitled to priority purchasing.

C. Red's conduct for prioritizing Black Negoland over Blue violates UNIDROIT Good Faith and Fair Dealing principle.

D. Blue has the right to damages for Red's failure to supply tungsten to Blue.

A. Red is obligated to supply Blue with tungsten under the Supply Agreement.

1. The Supply Agreement signed by Red and Blue in August 2000 required Red to provide Blue with, "the rare metals, such as Nickel and Titanium, which are produced by Red or its affiliate" [*Exhibit 6*]. This agreement includes any kinds of rare metals produced by Red, including tungsten. However, Red failed to supply tungsten for the placement orders made by Blue in November 2015 [*Exhibit 9*]. Therefore, Blue has the right to damages incurred for Red's non-performance.

2. Red and Blue mutually understood the Supply Agreement includes all kinds of rare metals. The Supply Agreement must be interpreted according to the common intention of Red and Blue [*UNIDROIT Article 4.1*]. The conduct of the parties after the conclusion of the contract

and the meaning commonly given to terms and expressions in the trade concerned must be taken into account when applying UNIDROIT Article 4.1 [*UNIDROIT Article 4.3*].

a) The phrase "such as" is defined to mean, "for example" [*English Oxford Living Dictionaries*]. The term "rare metals" indicates 47 different types of elements including nickel, titanium, platinum and tungsten [*National Institute for Materials Science*]. Since there are various type of rare metals, and "such as" is a non-exhaustive expression, the term clarifies that nickel and titanium were written only as examples to the broad category described.

b) During worldwide rare metal squeeze in 2004, Red filled all of Blue's orders Blue for nickel, titanium and platinum [*Record paragraph 15*], as all parties understood that platinum is a "rare metal", even if it was not specifically listed in the Supply Agreement. Red mentioned in the conversation that there were other companies offering to purchase those metals for much higher prices [*Record paragraph 15*], but Red honored its contractual commitment and supplied them to Blue first.

c) Furthermore, at a negotiation held in February 2014 regarding a proposed tungsten mining and refining joint venture, Red confirmed that the Supply Agreement covers tungsten as well. When Blue's representative stated, "You already promised us the priority-of-supply arrangement in the memorandum we signed in the past", during a conversation about the supply for tungsten. Red did not make any correction regarding Ruby's remark [*Record, paragraph 19*].

d) In 2005, when Blue's CEO and Red's CEO met, Blue said "We truly appreciate your consistently filling our orders for nickel, titanium and platinum" and "Demand for rare metals is huge, and I truly hope you will keep giving us priority over others" in the same context. Red did not deny Blue's remark [*Record paragraph 29*].

e) When Red and Nomura from Black Corp. ('Black') had a conversation about the tungsten supply Red said, "I understand our company has promised Blue Inc. to prioritize Blue in our exports of rare metals." [*Record, paragraph 22*]. In its plan to breach Blue's right of priority, Red confirmed that it had an obligation to supply Blue with all rare metals including tungsten, based on the Supply Agreement.

3. The plain meaning of the Supply Agreement, and Red's words and actions, each show that the mutually understood legal effect of the Supply Agreement is in no way limited to nickel and titanium. Therefore, Red is obligated to supply Blue with tungsten under the Supply Agreement.

B. Red prioritized Black Negoland which must be considered as a purchaser "in other countries than Negoland" that is not entitled to priority purchasing.

4. Red breached Blue's right of priority by prioritizing a purchaser "in other countries than Negoland". In November 2015, Red supplied 20 tons of tungsten to Black Negoland when Red's output of tungsten was reduced to one third of its previous output [*Exhibit 9*]. At that time, Blue ordered 20 tons of tungsten, Red did not comply with this demand. Red explained that Red had to supply its domestic purchasers [*Exhibit 10, 3rd message*]. However, Red should have supplied tungsten to Blue before Black Negoland, since Black Negoland must be treated the same as Black Corp. ('Black'), a Meditrian Company.

5. Red and Black openly discussed Black's purpose of establishing Black Negoland to interfere with Blue's priority purchasing rights. As Black was formed only to acquire Blue's share of rare metals, and none of what Black purchased was used on sold within Negoland, the subsidiary should be considered as a part of Black. Black established the subsidiary to acquire tungsten from Red before Blue [*Record paragraph 22*]. Furthermore, because Black Negoland is a wholly owned subsidiary of Black, it would operate as Black wishes. Black's nature and customers make it effectively a foreign purchaser of rare metals. Therefore, Black Negoland should be considered a foreign purchaser the same as Black, and Red breached its contractual obligation by supplying it with tungsten before Blue.

C. Red's conduct for prioritizing Black Negoland over Blue violates UNIDROIT Good Faith and Fair Dealing Principle.

6. Red's secret agreement with Black is against good faith and fair dealing. UNIDROIT Article 1.7 stipulates, "Each party must act in accordance with good faith and fair dealing in international trade." First of all, Red should not have revealed the contents of the Supply Agreement to another company in a competitive relationship with Blue [*Record paragraph 22*]. Second, Red actively encouraged Black to establish a wholly owned subsidiary in Negoland by saying, "Good idea. Let's do so." [*Record paragraph 22*]. Third, Red had a secret agreement with Black (on November 5th, 2015 [*Record paragraph 22*]) after the production amount of tungsten dropped (in the end of October 2015 [*Record paragraph 21*]). When Red allocated the limited amount of tungsten to Black Negoland instead of Blue, it made specific actions against good faith and fair dealing.

7. Red's conduct is against the very purpose of the Supply Agreement, which is to secure Blue a source of rare metals. Also, in the preliminary negotiation held when entering the Supply Agreement, Blue accepted Red's need to prioritize domestic purchasers because Red cannot sell the amount "earmarked for sales within Negoland" [*Record paragraph 12*]. Red was set up by the Negoland government to operate for national plans and important projects

[*Record paragraph 3*]. Red's nature as a public company is to operate for Negoland's benefit, so Blue acknowledged that earmarked rare metals would be consumed in Negoland. However, all the tungsten sold to Black Negoland was exported [*Record paragraph 22*]. If Red's conduct is allowed, Red would be free to prioritize any purchasers over Blue at any time, by just establishing a subsidiary in Negoland. Such action would contradict to the purpose of the agreement itself, and make Blue's priority rights meaningless. Because Red's conduct violated the purpose of the contract and is against Good Faith and Fair Dealing, Red's secret agreement with Black is a breach of the Supply Agreement. The breach caused the loss of US$5 million for Blue.

D. Blue has the right to damages for Red's failure to supply tungsten to Blue.

8. As Article 7.4.1 of UNIDROIT stipulates that, "Any non-performance gives the aggrieved party a right to damages", Red's failure to supply Blue with tungsten with the placement order made in November 2015 constitutes non-performance. Therefore, Blue has a right to damages of US$5 million incurred from Red's non-performance.

II. RED MUST PAY BLUE PRESCRIBED ROYALTIES REGARDING PLATINUM REFINING FOR BREACHING THE LICENSE AGREEMENT.

Blue submits that:

A. Red acknowledged that the "certain refining technology" licensed under the License Agreement is owned by Blue.
B. Alternatively, Red and Blue agreed to extend the License Agreement to include platinum refining.

A. Red acknowledged that the "certain refining technology" licensed under the License Agreement is owned by Blue.

9. Red and Blue concluded the License Agreement on February 28, 2014 to license Blue's refining technology ('Blue's Technology') for tungsten refining. On January 10, 2016, Red and Green Corp. ('Green'), a Meditrian company, concluded another license agreement to license refining technology ('Technology') for platinum refining [*Exhibit 11*]. Because, the Technology is the same as Blue's Technology, and Red acknowledged that the "certain refining technology" under the License Agreement is owned by Blue, Red is obligated to pay Blue the prescribed License Agreement royalty.

10. The content of the Technology and Blue's Technology are the same. On March 1, 2017 the Arbitration Center of Arbitria ordered Green to stop using the Technology in Meditria and Negoland immediately and to compensate Blue for damages because the technology which

Green used was the same as Blue's Technology [*Record paragraph 27*]. Under the New York Convention, this determination is binding in both Meditria and Negoland. Furthermore, the patent application by Green in Meditria was refused by the Patent Office in Meditria, because the technology applied by Green was the same as Blue's Technology [*Record paragraph 27*]. While Patent Office of Negoland restricted the ownership of the Technology to Green and rejected Blue's objection in the Negoland Patent Office [*Record paragraph 27*], the Negoland Patent Office did not refute that the Technology and the Blue's Technology were the same. Due to the holding of the Arbitration Center ruling, the Technology is the same as Blue's Technology.

11. Red acknowledged the Technology is owned by Blue, under License Agreement. The Whereas Clause of the License Agreement stipulates that, "Licensor owns certain refining technology of rare metals". Since the content of the Technology is the same as Blue's Technology, the term "Technology" applies to the "certain refining technology". The Whereas Clause in this contract is legally binding, since the License Agreement stipulates that this agreement constitutes the entire agreement, and there is no stipulation that excludes the validity of the Whereas Clause [*License Agreement Article 7.10*]. Red therefore acknowledged such technology belongs to Blue. As the License Agreement stipulates "Licensee shall pay to Licensor, … a royalty equal to three percent (3%) of the Production Amount each calendar month." [*License Agreement Article 3.2*], Red shall pay to Blue prescribed royalties in ground of the License Agreement.

B. Alternatively, Red and Blue agreed to extend the License Agreement to include platinum refining.

12. The License Agreement originally licensed Blue's Technology for solely the purpose of refining tungsten [*License Agreement Article 1.1.*] In November 2015, Red orally offer to amend to the License Agreement, to include platinum refining for use of Blue's Technology. Blue accepted the offer, "Is it OK that we will amend only Article 1.1 and add platinum at the end of the article?" and Red agreed [*Record paragraph 24*]. A contract is modified by the mere agreement of the parties, without any further requirement [*UNIDROIT Article 3.1.2*]. Therefore, the oral amendment of the License Agreement is valid.

13. Since Red did not notify Blue that Red would try to obtain another license, Blue lost its opportunity to license Blue's Technology to other prospective companies competing with Red. Since usage of Blue's Technology was amended to include refining platinum, Red is obligated to pay the prescribed royalty for using Blue's Technology for platinum refining under the License Agreement Article 3.2.

FISHERIES CASE

III. BLUE DOES NOT OWE ANY DAMAGES TO RED UNDER THE CONFIDENTIALITY AGREEMENT.

Blue submits that:

A. Blue is exempt from any obligation to keep Confidential Information secret because Blue has no fault for the disclosure.

B. The virus attack applies to Force Majeure under UNIDROIT Article 7.1.7, that Blue is excused for its non-performance.

C. Alternatively, the quantum of damages must be discounted to zero as a matter of equity.

A. Blue is exempt from any obligation to keep Confidential Information secret because Blue has no fault for the disclosure.

14. Red has made a claim for US$10 million based on the disclosure of evidence that proves Negoland Government ignored illegal fisheries activities ('Fisheries Information'). However, Blue is exempt from the obligation to protect information when it becomes accessible to the public through no fault of Blue [*Confidentiality Agreement Section 2(1)(ii)*]. Blue did not "disclose" any information but was a victim of a criminal and was hacked. Stolen information was disclosed on the internet by the criminal hacker [*Record paragraph 34*] not by Blue. Therefore, Blue is not liable to compensate for Red's damages.

15. Blue took reasonable steps to protect the information from hackers. Blue installed standard program to check for virus-infected emails in its system, and called employees to be careful with email attachments sent from strangers [*Record paragraph 34*]. Blue used a "reasonable degree of care" as required [*Confidentiality Agreement Section 2(1)(iv)*]. "Fault" would only apply when a party did not use a degree of care required under Section 2 (1)(iv). Since, the virus-infected email used the name of Blue's important customer and appeared very natural and the virus was a new type and passed through the program [*Record paragraph 34*] determined hacker was asked to gain access to files that were protected with a reasonable degree of care and employee education. Therefore, there was no fault of Blue, and Red is not entitled to seek for damages.

16. A recipient of Confidential Information is exempt from its obligation to protect information when the recipient is required to disclose by law [*Confidentiality Agreement Section 2(3)*]. Negoland and Arbitria are contracting states of the Convention on the Preservation of Fish Stocks ('Convention on Fish Stocks'). Fisheries Information was evidence that proves the Negoland government ignored fisheries activities carried out by Negoland vessels in breach

of the convention [*Record paragraph 35*]. And such illegal activity was required to be disclosed to the public by the convention's provisions [*Record paragraph35*]. Therefore, Blue is exempt from its obligation to protect Fisheries Information, and is not liable to compensate Red for damages.

17. As for a complement, Project-related information was also stolen and disclosed [*Record paragraph 35*]. However, there were no damages incurred from the release of project information. Therefore, Red is not entitled to any damages.

B. The virus attack applies to Force Majeure under UNIDROIT Article 7.1.7, that Blue is excused for its non-performance.

18. Non-performance by a party is excused when it was due to an impediment beyond its control and it could not be reasonably expected to have avoided its consequences [*UNIDROIT Article 7.1.7*]. The new type virus was beyond Blue's control, and affected [*Record paragraph 34*] other companies in Negoland and Arbitria [*Record paragraph 34*]. Because the virus attack is an impediment that is beyond Blue's control and could not have been avoided, Blue's nonperformance should be excused under UNIDROIT Article 7.1.7.

C. Alternatively, the quantum of damages must be discounted to zero as matter of equity.

19. Even if Blue was considered to have breached the Confidentiality Agreement, the quantum of damages must be discounted to the extent Red contributed to the harm [*UNIDROIT Article 7.4.7*]. Fisheries Information was not supposed to be sent to Blue, and it was Red's carelessness to provide such information to Blue [*Record paragraph 35*]. Furthermore, the exposure of Fisheries Information is an event which Red bears the risk, since the content is evidence of a breach of The Convention on Fish Stocks by Negoland Government. Red is owned by the Negoland government and had responsibility for its custody. This same government also contributed to the illegal fishing activity, and it would be inequitable to compensate Red for its illegal activity. Therefore, Red contributed to the harm fully, that the amount of damages must be reduced to zero.

IV. RED'S SITUATION DOES NOT CONSTITUTE "HARDSHIP" UNDER UNIDROIT ARTICLE 6.2.2.

Blue submits that all three events which Red presents do not constitute hardship situation under UNIDROIT Article 6.2.2.

A. Reduced production of Super Red Mix to half, and doubled production costs do not fundamentally alter the equilibrium of the Requirements Agreement.

B. Diminished catches of Negoland Fish by half does not fulfill the condition of hardship.

C. Increased costs for imported ingredients could have been reasonably considered at the time of conclusion of the Requirements Agreement.
D. Risk of losing suppliers of some ingredients were assumed by Red.
E. Risks of all above were assumed by Red when entering the Requirements Agreement.

A. Reduced production of Super Red Mix to half, and doubled production costs do not fundamentally alter the equilibrium of the Requirements Agreement.

20. "There is a hardship where the occurrence of events fundamentally alters the equilibrium of the contract either because the cost of a party's performance has increased or because the value of the performance a party receives has diminished" [*UNIDROIT Article 6.2.2*]. However, reduced production of Super Red Mix, and the doubled production costs do not constitute hardship. Red's performance of its obligations is backed by the government, which, even in the absence of a formal guarantee, will fuel necessary funds from the national budget in the event of shortage of funds for Red [*Record paragraph 3*]. Therefore, the increased production cost is not a matter that alters the equilibrium of the Requirements Agreement, since the Negoland Government can supplement funds.

B. Diminished catches of Negoland Fish by half do not fulfill the condition of hardship.

21. Diminished catches of Negoland Fish by half is a risk Red could reasonably take into account at the time of the conclusion of the Requirements Agreement and assume. Red explains that diminished numbers of Negoland Fish occurred because the ocean current changed by recent global warming [*Exhibit 21(1)*]. However, global warming has been occurring for decades ago. Red could have taken the risk into account since Red is engaged in aquaculture-related research to secure and conserve fish and marine resources [*Record paragraph 28*]. Furthermore, Red relied on one single type of fish to produce Super Red Mix despite the fact that the fish stock could change. It is reasonable for a company to secure another type of fish to provide for any situation which might lead to decrease of Negoland Fish. Because Red reasonably took the risk into account and assumed the risk when concluding the Requirements Agreement, and Red is not entitled to claim hardship [*UNIDROIT Article 6.2.2(b)(d)*].

C. Increased costs for imported ingredients could have been reasonably considered at the time of the conclusion of the Requirements Agreement.

22. Finding of hardship requires a determination that the events could not reasonably have been taken into account by the disadvantaged party at the time of the conclusion of the contract [*UNIDROIT Article 6.2.2(b)*]. Since changes in currency rates could have been reasonably considered at the time of the conclusion of the Requirements Agreement, they do not constitute hardship. Currency rates are never fixed and are often changing. There is a

precedent that the substantial appreciation of the Brazilian real against U.S. dollar was foreseeable at the time of the conclusion of the agreement and that therefore the risk of such an event must have been assumed by the foreign companies. Similarly, Red should have reasonably considered the currency might fluctuate within 15 years term [*Requirements Agreement Section 10*] of this contract. [*UNILEX, 07.12.2011, Brazil, TC 007.103/2007-7*]

D. Risk of losing suppliers of some ingredients were assumed by Red.

23. Suppliers of some of the ingredients used in Super Red Mix refused to sell to Red because evidence of illegal fisheries activities was revealed to the public [*Exhibit 21*]. However, when regular reasonable company would secure other suppliers to provide for situations when regular suppliers cannot supply their goods as usual. Red could have tried more to secure some other supplier to avoid this event. Therefore, the loss of suppliers does not fulfill the UNIDROIT requirement that the risk of the event was beyond the control of Red [*UNIDROIT Article 6.2.2(c)*] and it does not constitute hardship.

E. Risks of all the above were assumed by Red when entering the Requirements Agreement.

24. Hardship can only apply when, "the risk of the events was not assumed by the disadvantaged party." [*UNIDROIT Art 6.2.2 (d)*] Because Red assumed the risk of all the events mentioned above, in a conversation when entering the Requirements Contract, Red does not fulfill the requirement for hardship. During contract negotiation, Blue explained that Red would be under an obligation to deliver as required amount of feed to Blue. Red responded that Red will agree to bear the obligation [*Record para 32*]. Blue also agreed to the minimum purchase provision and bear the risk of purchasing Super Red Mix even in a situation which its requirements could be less. Red was exposed to a risk of supplying 5,000 tons, and Blue was exposed to a risk of purchasing 1,000 tons. Both parties considered and limited its risk within this range. Therefore, Red cannot claim hardship, and is not entitled for renegotiation.

V. EVEN IF RED'S SITUATION CONSTITUTES HARDSHIP, PROPOSED MODIFICATIONS AND TERMINATION OF THE REQUIREMENTS AGREEMENT MUST NOT BE ACCEPTED.

Blue submits that:

A. Even if Red's situation constitutes hardship, its proposed modifications of the Requirements Agreement are neither fair or reasonable and must not be accepted.
B. Termination of the Requirements Agreement must not be accepted.

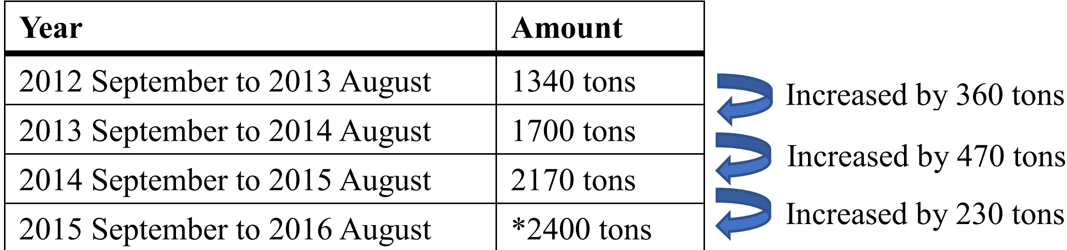
A. Even if Red's situation constitutes hardship, its proposed modifications of the Requirements Agreement are neither fair or reasonable and must not be accepted.

25. UNIDROIT Article 6.2.3(4)(b*)* stipulates, "If the court finds hardship it may, if reasonable, adapt the contract with a view to restoring its equilibrium." Red's proposal for the amendment of the contract was to set a provision allowing Red to inform Blue of the quantity available for sale each month at the prevailing fixed price. Red also wants to amend the maximum quantity of the supply to 1,200 tons per year. Red claims that also deleting the provision of minimum purchase is "fair and equitable" [*Exhibit 21*]. These amendments are not reasonable and must not be accepted.

    a) An amendment which allows Red to inform Blue of the amounts available for sale each month in advance of Blue's monthly order placement must not be accepted because it is effectively not an amendment, but rather is a totally new contract. The Requirements Agreement has a purpose of securing Blue the supply of Super Red Mix. However, in this proposal, Red could reject all orders by Blue. "[T]he tribunal can adapt the contract with a view of restoring its equilibrium." [*COMMENTARY ON THE UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS Second Edition ('Commentary') Article 6.2.3 IV. Court Measures*] Amendments must be a minimum as necessary to restore the equilibrium of the contract, and must be made based on the original contract's nature.

    b) Changing the price to the prevailing fixed price is not reasonable, because Blue had advantage over other competitive purchasers in the original agreement, by giving Blue 10% off the regular price of the product [*Requirement Agreement Section 2*]. Even if the regular price increases, Blue needs to maintain its advantage over competitors under the amended agreement. At a minimum, Blue must get 10% off the regular price, or other purchasers must be charged a 10% higher price than Blue.

    c) A maximum quantity of 5,000 tons is a realistic number for Blue's long term plans over the life of the Requirements Agreement. Blue was ordering Super Red Mix since 2012, and the amount of its order has regularly increased [*Exhibit 18*]. The chart below shows the amount of Super Red Mix Blue purchased per year.



Year	Amount
2012 September to 2013 August	1340 tons
2013 September to 2014 August	1700 tons
2014 September to 2015 August	2170 tons
2015 September to 2016 August	*2400 tons

*based on the estimate [*Exhibit 19*]

The average of the increased amount per year is 353.3 tons.

(360 + 470 + 230) ÷ 3 = 353.333

The Requirements Agreement will expire in 2027, which means the contract is valid for 10 more years [*Requirements Agreement Section10*]. If the amount Blue purchase increased 353 tons every year for next 10 years, it will mount to 3,530 additional tons. 2,400 plus 3,530 will be 5,930 tons. Therefore, it is realistic that Blue's need will exceed 5,000 tons per year.

d) Red argues that the maximum quantity should be amended to 1,200, which is half of what Blue is planning to order for 2016. However, this amendment is not reasonable. Before production decreased, Red was producing 10,000 tons per year, while Blue's maximum quantity was 5,000 tons. Now, Red's production decreased to 5,000 tons. If any reduction is required, it should be proportionate to Red's maximum capacity. Since Blue was entitled to half of Red's 10,000 tons production, Blue should at least be entitled to half of Red's 5,000 tons per year.

e) Red claims that removal of the minimum quantity is a concession to make the amendment "fair and equitable" for Blue, but removal of the minimum quantity does not give any advantage to Blue. From the chart above, demand of Blue has been increasing, and it is foreseeable that it will continue to increase in the future too. Furthermore, Blue never ordered less than or close to minimum quantity before. Therefore, removal of minimum quantity does not give Blue any advantage to make the amendment fair and equitable.

26. For all the reasons described in paragraph 25 of this brief, Red's proposals must not be accepted. If any adaptations to the contract were deemed necessary, the changes should be no more harmful to Blue than as follows: (i) amend the Requirements Agreement to reduce the maximum quantity to no less than 2,500 tons per year, (ii) amend the price so that it is more than 10% off the regular price for all competitors, and (iii) grant Blue a right to purchase Super Red Mix in precedence to any other purchasers.

B. Termination of the Requirements Agreement must not be accepted.

27. Red also claim that the Requirements Agreement can be terminated. However, it must not be terminated because there are still various ways to amend the Requirements Agreement to restore its equilibrium, and termination should be considered a final measure only when there is no other way to continue an agreement. "[A] tribunal is likely to be slow to resort to termination preferring, where possible, to adapt the contract." [*Commentary Article 6.2.3 IV. Court measures*]