

## Eighth Inter-Collegiate Negotiation Competition

### Problem (October 9 version)

1. Negoland is a nation in South America. It has a population of around 100 million and occupies about 2 million square kilometers of land. It is the cradle of an ancient civilization; the Kingdom of Negohappiness, where its indigenous culture flourished from the 10<sup>th</sup> century to the 14<sup>th</sup> century, but was destroyed by invaders from a European state in the 15<sup>th</sup> century. Many of the ancient ruins located in the country have been designated as UNESCO World Heritage Sites. About 10% of citizens follow a religion called Negoism, which places a belief in gods of ancient times and continues to be the traditional religion in Negoland. Known especially for oil, silver and molybdenum reserves and deposits, Negoland is one of the countries most endowed with natural resources, and has strong agricultural and fishing industries as well. The economy of Negoland has been growing at an accelerated pace in recent years, and its presence in the international community is similarly on the rise. Its current GDP is about US\$ 1 trillion. Domestically however, in addition to drug and safety/crime problems, etc., the country is experiencing growing gaps between urban centers and the countryside, and between the rich and the poor.
2. Red Corporation was incorporated in Negoland in 1998. It was co-founded by Don Nomura, who taught negotiation at Negoland University, the most prestigious university in Negoland, and Nobu Smith, who was active in Negoland's business circles and is an old friend of Nomura. In his youth, Nomura's study primarily centered on diplomatic issues until he concluded that diplomatic negotiation skills would greatly contribute to the world peace and shifted his focus to the art of negotiation. He attended the Program on Negotiation at Harvard University for two years, and continued his study of the art of negotiation by expanding the scope of his study beyond negotiation in the realm of diplomacy and into negotiation for a broader range of applications. Nomura's representative works include Negotiation and Peace, Negotiation: Theory and Art, and Negotiation for the Sake of Happiness. Nomura's goal was to establish the art of negotiation in Negoland to contribute to the happiness of her citizens. Nomura has made comments that are reflective of his views, such as "One can learn a lot from the Harvard negotiation techniques, but they need to be elevated to a

higher level to make it more appropriate to the people of Negoland," and "The educational programs on negotiation currently available are primarily directed to universities and working adults, but it is important to administer such educational programs to elementary and secondary school students in order to elevate negotiation competence in the real sense." In fact, Nomura published a textbook on negotiation for elementary school-level readers, titled Let's Talk It Over, designed to make elementary school children aware of the basic approach to negotiation and the possibilities offered by it in a fun way. The book encourages them to express their opinions while listening to the opinions of their peers and by letting them experience the process of coming up with a mutually beneficial solution through role playing using real-life situations familiar to them.

3. Smith was impressed by Nomura's idea. He was the president of Nego Industries, a leading and representative company of Negoland, until 1995 when he stepped down from the post due to failing health. He recuperated completely after a year of rest and was ready to take up a new endeavor worthy of his challenge, when he had a chance to meet with Nomura, after a long separation. Nomura told Smith about the textbook on negotiation he published for elementary school children, and passionately spoke of the importance of exposing elementary and junior high school students to negotiation in a fun way. Smith, who had been personally involved in a variety of negotiations at the forefront of business activities, was keenly aware of the importance and power of negotiation in real life. But having little idea about how to develop negotiation ability, Smith wanted to study negotiation training in the future. Smith agreed with Nomura that negotiation training that starts at elementary and junior high school levels is highly effective in elevating the negotiation skills of individuals, and also believed that it would help enrich the lives of Negoland citizens and bring happiness to Negoland society. Smith thought that for negotiation training, something more than a textbook was needed and that a theme park should be created where elementary and junior high school children can learn negotiation in a fun way through hands-on experience based on a variety of role play simulations. Nomura, who believed that role playing was extremely effective for negotiation training, liked Smith's idea. The two then proceeded to lay out concrete plans for a theme park.
4. Red Corporation was established by Nomura and Smith in 1998 to handle the

operation of the theme park, with Nomura and Smith serving as chairman and president respectively. Red Corporation is outlined in Exhibit 1. Red Corporation opened Nego Park in Nego City, the capital of Negoland, in January 1999 after a year of preparation. Not listed on any stock exchange, Red relied on the funds borrowed from a bank with which Smith had had business dealings when serving as the president of Nego Industries. The construction of Nego Park, costing US\$30 million, was financed through project finance.

5. Nego Park is designed to expose visitors to a variety of negotiation situations through which they learn negotiation in a fun way. Primarily targeting elementary and junior high school level children, the Park is divided into four areas. Nego Park is outlined in Exhibit 2. The mascot character of Nego Park is Nego-Nego (shown in Exhibit 3) and has been popular among Negoland customers. Nego-Nego was created by Junko Osawa, a designer, with a motif based on a cat believed to be the god of wisdom in the ancient Negoland civilization. Since its start in January 1999, Nego Park has enjoyed better-than-expected popularity. Changes in the number of annual park visitors over the years are shown in Exhibit 2. Two-thirds of Red Corporation's profits come from entrance ticket sales, with the balance from related merchandise sales. Fast-selling related merchandise include products featuring Nego-Nego (dolls, pendants, photo-stands, T-shirts etc.), negotiation game software, DVD and books on negotiation for elementary and junior high school readers, among others.
6. Outside of Negoland, there are two Nego Parks in operation: one in Belgium and another in the Netherlands. Nego Parks in Belgium and the Netherlands are run by Euro Nego Park Corporation, a Dutch entity. Euro Nego Park Corporation is managed by Thomas Holland, the son of a Dutch multimillionaire. Holland joined Red Corporation at its inception by acting on the invitation extended by Smith, Holland's former boss at Nego Industries. At Red Corporation, he headed the Planning Department and was instrumental in all practical aspects of the planning, construction, and operational processes as the head of an action team. In 2001, he decided to return to the Netherlands to live with his aging parents at their request. This is when he got the idea of building a Nego Park in his home country of the Netherlands. Holland talked about his plan to Nomura and Smith. The two seniors, who trusted Holland's personal character and abilities, felt confident that Holland,

who was personally involved in every phase of the Nego Park preparation and launch under Smith, could successfully build and run a Nego Park. Holland founded Euro Nego Park Corporation in the Netherlands by securing funds from the Holland Family and went on to open Dutch Nego Park in January 2003 and Belgium Nego Park in January 2005. The Nego Park locations in the Netherlands and Belgium are virtually identical in structure to their counterpart in Nego City, and they are also very successful. The Nego Park locations in the Netherlands and Belgium are outlined in Exhibit 4.

7. Arbitria is a country located in Asia. It has a population of about 50 million and occupies about 500,000 square kilometers of land. In ancient days, it flourished as a powerful military state but went to ruin in the sixth century. The Kingdom of Arbitria was established in 1800 after the area witnessed the rise and fall of many city-states. It has been a republic since 1945, when it abolished the monarchy and became a republic by a plebiscite. Its GDP is about US\$2 trillion. Major industries include machinery, textiles, automobiles and iron & steel, with the manufacturing sector driving its economic growth. It actively promotes tourism while at the same time encouraging measures to preserve its precious historically valuable cultural heritage and the lives of inhabitants.
8. Negoland and Arbitria have built a good relationship with each other over years, and their closeness has become especially strong in recent years. In January 2004, Negoland and Arbitria signed an Economic Partnership Agreement (EPA). The EPA, which came into force in January 2005, resulted in a remarkable jump in the trade between the two nations, as evidenced by a 38.4% increase in fiscal 2005, the first year after the EPA came into force, a 76.3% increase in the second year and an 85.6% increase in the third year.
9. Blue Corporation is a general trading company in Arbitria. It conducts business in a wide range of fields. Listed on the stock exchange of Arbitria, Blue is a representative company of Arbitria. Noted for its global presence with 75 business bases in 35 nations, Blue employs some 30,000 employees (including those employed by subsidiaries). Blue Corporation is outlined in Exhibit 5.
10. Blue's Entertainment and Life Style Unit is subdivided into 10 business groups. Group 3 is responsible for entertainment and educational undertakings, which include, among others, amusement park and theme park businesses. It has invested in theme parks on several occasions but results were less than

desired. Recent examples include key investments in two projects but both ended up in failure. In 1989 it invested US\$10 million in a science and technology theme park in Arbitria jointly planned by five Arbitrian companies, but it went bankrupt in 1995. In 1999 it invested US\$5 million in a theme park opened by the State of Ponta of Arbitria for regional rejuvenation. Themed around the history and culture of Arbitria, this park was an utter failure and closed its door in 2003.

- 1 1. Bob Orange, the head of Group 3 of the Entertainment and Life Style Unit, went to Negoland on a business trip in May 2005. The purpose of his trip was to engage in business negotiations with his counterpart in Nego Entertainment, its business partner in Negoland. During a lunch break that followed business negotiations, Suzanne White, a senior executive vice president of Nego Entertainment, told Orange about her visit with her children (a daughter in junior high school and a son in elementary school) to Nego Park. "The two kids really enjoyed their visit," White told Orange. "The visit helped them develop a certain level of familiarity with negotiation. After their visit, they began talking more like adults," she added. "Various role-playing opportunities are available at Nego Park; each negotiation session lasts at least twenty minutes with some stretching over two hours, and one day is definitely not enough to cover all the activities, which is why there are reportedly many repeat visitors who want to go back there again and again. My kids also want to visit Nego Park again."
- 1 2. While in college, Orange was a student belonging to the Department of Law where he took negotiation courses. He still remembers that George Ota, who taught courses on negotiation, deplored the lack of negotiation skills of the Arbitrian people and advocated for negotiation training, which Ota believed would assume greater importance in the future. "Arbitrians tend to avoid disputes more than necessary; instead of engaging themselves in an argument with others, many Arbitrians would rather opt for a compromise to settle a dispute congenially," Ota argued. "Moreover, Arbitrians are not good at communicating their opinions to others or listening to others' opinions in a positive manner." Orange has negotiated on a variety of occasions throughout his 25-year career at Blue. Orange himself felt he was pretty good at negotiation; he even lectured on practical negotiation at university. With this background, Orange became extremely interested in the concept of Nego Park, whose aim is to expose children as early as

elementary and junior high school levels to negotiation in a fun way and to equip them with necessary skills along the way. Orange told White that he would like to visit Nego Park. "Nego Park is a place dedicated to elementary and junior high school age children, therefore no adult is admitted to the Park except when they are there to accompany a child in that age group," explained White. "But I have a friend who's a lawyer retained by Red Corporation. I'll call him to see if he's willing to talk with you about the Park." The next day, White told Orange the following: "A lawyer acquaintance who's retained by Red talked to Smith, the president of Red, and Smith agreed to meet with you." Orange immediately proceeded to call Red Corporation to set up an appointment with Smith.

- 1 3. On May 15, 2005, Orange visited Red Corporation to meet with Smith. Smith first briefed Orange on the underlying ideas that eventually culminated in the decision by Nomura and Smith to build Nego Park and the types of experiences children could have there. He then took Orange on a tour of the Park. Orange was impressed by the level of enthusiasm displayed by the children immersed in a variety of role-playing activities. He had the idea of building Nego Park in Arbitria. "This park is great; I'm totally moved by the philosophy of Nego Park," Orange told Smith. "I have been interested in negotiation training myself. This is my personal opinion but I really want to create Nego Park in Arbitria as part of Blue Corporation's undertaking." "I'm glad you liked the Park," replied Smith. "If Blue Corporation is serious about building Nego Park in Arbitria, please contact me. I'm willing to consider your proposal in a positive light."
- 1 4. As soon as Orange returned to Arbitria, he initiated his study on the prospect of building a Nego Park in Arbitria with his subordinates within Group 3. He appointed Lynn Chen, a manager of Group 3, to be in charge of the project and had her do research on Nego Park. Chen asked Blue Negoland, a subsidiary of Blue Corporation in Negoland, to gather local information about Nego Park; she personally went to Negoland with her subordinates and took a tour of Nego Park with families of Blue Negoland employees. Further discussions were held within Group 3 in light of the result of Chen's research, and the Group concluded that it would like to officially go ahead with the Nego Park Project, with a park to be slated for a fiscal 2007 opening. Orange then proposed to Green, senior executive vice president in charge of the Entertainment and Life Style Unit, that his Group would like to build

Nego Park in Arbitria as part of its business. Green's initial reaction to the proposal was fairly negative due to a series of failed theme park projects in recent years, but persuaded by Orange's strong conviction and impressed by the success of Nego Park locations in the Netherlands and Belgium, Green eventually approved the project. The project structure was decided as follows: The total project size would be US\$30 million, and a wholly-owned subsidiary would be formed with US\$10 million of its capital to be supplied by Blue. The subsidiary would raise US\$20 million by a syndicated loan to cover its funding requirements.

15. Having secured Green's approval, Orange went to Negoland with Chen and visited Red Corporation on July 10, 2005 together with Kuroda, the head of Blue Negoland, and Cruise, the general manager in charge of Marketing at Blue Negoland. From Red Corporation, Nomura and Smith, as well as Brown, the head of its Planning Department, participated in the discussion.

The following conversation took place during the meeting.

Smith: At Red, Nomura is responsible for role-playing, characters and other conceptual and design-related aspects, while I am responsible for other aspects of the business including marketing, general administration, finance, planning and personnel.

(Smith then pointed to Article 10 of Articles of Incorporation of Red (shown in Exhibit 1)).

Orange: Nego Park is a truly wonderful facility. After a careful examination, Blue Corporation has decided that we would like to build a Nego Park in Arbitria.

Smith: Really. Please tell me more about the specific plans you have.

Orange: We are aiming for a fiscal 2007 opening. We envision a park similar in size with the one in Nego City. As for negotiation approaches, there are many common approaches to negotiation that prevail around the world, but typical negotiation topics and appropriate storylines for role-playing activities differ from country to country. For this reason, I believe they would have to be modified to better suit the people of Arbitria.

Nomura: I agree with you on this point. As a matter of fact, a certain degree of difference is observed in negotiation styles and approaches if you look at different societies, and I believe that new topics and storylines for role-playing activities should be formulated to meet with the

reality of the particular society.

Smith: For Nego Parks in the Netherlands and Belgium, new storylines were developed and local specialists were also involved in the process to reflect real-life situations of the Netherlands and Belgium.

Orange: Now, let's assume that Blue Corporation is to run a park in Arbitria after Red Corporation grants a license to it. What terms would you offer to us if we were to sign a contract with you?

Smith: The contract we used for the agreement with Euro Nego Park Corporation is available. Basically, I would like to use this contract in your case too. Red has a policy of avoiding complicated contracts. It would create an additional burden on Red if the contract to be signed with Arbitria would differ greatly from the existing contract for the Netherlands.

Orange: Could you show us your draft agreement, as we are greatly interested in its details. Please let us examine it. By the way, what's your policy on royalties?

Smith: We need an upfront fee of US\$1 million and a running royalty of 5% of revenues every three months thereafter.

Kuroda: An upfront fee of US\$1 million would be too much.

Nomura: Nego Park as a business model is worth that much. I believe you would be able to recover the money in a short period of time.

Orange: Can you do better than that?

Smith: We also requested US\$1 million to Euro Nego Park. We can't reduce the royalty fee just for you. Euro Nego Park is a corporation established by a former employee of Red, and we did request to pay such amount. If we sign an agreement with you, it will be the first deal for us to conclude with a third party. Honestly, we want to ask for a higher upfront fee and higher running royalty but we won't. We can, however, offer an alternative. If you can't afford US\$1 million up front, then we could consider reducing the upfront fee to US\$0.5 million and raising the (running) royalty to 10% instead.

Orange: I see. I'll consider your offer. I am interested in taking a look at your draft agreement.

Brown: I'll e-mail it later to you, but it should remain basically identical with the agreement we signed with Euro Nego Park Corporation. Please feel free to tell me if there are any special requirements that you



would like us to accommodate for Arbitria.

- 1 6. The first round of discussions finished. Orange and his associate were able to stay in Negoland only until July 12 because they had some other business matters to attend to. Upon their return to the office of Blue Negoland, they immediately debated over the acceptability of the proposed upfront fee of US\$1 million. They concluded that Nego Park was worth that much money and would have to accept the price, albeit reluctantly, to keep the running royalty down to 5%. Upon securing approval of Green by phone, they officially decided to accept the price of US\$1 million. Green told Orange to confirm with Euro Nego Park Corporation if it had indeed paid US\$1 million to Red. Orange, however, didn't comply with Green's order and didn't perform this check on purpose, thinking that checking on Euro Nego Park might create the impression that Blue Corporation was suspicious of the amount Red actually charged to Euro Nego Park.
- 1 7. The following day, Brown sent a draft agreement to Orange. It is shown in Exhibit 6 (Please note that the portions not presented in Exhibit 6 need not be considered for the purpose of the competition). A team headed by Orange and members of the Legal Department of Blue Negoland undertook a careful examination of this agreement. In particular, they paid close attention to Article 2(b). According to the members of the Legal Department, the provisions would allow Red to unilaterally veto any alterations proposed by Blue, even if such alterations would be necessary to meet specific requirements of Arbitria. "The provisions can be potentially detrimental to the creation of a Nego Park that is truly appropriate for the culture and society of Arbitria," they argued. "Ideally, the provisions should be rephrased so that alterations to meet special requirements of Arbitria can be decided at the discretion of Blue to a certain extent, and if this cannot be done, then at least, we'd better make sure that Red cannot reject Blue's proposals unless there are reasonable grounds."
- 1 8. The conference between Red Corporation and Blue Corporation on July 12 was attended by the same members present during the first meeting. The following conversation took place during this meeting.

Orange: If you insist on the one-million US dollar upfront fee, given your relationship with Euro Nego Park Corporation, we are willing to concede on this point. But I would like you to revise Article 2(b) of the draft agreement. The role play etc. needs to be modified to better

suit the requirements of Arbitrian culture and society, and we agreed on this during the last meeting. Nego Park is unique because it is themed around negotiation, which is closely linked to culture and society, and in this sense, Nego Park is different from other theme parks set around characters featured in movies. We are more familiar with the culture and society of Arbitria than you are. Moreover, we will need to accommodate customers' specific needs. The provisions, if they would remain as is, would give sole and absolute discretion to your organization, but I would request that Blue's ideas be honored to a certain extent.

Smith: I see your point. But revising the contract would be difficult. As I told you before, the draft agreement is the contract we used with Euro Nego Park Corporation, and no particular inconvenience has resulted from this contract. Red is interested in creating a great theme park and improving it through mutual discussion with you, while paying full respect to your opinions. Although the provisions don't provide specifically to this effect, let me assure you of this: Red will never reject your proposals unreasonably. The core element of Nego Park is its concept, rather than the design of characters or facilities. Red will be willing to respect your opinions based on your concern to suit programs and role playing to the needs of Arbitria, as long as your opinions don't concern fundamental issues that affect the essence of the very concept of Nego Park. We have always respected the opinions of Euro Nego Park in our relationship with them, and the same respect will be accorded to you.

Kuroda: I would like to see that in writing in our contract, if possible.

Nomura: I don't think that is necessary. We are going to undertake this project together with you by working together and discussing matters together on a mutual basis, and I don't see any need to complicate the contract unnecessarily, as long as mutual trust is in place.

19. Orange consulted with Kuroda and Chen after Smith and Nomura gave him the above replies. He had only one hour left for negotiation due to his return flight schedule, and besides, Red Corporation seemed unwilling to give in on this point. Orange decided to accept the draft agreement based on the fact that he had been given words of clear assurance from Nomura and

Smith.

Orange: I accept your explanation. Mr. Nomura, just as Mr. Smith told us, I would appreciate it if you would respect Blue's ideas and opinions regarding some fine details, and through mutual discussion I hope to build a great Nego Park through mutual discussion.

Smith: Yes, the crucial thing is to build a great Nego Park. Red will control the basic concept, but Blue will be responsible for the development of facilities, programs and role play simulations that meet the requirements of Arbitria. For Red, the success of Nego Park in Arbitria is going to be a milestone event, and we count on Blue Corporation for its success.

This round of negotiations ended with the above exchanges of opinions. Red and Blue then signed an agreement, which is shown in Exhibit 6, upon approval by their respective boards of directors. (This agreement is exactly the same as the draft agreement presented by Red).

20. Blue Corporation immediately embarked on preparations for the Nego Park Project. It formed Blue Park Corporation, a wholly owned subsidiary of Blue, for the operation of Nego Park. A few members of Blue Corporation, including Chen, were seconded to Blue Park to devote themselves to the project and to take on the enormous task of preparing for the opening of Nego Park Arbitria.

21. In April 2007, Nego Park Arbitria opened its doors in Abu-Abu, the capital of Arbitria. Nego Park Arbitria was fundamentally modeled after Nego Park in Nego City in terms of the area composition and situational set-ups for role-play. This was because a careful study led to the conclusion that very little difference was observed between Negoland and Arbitria in likely negotiation situations elementary and junior high school visitors would enjoy. However, some fine-tuning was made for role playing so that the Arbitrians would not find it too foreign. Facilities too were arranged in Arbitrian style, including houses and rooms depicting a typical Arbitrian household and classrooms, in an effort to make sure that Arbitrian elementary and junior high school children can simulate negotiations naturally and spontaneously as if in real-life, day-to-day situations familiar to them. The manual designed for Nego City was modified for Arbitrian use and the core staff of Nego Park Arbitria received 3 months training at Nego Park in Nego City prior to the opening of the Arbitrian park. Nego Park Arbitria is outlined in Exhibit 7.

2 2. Nomura and Smith were invited to the grand opening of Nego Park Arbitria on April 15. The two were very satisfied with how the preparation efforts for Nego Park Arbitria turned out. And they were moved as they watched Arbitrian elementary and junior high school-level visitors enter the park and engage themselves in role-play enthusiastically. Nomura and Smith told Orange and Chen the following during their dinner that night.

Nomura: The opening ceremony was great. I think Nego Park Arbitria has turned out to be a superb facility.

Smith: I agree. I was a bit concerned about how well the concept of Nego Park could be realized in Arbitria, a foreign country to us, but based on what I saw today, I think it will be alright.

Orange: Ongoing cooperation between Red and Blue is essential for the further success of the Park, and for this we are ready to strengthen our cooperation with you. Nego Park Arbitria has just been launched. There will be a variety of challenges ahead and at the same time there will be new, great ideas. Through exchanges of opinions and ideas between Red and Blue, Nego Park will be elevated to a new level of success.

Nomura: I agree. We will exchange ideas and share problems as we see them with each other.

Orange: Ideally, if new areas or storylines are developed for Nego City, we hope we'll be able to use them over here, and if Blue comes up with new areas or storylines, they'll be available for your use, and this way, both of us will grow through mutual cooperation.

Smith: I support your view.

Chen: How great to have agreed on so many points. I prepared a brief memo while listening to your conversations just now. Could you check to see if it is OK?

Nomura: I believe it's fine.

Smith: Why don't we put our signatures on it in commemoration of this great day?

Orange: I agree.

Nomura: Let's continue to work together on a mutual basis.

The document thus signed appears in Exhibit 8.

2 3. Nego Park Arbitria got off to a good start in terms of the visitor turnout, which is owed partially to TV and magazine coverage of the Park, but after six

months, the number of visitors began to fall. The annual visitors for fiscal 2007 stood at 300,000 against the initial projection of 500,000. Blue stepped up publicity efforts by promoting the Park at nearby elementary and junior high schools, but the annual visitors for the first half fiscal 2008 amounted only to 200,000 or so. After an analysis of visitor survey results, a few potential causes of the dwindling turnout were identified. Survey results are shown in Exhibit 9. Based on this report, Blue considered measures to shore up the visitor count. It concluded that the following measures would be needed: (1) Improvements in role playing and classes for elementary and junior high school children; (2) partnerships with neighborhood hotels; (3) creation of additional areas for high school and college-level visitors; and (4) introduction of a new character and enhancement of the character merchandise lines. Based on this decision, Blue Corporation drafted a proposal aimed at reforming Nego Park Arbitria and entered into discussions with Red Corporation. The proposal is outlined in Exhibit 10.

24. In August 2008, a consultation session between Red and Blue was held at the head office of Blue Corporation in Arbitria, on the occasion of the scheduled visit by the Red delegation to Nego Park Arbitria. The meeting was attended by Smith and Brown representing Red and Orange and Chen representing Blue. Orange and Chen tried to convince their counterparts from Red the need to reform Nego Park Arbitria by presenting the survey results in Exhibit 9 and the proposal for reform in Exhibit 10. As for the new character, Orange and Chen proposed Nego-Zero, positioned as the father of Nego-Nego and the sage versed with negotiation, whose illustration is provided in Exhibit 11. Nego-Zero was selected from a number of submissions by Blue's employees for new characters.
25. The people at Red Corporation were also fiddling with the idea of developing areas for high school and college level visitors then, but this topic was treated as a project to be embarked on in the future. No specific action in this direction had been initiated by Red, since it was satisfied with the number of visitors Nego Park in Nego City had maintained, albeit limited to elementary and junior high school children. As for new characters, Red introduced Negomi-chan (Exhibit 12) as a new character in 2004. Positioned as a sister of Nego-Nego, the new character did not fare well. Red Corporation thought that the idea of having Blue Corporation embark on the development of an additional area for high school and college-level visitors

and to come up with a new character was not a bad idea in itself after all. "If their attempts turn out to be a success, Red will be able to share in the fruits of Blue's efforts," thought the people at Red. "If they turn out to be a failure, all we'll have to do is to order them to stop." They also thought that given the magnitude of Blue's business, such attempts by Blue, even if they turn out to be a failure, would not immediately impact the health of Nego Park Arbitria. Smith thus signed a document allowing Blue to carry out these measures. The document is shown in Exhibit 13. Please note that no resolutions were passed by the board of directors of either Red or Blue with respect to the execution of this document.

26. In September 2008, Blue Corporation approached Osawa, who designed the original Nego-Nego character and requested that she officially design a new character based on the sketch of Nego-Zero drawn by an employee of Blue (Exhibit 11). Upon seeing the sketch, Osawa disapproved of the shape of the mustache on the face of Nego-Zero and strongly insisted that the design of the mustache be changed. Blue Corporation thought the design Osawa came up with was indeed better and decided to adopt Osawa's design (Exhibit 14) and informed Smith of the change over the phone.

Orange: About the new character we talked about the other day, I had a discussion with Ms. Osawa and decided to modify the shape of the mustache a little. I sent you a fax and I would appreciate your taking a look right away.

Smith: I guess it is OK, if the change was made as a result of a decision by the designer.

Orange: Is it necessary to re-draft the document we agreed on the other day?

Smith: There is no need to re-draft it. I'll attach the fax I just received to the document we drafted the previous day.

Smith attached the fax to the document drafted the other day. No communication except for the above telephone conversation took place for the selection of the new design.

27. During the fall and winter of 2008, Blue Corporation put its reform plan into action. A new character and two new areas for high school and college-level visitors were unveiled in January 2009. The areas for high school and college-level visitors were a huge success. Especially popular were role-playing sessions in which visitors got to take on the role of politicians

faced with a serious problem of historic significance (including being heads of state during World War II) and negotiation with kidnappers taking a hostage. Stimulated by the immense popularity of the areas for high school and college-level visitors, the areas for junior high school-level visitors regained their popularity. The new character was also warmly welcomed. Blue Corporation enhanced its character-related merchandise lines by creating souvenir products with the new character printed on them, and, as part of publicity efforts for Nego Park, it sold handkerchiefs and bags with the new character printed on them at department stores, restaurants and other venues affiliated with Blue Corporation. These character-related products sold extremely well and contributed to the growth in the number of park visitors. The number of visitors in the first six months of 2009 alone reached the 400,000-level.

28. In May 2009, Blue Corporation informed Red Corporation of the success it was enjoying as a result of the reform plan, and, along with the data related to role play, it sent samples of merchandise featuring the new character. In response, Blue received the letter from Red shown in Exhibit 15, indicating an unexpected turn of events. In a panic, Blue dispatched its people to Red Corporation in Negoland. Prior to this, Kuroda of Blue Negoland informed Blue that in Arbitria that according to his research the religious community of Negoland expressed strong disapproval of the new character. They argue that the new character blaspheme their god by changing the color of his skin and the shape of the whisker. Furthermore they strongly criticize that printing the god on towels and shoes is an act of desecration. In addition, Kuroda informed Blue that based on his research, the development of new areas designed for high school and college-level visitors, modeled after the areas developed by Blue, were already underway at Nego Park in Nego City and that information about such new areas had been passed on to Euro Nego Park as well.

29. Orange requested a meeting with Smith but it was not granted one because Smith was reportedly ill and in a hospital. Instead, Orange met with Nomura on August 10, 2009. The following conversation took place during the meeting:

Orange: We are quite surprised at your letter dated July 15. We proceeded with these matters mentioned in the letter upon securing the consent of Mr. Smith.

Nomura: Please read the contract carefully. It says that all changes are subject to the prior written approval of Red.

Orange: We obtained the written approval of Mr. Smith on these matters.

Nomura: We did inform you that I am the one responsible for characters and other conceptual and design-related aspects. In any event, the matters were not submitted to our Board of Directors for their resolution. Even if the consent given by Smith was to be considered valid, his consent was for the design shown in Exhibit 11, and no consent is in existence for Exhibit 14. Furthermore, according to the contract, you are permitted to sell character merchandise only inside Nego Park, and your use of the characters outside of Nego Park constitutes a breach of the contract on your part.

Orange: According to our understanding, the use of the characters in relation to Nego Park falls within the permitted scope of use under the agreement. •

Nomura: Your interpretation is different from ours.

Orange: We hear that some religious organizations in your country expressed disapproval regarding the new character. Is this the reason for what you are telling us now?

Nomura: It's true that some feel very offended by the changing of the mustache and the color of the skin on a sacred and inviolable god, and they regard the printing of the image of a god on handkerchiefs and towels used for wiping hands, and on sneakers, which come into contact with dirty feet, as a terrible act of desecration. About the latter point in particular, some politicians have filed a complaint with us, and we find ourselves in a very awkward position. The religious organization of Negoism has declared that they would roll out a boycott campaign against Nego Park by appealing to the media and press, if we continue to allow the use of the new character. The politicians are also threatening us by saying they'll bring the issue to the national legislature. If this happens, Nego Park will face substantial damage. The exact amount of damages is immeasurable at this point. In any event, the new character is used without going through the formal procedures defined in the agreement in the first place, and for this reason, you must stop using the new character immediately.



Orange: But the new character is immensely successful, a large volume of character products has already been made, and the facilities have been redesigned to account for the new character. It's too late to stop the use of the new character now - it's not possible to stop it now.

Nomura: This isn't a question of possibility. As long as you are in violation of the agreement, you must stop using it immediately. Otherwise, we'll have no other choice but resorting to legal means, and on top of that, we'll be forced to demand penalties in line with the provisions of the contract.

Orange: According to our calculations, it would definitely cost us a total of US\$600,000 if we were to stop using the new character now. Broken down, this would be the following: US\$100,000 for the restoration of the facilities, US\$200,000 for the destroying of the character merchandise intended for sale within the Park, and another US\$300,000 for the destroying of the handkerchiefs, towels, sneakers and other character products intended for sale outside of the Park. Is there any way to avoid this? We are willing to have discussions with religious organizations.

Nomura: Both the religious organizations and the politicians tell us that there's absolutely no room for further discussion on this issue. Nego Park will suffer no immediate impact from their agitation, but I cannot deny the likelihood of negative consequences on us over time.

Orange: We hear that your organization has initiated preparation for the introduction of new areas for high school and college-level visitors, which were originally developed by us upon the consent of Mr. Smith – the same consent given with respect to the new character - and that you have reportedly disclosed information concerning these areas to Euro Nego Park.

Nomura: That's true but it has nothing to do with the current issue we are discussing.

Orange: Blue Corporation has the right to the information about the new areas, and you are not allowed to use such information without our authorization.

Nomura: The information you are talking about concerns Nego Park in the first place, and it is Red which has all the rights to and in such information.

Besides, no confidentiality agreement has been signed between you and us, so it's up to us to decide how to use the information we learn from you.

The discussion did not result in any solution to the problems. (Please note that Blue Corporation netted US\$100,000 in profits from the use of the new character, which is broken down into net profits of US\$30,000 from sales of character merchandise within the Park and net profits of US\$70,000 from sales of character merchandise outside of the Park.)

30. Orange then switched to another topic. It concerned an Internet-based negotiation system. Red embarked on the development of a negotiation system that takes advantage of the Internet in 2007. Completed in 2008, the system, known as Web Nego, allows visitors to a virtual park to experience negotiation through online role playing without paying a visit to a physical Nego Park. Beginning in January 2009, visitors to Nego Park in Nego City may sign up for the online system after obtaining an ID and a password. According to Blue Negoland, the system was generating a great deal of attention in Negoland lately as a tool enabling ongoing negotiation training. Furthermore, Red Corporation and Euro Nego Park Corporation reportedly signed a pact concerning the use of the Web Nego in May. This pact not only allows the latter to introduce and use the Web Nego at Euro Nego Park, but also allows customers of Euro Nego Park and those of Red Corporation to engage in online role playing together.
31. Blue Corporation, upon hearing this story, became interested in introducing the Web Nego system. In July 2008, Chen of Blue Corporation submitted a request to Brown of Red Corporation so that a similar pact concerning the Web Nego system could be signed between them, but the reply given by Brown at that point indicated that Red had no intention of signing such a pact with Blue for the time being. Although Red repeatedly asked Brown to reconsider, Brown always rejected the proposal as being too premature time-wise.
32. Orange requested to Nomura that Blue Corporation be allowed to introduce the Web Nego system.

Orange: We have a request for you, which we have already made to Mr. Brown for his consideration. We want to introduce the Web Nego system. Although Mr. Brown replied to us that it's too early to consider such a proposal, we want to introduce it as soon as

possible.

Nomura: We have no plan to sign an agreement with you on this, given the pending dispute over the new character with you.

Orange: In the memorandum signed in 2007, we promised each other that new areas, new role playing etc. developed by either of us will be available for free use by the other party, didn't we? We request you to keep the promise.

Nomura: That isn't a contract and is not legally binding. Besides, we never envisaged web-based systems like the Web Nego then.

Orange: Your organization is taking advantage of the information about the new areas developed by us, correct?

Nomura: That has nothing to do with the memorandum. If you insist on using the system, we could consider it, but we want you to pay US\$1 million for your use.

Orange: That's outrageous. Did you request Euro Nego Park Corporation US\$1 million for their use too?

Nomura: We let them use the system free of charge, but we treat your organization and Euro Nego Park differently.

33. In connection with the extra charge Nomura requested, Orange decided to express to Nomura the dissatisfaction Blue Corporation experienced with Red concerning the upfront fee for the licensing agreement. Orange had a chance to meet Mr. Holland of Euro Nego Park and heard from Holland that Red requested Euro Nego Park to pay US\$1 million for an upfront fee, but did not have to make this payment after the negotiation. Holland told Orange that Holland could have told this to Orange, had Orange personally approached Holland prior to Orange's signing of the contract. Blue decided to comply with the upfront fee as requested by Red, because it was Blue's understanding that Euro Nego Park as well had paid an upfront fee. Upon learning this from Holland, Orange complained about the fee to Smith over the phone, but Smith had dismissed the complaint, claiming "things that happened in the past are over and done now."

Orange: During the negotiation of the license agreement, you told us that you made Euro Nego Park pay an upfront fee of US\$1 million for the initial licensing agreement. We decided to accept your request for US\$1 million, thinking we could do nothing to change your mind about the pricing given the same amount paid by Euro Nego Park,

but I heard that in reality Euro Nego Park never paid any upfront fee.

Nomura: We didn't say we actually had been paid. Euro Nego Park is a company established by our former employee. In any event, we didn't do that on purpose.

Orange: Since you gave us a seriously misleading explanation, we are entitled to have the US\$1 million fee refunded to us, right?

Nomura: Red Corporation didn't think you made such a misunderstanding. We are under no obligation to provide an explanation about the negotiation with another company to you, and besides, your organization could have performed a check to confirm if it was true had it really wanted to. It is your organization which failed to perform this, and therefore Red shouldn't have to deal with this issue now. You should have raised the issue before signing the agreement.

34. Red Corporation and Blue Corporation discussed these issues. On the matter of Nego-Zero, Red Corporation argues: (1) According to Article 2 of the Agreement on July 12, 2007, Blue Corporation is permitted to use the character pertaining to Nego Park only in the manner of use granted by Red Corporation in the Agreement, and Blue Corporation is not permitted to change or modify it or use it beyond the scope authorized by Red Corporation without the prior written approval of Red Corporation. (2) Blue Corporation, in violation of this provision, came up with the character Nego-Zero by altering the original character and has utilized Nego-Zero on character products sold within the premises of Nego Park and outside thereof. (3) Such act is in violation of Article 2 of the Agreement, and Blue Corporation must stop the use of the Character immediately. (4) In addition, Red Corporation is entitled to claim damages pursuant to Article 4 of the Agreement. On the other hand, Blue Corporation argues: (1) Blue Corporation is using Nego-Zero based the written authorization obtained from Red Corporation; therefore, no breach of the Agreement is found on the part of Blue Corporation. (2) Sales by Blue of the products depicting Nego-Zero outside of Nego Park are allowed under the Agreement. (3) Blue Corporation is not liable to pay any damages pursuant to Article 4 of the Agreement, as it uses Nego-Zero upon the authorization of Red Corporation.
35. Next, on the matter of the upfront fee paid by Blue Corporation and Nego-Web, Blue Corporation argues: (1) Red Corporation caused Blue Corporation to pay an upfront fee of US\$1 million to Red Corporation by

misleading Blue Corporation that Euro Nego Park Corporation had paid the same amount as an upfront fee. (2) Red Corporation, who is obliged under the Memorandum dated April 15, 2007~~9~~ to let Blue Corporation use the Web Nego developed by Red Corporation, has refused to allow Blue Corporation to use this program despite the request of Blue Corporation. On the other hand, Red Corporation argues: (1) Red Corporation is not under obligation to refund the upfront fee, since Blue Corporation agreed, out of its own will, to pay the upfront fee based upon its investigation of facts on its own responsibility. (2) The nature of the Memorandum dated April 15, 2007~~5~~ does not trigger Red's legal obligation to allow Blue Corporation to use the Web Nego.

36. Red Corporation and Blue Corporation, thinking the discussion on these subjects between the two companies will go nowhere, decided to bring the dispute to arbitration pursuant to the agreement. The claims of Red Corporation and Blue Corporation appear in Exhibit 16. With respect to Article 33 (1) of the UNCITRAL Arbitration Rules in relation to the said proceedings, the two parties agreed that, "Failing such designation by the parties, the Arbitral Tribunal shall apply the rules of law which it determines to be appropriate."

<Round A>

37. Based on preliminary discussions with the arbitrators, an oral hearing is scheduled for December 5. The issues listed in Exhibit 16 will be deliberated on that day. Red Corporation and Blue Corporation are to prepare briefs summarizing their respective claims, which must reach the designated place of address no later than noon, November 23.
38. It was also decided that the hearing on December 5 would be, in principle, conducted according to the following timetable. However, the timetable may be modified subject to a preparatory discussion among the arbitrators and the parties on the day of the hearing.

13:00~13:10	Preparation
13:10~13:15	Opening statement on behalf of Red Corporation regarding the first point at issue (Claim by Red Corporation)
13:15~13:20	Opening statement on behalf of Blue Corporation regarding the first point at issue
13:20~14:50	Hearing on the first point at issue.

14:50~15:05 Recess  
15:05~15:10 Opening statement on behalf of Blue Corporation regarding the second point at issue (Counter-claim by Blue Corporation)  
15:10~15:15 Opening statement on behalf of Red Corporation regarding the second point at issue  
15:15~16:30 Hearing on the second point at issue  
16:30~16:40 Closing arguments on behalf of Red Corporation and Blue Corporation  
16:40~17:00 Comments by arbitrators

39. For details regarding the authority of company directors under Negoland and Arbitrian laws, please see Exhibit 17, where the Companies Acts of Negoland and Arbitria are presented.

<Round B>

- 4 0. It was already decided that the dispute between Red Corporation and Blue Corporation over the new character and the Web Nego would be submitted to arbitration. Although their respective claims were already filed with the arbitration tribunal, the arbitral proceedings have not yet begun. In the meantime, Red and Blue Corporation agreed to sit together again to try to settle the dispute between themselves through negotiation, and this meeting was set up by Holland, who acted as an intermediary between the two out of his concern over the deteriorating relationship between Red and Blue. The date of the negotiation has been set for December 6, after which time the arbitration proceedings will be initiated if no settlement is reached between Red and Blue.
- 4 1. In addition to the dispute, there is one bright issue that the two parties have to negotiate -- an idea to build a Nego Park in Japan, a neighbor of Arbitria. Blue Corporation has already reviewed the prospect of building a Nego Park in Japan for a year, partially in response to the urging of Blue Japan, the Japanese subsidiary of Blue Corporation, which noticed the growing coverage of Nego Park by the Japanese media as a result of the recent surge in the popularity of the park in Arbitria. Concerning the feasibility of Nego Park in Japan, Blue asked Grape Data Bank to conduct market research. The results of this feasibility study are already available and are summarized in Exhibit 18. Grape Data Bank's research is reliable. Based on the results of this market research, Red and Blue have had two administrative-level meetings on this topic. Initially, Red stated that it did not preclude the possibility of opting for a local Japanese firm for the operation of the proposed park in Japan, but given the success of Euro Nego Park Corporation in running Nego Parks in two countries- the Netherlands and Belgium -, Red Corporation is thinking more positively about delegating this task to Blue.
- 4 2. During previous meetings, Blue proposed to Red that the current licensing agreement between the two parties be amended so that Blue would obtain an additional license for the proposed Nego Park in Japan. Red told Blue that the possibility does exist but in such a case, an upfront fee of US\$1 million would be requested, in addition to a higher running royalty of 8% (against the

current 5%) not only for the proposed park in Japan but also for the existing park in Arbitria. Red argued that the running royalty of 5% was too low and that it needed to revise the royalty scale upward to 8% on this opportunity. Moreover, payment of an upfront fee should be required in light of the additional rights Blue would be entitled to. Blue, on the other hand, demanded no upfront fee and for the running royalty to remain at the current level of 5%.

- 4.3. For the proposed Nego Park in Japan, they need to decide quickly on the following: (1) location, (2) target, (3) maximum visitor capacity, (4) running royalty, (5) upfront fee and (6) any other details, if the agreement dated July ~~29~~<sup>12</sup>, 200~~5~~<sup>7</sup> is to be amended. If they don't agree on these points, there will be no possibility for both companies to enter into a future contract on the Nego Park in Japan.
- 4.4. It was decided that during the meeting scheduled for December 6, the two parties would deal with both the pending dispute submitted to arbitration and the proposed Nego Park in Japan. Scheduled participants are: Smith, Nomura, Brown and other relevant department heads from Red as well as their attorney(s) on the one hand and Orange, Chen, Kuroda and other relevant department heads from Blue as well as their attorney(s) on the other. The two delegations are authorized to deal with all the issues to be discussed in connection with the subject matters. However, Red is required to report the result of the negotiations to Nego Industries, its key shareholder, and Blue is required to report the same to Green, its senior executive president.



## Outline of Red Corporation

Founded in: January 1998

Head Office: Nego City

Capital: US\$1 million

Shareholders: Not publicly disclosed, although the largest shareholder is Nego Industries.

Chairman & Director: Don Nomura

President & Director: Nobu Smith

Number of employees: 100

Line of business: Operation of Nego Park

Business results: Not disclosed to the public

However, 2/3 of its profits came from entrance ticket sales and the remaining balance came from merchandise sales in fiscal 2008, according to its public announcement.

The following is the description in the Articles of Incorporation of Red Corporation concerning its authorized business activities:

### Article 10 of the Articles of Incorporation

1. All authority concerning the business execution of Red Corporation is vested in the Board of Directors.
2. Notwithstanding the foregoing paragraph, with respect to business of a day-to-day nature, Nomura may execute matters concerning conceptual and design aspects of Nego Park at his sole discretion and Smith may execute matters concerning marketing, general administration, finance, planning and personnel at his sole discretion.

### An Outline of Nego Park in Nego City

- Primary targets: Elementary and junior high school children
- Business days: 365 days each year
- Hours of operation: From 9am to 8pm
- Entrance fee: US\$30 for adults, US\$20 for junior high school students, and US\$10 for elementary school students
- Admission to the Park: Adults not accompanying a child are not admitted. A maximum visitor capacity has been set. Reservations are accepted.
- Maximum visitor capacity: The annual maximum visitor capacity is 800,000.
- Areas: There are four areas which are more fully described below. Each area consists of (1) role playing fields, (2) a library and (3) classrooms.
  - ① Residential area: Area geared to negotiation situations that typically take place in the course of family life
    - Example: Sharing a piece of cake with two people
  - ② School area: Area geared to negotiation situations that typically occur in the course of school life
    - Example: Decision regarding task sharing among students to be decided by the entire class
  - ③ World area: Area geared to negotiation situations concerning global issues.
    - Example: Drafting of an international rule concerning the amount of CO<sub>2</sub> emissions
  - ④ Business area: Area geared to negotiation situations often encountered in business
    - Example: Sales/purchase negotiation concerning hybrid cars
- Role playing fields: Each area has role playing fields ranging from five to eight in number. A role playing field shapes and functions like a studio, where visitors are first briefed on the theme and other information pertinent to negotiation sessions. Depending on role-playing scenarios, the park staff may act as the counterparty to visitors in negotiation role playing or visitors may negotiate with each other in role playing. Time required for each role-play session varies, ranging from 20 minutes to around 2 hours. Role play sessions are divided into introductory, elementary, intermediate and advanced levels, and in order to participate in sessions of higher

levels, participants must have collected enough "points" given for completing role playing sessions or attending classes. Only elementary and junior high school children are permitted to participate in the role-playing sessions.

○ Library: Reference materials, films, games and others concerning the negotiation topics dealt with at the respective Areas are available at the library, and visitors may freely browse and watch any of them.

○ Classes: Lectures on a variety of topics that concern negotiation activities taking place in the respective Areas are offered. A lecture lasts about 15 minutes to 40 minutes.

○ Point-award system: Certain role playing sessions and classes require that participants must have earned enough points (determined separately for each session/class) for participation. (There are also sessions/classes for participation by anyone regardless of points earned previously.)

○ School: At the School, introductory courses are offered to teach first-time visitors the basic approach to negotiation and how to play role playing sessions, as well as training classes designed to teach theories and skills that constitute the common knowledge base for all negotiation activities taking place in that Area. Visitors are able to take any of the courses offered by the School as needed.

○ Stores : Stores carry souvenirs including character merchandise (dolls, pendants, photo-stands, T-shirts etc.), negotiation game software, DVDs, as well as Nomura's publications and other books on negotiation.

○ Visitor count

(thousands of visitors)

Year	99	00	01	02	03	04	05	06	07	08
Number of visitors	600	600	600	600	700	700	700	700	800	800

\* The increase in the number of visitors experienced in 2003 and again in 2007 was attributable to the expansion of facilities, which translated into an increase in the maximum visitor capacity set by the company. The annual visitor count of 800,000 means that the Park has been operating at maximum capacity for some time, and currently, the park is almost always fully booked by advance reservations.

<Exhibit 3>



<Exhibit 4>

States of business at Nego Park Netherlands and Nego Park Belgium

- Details are exactly identical with Nego Park in Nego City.
- Changes in the number of visitors over the years are show below:

(Thousands of visitors)

Year	2003	2004	2005	2006	2007	2008
Netherlands	600	600	700	700	800	800
Belgium	-	600	600	700	800	800

### An Outline of Blue Corporation

Founded in: December 1919

Head office: Abu-Abu

Capital: US\$1 billion

President and director: Tony Thompson

Number of employees: 2,500 (non-consolidated); 30,000 (consolidated)

Business locations: 75 locations in 35 countries

Lines of business: Business is broadly diversified into sales of a variety of products and services in Arbitria, exports/imports and multilateral (intermediary) trading, and business investments in and outside of Arbitria, among others. Its business is classified into seven business lines: Metals; Transportation & Construction Equipment; Infrastructure; Media and Life Style; Resources and Chemicals; Living Essentials/Construction/Real estate; and Finance and Logistics.

Operating results:

(US\$ millions)

Year	2004	2005	2006	2007	2008
Gross profits on sales	2,500	2,800	3,500	4,600	4,800
Net income	300	700	800	1,000	1,200
Total assets	25,000	25,200	32,000	42,000	35,000

\* Blue Corporation did poorly in 2004 and 2005, due to the general economic slowdown in Arbitria, but its business has picked up in recent years and is doing well now.

## LICENSE AGREEMENT

This Agreement is made on July 29, 2005 by and between Red Corporation, a Negoland corporation, with its principal place of business at 77 Break-up Street, Negonego, State of Tanaha, Negoland (hereinafter referred to as Red) and Blue Corporation, a Arbitrian corporation with its principal place of business at 120 Table Street, Abu-abu, State of Medarb, Arbitria (hereinafter referred to as Blue).

WHEREAS, Blue is willing to establish a Theme Park more fully described below with the same concept as with Nego Park currently operated by Red at the suburbs of the Negonego, and obtain licenses for various copy rights and trade-marks and technical assistances from Red, and

WHEREAS, Red is willing to assist Blue in establishing a Theme Park by licensing such copy rights and trade-marks and giving technical assistances for the establishment and operation of the Theme Park.

NOW THEREFORE, in consideration for the mutual covenants and promises herein contained, parties agree as follow:

### 1. Definitions

In this Agreement:

The word "Licensed Property" means (i) the role play stories, character names, costumes, environmental settings, artwork, logos and other elements depicted and regularly used in the Nego Park, including all copyrights, trademarks, and (ii) methods of training of children under age of 18 of negotiation skills and patterns and problems of negotiation games, including business models relating thereto.

The word "Theme Park" means Blue's theme park to be established by Blue in Arbitria with the same concept as with Nego Park.

The word "Nego Park" means a theme park operated by Red in Negoland for the training and entertainment of children interested in the development of negotiation skills and negotiation games.

## 2. License

(a) Red hereby grants Blue an exclusive license to use the Licensed Property in Arbitria, solely in connection with the development, construction, operation and management of the Theme Park, in accordance with the terms and conditions of this Agreement.

(b) It is understood and agreed that all aspects and elements of the Theme Park, whether specifically utilizing the Licensed Property or otherwise (and, in any event, all attractions and facilities, all atmospheric and scenic elements, all facades and props, all signage, flags and banners, symbol characters and all other contents within the area of Theme Park), that are observable by guests at the area of Theme Park, shall be subject to the prior written approval of Red at its sole and absolute discretion. This provision shall apply to all changes and modifications of such approved aspects and elements.

(c) Blue shall open the Theme Park by the end of August, 2007.

## 3. Royalty

(a) Blue shall pay Red US Dollars 1,000,000.- upon the execution of this Agreement as an upfront royalty.

(b) Blue shall pay Red a running royalty of 5% of all revenue from the operation of Theme Park, including and without limitation to admission fees, proceeds of related good, foods and drink sold at the Theme Park ( hereinafter referred to as Running Royalty).

(c) The Running Royalty shall be paid by Blue to Red in U.S. Dollars, within two weeks after every calendar quarter. At least three business days before the payment, Blue shall give Red an account sheet disclosing the details of the basis of the calculation of the Running Royalty in such form and substance as agreed between the parties hereto.

(d) Red shall have the right to have an independent public accountant or an accounting firm inspect all books and records relating to the calculation of the Running Royalty. Such inspection shall be conducted within the normal business hours of Blue. Red shall give Blue 7 days prior notice of such inspection. All costs and expenses for such inspection shall be borne by Red.

(e) Accounting of the Theme Park shall be conducted in accordance with the generally accepted accounting principles that shall be applied consistently through the validity of this Agreement.



#### 4. Liquidated Damages

If Blue uses the Licensed Property in violation of this Agreement, Blue shall pay to Red damages equal to the amount of net profit earned by Blue from the use of unauthorized use of such intellectual property, as liquidated damages but not as a penalty.

#### 5. Validity

This Agreement shall be valid until the expiration of 10th accounting year of the Theme Park.

#### ~~65~~. Assignment

Blue may assign all rights and obligations arising out of this Agreement to a wholly owned subsidiary of Blue established for the purpose of operating and managing Theme Park, with two month prior notice to Red. In this case, Blue shall remain liable for the full performance of this Agreement by such assignee jointly and severally with such assignee.

#### ~~76~~. Force Majeure

Neither party shall be liable for failure to perform or delay in performing any obligation hereunder to the extent that such failure or delay is attributable to Force Majeure. The term Force Majeure shall mean such acts, happenings, causes or circumstances as, including, but not limited to, war, civil disturbance, labor difficulties or direction of a governmental authority which are beyond the reasonable control of the party affected.

#### ~~87~~. Governing Law

This Agreement shall be construed and governed by UNIDROIT Principles for International Commercial Contracts 2004.

#### ~~98~~. Arbitration

Any dispute arising out of or under this ~~Agreement~~~~contract~~ shall be settled by arbitration in accordance with UNCITRAL Arbitration Rules, in the edition current at the date of this contract.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement executed by their respective duly authorized officers, as of the day and year first above written.

Red Corporation

Blue Corporation

By: \_\_\_\_\_

By: \_\_\_\_\_

## An Outline of Nego Park Arbitria

<Aspects identical with Nego Park in Nego City>

## An Outline of Nego Park in Nego City

- Primary targets: Elementary and junior high school children
- Business days: 365 days each year
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    - Example: Sharing a piece of cake with two people
  - ② School area: Area geared to negotiation situations that typically occur in the course of school life
    - Example: Decision regarding task sharing among students to be decided by the entire class
  - ③ World area: Area geared to negotiation situations concerning global issues.
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- Role playing fields: Each area has role playing fields ranging from five to eight in number. A role playing field shapes and functions like a studio, where visitors are first briefed on the theme and other information pertinent to negotiation sessions. Depending on role-playing scenarios, the park staff may act as the counterparty to visitors in negotiation role playing or visitors may negotiate with each other in role

playing. Time required for each role-play session varies, ranging from 20 minutes to around 2 hours. Role play sessions are divided into introductory, elementary, intermediate and advanced levels, and in order to participate in sessions of higher levels, participants must have collected enough "points" given for completing role playing sessions or attending classes. Only elementary and junior high school children are permitted to participate in the role-playing sessions.

○ Library: Reference materials, films, games and others concerning the negotiation topics dealt with at the respective Areas are available at the library, and visitors may freely browse and watch any of them.

○ Classes: Lectures on a variety of topics that concern negotiation activities taking place in the respective Areas are offered. A lecture lasts about 15 minutes to 40 minutes.

○ Point-award system: Certain role playing sessions and classes require that participants must have earned enough points (determined separately for each session/class) for participation. (There are also sessions/classes for participation by anyone regardless of points earned previously.)

○ School: At the School, introductory courses are offered to teach first-time visitors the basic approach to negotiation and how to play role playing sessions, as well as training classes designed to teach theories and skills that constitute the common knowledge base for all negotiation activities taking place in that Area. Visitors are able to take any of the courses offered by the School as needed.

○ Stores : Stores carry souvenirs including character merchandise(dolls, pendants, photo-stands, T-shirts etc.), negotiation game softwares, DVD, as well as Nomura's publications and other books on negotiation.

<Aspects different from Nego Park in Nego City>

○ Typical Arbitrian residential and school settings are used for its role playing fields.

○ Due to the population of Abu-Abu, which is larger than that of Nego City, the maximum visitor capacity is extended to one million visitors per annum.

○ Its stores also carry books on negotiation published in Arbitria.

<Exhibit 8>

Memorandum

Celebrating the opening of the Nego Park Arbitria, Red Corporation and Blue Corporation agreed that both companies will exchange new ideas, role play simulations, characters or any other items which may be useful to improve, strengthen and/or develop their business each other, if necessary, for a reasonable royalty.

The details of such exchange shall be determined by mutual discussion in good faith.

April 15, 2007

For Red Corporation: Don Nomura, Nobu Smith (Signatures)

For Blue Corporation: Bob Orange, Lynn Chen (Signatures)

### Summary of Survey Results

○ Results of survey responses provided by visitors in the first half of fiscal 2008 (January to June, 2008)

<Responses from elementary and junior high school visitors>

Q : Did you enjoy Nego Park?

- Yes                75%
- No                 25%

(Selected reasons of those who replied "No": It was a bit difficult for me; I wanted more variations; There were no attractive characters; One day wasn't enough to enjoy fully)

Q : What areas do you think we need to improve?

- I want more attractive character goods to buy as souvenirs.
- The park should be arranged so that we can enjoy it at a less hectic pace.

<Responses from parents>

Q: In your opinion, is Nego Park a good facility for children?

- Yes                90%
- No                 10%

(A selected reason of those who replied "No": It was a bit too difficult for elementary school children)

Q : What areas do you think we need to improve?

- Areas geared to high school and college-level visitors are desired.
- Reasonable accommodations nearby, so that we can visit the park for two or more days in a row.
- Discount for repeat customers, because it is difficult to enjoy the whole park in a day and we want to come repeatedly.

### Outline for Reform Plan for Nego Park Arbitria

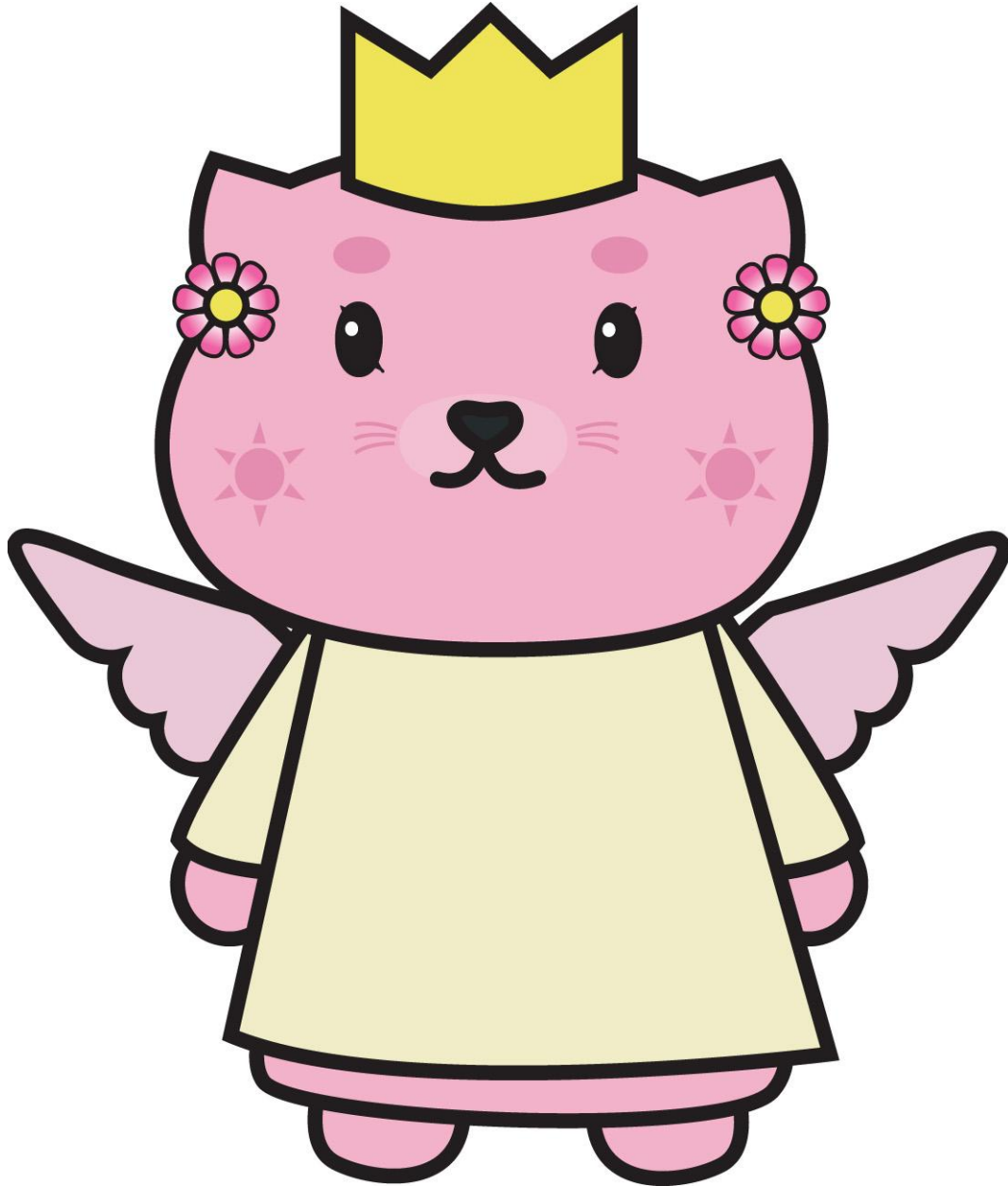
1. Role play simulations and classes offered to elementary and junior high school children should be reviewed.
  - ~Role play details need to be reviewed and adjusted so that the Arbitrian elementary and junior high school students would enjoy them more.
2. The need for hotel accommodations for visitors wishing to stay near the Park should be addressed and a special discount should be provided for repeat customers
  - ~Partnerships with neighboring hotels should be formed for the convenience of visitors wishing to visit the Park for two or more days in a row, allowing them to stay at a reasonable cost.
  - ~Introduction of special discount for repeating customers. The privileged discount rate should be applied to a customer based on the number of visits to the park. The percentage of the discount given to a customer should increase with the number of visits to the park.
3. Areas targeting high school and college-level visitors should be developed.
  - ~The introduction of new areas attractive to high school and college-level visitors will in turn expand the visitor base.
4. A new character should be introduced and character-product lines should be enhanced.
  - ~In addition to the existing characters, an additional character should be introduced and the character merchandise line should be enhanced. Currently, sales of character merchandise contribute to 10% of total sales but the percentage should be raised to 20%.

<Exhibit 11>





<Exhibit 12>



<Exhibit 13>

August 12, 2008

In relation to the Agreement between Red Corporation and Blue Corporation dated July 12, 2007, Red Corporation agrees and approves that Blue Corporation will take the following measures to strengthen their competitiveness in the Arbitrian market; provided that Red Corporation shall not be responsible in any respect on these measures and Blue Corporation shall take all risks accompanied by them.

1. To improve the role play simulations and classes to attract elementary school and junior high school students in Arbitria;
2. To make arrangements with neighboring hotels to enable our customers to stay there for reasonable price;
3. To introduce a special discount for repeat customers;
4. To create new areas which may be suitable to high school and university students;
5. To create a new character as attached to this memorandum (Exhibit11).

On behalf of Red Corporation

Nobu Smith

<Exhibit 14>



July 15, 2009

Blue Cooperation  
General Manager  
Group 3, Entertainment and Life Style Unit  
Mr. Bob Orange

It has come to our attention that you have been using the character of Nego-Nego in unauthorized manner. More specifically, we learned that you made an unauthorized change to the character of Nego-Nego by adding mustache and that you are selling various goods, such as handkerchiefs, towels and sneakers not only in the Park, but also outside of the Park.

Such conducts constitute a breach of Article 2 of the Agreement between us dated July 29, 2005. Please stop the use of the character immediately and stop selling of the goods on which the character is printed. Also please destroy all goods with the character.

We are looking forward to your prompt response and by no later than August 15, 2009.

Best regards,

Red Corporation  
Don Nomura

1. Remedies or reliefs sought by Red Corporation

Red Corporation requests the Tribunal the following remedies:

- (1) To order Blue Corporation not use the new character Nego-Zero (hereinafter the "Character");
- (2) To require Blue Corporation to destroy the products featuring the Character;
- (3) To order Blue Corporation to pay damages in the sum of US\$100,000;
- (4) To order Blue Corporation to bear all costs and expenses of the arbitration, fees and expenses of this Tribunal and costs and expenses required for the arbitral proceedings.

Red Corporation requests the Tribunal to decide that Blue Corporation is not permitted to sell the products featuring the Character outside of the Park, even in the event that the claims made in (1) and (2) are not accepted.

2. Remedies or reliefs sought by Blue Corporation

- (1) To order Red Corporation to pay US\$1 million to the Blue Corporation;
- (2) To require Red Corporation to allow the use of the Web Nego by Blue Corporation free of charge; and,
- (3) To order Red Corporation to bear all costs and expenses of the arbitration, fees and expenses of this Tribunal and costs and expenses required for the arbitral proceedings.

For (2), Blue Corporation is willing make a reasonable payment as determined appropriate by this Tribunal.

3 Issues in Red Corporation's claims

- (1) Whether Red Corporation granted a license for the Character to Blue Corporation;
- (2) ~~If it is decided that the said license was never granted, w~~Whether Red Corporation is entitled to demand Blue Corporation to discontinue its use of the Character and to destroy the products featuring the Character;

- (3) Whether Blue Corporation is liable for damages in the amount of US\$100,000, which is equivalent to the net profit it earned from its unauthorized use of the Character pursuant to Article 4 of the Agreement of July 29, 2005; and,
- (4) Whether Blue Corporation is permitted ~~under the Agreement~~ to sell products featuring the Character outside of the Park, ~~if it is decided that the said license was granted.~~

#### 4. Issues in Blue Corporation's -claim

- (1) Whether Red Corporation is legally liable to refund the upfront fee of US\$1 million;
- (2) Whether Red Corporation is under obligation to allow Blue Corporation to use the Web Nego ~~under the Memorandum dated April 15, 2009~~; and
- (3) If it is decided that Red Corporation has the obligation stated in (2) above, the monetary amount due to Red Corporation in return for such use.

Particulars of the Companies Act of Negoland

- ① The authority to execute business is vested in the Board of Directors.
- ② A company may delegate a portion of the authority to execute business to its director(s) by a resolution of its Board of Directors or by its Articles of Incorporation.
- ③ In cases where a portion of the authority to execute business has been delegated to its director(s), the scope of authority exercisable by such director(s) shall be limited to the scope defined by a resolution of the board of directors or by the Articles of Incorporation, and any act by such director(s) beyond that scope shall have no effect in relation to the company.
- ④ A party to a transaction shall have the responsibility of confirming whether such director(s) of its counterparty to the transaction is authorized to execute such business, and if the former fails to perform such confirmation, any disadvantages that arise from an act by the said director of the counterparty beyond his authorized scope shall be borne by the former.
- ⑤ The company may ratify an act of its director.
- ⑥ Notwithstanding Sections ③ and ④, an act by such director(s) shall have effect in relation to the company, if such director(s) had actively engaged himself in false manifestation with respect to his authority and no fault was committed by the other party in believing that such fictitious manifestation was true.

Particulars of the Companies Act of Arbitria

- ① Authority to execute business is vested in the Board of Directors.
- ② A company may delegate a portion of the authority to execute business to its director(s) by a resolution of its Board of Directors or by its Articles of Incorporation.
- ③ In cases where a portion of the authority to execute business has been delegated to its director(s), the scope of authority exercisable by such director(s) shall be limited to the scope defined by a resolution of the board of directors or by the Articles of Incorporation, and any act by such director(s) beyond that scope shall have no effect in relation to the company.
- ④ The company may ratify an act of its director.
- ⑤ Notwithstanding Section ③, an act by the director(s) whose titles include

President, Vice President and the like whose title implies that they have the authority to execute business on behalf of a company, shall have effect in relation to the company, except where the other party to a transaction knew that the act of such director(s) was not within his authorized scope or was grossly negligent in not knowing it.



Results of Market Research by Grape Data Bank

- Fundamentally, Japan is a country noted for great zeal for education, and its business people in particular are highly interested in improving negotiation skills. However, it does not have a high level of interest in negotiation training in elementary and secondary schools and colleges. Its theme-park industry is experiencing declining revenue and profit, impacted by the general economic slowdown triggered by the financial crisis. One feature of the theme-park industry in Japan is the prominence of Oriental Land Company, the operator of Tokyo Disneyland.
- Nevertheless, demand for quality theme parks that make visitors want to go back repeatedly is high, and they do not have to be giant theme parks like Tokyo Disneyland. For instance, KidZania, which opened its door in Tokyo in October 2006, turned out to be an extremely popular destination; and a second KidZania location was opened in Koshien in March 2009 as a result. The concept of learning through fun activities advocated by KidZania overlaps with the concept of Nego Park in some ways. If built in Japan, we believe that Nego Park will have a good chance of becoming a success.
- For each candidate location currently under consideration, probabilities of achieving certain percentages of the annual maximum capacity (maximum number of visitors allowed in a year) are presented below, together with the likely P/L divided by the maximum number of visitors allowed (Other P/L factors need not be considered. Therefore, profit or loss from the operation of Nego Park in a year is the P/L shown below (the amount shown in ③) multiplied by the annual maximum number of visitors allowed. If the new theme park is set up in Tokyo 23-Wards and its annual maximum capacity of visitor is one million, and if the number of actual visitors in a year reaches 100% of the annual maximum capacity, the profit of the year is amount to 350,000,000 yen (350yen x 1,000,000 visitors. Other locations have greater risks and thus are not worth considering.

Within 23-Wards of Tokyo			Kyushu		
① Percentage of Actual visitors to maximum visitor capacity(%)	② Probabilities that the percentages listed under ① will be realized (%)	③P/L divided by the maximum number of visitors allowed (yen)	① Percentage of Actual visitors to maximum visitor capacity (%)	② Probabilities that the percentages listed under ① will be realized (%)	③P/L divided by the maximum number of visitors allowed (yen)
100	30	350	100	15	400
80	40	150	80	50	200
60	20	-100	60	25	-100
40	10	-300	40	10	-200
A high turnout rate is likely but costs/expenses would be higher, and this would in turn lower the P/L divided by the maximum number of visitors allowed.			Due to the availability of inexpensive land, costs/expenses would be kept at a comparatively low level, but there is a slight concern over visitor turnout.		

A Suburb in Kinki Region			Chiba		
① Percentage of Actual visitors to maximum visitor capacity (%)	② Probabilities that the percentages listed under ① will be realized (%)	③P/L divided by the maximum number of visitors allowed (yen)	① Percentage of Actual visitors to maximum visitor capacity (%)	② Probabilities that the percentages listed under ① will be realized (%)	③P/L divided by the maximum number of visitors allowed (yen)
100	15	400	100	25	500
80	45	200	80	25	300
60	25	0	60	25	-100
40	15	-200	40	25	-200
Visitor turnout would be low compared to other locations, but loss would be limited because of the ease of control over costs/expenses.			Due to the availability of inexpensive land, costs/expenses would be kept at a low level but it would be difficult to predict the visitor turnout.		