Sixteenth Annual Intercollegiate Negotiation Competition

Problem (October 17 Version)

1. Negoland is a country in the Northern Hemisphere, with a population of about two million occupying a land area of about 100,000 square kilometers. Its capital is Negotown, situated in the south. Negoland's political and business center is Negotown. The northern part of the country is endowed with abundant mineral deposits such as iron, nickel, titanium and platinum. In addition to exporting these commodities abroad, Negoland has been an active producer of iron, nickel and titanium alloys, which are also exported. There is a mountainous area called the Nego Mountains in the north-south corridor of the nation. Its terrain is suited for hydroelectric power generation, and its output of inexpensive power satisfies 80 percent of the nation's electricity needs. A river called the Nego-Abu River runs along the eastern edge of the nation bordering with Arbitria. Upstream lies another mountainous area, which includes Mount Negoland, a dormant volcano, and Nego Lake, which is believed to have been created by a volcanic eruption. Mount Negoland is 2,000 meters above sea level and Nego Lake covers an area of about 500 square kilometers. They are surrounded by vast woodlands.

2. The western shore of Negoland is the meeting point of a warm ocean current (Negoland Current) and a cool ocean current (North Current). Thanks to the Negoland Current, the climate of Negoland is generally mild and warm. Furthermore, the mixing of warm and cold currents creates rich fisheries for salmon, trout and mackerel. Due to the presence of the world-class fisheries in close proximity, the fishing industry has been thriving along Negoland's western coast. About 30 years ago, overfishing pushed many fish populations to the point of collapse in Negoland. The government responded by setting up a Negoland Oceanographic Committee, which studied the situation, drafted national plans to regulate fishing based on study results, introduced fishing quotas to fishing vessels and fishers based on the plans, and began offering data and information to fishers. As a result, the situation improved along Negoland's coastal waters, and concerns over depleting fish stocks became a thing of the past. Fishers and fishing vessels now catch fish in accordance with their assigned quotas, and the practice of planned fishing brought stability to their income and business.

3. In Negoland, the primary, secondary and tertiary industrial sectors account for about 20 percent, 35 percent and 45 percent of its GDP respectively. The primary sector is led by fishing and mining, the secondary sector by the production of processed marine products and mineral products, and the tertiary sector by tourism and ocean freight. Its per capita GDP is about US$10,000. Negoland's economy remains on a solid trajectory, and the government's

financial condition remains sound. One characteristic of the corporate sector of Negoland is that the nation is the major shareholder of a good number of leading corporations based in Negoland. Furthermore, the government of Negoland set up a corporation called Trade Development Public Corporation of Negoland under the Ministry of Economy and Trade. The Public Corporation has three areas of focus, namely, exports of mineral-based products, control over marine resources, and development of tourist destinations targeting foreign visitors. Its tasks include drafting of national plans concerning these three areas and negotiations with foreign governments and corporations regarding important projects. Because the building that houses Trade Development Public Corporation of Negoland is made of red bricks, the company is dubbed Red Corporation. Red Corporation is outlined in Exhibit 1. Its finances are solid, but details are not disclosed externally. The performance by Red 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.

4. Arbitria has a population of about 50 million, with a land size of 300,000 square kilometers. Its per capita GDP is about US$40,000. Arbitria's primary, secondary and tertiary sectors account for 15 percent, 30 percent and 55 percent of its GDP, respectively. Due to the generally flat terrain of the land, agriculture and animal husbandry are thriving, especially in the areas stretching from central to southern regions. Unlike Negoland, Arbitria is not endowed with mineral resources, which Arbitria must import from overseas. Lake Arbitria, situated in central region, is a freshwater lake of about 5,000 square kilometers. With lush forests and resorts with camping grounds and water activity bases in the vicinity, Lake Arbitria is the choice place of relaxation and enjoyment for many Arbitrians. Three years ago, the construction of a large resort was launched in the northwestern Abu-Nea District of Lake Arbitria and has caught a good deal of attention as a vacation resort where visitors can relax and reconnect with nature. Arbitria's capital is Abu-Abu, the center of politics and business. Along the Nego-Abu River, which borders with Negoland, industrial and commercial centers dot Arbitria's side of the bank. Around the areas surrounding Arbitria Bay in the country's southeastern region, many people are involved in salmon and trout aquaculture.

5. Blue Inc. is an Arbitrian company headquartered in Abu-Abu. It has offices in Negotown, Tokyo, Hong Kong, Singapore and Sydney, among other cities. Its business scope is extensive but has focused strongly on the fields relating to metals and other resources, in addition to agricultural and marine products. In the past, Blue Inc. concentrated its efforts on exports and imports of goods to and from Arbitria, but since 1990, in a move to secure a stable supply of resources and produce, it has increased its involvement in upstream production processes in the

industrial value chains, including, among others, mining of mineral resources and production of agricultural and marine products. It now actively engages in the production of agricultural products and fish aquaculture through its subsidiaries in Arbitria and abroad, invests in overseas companies engaged in mineral exploitation and agricultural and marine production, and engaged in development of technologies and facilities construction for mineral exploitation. In recent years, Blue has also been active in the tourism industry; it is playing a pivotal role in the large resort project under construction in the Abu-Nea district. Blue Inc. is outlined in Exhibit 2.

6. A map of Negoland and Arbitria is shown in Exhibit 3. Both nations are WTO members, including the TRIPS Agreement. In 2005, the two nations signed a bilateral free trade agreement, under which no customs duties are levied on goods traded between the two nations. Negoland's currency is the Nego-Lira, and Arbitria's currency is the Abu-Dollar. Changes in the exchange rate between the Nego-Lira and the Abu-Dollar over the recent years are shown in Exhibit 4. Experts consider that a negative view about the future of Negoland economy and activities of speculators account for the rapid decrease of the value of Nego-Lira since 2016. Negoland and Arbitria are contracting states to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (known as the "New York Convention"). Their respective arbitration laws were modeled after the UNCITRAL Model Law on International Commercial Arbitration (with amendments as adopted in 2006). In establishing its own laws, neither nation deviated from the UNCITRAL Model Law to such an extent that the deviation therefrom must be taken into account in relation to this problem. In addition, the two nations are contracting states to the Paris Convention for the Protection of Industrial Property.

7. In April, 2000, Red decided to replace the obsolete plant at Negoland Metals Corp., Red's wholly owned subsidiary, in the business of smelting and refining nickel and titanium deposited in Negoland (prior to the merger with Negoland Materials, Negoland Metals only dealt with nickel and titanium). Aside from Negoland Metals, there was another wholly owned subsidiary of Red in the metal-related business, namely, Negoland Materials, which mined, smelted and refined platinum. Red handles all sales of metals produced by Red's subsidiaries.

8. Prior to 2000, Red enjoyed a good relationship with Yellow Co., Ltd. a leading company of Meditria, a developed country, in the field of non-ferrous metal manufacturing and processing plants. The obsolete plant mentioned above was in fact built by Yellow. Yellow boasts superior technology for non-ferrous metal plants and its reputation has not faded to this day, but with the rapidly deteriorating economy of Meditria, the business of Yellow has greatly declined

since 1999. Given the faltering state of business at Yellow, the thought of asking Yellow to undertake the plant replacement project never occurred to Red.

9. Blue Inc. successfully seized the opportunity by filling the vacuum created by the outgoing contender. Blue had established a branch in Negoland early on and demonstrated a strong interest in launching and expanding business in Negoland, known for rich marine resources and metal deposits not available in Arbitria. In partnership with a number of companies in Negoland, Blue had accumulated experience exporting Arbitria's agricultural produce to Negoland and importing Negoland's marine and steel products to Arbitria. It also worked with Red Corp. for the importation of marine products from Negoland and for sales of hot rolled steel sheets, but it had never succeeded in winning nickel/titanium-related business or a plant export project. Blue wanted to make best use of the situation created by the absence of a strong competitor and, believing that winning the project would open the door to more business with Red Corp., it made an all-out effort to win the plant replacement project.

10. At Blue Inc., the person who played the central role for the project was George Ruby, General Manager of Blue's Negoland Branch. Prior to his assignment to Negoland, Ruby had worked extensively in the field of metals at Blue's headquarters. In recognition of his outstanding performance, the company awarded Ruby the President's Award for Service Excellence many times. At the age of 35, Ruby became the youngest person to head the Negoland branch and was already considered a fast tracker with the potential to eventually reach an executive-level post. Upon his arrival at Blue's Negoland branch in January 2000, he embarked on a proposal for Red Corp. by getting support of Blue's headquarters. At Red, Kate Fox was in charge of the project. Fox, who was the head of the Metal Resources Division, had worked extensively in the metal resources area and had been an expert of the metal resources business.

11. In May 2000, Ruby visited Fox at Red Corp. with a proposal for the plant replacement project for Negoland Metals. Ruby's proposal was a showcase of world-class technologies and was very attractive to Red Corp. However, another project had just been given the go-ahead at Red's Metals Resources Division, and Red desperately needed to cut down on spending for other projects, including the plant replacement project, as much as possible. Red found the price proposed by Blue during the first meeting -- US$80 million on turnkey basis -- too high and requested that Blue reconsider the price. Meanwhile, Blue wanted to use the plant replacement project as a stepping stone to expand into other business areas such as imports of nickel and titanium to Arbitria, where demand for such metals remained robust amidst diminishing outputs by supplier nations.

12. During the meeting held in July 2000, the following exchanges took place between Red’s Fox and Blue’s Ruby. Note that neither party made any express reference to Negoland Materials during the meeting.

Fox (Red): At the last meeting, I asked you to reconsider the price. Well …

Ruby (Blue): It’s not easy to lower the price because the latest technologies will be featured throughout the new plant. But we thought about it. We view the plant replacement project as an opportunity for us to expand our relationship to other areas, and in particular, we are interested in obtaining rare metals. Demand for rare metals is very strong in Arbitria as in other countries, and we would love to buy rare metals from you. If you let us buy rare metals from you, we will consider lowering the price of the plant replacement a little, in light of the long-term benefits that we will enjoy.

Fox (Red): I see, but our nickel and titanium earmarked for exports are fully subscribed by existing customers.

Ruby (Blue): The new plant we are going to build will improve refining efficiency very much. And I believe it will reduce the time and cost required for refining processes and boost operational efficiency and production output along the way. I understand the price of the project is a critical element as far as you are concerned, and we are willing to give you a price break if you agree to sell us your rare metals.

Fox (Red): I see. In that case we will consider selling you rare metals, but you’d better tell me what kind of price break you are talking about.

Ruby (Blue): We are willing to slash it to US$75 million.

Fox (Red): I’m sure you can do better than that. The money we can spend on this project is limited.

Ruby (Blue): If you promise to sell us rare metals produced by Negoland Metals on a priority basis -- that is, by giving us priority over other customers for the supplies, we can slash the price further.

Fox (Red): How much?

Ruby (Blue): US$70 million is the very lowest price we could offer.

Fox (Red): US$70 million? Can’t you make more of a discount?

Ruby (Blue): It’s difficult.

Fox (Red): All it takes is our promise to give you priority over other customers when allocating the rare metals set aside for exports, right? We can’t touch the rare metals earmarked for sales within Negoland, you know.

Ruby (Blue): If so, US$73 million is our best price, not US$70 million.

Fox (Red): You can make it US$70 million, can't you.

Ruby (Blue): I see. Let's agree on US$70 million on condition that your company will give priority to the supply to us except what you need for domestic sales.

Fox (Red): I appreciate it. Well, about the prices of the rare metals …

Ruby (Blue): We can decide on the prices later based on the market price.

Fox (Red): By the way, I want to see the new plant to be completed as soon as possible.

Ruby (Blue): We'll do our best on the project. You won't regret you picked us for the project.

13. After the above exchanges, Blue Inc. signed a US$70 million deal for Negoland Metals' new plant project. Around this time, a series of communications between Red and Blue took place as indicated in Exhibit 5, and an agreement as indicated in Exhibit 6 was signed by the two parties. The agreement given in Exhibit 6 was drafted by Blue Inc. and sent to Fox by snail mail after Ruby signed it, and then Fox signed it. Fox said that she signed the agreement without noticing the difference between the draft agreement attached to the communication in Exhibit 5 and the agreement in Exhibit 6. The person at Blue who finalized the agreement as shown in Exhibit 6 said that he revised the draft agreement because the use of parentheses in the draft rendered the main points of the agreement unclear.

14. The new refining plant for Negoland Metals was completed ahead of schedule and put into service in 2002. Equipped with the world's latest technology, the plant boasted excellent performance and attracted lots of attention. The superior performance of the new plant resulted in significant improvements in productivity and contributed greatly to higher earnings posted by Red's Metal Resources Segment. In addition, the sale of nickel and titanium ore from Red to Blue got off to a good start. In 2003, Red had Negoland Materials merged into Negoland Metals. This merger prompted Red and Blue to embark on platinum-related transactions (prior to this merger, there had been no business relationship between Blue and Negoland Materials).

15. In and around 2004, the demand for rare metals rose sharply around the world, triggering a rare metals squeeze. Red filled all orders placed by Blue for nickel, titanium and platinum. The following conversation took place between Red and Blue in 2004:

Ruby (Blue): Thank God, you keep supplying nickel, titanium and platinum to us.

Fox (Red): Well, some people in Red suggest that we take the supply to other buyers offering more money. In fact, some overseas buyers have approached us saying that they will pay anything as long as they can get hold of the supply. In my opinion, nothing is more important than a stable business relationship. Besides, you did a great job building a new plant for Negoland Metals. We want to reciprocate your great work by meeting your request for supply as much as possible. Mutual trust is crucial.

Ruby (Blue): We are fortunate to have a business partner like you. I believe the rare metals markets such as nickel, titanium and platinum will be unstable for some time. We are counting on you for stable supplies.

Fox (Red): You can rest assured. Count on us.

16. After that, the transactions of nickel, titanium and platinum between Red and Blue were conducted without any trouble. During the global nickel supply squeeze of 2014, in the wake of the announcement of export restrictions by Indonesia, the world's largest nickel producer, Red still filled all orders for nickel placed by Blue. In other words, Red filled all orders placed by Blue after 2000 without fail and without any special conditions attached. And the seeming absence of any difficulty surrounding the order fulfillment partially explained why neither Red nor Blue made any express reference to the Agreement shown in Exhibit 6.

17. In January 2014, a new tungsten mine was discovered in Negoland. According to reports, the mine is likely to contain high-quality tungsten deposits in abundance. Red Corp. decided to build a plant for the mining and refining of tungsten. Red appointed Kate Fox to head this project. Recently Fox was promoted from the post of division head to the post of the head of the Resource Development Group of Red. Fox gave a phone call to Ruby, who was also promoted from general manager to the head of the Metal Resources Division at Blue's headquarters. Blue refines tungsten in Canada and its latest technology for tungsten and other rare metals refining has been patented in Negoland, Arbitria, Meditria and Japan.

Fox (Red): I guess you may have heard about it, but a new tungsten mine was just discovered in Negoland. Studies say the mine is likely to contain lots of high-quality tungsten. We've decided to build a plant for tungsten mining and refining. We won't use the bidding method to select a contractor; instead, we will award the deal through negotiations with the shortlisted candidate. We hope we'll be able to use your refining technology for our business.

Ruby (Blue): We too are interested in securing good-quality tungsten, and we hope we will be of some help to your country in exploiting tungsten.

Fox (Red): Aside from technological assistance, would it be possible to provide us with partial financing for the plant construction?

Ruby (Blue): What kind of figure are you talking about?

Fox (Red): Well, the construction will cost US$70 million in total, of which we hope to secure US$50 million through loans.

Ruby (Blue): I see. I will get back to you shortly on this after I discuss the matter with my colleagues.

18. In February 2014, Red and Blue held a meeting to discuss the exploitation of tungsten and the plant construction for refining. There was a clear consensus among the parties regarding the need to form a new company to handle tungsten-related business and the total cost of construction, i.e., US$70 million. However Red and Blue disagreed on the business arrangement to be made for the implementation of the business. Blue wanted to set up a joint venture, which would be responsible for tungsten mining and refining. Expecting that demand for tungsten would remain strong not only in Arbitria but throughout the world, Blue wanted more than what the plant construction would yield. Blue was interested in securing a long-term interest in tungsten production in Negoland by holding a stake in the joint venture responsible for tungsten production. For Red Corp., a joint venture was not a desirable form of business. While Red respected and trusted Blue's technological and marketing capabilities, Red wanted to stay away from a joint venture, where Red may not always have its way when making a decision.

19. During the February 2014 meeting, the following exchanges took place between Red and Blue:

Fox (Red): Basically, we are satisfied with your proposal on the plant. However, it would be difficult for us to accept your idea of a joint venture for mining and refining of tungsten.

Ruby (Blue): May I ask you why?

Fox (Red): A joint venture would require that managerial decisions be made based on consultation between you and us. This would restrict our freedom in decision making and would be unacceptable to us.

Ruby (Blue): Since we are offering funds and technology to facilitate tungsten mining and refining for you, I think it wouldn't be too much to ask for a certain interest in the business itself.

Fox (Red): I believe we can give you priority for tungsten supply which we mine and refine.

Ruby (Blue): You are talking about the same kind of deal you gave us when we built a refining plant for nickel and titanium production, correct?

Fox (Red): Yes. We are planning to give you a similar deal. I believe the arrangement has worked fine for nickel and titanium supply.

Ruby (Blue): You already promised us the priority-of-supply arrangement in the memorandum we signed in the past. What we want now is an active involvement in the business itself, beyond the priority-of-supply deal.

Fox (Red): It's the matter the government has already decided, so we are unable to accept your proposal.

Ruby (Blue): Well, I guess it can't be helped. But you have to agree to royalty payments, which will be linked to monthly output, as well as the upfront license fee.

Fox (Red): Agreed.

20. Subsequent to the February 2014 meeting stated above, a license agreement based on Blue's refining technology of rare metals was signed by Red and Blue. It is shown in Exhibit 7. No written document of any kind was exchanged between the parties concerning the priority supply deal. Regarding this point, the witnesses summoned to appear for arbitration proceedings made the depositions as shown in Exhibit 8. Note that Fox left Red Corp. in December 2015 upon reaching retirement age.

21. For the tungsten business, Red formed Negoland Tungsten Corp. as its wholly owned subsidiary, and, with financial and technological assistance from Blue, the refining plant for tungsten was completed and put into operation in September 2015. The tungsten bullions produced by the plant are of extremely high quality, and corporate orders began to pour in from many foreign countries. Production of tungsten went without a hitch in September and October of 2015. At the end of October, however, record rainfalls flooded the area where Negoland Tungsten's plant was located, and the plant was partially submerged in water. The company's production capacity diminished to 1/3 of the normal level in the five-month period from November 2015 to March 2016.

22. Exhibit 9 shows monthly volume of tungsten bullions output by Negoland Tungsten Corp., ordered by Blue, and supplied by Red in the seven-month period from September 2015 to March 2016. On November 10, 2015, Red informed Blue that it was no longer able to fill Blue's orders due to a drop in its production capacity to 1/3 of the normal level. Blue, insisting that Red was under obligation to serve Blue before other customers, demanded that Red give tungsten bullions supply on a priority basis to Blue, but Red never complied with this demand. The correspondences between Red and Blue in this period are summarized in Exhibit 10. Note that according to the table in Exhibit 9, the supply of tungsten bullions for distribution in Negoland rose in November and onward. It was discovered that the increase was due to a new business deal with Black Negoland, a wholly owned Negoland subsidiary of Meditria-based

Black Corporation. As the supply of tungsten bullions continued to diminish, Black told Red that it was willing pay 30 percent more than Blue, and Red conceded. Black Negoland exports overseas all amount of the tungsten bullions it purchases. Black Negoland is a corporation that Black has established for this transaction on November 5, 2017. When Black made an offer to Red to purchase tungsten bullions at a 30 percent higher price than Blue, the following conversation was made between Orange, the general manager of the Metal Resources Division, and Nomura, the head of Resources Group of Black Corporation.

Nomura (Black): We will purchase your tungsten at 30% higher price than other companies, so please prioritize the sales to us.

Orange (Red): It's an attractive offer. However, I understand that our company has promised Blue Inc. to prioritize Blue in our exports of rare metals.

Nomura (Black): I see, if so, could you prioritize domestic sales?

Orange (Red): I think so.

Nomura (Black): OK, if so, our company will set up a subsidiary in Negoland. Could you sell your tungsten to that subsidiary? That would not be exports, so you would be able to prioritize the sale to that subsidiary.

Orange (Red): Good idea. Let's do so.

After this conversation, Nomura of Black Corporation invited Orange of Red on a five-day trip to Meditria to deepen his relationship with Orange, and provided luxury entertainment in Meditria. (There is a rumor that all expenses were paid by Black Corporation.) In December 2016, Orange was fired by Red as a disciplinary action, for he received money from domestic companies in Negoland (not Black Negoland) in contravention of the company's internal rules. Regarding the above trip to Meditria, Orange claims that he paid the expenses by himself.

23. Blue would have reaped a profit of US$5 million had it been able to obtain the supply as ordered in the period from November 2015 to March 2016 (this point is not disputed by either party). Blue seeks damages claiming that Red's failure to supply tungsten to Blue, which constituted a breach of its priority-of-supply obligation, caused Blue to suffer a loss of US$5 million. Red asserts that it was not under any priority-of-supply obligation with respect to the supply of tungsten, and even if Red was, hypothetically, under some sort of a supply-related obligation, there would have been no breach by Red given the circumstances that prevailed then.

24. Blue filed another claim against Red in connection with the tungsten-related business. It relates to Blue's rare metal refining technology, which Red uses for tungsten under a license from Blue. Dissatisfied with the refining technology for platinum, Red's research division came up with an idea of using the licensed refining technology to refine platinum. Red

proceeded to discuss the idea with Blue in November 2015.

Orange (Red): We think the rare metals refining technology we use under your license may be used for the refining of platinum.

Ruby (Blue): Yes, we think the technology will have other applications like the one you just mentioned. If you wish, we can revise the license agreement to cover platinum refining as well.

Orange (Red): Thank you. We should revise the license agreement. I will contact you again about the procedure to revise the agreement.

Ruby (Blue): I see. I will be waiting for your call.

After the above exchanges, on December 10, 2015, there was the following e-mail communication:

Ruby (Blue) → Orange (Red): Hello. How is the situation of the procedure to revise the agreement? Is it OK that we will amend only Article 1.1 and add platinum at the end of the article? Should we send you the amendment agreement?

Orange (Red) → Ruby (Blue): Thank you very much for your agreement to the amendment of the License Agreement. Yes, I agree with the part to be amended. We will send the amendment agreement, so please wait a while.

25. On December 15, 2015, Red was approached by Green of Meditria (Meditria is a contracting state to the New York Convention, the Paris Convention and the WTO including TRIPS Agreement). Green owned a platinum refining technology ("the Technology") and wanted to sell the license to Red. The Technology proposed by Green was very similar to the rare metal refining technology of Blue, which Red had contemplated using for platinum refining, but according to Green, the Technology was independently developed by Green only recently and Green applied for patents in Meditria and Negoland. Green, which began using the Technology recently at the platinum mines it owned in Meditria, said the Technology turned out to be excellent and significantly improved refining efficiency. Green's offer was very attractive. All it was asking for was a fixed sum payable upfront as license fee. Red signed a license agreement regarding this technology with Green (see Exhibit 11), which granted to Red a license to use the Technology in Negoland, and began using the Technology at the refining plant Red owns in Negolnad on March 1, 2016. In this process, Red had neither contacted nor consulted with Blue. Under Negoland and Meditria law, it is possible to license rights on patent pending technology.

26. In May 2016, Red received a letter (see Exhibit 12) from Blue warning that the Technology provided by Green was an infringement of the patent owned by Blue. Red contacted Green

about the alleged patent infringement and received a response from Green explaining "Please be assured that the technology we licensed to you is a technology we independently developed and that it does not infringe on the patents owned by Blue Inc. We are certain that the arbitral decision to be made for the pending arbitration between us and Blue Inc. will confirm that the technology was indeed developed independently by us and does not infringe on the patents held by Blue Inc." Therefore, Red sent a response (see Exhibit 13) to Blue and continued using the Technology.

27. On March 1, 2017, the Arbitration Center of Arbitria issued an arbitral award, which ordered Green to stop using the technology immediately and compensate Blue for damages caused by the patent infringement because the Technology used by Green at Green's platinum refining plants in Meditria was the same as the technology for which Blue has the patent, and the use of the Technology constituted an infringement of the patents owned by Blue in Negoland and Meditria. (Red was not a party to this arbitration and the arbitration did not deal with the production of platinum by Red.) In a letter addressed to Red (Exhibit 14), Blue demanded Red pay the amount of a royalty on the ground that Red was using Blue's technology for platinum (there is no dispute that Red would have been obliged to pay US$5 million each month as a royalty, for the period since March 1, 2016, if Red had used Blue's technology licensed under the license agreement between Red and Blue). On April 1, 2017, the patent application by Green in Meditria was refused by the Patent Office of Meditria for the technology applied by Green was the same as the technology for which Blue has the patent. Green made an appeal, but the appeal was rejected on May 1, 2017. In rejecting the appeal, the Patent Office of Meditria did not touch the issue of the similarity of the Technology and the technology of Blue. The reason for rejection was that Blue failed to submit evidence by the deadline (in fact, the person in charge at Blue forgot to make the submission of the evidence by the deadline). Green filed a law suit to vacate the decision of refusal by the Patent Office of Meditria in Meditria court, but it will take 2-3 years to reach final judgment. Meanwhile, the patent filed for by Green in Negoland was approved on April 1, 2017, and Green was subsequently registered as patent holder. Blue presented the aforementioned arbitral award to the Patent Office of Negoland and filed the objection that the Patent Office of Negoland should not have approved the patent filed by Green. On May 1, 2017, Blue's objection was rejected by the Patent Office of Negoland, which approved the patent filed by Green under the Patent Act of Negoland. Blue filed a lawsuit to invalidate Green's patent in the Negoland court, but it will take 2-3 years to reach final judgment. Red sent a letter shown in Exhibit 15 to Blue, informing Blue that Red was under no obligation to pay any royalty to Blue because the registered patent holder in Negoland is Green.（Red continues its production of platinum in Negoland.） Blue responded in the

letter shown in Exhibit 16 that Red must pay the royalty fee to Blue, as long as Red used the technology that was licensed by Blue, whether or not Green is the patent holder in Negoland.

The above case concerning rare metals is referred to as the "Rare Metals Case."

28. Red Corp. is not only an active exporter of salmon, trout, mackerel and other fishes found in the fisheries along the country's shore; it is also engaged in aquaculture-related research in an effort to secure and conserve fish and marine resources. In 2005, Blue began selling a fish feed called Red Mix. It is a dry, solid feed made primarily of fishmeal composed of Negoland fish, a small fish found in the sea where the Negoland Current and the North Current meet, along with other ingredients. To address the nutritional requirements of different fishes, Red Mix comes in multiple formulas specifically designed for salmon, trout, mackerel and so forth. When it was rolled out to the market in 2005, Red Mix was priced at US$1 per kilogram, the standard price for fish feeds. Because it was little known, it did not sell at all. Red's inability to recoup the money spent on the development of fish feeds prompted some in the organization to call for an exit from R&D on fish feeds used in fish farming.

29. Blue Inc.'s Foods Group has engaged in salmon aquaculture around Arbitria Bay as part of its effort to ensure a stable supply of marine produce. Blue's goal was to produce farm-raised salmon that would be better tasting than wild salmon. In and around 2005, Blue was not fully satisfied with the fish feed they were using for fish farming. They thought the feed was too pricey for the quality, which was unstable at best. Meanwhile, a dinner was set up by Blue Inc. to express thanks to Red Corp., for making supplies of rare metals consistently available to Blue even during the rare metals crisis. Diamond, CEO of Blue Inc., invited Hawk, CEO of Red Corp., to the dinner. The following conversation took place between Diamond and Hawk:

Diamond (Blue): We truly appreciate your consistently filling our orders for nickel, titanium and platinum.

Hawk (Red): We value the stable, long-term relationship with you.

Diamond (Blue): Demand for rare metals is huge, and I truly hope you will keep giving us priority over others.

Hawk (Red): I see. Kate Fox told me all about Blue Inc. We love doing business with you. By the way, I hear you are involved in fish farming. Did you know we make fish feeds? We just released an excellent fish feed. We are confident about the quality of the feed, but we are little known on the market. I wonder if you would be interested in trying our feed.

Diamond (Blue): You always help us out, so we'll definitely give serious thought to it. I will tell the guy in charge of fish farming to consider your feed.

30. After the above exchanges between the two corporate heads, negotiations on Red Mix began between Red and Blue. Risa Wolf, the division head of Red's Fishery Division, and Sapphire, the head of Blue's Aquaculture Group discussed the sale and purchase of Red Mix as recounted below, after Red gave a sample of the feed to Blue and Blue tested it. The sale and purchase of Red Mix was officially launched in May 2006. The production of Red Mix ended in October 2006.

Sapphire (Blue): Mr. Hawk told my boss about Red Mix. We tried the sample and your feed kept the fish in good condition and we are quite satisfied with it. We are thinking of making Red Mix the official feed of the Aquaculture Group.

Wolf (Red): That'll be great.

Sapphire (Blue): As you know, fish feed is the single most critical cost factor affecting the fish farming business. And we are trying to cut the cost as much as possible. We can promise to buy a minimum of 1,000 tons per year, and I am wondering if you would give us a 20 percent discount in exchange?

Wolf (Red): All right. We will give you a discount in exchange for stable business. I agree with the condition you just mentioned.

31. Around 2010, Red Mix began to gain popularity on the market. Red Mix had established the reputation of making fish more disease-resistant, firm-bodied and tastier. Due to its popularity, the price of Red Mix went up from the initial price of US$1 per kilo to US$1.2 per kilo. After Blue switched to Red Mix, the reputation of the salmon Blue farmed also improved. The salmon farmed by Blue, which is branded under the name of Blue Salmon, enjoyed the reputation of being tastier and more nutritious than wild salmon and free of parasites. The price of Blue Salmon soared by 50 percent after the switch to Red Mix.

32. In July 2012, Red released Super Red Mix, an improved version of Red Mix, to the market. It was priced at US$1.80 per kilogram. Blue, believing that the success of its Blue Salmon owed entirely to Red Mix, wanted to conclude a requirement contract with Red on the occasion of the release of Super Red Mix. A meeting between the two parties was held in August 2012 to discuss the contract.

Sapphire (Blue): We believe Super Red Mix will be indispensable for the farming of Blue Salmon, and we would like to purchase it.

Wolf (Red): Thanks to our enthusiastic customers, Red Mix has become an extremely successful product generating excellent sales. We used the proceeds from Red Mix to come up with Super Red Mix, whose quality is even better than Red Mix.

We are very confident about the quality of the new product.

Sapphire (Blue): I am sure Super Red Mix will catch on, like its predecessor. By the way, what is your production capacity like for Super Red Mix?

Wolf (Red): Our recent study confirmed that there is plenty of supply of Negoland fish, enough for our production of Super Red Mix, I guess.

Sapphire (Blue): Well, we are thinking about concluding a requirement contract with you for Super Red Mix.

Wolf (Red): What is a requirement contract?

Sapphire (Blue): Under a requirement contract, you promise us to supply the amount of feed required by us. In other words, you'll be under obligation to deliver whatever the amount of feed we order in accordance with the contract.

Wolf (Red): This contract entails only obligations and no merits on our part. But we will sign a requirement contract, if you agree to the new pricing. Until now, you've enjoyed a 20% discount on the feed. If you agree to pay the full price from now on, we will sign a requirement contract.

Sapphire (Blue): We promise to buy at least 1,000 tons like before, so can we still get a discount, perhaps a discount of 10 percent?

Wolf (Red): All right, then. We'll give you a 10 percent discount, but you have to agree on a cap of 5,000 tons.

Sapphire (Blue): It's a deal.

As a result of the meeting described above, Red and Blue signed the contract shown in Exhibit 17 in September 2012. Quantities ordered by Blue to Red thereafter under that contract are shown in Exhibit 18.

33. In December 2015, Wolf (of Red) and Sapphire (of Blue) met to discuss the planned sale and purchase of fish feed for 2016. The following conversation took place between the two:

Sapphire (Blue): We had a good year thanks to your support.

Wolf (Red): We had a good year together.

Sapphire (Blue): We prepared an order plan for fish feed for 2016. In principle, we'll place an order each month in accordance with the order plan.

Wolf (Red): I see. By the way, we are starting a project to study fish stocks along the coasts of Negoland and Arbitria. We would like you to join us for the project, but are you interested?

Sapphire (Blue): Yes, we would be pleased to work with you.

Wolf (Red): Before we launch the project, we will need you to sign a confidentiality agreement, because we handle study data and results concerning fish stocks found in our territorial waters, which have not been publicly disclosed.

Sapphire (Blue): We don't mind signing a confidentiality agreement, as long as it is a mutual one. We too have lots of data concerning fish stocks found in Arbitria's coastal areas.

The order plan Sapphire gave to Wolf by hand is shown in Exhibit 19.

34. The meeting between Wolf and Sapphire in December 2015 was followed by in-depth negotiations about the joint study project on fish stocks. After an agreement was reached on the joint project, the two parties signed a confidentiality agreement in March 2016, which is shown in Exhibit 20. The two parties began exchanging a variety of information related to the project with each other. In April 2016, an employee involved in the project at Blue accidentally opened a virus-infected e-mail attachment sent from an external source, which resulted in hacked passwords and the exposure of certain project-related information on the Internet by a hacker. At Blue, standard programs to check virus-infected e-mails are installed in the system and employees are frequently told to be careful with e-mail attachments sent from strangers. However, the virus was a new type and passed through the virus-infected e-mail check program, and the employee in question inadvertently opened the file.

35. The project-related information exposed on the Internet included certain information given by Red to Blue, including information revealing evidence of the approval by Negoland's Ministry of Agriculture, Forestry and Fisheries of fishing activities carried out by Negoland's fishing vessels along its coasts in breach of the *Convention on the Preservation of Fish Stocks* ("Convention on Fish Stocks"), to which Negoland and Arbitria are contracting states. To be specific, one memo that came out in the open indicated that Negoland's Ministry of Agriculture, Forestry and Fisheries not only failed to act on news of illegal fishing activities reported by external parties but let such activities go uncorrected. The Convention on Fish Stocks stipulates that if any fishing activity in breach of the Convention is found, a contracting state must administer necessary action and disclose such illegal activity to the public. The story made headlines in newspapers and TV news around the world, stirring up boycotts of marine products from Negoland as well as refusals to provide supplies essential to fisheries to Negoland. As a result of the expose, exports of marine products from Negoland plummeted in the period from April to December of 2016, and Red incurred a loss of US$10 million. Negoland's Ministry of Agriculture, Forestry and Fisheries never officially admitted it as a fact. This piece of information was originally received by Red from the Ministry and was never intended to travel beyond the confines of Red's offices, but Red's employee gave it together with other confidential information to Blue by mistake. (Red had not noticed the fact that it had given the

information to Blue by mistake until this incident happened.) The case faded into the background in 2017, as the Ministry announced a variety of proactive measures for the conservation of fish stocks. Red's exports of marine products recovered to the previous level.

36. Red seeks US$10 million in damages from Blue, alleging that the release of the information described above constituted a breach of the confidentiality agreement between Red and Blue (Exhibit 20) and that Red suffered US$10 million in damages caused by the breach. Blue argues that no breach of the confidentiality agreement was committed and Blue is not liable for US$10 million in damages. Note that neither party disputes the fact that the damages amounting to US$10 million wouldn't have arisen if the information had not been brought in the open.

37. In September 2016, in a letter addressed to Blue (Exhibit 21), Red requested that the contract shown in Exhibit 17 be re-negotiated on grounds of hardship (statements made at ①～⑦ in Exhibit 21 are not disputed). Blue refused to re-negotiate in a letter to Red shown in Exhibit 22. Rejected, Red asked for re-negotiation again citing the same reasons as those shown in Exhibit 21, by calling Blue and by other means, but Blue rejected Red's request again on the same grounds as stated in the letter in Exhibit 22. In an attempt to seek an amendment or cancellation of the contract, Red brought the case to arbitration. Red stated that, while the dispute was pending before the arbitration panel, the most it could grant to Blue was a sale of up to 100 tons each month at a discount of 10 percent, and Blue accepted it as a tentative measure in effect until the end of November 2017. Note that Blue accepted this tentative measure with reservation that its acceptance thereof will have no impact on its claims on the absence of hardship and the effects thereof.

The above case is referred to as the "Fisheries Case."

38. Red and Blue agreed to solve the disputes in connection with the Rare Metals Case and the Fisheries Case through arbitration. The two parties also agreed that the laws applicable to the substantive matters of the cases will be UNIDROIT Principles of International Commercial Contracts 2016, irrespective of the year in which the relevant facts arose. The claims made by each party and issues in dispute that must be addressed on November 18, 2017 are shown in Exhibit 23.

<Round B>

39. In January 2017, a vein of a new mineral was discovered on the seafloor near the coast of Negoland. The mineral was named “negonium.” Research performed on the samples extracted from the seabed revealed that negonium is more versatile than other minerals that exist today and may be used in a broad spectrum of applications including the use of negonium as an additive in permanent magnets for motors, catalysts for automotive exhaust gas cleaning and high-performance steel (e.g., high tensile strength steel, heat resistant steel) among others, and, therefore, negonium is expected to be in high demand. However, regarding the volume of negonium and possibility of commercialization, we need to await the results of the forthcoming research and feasibility study.

40. Some believe that the seabed near the coast of Arbitria may also contain negonium deposits, but at this point, Negoland is the only nation with a confirmed negonium mine. Red wants to contribute to the economic development of Negoland by making negonium available for use by Negoland’s manufacturing sector and by exporting it overseas. More concretely, Red plans to make the research on the volume etc. and feasibility study in 2018 and 2019, and after that, to decide if it will go forward to full-scale development. Because Red lacks the technical know-how for ocean mining and the risk is higher for ocean mining, Red decided to form a joint venture with a partner with the know-how necessary to exploit negonium from the sea mine.

41. In September 2017, Red invited domestic and foreign resources development companies and trading companies with an interest in negonium mining to bid for the mine development project. Because the project will involve sea mining, the companies invited by Red to bid were selected primarily on the basis of their experience in sea mining and records of addressing environmental impact. During the preliminary round, Red shortlisted the candidates to seven companies, including Blue. And Blue was given preferential negotiating rights on account of its exceptionally high score in addressing environmental impact.

42. Red and Blue will negotiate with each other on the issues given below on November 19, 2017. The project in question, to be co-funded by Red and Blue, will be carried out by an unincorporated joint venture.

① <u>Amounts to be invested in the Project</u>

At this stage, the expenses for research and feasibility study are estimated about US$50 million per year both in 2018 and 2019. In the previous negotiation, Red showed its intention that it is willing to assume up to 60-70 percent of the total investment, and, at the same time, that it is hoping Blue will invest as much as possible so that it owes substantial responsibility for this project. Blue, on the other hand, does not want to invest too much in the project, because the market for negonium has not been established, and a high degree of risk is associated with mine development to be conducted in the sea, while Blue recognizes the good prospects of negonium.

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② Valuation of Blue's Technology

In this project, the technology of Blue is essential. Blue demands that they want the technology provided by Blue to be treated as an investment in kind. According to Blue, this technology is the latest technology, just completed in 2017, and it took US$20 million to develop. For Red, a high valuation for this technology will lead to an increase in project cost and a dilution of Red's share, so Red hope to keep the valuation of the technology as low as possible.

③ Sale of the Products

In the negotiation so far, the parties have discussed how to divide the negonium, which will be produced in the full-scale development. It is understood by both parties that in principle the negonium to be produced will be allotted between the two parties in proportion to their investment. However, Red argues that this project of negonium is a national project, and it wants to use it for development of the Negoland economy by making negonium available for Negoland's manufacturing sector and by exporting negonium to countries strategically important for Negoland. From that point of view, Red requests Blue to promise to sell up to 30% of the Negonium distributed to Blue to Red Company or other Negoland company when requested by Red. Blue replied such restraint is difficult to accept, because Blue wants to keep its free discretion about the sale of negonium so that it can maximize its interest, considering that negonium can be used in various fields, and if it is to be successfully mined, lots of inquiries from customers are expected.

43. Aside from the negonium project, Red has a plan to build a Geopark in the area around Mount Negoland and Nego Lake. The water transparency of Nego Lake is high, and it is transparent enough to clearly see the shape of the fish underwater and the rock sinking to the bottom. Around Nego Lake, rich forests grow and many animals and plants can be seen. The current of the Nego-Abu River flowing from Nego Lake is gentle and the river is home to a wide variety of

fish. According to UNESCO, a Geopark is an endeavor aimed at the conservation of geological heritage, such as strata, rocks, terrains, volcanoes, dislocations, and the use thereof for research. A Geopark is so managed that it serves as a venue to foster people's understanding of the relationship between nature and man and as a site for scientific education and disaster prevention training. A Geopark can be a new source of tourism, contributing to the economy and development of the local community. In a nutshell, a Geopark is a way of conserving nature and culture unique to the region, making people aware of geological and other heritage and attracting visitors to the area, and revitalizing the local economy in a sustainable way. Negoland plans to conserve the natural environment of the area, transform it into a tourist attraction for tourists from Negoland and foreign countries, and develop tourism into a key industrial sector, which together with metal exploitation and fisheries will drive the economic growth of the nation. The area is currently designated as a national park, but it lacks adequate tourist-oriented facilities, such as accommodations, bus and rail transportation from urban centers, and well planned out roads to facilitate visitors' mobility within the area. Ordinary roads are maintained, but there is no express means of access to this area. The town closest to the national park is Negoria. It takes 1 hour by airplane and 4 hours by express train to get to Negoria from Negotown. There is no railroad line connecting Negoria to the national park, though, so it will take about 2 hours to reach the national park from Negoria by car on the ordinary road. Negoland has commissioned Red to manage the volcanic zone of the area. By building up its experience serving and attracting tourists to the area while conserving the beautiful environment, Red hopes to obtain Geopark status for the national park before 2025.

44. In October 2017, during the negotiations on the negonium mining project, Red requested Blue to support the national park enhancement project for the development of the tourism industry in Negoland. Blue's representative present at the meeting belonged to the Metals and Energies Group, and instead of giving a concrete reply right away, he told Red's representative that he would take the matter back to Blue's head office for internal discussion. Thereafter, Blue informed Red that it would be difficult to make donations, but it will seriously consider what kind of support Blue would be able to make, and will give Red an answer on November 19, 2017, the date of the next negotiation session. Red asked the following three questions, which must be addressed and discussed on November 19 during the negotiation session:

① Whether Blue is willing to provide donations for national park enhancements such as accommodations and transportation from urban centers.

② Whether Blue will extend cooperation in the area of building facilitates for tourism development.

③ Any ideas for luring tourists to the area

45. Red plans to send a Senior Executive Officer, the Director in charge of the Resources Development Group, the Head of the Tourism Business Division, the Head of the Legal Department, and the Head of the Finance Department to the negotiation. Blue will be represented by a Senior Executive Officer, the Director in charge of the Metals and Energies Group, the Head of the Machinery and Infrastructure Unit, the Head of the Legal Group, and the Head of the Finance Group. Even when there is an item on which the parties could not reach an agreement because the further research is necessary to reach the final agreement, it is expected that the parties reach an agreement about the direction of future negotiation on that item. The meeting will be held at the meeting room of Red in Negoland.

【Exhibit 1】

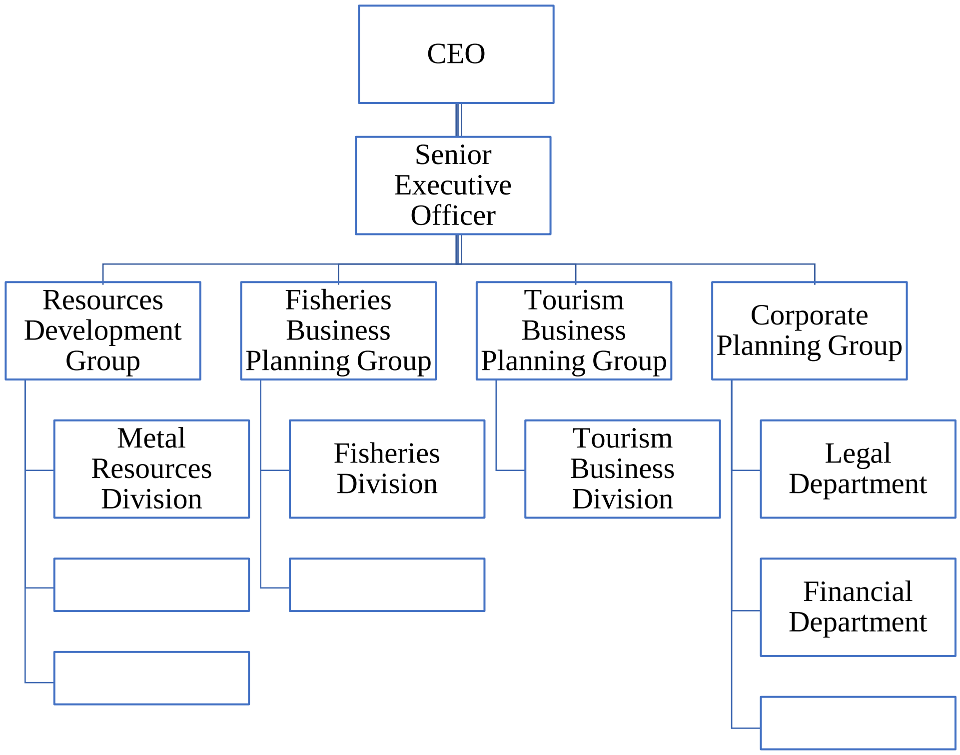
An Outline of Red Corporation

Corporate Name: Red Corporation

Principal Office: Negotown, Negoland

Financial Statements: Not publicly disclosed

Organization (Only parts relevant to the Problem are shown)



【Exhibit 2】

An Outline of Blue Inc.

Corporate Name: Blue Inc.

Principal Office: Abu-Abu, Arbitria

Shares: Traded on the Arbitria Stock Exchange

Book-closing: December. Financial statements are prepared in accordance with IFRS (International Financial Reporting Standards)

1. Consolidated Financial Statements

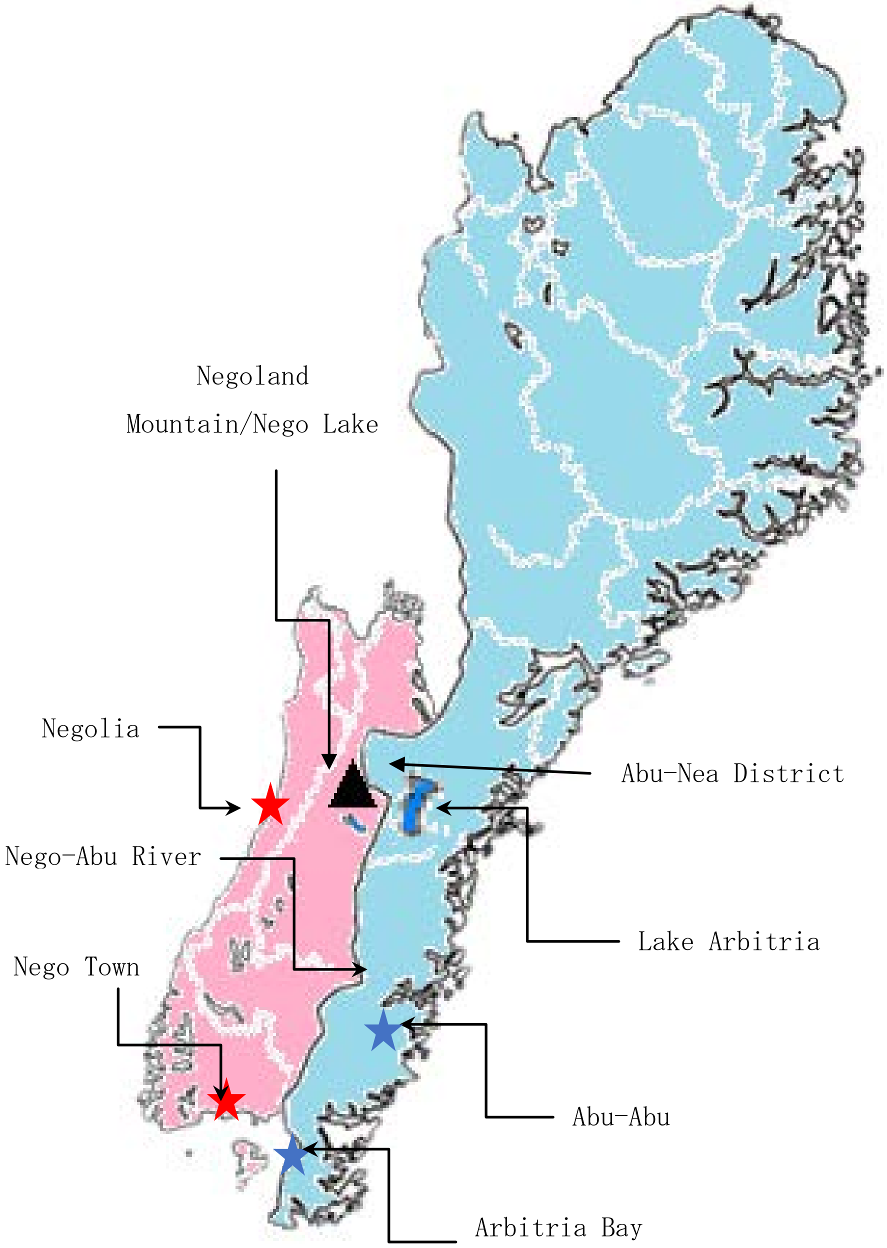
	(US$ millions)	2012	2013	2014	2015	2016
	Metals & Energies	34,500	35,600	22,900	15,900	15,200
	Machinery & Infrastructure	6,100	5,900	5,300	4,500	4,700
	Foods	12,100	13,600	10,500	8,500	8,900
	Living Essentials	13,300	12,900	11,500	10,700	11,400
	Other	2,000	2,000	1,800	1,400	1,800
Revenue		68,000	70,000	52,000	41,000	42,000
	Metals & Energies	1,700	1,500	300	-2,400	200
	Machinery & Infrastructure	500	400	300	100	700
	Foods	100	100	100	100	100
	Living Essentials	200	300	200	200	200
	Other	300	0	100	100	0
Net Income		2,800	2,300	1,000	-1,900	1,200

	(US$ millions)	2012	2013	2014	2015	2016
	Metals & Energies	74,000	72,000	59,000	43,000	49,000
	Machinery & Infrastructure	26,000	27,000	24,000	22,000	25,000
	Foods	12,000	11,000	10,000	8,000	10,000
	Living Essentials	22,000	22,000	19,000	17,000	19,000
	Other	9,000	7,000	7,000	5,000	8,000
Total Assets		143,000	139,000	119,000	95,000	111,000

(US$ millions)	2012	2013	2014	2015	2016
Cash flow from operating activities	7,410	6,500	7,540	6,370	4,810
Cash flow from investing activities	-12,220	-9,490	-4,550	-4,420	-4,160
Cash flow from financing activities	3,900	-130	-1,430	-520	-650
Cash and cash equivalent at the end of the year	23,270	17,680	16,510	16,120	17,810

【Exhibit 3】

Map of Negoland and Arbitria



【Exhibit 4】

Changes in Currency Conversion Rates for Nego-Lira, Abu-Dollars and US Dollars

	Nego-Lira	Abu-Dollars	US Dollars
2000	1	1	1
2001	1	1	1
2002	1	1	1
2003	1	1	1
2004	1	1	1
2005	1	1	1
2006	1	1	1
2007	1	1	1
2008	1	1	1
2009	1	1	1
2010	1	1	1
2011	1	1	1
2012	1	1	1
2013	1	1	1
2014	1	1	1
2015	1	1	1

	Nego-Lira	Abu-Dollars	US Dollars
2016.1	1.1	1	1
2016.2	1.1	1	1
2016.3	1.2	1	1
2016.4	1.3	1	1
2016.5	1.3	1	1
2016.7	1.4	1	1
2016.8	1.4	1	1
2016.9	1.4	1	1
2016.10	1.4	1	1
2016.11	1.4	1	1
2016.12	1.4	1	1
2017.1	1.4	1	1
2017.2	1.4	1	1
2017.3	1.4	1	1
2017.4	1.4	1	1
2017.5	1.4	1	1
2017.6	1.4	1	1
2017.7	1.4	1	1
2017.8	1.4	1	1
2017.9	1.4	1	1
2017.10	1.4	1	1
2017.11	1.4	1	1

【Exhibit 5】

E-mail communications between Red and Blue

From: George Ruby
Sent: Friday, July 29, 2000 10:23 AM
To: Kate Fox
Subject: Re: Priority Supply Agreement

Dear Ms. Fox,

Thank you very much for your e-mail.
We accept your proposed amendments.
Let’s take necessary internal steps to conclude the agreement and sign it as soon as possible.

Best regards,
George

-----Original Message-----
From: Kate Fox
Sent: Wednesday, July 19, 2000 5:51 PM
To: George Ruby
Subject: Re: Priority Supply Agreement

Dear Mr. Ruby,

Thank you for your email.
I reviewed the draft agreement regarding the priority supply of Nickel and Titanium. Please find my proposals (highlighted in red) to amend to reflect our mutual understanding more precisely.

Best regards,
Kate

<Attachment File>

RE: Priority Supply of Rare Metals

Red Corporation (“Red”) and Blue Inc. (“Blue”) agree that Red gives Blue the right and Blue accept the right to order and purchase the rare metals (Nickel and Titanium) that are produced by Red or its affiliate in precedence to other prospective purchasers in other countries than Negoland.

Kate Fox	George Ruby
Red Corporation	Blue Inc.

-----Original Message-----
From: George Ruby
Sent: Friday, July 7, 2000 2:51 PM
To: Kate Fox
Subject: Priority Supply Agreement

Dear Ms. Fox,

It was great to see you and discuss the priority supply of rare metals produced by your company. Please fine the attached draft agreement on the priority supply and give your comments, if any. Thank you very much and I look forward to hearing from you.

Best regards,
George

<Attachment File>

RE: Priority Supply of Rare Metals

Red Corporation (“Red”) and Blue Inc. (“Blue”) agree that Red gives Blue the right and Blue accept the right to order and purchase the rare metals that are produced by Red or its affiliate in precedence to other prospective purchasers.

Kate Fox	George Ruby
Red Corporation	Blue Inc.

【Exhibit 6】

RE: Priority Supply of Rare Metals

Red Corporation ("Red") and Blue Inc. ("Blue") agree that Red gives Blue the right and Blue accepts the right to order and purchase the rare metals, such as Nickel and Titanium, which are produced by Red or its affiliate in precedence to other prospective purchasers in other countries than Negoland.

August 1, 2000

Kate Fox	George Ruby
Red Corporation	Blue Inc.

【Exhibit 7】

License Agreement

This License Agreement (this “Agreement”), made and entered into as of February 28, 2014, by and between Blue Inc. (“Licensor”), a corporation organized and existing under and by virtue of the laws of Arbitria, and Red Corporation (“Licensee”), a corporation organized an existing under and by virtue of the laws of Negoland.

W I T N E S S E T H:

WHEREAS, Licensor owns certain refining technology of rare metals (“Licensed Technology”); and

WHEREAS, Licensee desires Licensor, and Licensor is willing to grant Licensee a license regarding such refining technology under the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual premises and covenants hereinafter set forth, the parties hereto agree as follows:

1. LICENSE:

1.1 Subject to the terms of this Agreement, Licensor hereby grants to Licensee and its subsidiaries a non-exclusive, non-transferable, limited, royalty-bearing license, without any right to grant a sublicense under the Licensed Technology during the term of this Agreement solely to refine Tungsten.

1.2 Licensee may not use the Licensed Technology other than the purpose as set forth in Section 1.1.

1.3 Licensee shall cause its subsidiaries to be bound by the obligations no less restrictive than those of Licensee under this Agreement and will be fully liable for the subsidiaries’ performance thereof.

2. OWNERSHIP:

2.1 Licensee acknowledges that this Agreement does not transfer or convey to Licensee the ownership of or any rights in any of the Licensed Technology (expressly including intellectual property rights thereto) except as expressly set forth herein. Licensee shall not acquire any right, title or goodwill to the Licensed Technology by virtue of using such Licensed Technology.

2.2 Any right not expressly granted herein to Licensee is expressly reserved by Licensor. Unless otherwise expressly provided herein, nothing contained in this Agreement shall be construed as granting or conferring any right or license, by implication, estoppel or otherwise, under any patent, copyright, trademark, trade secret or any other intellectual property rights of Licensor.

3. LICENSE FEE AND ROYALTIES

3.1 In consideration of the license granted under Section 1.1 hereof, Licensee shall pay to Licensor US$200,000 within thirty (30) days after the execution of this Agreement.

3.2 In addition to the foregoing, Licensee shall pay to Licensor, in United States dollars, a running royalty equal to three percent (3%) of the Production Amount each calendar month. The "Production Amount" means the quantity produced by Licensee by using the Licensed Technology and/or its subsidiaries multiplied by the average of the market price for the respective month in the London Metal Exchange. Within fifteen (15) days after the end of each calendar month, Licensee shall provide a report to Licensor stating the Production Amount and applicable royalties for the applicable month, for the applicable month, and pay the running royalty within forty-five (45) days after the end of each calendar month.

(Omitted)

6. TERM:

6.1 This Agreement shall become effective as of February 28, 2014 and shall continue in full force and effect for one (1) year. Thereafter, this Agreement shall be automatically extended on a year-by-year basis unless either party gives to the other party a written notice of its termination to terminate this Agreement at least thirty (30) days prior to the expiration of such initial one (1) year period or any extended term thereof, as the case may be.

7. MISCELLANEOUS:

(Omitted)

7.8 This Agreement and any disputes related to or arising out of this Agreement shall be governed in all respects by UNIDROIT Principles of International Commercial Contracts 2016.

7.9 Any controversy or claim arising out of or relating to this Agreement shall be settled by arbitration in Tokyo, Japan. Such arbitration shall be conducted in accordance with UNCITRAL Arbitration Rules.

7.10 This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement, and supersedes and replaces all prior or contemporaneous communications, discussions, understanding or agreements, written or oral, regarding the subject matter hereof. No amendment or supplement to or modification of this Agreement shall be binding unless made in writing and signed by a duly authorized representative of each of the parties.

IN WITNESS WHEREOF, the parties by their duly authorized representatives have executed this Agreement upon the date first set forth above.

Licensor:	Licensee:
Blue Inc.	Red Corporation
By (signed)	By (signed)

【Exhibit 8】

〇Depositions by Ruby and other parties at Blue Inc. involved in the case

Q：Why did you not prepare an agreement in writing about the priority of supply in respect of tungsten?

A：According to our understanding, tungsten was covered by the agreement shown in Exhibit 6; therefore, we didn't think it was necessary to conclude a separate agreement specifically for tungsten supply.

Q： Did you and Red Corp. discuss what specific metals the agreement in Exhibit 6 would apply to?

A： The topic was never expressly discussed between us and Red, except at the meeting in July 2000 and in our communications shown in Exhibit 5.

〇Depositions made by Fox and other parties at Red Corp. involved in the case

Q：Why did you not prepare an agreement in writing about the priority of supply in respect of tungsten?

A：We thought the agreement in Exhibit 6 concerned sales and purchase of nickel and titanium. We didn't bother bringing up the subject of priority supply for tungsten, since Blue Inc. never asked for it.

Q：Did you and Blue Inc. discuss what specific metals the agreement in Exhibit 6 would apply to??

A： The topic was never expressly discussed between us and Blue except at the meeting in July 2000 and in our communications shown in Exhibit 5.

【Exhibit 9】

Production, Demand and Supply of the Tungsten Products of Red

(unit : tonne)	2015.9	2015.10	2015.11	2015.12	2016.1	2016.2	2016.3
Total Production Quantity	120	120	40	40	40	40	40
Demand in Negoland	20	20	*40	*40	*40	*40	*40
Supplied to Negoland Companies	20	20	*40	*40	*40	*40	*40
Export	100	100	0	0	0	0	0
Ordered by Blue	20	20	20	20	20	20	20
Supplied to Blue	20	20	0	0	0	0	0

20 of 40 with (*) are demand from Black Negoland or Supply to Black Negoland.

【Exhibit 10】

Communications between Red Corp. and Blue Inc.

1. From Red to Blue

A severe rainstorm hit Negoland recently, and a part of the plants owned by Negoland Tungsten was submerged under water. Recovery work is planned, but we expect that it will take about six months to recover. We have confirmed that until then, our production capacity will decrease to 1/3 of the usual level.
Until our production capacity recovers, we will not be able to supply tungsten bullions to you. We ask you for your understanding.

2. From Blue to Red

We are sorry for the damage caused by the rainstorm.
You wrote that you could no longer meet our order for tungsten bullions due to a decrease in production capacity to 1/3 of the usual level, but you promised us to supply tungsten on a priority basis over other customers in the agreement signed in August 2000. We therefore request that you continue to supply tungsten to us over other customers in accordance with the agreement.

3. From Red to Blue

Thank you for contacting us.
We promised to supply nickel and titanium to you on a priority basis, but we have never agreed to a similar arrangement for any other rare metals.
Furthermore, we also need to meet an increasing demand for tungsten in Negoland, and after subtracting tungsten earmarked for domestic shipments, we have no supply left for exports.

4. From Blue to Red

The agreement signed in August 2002 does not speculate that its application is limited to nickel and titanium. You informed me that more tungsten must be supplied to Negoland, but we cannot understand your decision to increase rather than limit the supply earmarked domestically, when your output has dropped so much.

5. From Red to Blue

We regret to inform you that we cannot meet your request.

【Exhibit 11】

License Agreement

This License Agreement (this “Agreement”), made and entered into as of January 10, 2016, by and between Green Inc. (“Licensor”), a corporation organized and existing under and by virtue of the laws of Meditria, and Red Corporation (“Licensee”), a corporation organized an existing under and by virtue of the laws of Negoland.

W I T N E S S E T H:

WHEREAS, Licensor owns certain refining technology of Platinum (“Licensed Technology”); and

WHEREAS, Licensee desires Licensor, and Licensor is willing to grant Licensee a license regarding such refining technology under the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual premises and covenants hereinafter set forth, the parties hereto agree as follows:

1. LICENSE:

1.1 Subject to the terms of this Agreement, Licensor hereby grants to Licensee and its subsidiaries a non-exclusive, non-transferable license, without any right to grant a sublicense under the Licensed Technology during the term of this Agreement to refine Platinum in Negoland

1.2 Licensee may not use the Licensed Technology other than for the purpose as set forth in Section 1.1.

1.3 Licensee shall cause its subsidiaries to be bound by the obligations no less restrictive than those of Licensee under this Agreement and will be fully liable for the subsidiaries’ performance thereof.

1.4 In consideration of the license granted under Section 1.1 hereof, Licensee shall pay to Licensor US$500,000 within thirty (30) days after the execution of this Agreement.

2. OWNERSHIP:

2.1 Licensee acknowledges that this Agreement does not transfer or convey to Licensee the ownership of or any rights in any of the Licensed Technology (expressly including intellectual property rights thereto) except as expressly set forth herein. Licensee shall not acquire any right, title or goodwill to the Licensed Technology by virtue of using such Licensed Technology.

2.2 Any right not expressly granted herein to Licensee is expressly reserved by Licensor. Unless otherwise expressly provided herein, nothing contained in this Agreement shall be construed as granting or conferring any right or license, by implication, estoppel or otherwise, under any patent, copyright, trademark, trade secret or any other intellectual property rights of Licensor.

(Omitted)

6. TERM:

6.1 This Agreement shall become effective as of January 10, 2015 and shall continue in full force and effect for one (1) year. Thereafter, this Agreement shall be automatically extended on a year-by-year basis unless either party gives to the other party a written notice of its termination to terminate this Agreement at least thirty (30) days prior to the expiration of such initial one (1) year period or any extended term thereof, as the case may be.

7. MISCELLANEOUS:

(Omitted)

7.8 This Agreement and any disputes related to or arising out of this Agreement shall be governed in all respects by UNIDROIT Principles of International Commercial Contracts 2016.

7.9 Any controversy or claim arising out of or relating to this Agreement shall be settled by arbitration in Tokyo, Japan. Such arbitration shall be conducted in accordance with UNCITRAL Arbitration Rules.

7.10 This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement, and supersedes and replaces all prior or contemporaneous communications, discussions, understanding or agreements, written or oral, regarding the subject matter hereof. No amendment or supplement to or modification of this Agreement shall be binding unless made in writing and signed by a duly authorized representative of each of the parties.

IN WITNESS WHEREOF, the parties by their duly authorized representatives have executed this Agreement upon the date first set forth above.

Licensor:	Licensee:
Green Inc.	Red Corporation
By (signed)	By (signed)

【Exhibit 12】

To Red Corporation

From Blue Inc.

Regarding the use of the refining technology we licensed to you, you use the said technology for the refining of platinum. According to the license agreement executed in 2014, the said technology may be used only for tungsten refining. Your use of the said technology for the refining of platinum without our consent constitutes a breach of the license agreement. And if you use the said technology for the refining of platinum, you are required to pay royalties proportionate to your platinum output in accordance with the provisions of the license agreement.

We hear that you were granted a license from Green Inc. This license infringes on the patents we own pertaining to our refining technology, and we have requested arbitration seeking damages and immediate cessation of the patent infringement.

I request that you immediately discontinue the use of the said technology for the refining of platinum, or, alternatively, modify our license agreement and pay royalties proportionate to the platinum output produced by you.

【Exhibit 13】

To Blue Inc.

From Red Corporation

We contacted Green Inc. about the technology which Green licensed to us. Green confirmed that the said technology was developed independently by Green and it does not infringe on your patents. Therefore, we will continue using the said technology. And we believe that there is no reason for us to pay royalties to you.

【Exhibit 14】

To Red Corporation

From Blue Inc.

An arbitral award was rendered by Arbitria Arbitration Center recently concerning the dispute between us and Green Inc. It declared that the technology licensed by Green Inc. to you infringed upon the patents held by us in Negoland and Meditria and hence, ordered Green Inc. to stop using the technology immediately and compensate us for damages caused by the patent infringement.
Therefore, you are requested to immediately stop using the said technology for platinum refining, or, alternatively, modify our license agreement and pay royalties proportionate to your platinum output.

【Exhibit 15】

To Blue Inc.

From Red Corporation

We received your letter informing us that Arbitria Arbitration Center found patent infringement by Green Inc. As you may know, the Patent Office of Negoland granted a patent to Green Inc. on April 1, 2017, and Green Inc. is registered as the patentee of the technology.
Therefore, we are of the opinion that the claim you are making to us is groundless.

【Exhibit 16】

To Red Corporation

From Blue Inc.

I read your letter.

The arbitral decision, which I informed to you earlier, should be respected with respect to the patent infringement by Green Inc. of our technology. In addition, the patent application by Green in Meditria was refused by the Patent Office of Meditria. Also, please be informed that we filed a lawsuit to invalidate Green’s patent in the Negoland court. The fact that you use the technology we licensed to you for the production of platinum puts you under obligation to pay us royalties, whether or not Green Inc. holds the relevant patent.

【Exhibit 17】

Requirements Contract

This Requirements Contract (this “Agreement”), made and entered into as of September 1, 2012, by and between Blue Inc. (“Purchaser”), a corporation organized and existing under and by virtue of the laws of Arbitria, and Red Corporation (“Supplier”), a corporation organized an existing under and by virtue of the laws of Negoland (Purchaser and Supplier are collectively, the “Parties” and respectively, the “Party”).

W I T N E S S E T H:

WHEREAS, the Supplier is in the business of developing, manufacturing and selling certain feed called “Super Red Mix” (“Product”);

WHEREAS, the Purchaser desires to purchase certain of its requirements for Product from the Supplier, and the Supplier desires to sell to the Purchaser the Product to the Purchaser, subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual premises and covenants hereinafter set forth, the Parties hereto agree as follows:

Section 1. Requirements Contract

For the term of this Agreement, so long as the Supplier sells the Products, the Supplier agrees to sell to the Purchaser and the Purchaser agrees to purchase from the Supplier, all the Purchaser’s requirements of the Products on the terms and conditions contained herein.

Section 2. Prices

The prices for the Product to be charged to the Purchaser will be ten percent (10%) off the regular price of the Product.

Section 3. Forecast

On or before the end of each calendar year, the Purchaser shall issue to the Supplier a monthly forecast of its expected purchase of the Product for the next calendar year.

Section 4. Limitation of the Quantity

4.1 The minimum total quantity of the Product to be purchased by the Purchaser shall be kiloton (1,000t) per a calendar year.

4.2 The maximum total quantity of the Product to be supplied by the Supplier shall be five kilotons (5,000t) per a calendar year.

(Omitted)

Section 10. Term

This Agreement shall become effective as of the date first above written and shall continue in full force and effect until for fifteen (15) years.

Section 11. Miscellaneous

(Omitted)

11.8 This Agreement and any disputes related to or arising out of this Agreement shall be governed in all respects by UNIDROIT Principles of International Commercial Contracts 2016.

11.9 Any controversy or claim arising out of or relating to this Agreement shall be settled by arbitration in Tokyo, Japan. Such arbitration shall be conducted in accordance with UNCITRAL Arbitration Rules.

11.10 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement, and supersedes and replaces all prior or contemporaneous communications, discussions, understanding or agreements, written or oral, regarding the subject matter hereof. No amendment or supplement to or modification of this Agreement shall be binding unless made in writing and signed by a duly authorized representative of each of the parties.

IN WITNESS WHEREOF, the parties by their duly authorized representatives have executed this Agreement upon the date first set forth above.

Purchaser:	Supplier:
Blue Inc.	Red Corporation
By (signed)	By (signed)

【Exhibit 18】

Quantities ordered by Blue (ton)

2012.9	100
2012.10	100
2012.11	100
2012.12	100
2013.1	110
2013.2	110
2013.3	110
2013.4	110
2013.5	120
2013.6	120
2013.7	130
2013.8	130
2013.9	130
2013.10	130
2013.11	130
2013.12	140

2014.1	140
2014.2	140
2014.3	140
2014.4.	150
2014.5	150
2014.6	150
2014.7	150
2014.8	150
2014.9	160
2014.10	160
2014.11	170
2014.12	170
2015.1	180
2015.2	180
2015.3	180

2015.4	190
2015.5	190
2015.6	190
2015.7	200
2015.8	200
2015.9	200
2015.10	200
2015.11	200
2015.12	200

【Exhibit 19】

Red Corporation

Order Plan

Blue Inc.

We will place the following orders in 2016. The following is an estimate only and formal order will be made in each month.

2016.1	200
2016.2	200
2016.3	200
2016.4	200
2016.5	200
2016.6	200
2016.7	200
2016.8	200
2016.9	200
2016.10	200
2016.11	200
2016.12	200

【Exhibit 20】

Confidentiality Agreement

This Confidentiality Agreement (this “Agreement”), made and entered into as of March 15, 2016, by and between Blue Inc. (“Blue”), a corporation organized and existing under and by virtue of the laws of Arbitria, and Red Corporation (“Red”), a corporation organized an existing under and by virtue of the laws of Negoland (Blue and Red are collectively, the “Parties” and respectively, the “Party”).

W I T N E S S E T H:

WHEREAS, the Parties wish to exchange certain information which may be confidential and proprietary to a disclosing Party for jointly performing the research project regarding fish stock in the sea around Negoland and Arbitria (“Project”), subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual premises and covenants hereinafter set forth, the Parties hereto agree as follows:

SECTION 1. DEFINITION:

(1) “Confidential Information” shall mean (i) the existence of the Project, and (ii) any and all confidential, proprietary or secret information which are disclosed by the Discloser, and are clearly labeled as “Confidential”, or should be reasonably considered to be confidential given the nature of the information or the circumstances surrounding its disclosure.

(2) “Discloser” shall mean the Party who will disclose its Confidential Information hereunder.

(3) “Recipient” shall mean the Party receiving the Confidential Information of the Discloser.

SECTION 2. NON-DISCLOSURE OBLIGATIONS:

(1) For a period of five (5) years from the effective date of this Agreement, the Recipient agrees that:

(i) it shall keep in confidence and not disclose or disseminate to any third party the Confidential Information of the Discloser;

(ii) it shall not use the Confidential Information for any purpose other than the Project;

(iii) it shall not disclose the Confidential Information to any person other than its officers and employees whose duties justify a need-to-know for the Project; and

(iv) it shall use the same degree of care, but no less than a reasonable degree of care, to avoid disclosure, publication or dissemination of the Confidential Information as the Recipient would use with respect to its own confidential information of similar importance.

(2) Notwithstanding the foregoing, the obligations set out in Section 2 (1) shall not apply to any portion of the Confidential Information of the Discloser which:

(i) was already known to the Recipient at the time of disclosure;

(ii) is or becomes accessible to the public through no fault of the Recipient;

(iii) is obtained by the Recipient from a third party lawfully in possession thereof without restriction on disclosure or use; or

(iv) is independently ascertained or developed by or for the Recipient without use of such Confidential Information.

(3) Notwithstanding the provisions of Section 2 (1) above, if the Recipient is required to disclose any of the Confidential Information of the Discloser by government authorities or required by law, ordinance, rule, regulation or court order applicable to the Recipient, the Recipient may so disclose such Confidential Information; provided that the Recipient shall take reasonable steps to obtain confidential treatment of such Confidential Information and shall make reasonable efforts to give the Discloser prior written notice of such requirement together with a copy of the information to be disclosed.

(Omitted)

SECTION 5. MISCELLANEOUS:

(1) Each Party acknowledges that the unauthorized use or disclosure of its Confidential Information by the Recipient would cause irreparable harm and significant injury to the Discloser and monetary compensation may not be sufficient to cure the same. Accordingly, should such unauthorized use or disclosure occur or be likely to occur, the Discloser shall be entitled to appropriate relief, including injunctive and other equitable relief, to enforce the provisions of this Agreement.

(2) This Agreement shall become effective as of the date first above written.

(Omitted)

(8) This Agreement and any disputes related to or arising out of this Agreement shall be governed in all respects by UNIDROIT Principles of International Commercial Contracts 2016.

(9) Any controversy or claim arising out of or relating to this Agreement shall be settled by arbitration in Tokyo, Japan in accordance with UNCITRAL Arbitration Rules.

Blue Inc.	Red Corporation
By (signed)	By (signed)

【Exhibit 21】

To Blue Inc.

From Red Corporation

We are informing you that we find it extremely difficult to continue supplying Super Red Mix to you under the current terms and conditions, as the equilibrium of the obligations have been altered due to the following reasons. We request that you agree to an amended agreement with more reasonable provisions or we request that the agreement be terminated.

Reasons for us requiring an amendment of the agreement or termination thereof are given below:

① The ocean currents that reach the coastal area of Negoland are changing their patterns of travel due to recent global warning. Since the summer of 2016 especially, the Negoland Ocean Current and the North Ocean Current have moved waters in patterns different from the past, slashing our catch of Negoland fish by half.

② Some ingredients used in Super Red Mix are imported from overseas. The cost of imports has increased sharply in recent years due to changes in foreign exchange rates.

③ After you illegally divulged our information, some suppliers refused to sell us ingredients needed for the production of Super Red Mix. We suddenly found ourselves in need of looking for new sources of supply and we are only able to secure a supply equivalent to about 1/2 of the previous level.

④ For the reasons stated above, our production of Super Red Mix has been cut down by half, while the cost of production has doubled.

⑤ In the absence of competing products, demand for Super Red Mix remains unchanged after you leaked our information.

⑥ While, the total amount of orders from customers including Blue in these 1-2 years are about 10,000 tons, our current ability of supply has decreased to 5,000 tons per year, so we are not able to satisfy all orders from customers.

⑦ Many experts agree that it is not expected that the above situation will be improved in the near future.

We still need to meet our customers’ needs despite our reduced production, and for this and for the above reasons, we can no longer honor the Requirement Contract. The events listed above were unforeseeable and beyond our power and control. In the amended contract, we would like to have a provision allowing us to inform you of the quantity available for sale to you each month in advance of your placement of monthly orders, which will be filled at the prevailing fixed price. At a minimum, we need to amend the maximum quantity of our supply to 1,200 tons per year. Also, we would like to delete the provision regarding your minimum purchase. Considering the recent quantity of order from your company, which is about 2,400 tons, 5,000 tons is unrealistic as the maximum quantity. Limiting the amount of maximum supply to 1,200 tons, which is the half of the quantity you order in a year, by reflecting the fact that our ability of supply has dropped into the half, is fair and equitable, because your obligation to purchase the minimum amount will be removed at the same time, and concerning the supply of Super Red Mix, we still give you priority over other customers.

If you find it difficult to agree to the amended terms of the contract as stated above, I request that the agreement be terminated.

【Exhibit 22】

To Red Corporation

From Blue Inc.

I read your letter, which made us aware that a variety of factors gave rise to the situation. However, none of them serve as evidence of a hardship; hence we decline to amend or terminate the contract. Thank you in advance for your understanding.

【Exhibit 23】

○Rare Metals Case

・Arbitral decision sought by Blue Inc.

1. Red shall pay US$5 million to Blue.
2. Red shall pay prescribed royalties in connection with platinum refining (the exact amount of royalties shall be determined later).

・Arbitral decision sought by Red Corporation

Both claims by Blue Inc. shall be dismissed.

・Points at issue

1. Is Red in breach of the obligation to supply tungsten to Blue?
2. Is Red under obligation to pay prescribed royalties to Blue in connection with the refining of platinum?

○Fisheries Case

・Arbitral decision sought by Red

1. Blue shall pay US$10 million to Red.
2. The contract dated September 1, 2012 shall be either amended as the tribunal considers necessary to restore the equilibrium of the contract or terminated.

・Arbitral decision sought by Blue

Both claims by Red shall be dismissed.

・Points at issue

1. Is Blue obligated to pay US$10 million in damages to Red due to a breach of the confidentiality obligation?
2. Should the contract signed between Red and Blue on September 10, 2012 be terminated or amended? If it is to be amended, what specific changes must be made to the contract (the parties need to discuss the amendments proposed by Red in Exhibit 21, while the parties may discuss the modification of the proposal of Red, if necessary)?