Ninth Inter-Collegiate Negotiation Competition

Problem (Oct. 20 version)

1. The Kingdom of Negoland is a developing nation in Asia. It has a population of 100 million occupying one million square kilometers of land. Its national law stipulates that the King delegates day-to-day public administration to the government directed by the Prime Minister, whom the King appoints, and the King himself does not involve himself in public administration; however, the ultimate authority with respect to public administration rests with the King, giving, in reality, significant power over public administration to the royal family and certain government officials who have successfully gained the favor of the royal family.

In the past, politics was plagued by corruption and widespread bribery, and its economy was underscored by stagnancy. Nego III, who acceded to the throne in 1995 and has been the King to this day, has worked very hard to change this picture by modernizing Negoland's society and economy. The reforms implemented by Nego III, which concentrate on taking advantage of cheap labor and abundant resources while bringing in funds and technology from overseas, has turned out to be extremely successful. As a result of the reforms undertaken by Nego III, Negoland has enjoyed remarkable economic progress in recent years, and has generated global attention as one of the most promising markets in the world. The following table shows Negoland's nominal and real GDP over the years.

(Unit: 00,000,000s of US dollars)

| | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 |
|---|---|---|---|---|---|---|---|---|---|
| Real | 100 | 130 | 150 | 187 | 206 | 230 | 260 | 284 | 310 |
| Nominal | 250 | 290 | 330 | 400 | 450 | 520 | 643 | 785 | 838 |

2. While Negoland's economy is evolving soundly, serious environmental pollution problems have surfaced. In particular air pollution and water contamination/sludge problems are extremely serious in urban areas. The country's environmental pollution is attributable to the backward environmental technology of Negoland and to the government's policy of placing utmost priority on economic development. Nego III, believing that his people's lives would be threatened without efforts to halt pollution, declared that the government would unveil a new policy in 2005 to coincide with the year in which the *Kyoto Protocol* would come into force. The King announced, in his January 2005 speech, that he had directed the government to manage both economic development and environmental conservation at the same time rather than giving highest priority to economic progress and secondary importance to environmental conservation as in the past. The government embarked on active environmental measures by creating and strengthening environmental laws and ordinances while increasing the budget allocated to environmental conservation. Air pollution is caused mainly by dust and sulfur dioxide, and emissions of dust and sulfur dioxide declined as a result of stronger air pollution prevention laws in 2005, as well as a requirement to equip factories of a certain size and larger with dust removers and desulfurization equipment, stronger inspections of

corporate compliance with environmental standards and stringent disciplinary action, including forced shutdown, if corporations failed to satisfy such standards. In the water pollution sphere, pollution attributable to industrial wastewater has been alleviated, due to reduced industrial wastewater volume and stricter treatment standards for industrial wastewater required by the amended *Water Pollution Prevention Law* of 2006. On the other hand, measures to counter water contamination caused by household sewage have not yet been fully successful, as evidenced by the absence of significant improvement in the water quality of major rivers and lakes.

3. In 2002 Negoland ratified the *Kyoto Protocol*, which was adopted at COP3 in 1997. The *Kyoto Protocol* came into force in February 2005 but Negoland, as a non-Annex I Party, is under no obligation to reduce CO2 emissions under the *Kyoto Protocol*. The government of Negoland has been engaged since 2005 in activities aimed at increasing its reliance on energies emitting no CO2 such as hydro-electric, wind and solar power and activities resulting in energy conservation. The *Basic Law for the Prevention of Global Warming*, created in 2006, stipulates that all citizens and business operators are expected to make an effort to achieve reductions in CO2 emissions. However, the Law does not specify emissions standards that the citizens or business operators are required to comply with, and no such standards have been established voluntarily by business or trade organizations either. For this reason, Negoland's business operators are lagging far behind their peers in Europe, the United States and other industrialized nations in their effort to reduce CO2 emissions. The reluctance by business operators and the rapid economic development of the country are factors behind the yearly increase in CO2 emissions. The table below shows greenhouse gas emissions (which consist mostly of CO2) in Negoland.

(Millions of metric tons)

| Year | 1995 | 1997 | 1999 | 2001 | 2003 | 2005 | 2007 | 2009 |
|---|---|---|---|---|---|---|---|---|
| Emissions | 300 | 320 | 320 | 330 | 350 | 370 | 375 | 380 |

Since the *Kyoto Protocol* came into force, Negoland has shown strong interest in international cooperation available through the Clean Development Mechanism ("CDM"), and it has been very active in giving out national approval, which is a prerequisite for projects to be eligible for the CDM, to hydro-electric and wind power plant projects among others. As of December 2009, about 100 projects were given host-country approval by Negoland; however, projects registered as CDM projects, which require approval of the CDM Executive Board of the UN, amounted only to some 25 projects. Only a quarter of the nationally approved projects were registered as CDM projects because some projects were pending for a long time to complete needed procedures and some others had defects in their substance (Details are unknown).

4. Arbitria is an industrialized nation in Asia based on a parliamentary democracy. Bordering with Negoland, it occupies 400,000 square kilometers of land with a population of 100 million. Although Arbitria is not endowed with natural resources, it is globally recognized as the home base

of a number of corporations that lead the world with superb technology, which is the driving force behind the nation's economic prosperity.

The following table shows Arbitria's nominal and real GDP over years.

(Unit: 00,000,000s of US Dollars)

| | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 |
|---|---|---|---|---|---|---|---|---|---|
| Real | 10000 | 10000 | 10500 | 10500 | 10800 | 10400 | 10000 | 10100 | 10200 |
| Nominal | 8000 | 8000 | 8400 | 8700 | 9000 | 8600 | 9000 | 9500 | 9000 |

5. Arbitria began to tackle environmental problems as early as the second half of the 1900s. In 1990, it formulated the *Basic Environmental Act,* which declares that Arbitria aims at environmentally friendly economic development based on the belief that economic development and environmental conservation must be achieved in tandem. In addition, Arbitria introduced the *New Energy Act* in 2000, which embodies the nation's commitment to the development and practical application of new energies that will contribute to reducing CO2 emissions. Corporations in Arbitria are known for superb environment-related technology as well, as evidenced by a number of important patents held by Arbitrian corporations ranging from technologies to prevent air and water pollution to technologies that effectively reduce CO2 emissions, which are increasingly viewed as powerful tools for curbing global warming.

Arbitria ratified the Kyoto Protocol in 2002, and as an Annex I Party, it is under obligation to reduce greenhouse gas emissions by six percent by 2012 from the 1990 level. In 2006 the government of Arbitria enacted the *Act to Promote Measures to Curb Global Warming* but stopped short of defining emissions limits for greenhouse gases by law and of imposing sanctions on business operators that emit more than their greenhouse gas emissions limits. Its actions have been limited to urging business operators to make efforts to curb their greenhouse gas emissions. This leniency stems from the government's concern over the negative impact of strong enforcement on the nation's economic activity. In contrast to the government's indecisiveness, many business operators and trade associations have voluntarily embarked on measures to limit greenhouse gas emissions, partially in response to the growing public concern over environmental issues. The Arbitrian Coalition of Business Operators in particular has been setting an emissions reduction target for each industrial sector every year in its self-regulation plan and has been announcing the amounts of reduction achieved in a given year compared to the corresponding targets. Despite such voluntary undertakings, it is extremely difficult for Arbitria to reach the target of 6% reduction in greenhouse gas emissions from the 1990 level by 2012, as the table below showing changes in greenhouse gas emissions in Arbitria over the years indicates.

(Millions of metric tons)

| Year | 1990 | 1995 | 1999 | 2001 | 2003 | 2005 | 2007 | 2009 |
|---|---|---|---|---|---|---|---|---|
| Emissions | 1250 | 1300 | 1340 | 1315 | 1305 | 1352 | 1335 | 1310 |

6. Arbitria ratified the *Convention on Combating Bribery of Foreign Public Officials in*

*International Business Transactions* adopted by the OECD in 1997 and the *Convention against Corruption* adopted by the UN in 2003. In addition, it enacted a companion domestic act banning the bribery of foreign public officers. Article 1 of the said law states the following: "No person shall give, or offer or promise to give, any money or other benefits to a foreign public officer for the purpose of having the foreign public officer act or refrain from acting in a particular way in relation to his/her duties, or having the foreign public officer use his/her position to influence another foreign public officer to act or refrain from acting in a particular way in relation to that officer's duties, in order to obtain illicit gains in business with regard to international commercial transactions." Article 2 of the same act stipulates the following: "The term 'foreign public officer' as used in Article 1 means a person who engages in public service for a foreign government, ..., or a person who engages in the affairs under the authority of a foreign government and which has been delegated by such government." This law also applies to acts by citizens or corporations of Arbitria committed outside of Arbitria. A person who violates the law shall be punished by imprisonment with labor for not more than five years or by a fine of not more than US$100,000 and a juridical person shall be punished by a fine of not more than US$5 million. In Arbitria, the number of cases in which companies have been found guilty for violating this law has been increasing recently. The companies who have been prosecuted for violating the law were exposed to severe criticism from the people, and the heads of companies were forced to resign in some cases.

7. In Negoland, the demand for energy has been rising sharply keeping pace with the strong economic development. Negoland is noted for abundant coal supplies, and it boasted 100% self-sufficiency in energy until recently. However, demand for energy is growing faster than energy production, forcing the country to partially depend on imported energy, resulting in diminishing self-sufficiency. The table below shows changes in its energy self-sufficiency rate, power generation, and breakdown of energy sources over a recent period.

| | 1980 | 1990 | 2000 | 2003 | 2005 | 2007 | 2009 |
|---|---|---|---|---|---|---|---|
| Self-sufficiency | 105% | 105% | 97% | 95% | 94% | 93% | 91% |
| Generated power (Unit: 00,000,000 kWh) | 600 | 700 | 1,200 | 1,600 | 1,900 | 2,100 | 2,300 |
| Coal | 70% | 75% | 72% | 72% | 72% | 73% | 72% |
| Petroleum | 23% | 20% | 18% | 18% | 18% | 15% | 15% |
| Natural gas | 3% | 2% | 3% | 2% | 2% | 2% | 2% |
| Hydro-electric power | 4% | 3% | 7% | 8% | 8% | 9% | 10% |
| Others | 0% | 0% | 0% | 0% | 0% | 1% | 1% |

* "Others" include solar power generation and wind power generation, among others. There are no nuclear power plants in Negoland.

8. In Negoland, three large-scale power-generator enterprises account for the majority of nationwide power supply. In addition to these "Three Majors", there are smaller power generator enterprises, which supply power to limited areas or for limited purposes. In Negoland, a license is required to operate a power generator enterprise. As a rule, the electric power produced by the

power generator enterprises in Negoland is bought by the Power Supply Authority of Negoland (hereinafter, “the Power Supply Authority”) in its entirety and is supplied across the nation by the Power Supply Authority, except for cases where Negoland's government has designated otherwise, such as power generated specifically for limited geographical areas or for specific use. Negoland Electric Power (“Negoland Electric”) is the largest of the Three Majors. It is wholly owned by the royal family of Negoland. In the past, Negoland Electric was the only large-scale power generator enterprise in Negoland. Two new companies, Red Electric Power ("Red") and Yellow Electric Power (“Yellow”) were created in 1998 to meet growing demand for additional power generation to support the nation's economic development.

Purchase prices by the Power Supply Authority are decided by the Power Supply Authority each year. The Power Supply Authority determines the purchase price so that stable and inexpensive power supply on the one hand and stable business for the power generator enterprises on the other are ensured, and it considers the volume of power generated and plant and business conditions of each power generator enterprise in its pricing decision.

The table below shows the state of power generation and average prices of power for the Three Majors.

| | Percentage of total power generation | Coal | Petroleum | Natural gas | Hydro-electric | Others | Purchase price per 1 kWh |
|---|---|---|---|---|---|---|---|
| Negoland Electric Power | 65% | 72% | 15% | 2% | 10% | 1% | US$0.05 |
| Red Electric Power | 15% | 78% | 14% | 0% | 6% | 2% | US$0.07 |
| Yellow Electric Power | 20% | 70% | 16% | 1% | 12% | 1% | US$0.07 |

The purchase prices for energy produced by Red and Yellow are higher than the purchase price paid to Negoland Electric, because of smaller amounts of power generated by Red and Yellow compared to Negoland Electric and because the prices paid to Red and Yellow, which are relatively new, reflect a partial subsidy for the construction costs incurred for the new power plants, among others.

The financial conditions of Negoland Electric, Red and Yellow have been extremely stable.

9. Red is outlined in Exhibit 1. Red is the smallest of the Three Majors. One characteristic of Red is its high dependency on coal power generation, compared with Negoland Electric and Yellow. Red tried to limit CO2 emissions by replacing its oldest and least efficient thermal power generation plants with a new thermal power plant site. Due to the fact that Red was unsuccessful in deploying new technologies with superior CO2 reduction capabilities because of budget constraints, leaving Red dependent on coal power generators, this has caused its CO2 emissions to hover at a high rate compared to the other Majors. As in other countries, the public of Negoland has been increasingly

concerned about environmental issues, and public scrutiny of the CO2 emissions by the power generator enterprises is on the rise. Currently, no specific limits on CO2 emissions have been set for power generator enterprises, but environmental groups, having conducted a comparative analysis of the Three Majors' CO2 emissions, run campaigns in newspapers and on the Internet criticizing the backwardness of Red in initiating measures to reduce CO2 reductions. Such criticism has been damaging the company image of Red. CO2 emissions by Negoland Electric and Yellow are lower than Red because they successfully replaced their old plants in a timely manner coupled with the fact that they relied more heavily on hydro-electric power generation from the start. However, their CO2 emissions are still higher than power generator enterprises in major industrialized countries in Europe and the United States. The table below shows CO2 emissions per amount of power sold by the Three Majors.

<Kg-CO2/kWh>

| | 2006 | 2007 | 2008 | 2009 |
|---|---|---|---|---|
| Negoland Electric Power | 0.65 | 0.62 | 0.60 | 0.58 |
| Red Electric Power | 0.77 | 0.75 | 0.74 | 0.73 |
| Yellow Electric Power | 0.60 | 0.58 | 0.55 | 0.50 |

10. To meet the rapidly rising demand for power in the short term, the Government of Negoland decided to allow new entry to its market by power generator enterprises, including foreign capital firms. As the government viewed environmental issues as an important area requiring attention, however, it decided to take steps beyond simply increasing the number of power plants. Therefore, the government of Negoland announced its "Basic Principles Concerning Power Generation Business." The Basic Principles, which serve as an important policy foundation for the Negoland government, are outlined below. (Both Red and Blue have known the Principles since their release)

(1) The construction of new power plants is encouraged to meet the rapidly rising demand for electric power.

(2) Construction of power plants by companies whose majority or entire stake is held by a foreign party is permitted. (Until then, licenses for power supply, which are a part of the economic infrastructure of the nation, were given only to companies whose majority stake was held by domestic concerns.).

(3) With respect to projects that start in fiscal 2009, the nation, upon request by the parties concerned, will subsidize a certain portion of the cost of the construction of new power plants, provided that such power plants to be constructed will meet satisfactory standards of environmental conservation, and will subsidize a certain portion of the cost of overhauls of existing plants, provided that such overhauls will result in higher power generation efficiency while reducing the burden on the environment.

(4) The amount of such subsidies will range from 10% to 30% of the construction costs and will be determined at the discretion of the government of Negoland, after comprehensive

evaluation by the government of the cost of construction or overhauls, the supply and demand outlook at the time of the request, and the volume of power to be generated, among other matters.

(5) No subsidies will be awarded to projects which fail to achieve the satisfactory level of power generation efficiency or environmental conservation.

(6) The government may order such subsidies be reverted, if request for a subsidy is filed based on false data or if what is claimed in the request differs materially from the actual outcome.

(7) The power generator enterprise who made the best contribution to environmental protection will be commended by the King and the government will give US$1 million as a prize.

11. After the announcement of the Basic Principles, Red decided to examine the feasibility of constructing new power plants. It concluded that it would like to go ahead with the construction of power plants at several locations by taking advantage of the incentives offered in the newly announced Principles. The decision was based on: the likelihood of continued economic growth in Negoland and the subsidy from the government for power plants constructed pursuant to the Principles, which would be translated into construction for less money for Red. Red proceeded to set up an in-house project team for the construction of new power plants to be built under the Principles. The Project Team was headed by Nahgata, Vice President of Red. Under Nahgata, the heads of the power generation business department, corporate planning department, environmental department and legal department gathered together to discuss what type of power plants to be constructed, how many such plants should be constructed and how to construct such plants. The Project Team decided that the environmental impact of the new plant construction must be given special attention, since environmental conservation had become a critical issue in Negoland, preferential treatment would be accorded in the awarding of subsidies if CO2 emissions could be reduced to a low level, and the prize would be given and the corporate image would be improved if it is commended as the most environmentally friendly power generator enterprise. In the past, Red investigated the feasibility of addressing environmental issues by Red alone, but it decided to turn to overseas sources for technology and funding, given limited technological and capital resources within Red. As for specific planning, the following was decided: first, the possibility of utilizing the superior environmental technology available abroad should be examined, and second, looking forward, Red would construct additional hydro-electric power plants by teaming up with some corporation in an industrialized country and by taking advantage of CDM or a similar framework. Red though, had never utilized such schemes before.

12. Arbitria is not endowed with natural resources such as coal, oil and natural gas, and its energy self-efficiency rate is very low. In the field of power generation, it saw promise in nuclear power generation from early on, and the country is known worldwide for its superb nuclear power generation technology. Moreover, Arbitria's government and corporations are actively engaged in R&D for new power generation techniques, including solar and biomass power generation, and Arbitria possesses world-class technologies in these two areas.

The table below shows changes in energy self-sufficiency rate, power generation, and breakdown of energy sources over a recent period.

| | 1980 | 1990 | 2000 | 2003 | 2005 | 2007 | 2009 |
|---|---|---|---|---|---|---|---|
| Self-sufficiency | 12.6% | 17.2% | 20.4% | 19.5% | 18.2% | 17.6% | 18.0% |
| Generated power (00,000,000 kWh) | 5800 | 7500 | 9000 | 9300 | 9500 | 9700 | 10000 |
| Coal | 5% | 12% | 18% | 19% | 21% | 21% | 22% |
| Petroleum | 46% | 29% | 21% | 18% | 16% | 15% | 12% |
| Hydro-electric power | 19% | 14% | 12% | 10% | 10% | 9% | 9% |
| Natural gas | 15% | 20% | 20% | 21% | 21% | 24% | 22% |
| Nuclear power | 15% | 25% | 29% | 31% | 31% | 30% | 33% |
| Others | 0% | 0% | 0% | 1% | 1% | 1% | 2% |

13. In Arbitria, there are five major electric power companies (the “Big Five”). One of them is Blue. Blue is outlined in Exhibit 2. Blue is ranked third among the Big Five (12% of the total power generation in Arbitria). Blue became highly interested in environmental conservation technology from early on and has focused strongly on R&D related to fuel efficiency and CO2 emissions minimization for thermal power plants, as well as R&D related to new power generation techniques including solar, biomass and wind power generation. In particular, Blue possesses sophisticated technology that aids CO2 emissions reductions for thermal power plants and technology in the field of biomass power generation. Such technology is already in service at Blue's power plants.

14. Blue enjoys stable business. In response to growing environmental awareness around the world, it sought to contribute to environmental conservation and to boost its revenue and earnings at the same time by utilizing its own environmental technology for power generation endeavors in developing countries.

Blue successfully lowered its emissions below the CO2 emissions limit (0.5kg-Co2/kWh) set forth by the Arbitrian Association of Electric Power Generator Enterprises. The government of Arbitria is very likely to ask the power generation industry to further its effort to reduce emissions in the near future, given that the nationwide reduction of 6% in emissions from the 1990 level by 2012 appears to be increasingly difficult, given the progress made to date. Blue knew it would have to not only keep up its efforts to reduce CO2 emissions to meet such further requirement from the government, but also be more active in emission trading where Blue could buy emissions rights. In addition, Blue thought demonstrating its proactive commitment to the environment would be crucial to improve its corporate image, given growing environmental consciousness among the citizens of Arbitria.

Blue began its involvement in CDM projects in developing countries under the Kyoto Protocol framework in 2008, and it has participated in ten such projects thus far. Of the ten projects, five have been registered as CDM projects after gaining approval of the CDM Executive Board of the

UN. Three projects have been given the approval of the host countries and two are awaiting approval of the host countries. It has never participated in a project in Negoland. The CDM projects in which Blue has participated in are outlined Exhibit 3.

15. In November 2008, an international symposium called "Future of the Environment and Energy" was held in Negoland. The symposium's objective was to discuss how the energy industry should address environmental issues in today's world where problems were becoming increasingly serious, and a variety of environmental conservation technologies and new power generation techniques were showcased.

Nomura, the President of Red, and Ota, the President of Blue, both participated in the Symposium. Until then, Blue had focused on Asian countries other than Negoland in its effort to sell environmental technology and to explore CDM projects. Blue had not been involved in any project in Negoland. However, from early on, Blue took notice of the promise offered by Negoland, a neighboring country of Arbitria, as it continued its economic development. Three years ago, a small amount of radiation leakage was found at a Blue nuclear power plant near the Negoland border. The leak involved only a small amount of radiation, not causing any harm to humans, but there was a delay in reporting the leak to the government of Negoland, and to Negoland residents living close to the nuclear plant in question, resulting in heavy criticism from the mass media and local residents of Negoland. This course of events led Blue to shy away from investing in Negoland. Three years passed from the accident, and Ota wanted to seek good business opportunities by taking advantage of the symposium.

During the symposium, Ota became acquainted with Bob Orange, who was the Assistant Director General of Negoland's Energy Agency. Orange, a relative of Nego III, holds real power over energy-related matters within the government. The following conversation took place between Bob Orange and Ota.

Orange: Blue has never invested in Negoland. You aren't interested in investing in Negoland, are you?

Ota: Actually, we are very interested in investing in Negoland. We are sorry for the trouble caused by the accident three years ago, but it will not happen again. We didn't invest in Negoland because we haven't run across any good opportunities. If we can find a good deal, we are very willing to get involved.

Orange: Really? In that case, I will introduce you to a key figure in Negoland's power generation industry.

Then, Orange introduced Nomura to Ota.

16. After the Symposium, Nomura and Ota met for dinner. They exchanged opinions about the state of the electric power business in Negoland and Arbitria and the possibility of Red and Blue doing business together. The discussion led to their consensus that substantial synergy would result, if Blue's and Red's needs could be effectively matched together. In other words, Red wanted to take in thermal power generation technology to reduce CO2 emissions and new power generation

techniques which are more environmental friendly, while Blue wanted to sell the relevant technologies invented by Blue. In addition, Blue was in search of outstanding CDM projects, while Red was interested in utilizing the CDM framework for the first time.

Nomura and Ota got along with each other very well and decided to have their respective teams examine the possibility of collaboration as soon as possible. Based on this agreement between Nomura and Ota, Smith, the deputy general manager of the power generation business department, was appointed as the head of the team from Red and Brown, the deputy general manager of the international department, was appointed as the head of Blue's team. Both Smith and Brown had full authority necessary to conduct negotiations on behalf of their respective companies relating to this project. After discussions, the parties responsible at the two firms concluded that, to begin with, full-fledged examinations should be made in two areas. The two areas are indicated below.

(1) Licensing, to Red of Blue's technology enabling reductions in CO2 emissions at thermal power plants; and

(2) Construction of a biomass power generation plant in Negoland.

As for other projects, they agreed to put them aside for the time being and discussions on them would resume later upon review of the status of the progress made in these first two projects. Project (1) above was viewed as a project that would satisfy Blue's need for reducing CO2 emissions and Red's need for boosting revenue by licensing out its technology. Blue had patents for the technology to reduce CO2 emissions in major countries including Negoland and Arbitria. They came up with Project (2) as this would satisfy Red's need for deploying new power generation techniques for its business. For Blue, biomass power generation was a technology still in the development stage, but it saw the construction of a biomass power plant in a positive light, since the construction would help Blue elevate its technology a step further. The fact that Blue could build a biomass power plant inexpensively using the subsidy from Negoland and in cooperation with Red made the deal very attractive to Blue as well. It was also agreed that for the biomass power plant project, an application to make it a CDM project should be filed pursuant to the Kyoto Protocol to satisfy the need of Blue to obtain credits under the Kyoto Protocol.

17. In January 2009, Red and Blue reached a basic agreement concerning their cooperation for environmentally friendly power production, which reflected the outcome of the past discussions between the two companies.

The Basic Agreement, which describes details of their basic agreement, is shown in Exhibit 4. At a party celebrating the signing of the Basic Agreement, the following conversation took place between Nomura and Ota.

Nomura: We are very delighted to have reached an agreement with Blue like this one. Let's make the specific projects roll based on the Basic Agreement.

Ota: Yes, it is reassuring to have a powerful partner like you in the Nego market. There are issues that need to be settled like the handling of intellectual property rights, but we plan to actively provide you with our technology.

Nomura: We would appreciate that. The electric power market of Negoland has a lot of potential.

We want to grow big using your technology and capital. I hope you will concentrate your efforts on our relationship together. The government of Negoland will commend the power generator enterprise making the best contribution to environmental protection in 2009 and US$1 million will be given to the winning company. We want to win this prize by introducing the excellent technology of Blue. Therefore, it would cause a serious problem if you license the same technology to other Negoland companies.

Ota: Of course we will focus on building our relationship together. I hope you too will focus on the relationship with us. Blue hopes to contribute to Negoland by cooperating with Red.

18. Based on the Basic Agreement described above, they proceeded with discussions to finalize their agreements for the specific projects.

For licensing to Red of Blue's technology enabling reductions in CO2 emissions, they encountered differences of opinion concerning the licensing fee and the scope of use for the licensed technology. Red sought to limit the licensing fee to US$100,000 and wanted to use the licensed technology at any power plants where such technology would be considered necessary, at Red's discretion. Blue, on the other hand, wanted US$300,000 for the licensing fee and requested that the power plants where such technology would be used be decided by mutual agreement between Red and Blue.

Regarding these issues, the following exchanges took place between Smith and Brown:

Smith: We need to reduce CO2 emissions at thermal power plants as soon as possible. We want to utilize the licensed technology at many thermal power plants as soon as we can.

Brown: We welcome your use of our technology. But we need to know exactly where our technology would be used, and it is only fair to vary the licensing fee by the number of power plants that will benefit from our technology. And please remember that the technology to be licensed to you will be our most advanced technology and this is the exclusive license which prohibits us to license the same technology to other parties. We would be at a loss without an appropriate licensing fee.

Smith: We evaluate highly your superb technology and we could be flexible when it comes to licensing fees. We could consider a higher licensing fee, but let us at Red decide on where your technology will be used.

They eventually agreed on a licensing fee of US$500,000, which was higher than the amount initially proposed by Blue, and in exchange for the higher fee, Red's request with respect to the scope of use was granted. In May 2009, a license agreement, which is shown in Exhibit 5, was signed.

After the execution of the license agreement, Red applied for a subsidy to the government of Negoland for the overhaul work to be carried out at power plants in preparation for introducing the technology licensed to Red by Blue. The government granted a subsidy of US$30 million, which is 20% of the total cost of the overhaul work of US$150 million. It was confirmed that the following conversation took place between Red and Blue over the course of preparing and in the period following the filing of the application.

Smith: To obtain the subsidy, we need to have all the data for the application ready around September. We need to know the amount of reduction in CO2 emissions to be achieved after the new technology is in place.

Brown: Our past records of reductions achieved in Arbitria show that we were able to reduce emissions by 1/2 from the level that prevailed prior to the introduction of this technology. We are planning to improve this number further by advancing the technology, but at this point, this number roughly represents where we stand now.

Smith: If there is a material difference between the would-be performance indicated in our application and the actual results, we will face the risk of the government canceling the subsidy.

Brown: Actual reductions vary depending on the current equipment and fuel used at thermal power plants as well as the skill level of employees. To ensure accuracy, we need to conduct on-site surveys at all power plants where you plan to use our technology. Ordinarily, investigations will take about two months.

Smith: We can't file our application in time if your investigations take two months. You need to complete your investigations in two weeks.

Brown: There is no way to ensure accuracy with two-week investigations.

Smith: It's your responsibility to figure out a way to complete the surveys in two weeks. Without the subsidy, it would be difficult for Red to pursue this business further.

Brown: Well, we see your point.

Smith: Why don't you do your surveys at thermal power plants at, say, three representative locations?

Brown: As things stand now, we'll be forced to accept your suggestion. Who will select the representative thermal power plants?

Smith: Because your company doesn't know the details of our power plants, it would be faster if we provided the list. Are there any special concerns that need to be addressed in selecting the sites?

Brown: We expect you to select your representative thermal power plants so that we will be able to get a good overall picture of your entire thermal power generation plants.

Smith: We'll make efforts in that direction.

Red selected thermal power plants at three locations and informed Blue of the selection. The three power plants selected by Red were the three biggest plants of Red and the volume of power generation by these three plants amounts to half of the total power generation by Red (Blue knew those facts). Results of Blue's surveys at these three plants confirmed that the rate of reduction in CO2 emissions achievable with the new technology would be about 1/2, as suggested previously.

Red announced the introduction of Blue's technology, and in January 2010, Negoland government notified Red that the government internally decided that Red would be commended as the best contributor to environmental protection in 2009 with the prize of US$1 million for introducing the most advanced technology by making a license agreement with Blue. (The announcement of the commendation and payment of US$1 million was to be made in the end of March 2010).

19. Blue has built biomass power generation plants, where a mixture of chicken manure and wood chips is used as fuel. These biomass power generation plants in Arbitria produce about 30,000 kilowatts of power output by incinerating a mixture of about 300,000 tons of chicken manure and wood chips with the special additive invented by Blue. These power plants are small. Blue would like to test its technology at a larger biomass power generation plant by building one in Negoland. Red knew the above facts about the biomass power generation plant of Blue in Arbitria.

Red requested that a new biomass power generation plant be built by Red upon grant by Blue of Blue's technology, while Blue insisted that a new biomass power plant be built by a joint venture firm to be established between Red and Blue. Red wanted to have freedom in constructing its own power plant using the licensed technology, in contrast to Blue, which desired to participate in the construction and operation of the new power plant through a joint venture with Red, as this would allow Blue to maintain its control over its own technology and know-how and to utilize the data and other information obtained in the course of the construction and operation of the new power plant to take its technology and know-how to the next level. Regarding this point Red finally conceded, after understanding that biomass generation, although already in operation, was still in the development stage, and that Blue needed to participate in the operation of the power plant to improve its technology and know-how. An agreement was reached between the two in July 2009 to make it a joint venture. The joint venture company was named Green. The Joint Venture Agreement is outlined in Exhibit 6.

20. For the construction of the new power plant, which would be built as a joint venture, it was decided that an application for subsidy would be filed to the government pursuant to the government's Basic Principles. Before the execution of the Joint Venture Agreement, the following exchanges took place between Red and Blue regarding this point.

Smith: To obtain the subsidy, we have to finalize specifications before the end of October. We need to know power output to be achieved by the new power plant.

Brown: Past records in Arbitria show that 30,000 kilowatts of output were possible. We are planning to improve this number further by advancing the technology, but at this point, this number roughly represents where we stand now.

Smith: As I mentioned before when we discussed the thermal power plants, if there is a material difference between the would-be performance indicated in the application and actual results, we will face the risk of the government canceling the subsidy. Are you sure about 30,000 kilowatts of output?

Brown: Actual output varies depending on the conditions of chicken manure and wood chips, among other matters. To ensure accuracy, we need to conduct thorough investigations including an on-site survey and incineration testing using samples of chicken manure and wood chips. Ordinarily, investigations will take about two months.

Smith: We'll prepare samples for you, and we'll deliver them to you quickly. But we can't file our application in time, if your investigations take two months. So, I ask you to

complete the investigations as soon as possible, say, in a week.

Brown: Well, that can't be done.

Red: Without the subsidy, it would be difficult for us to pursue this business further. And you will miss this great opportunity to build a brand-new, large-scale biomass power generation plant.

Blue: Well, we see your point. . .

Red: Well, then, I'll prepare samples for you right away.

Red then proceeded to deliver samples of chicken manure and wood chips available in Negoland to Blue. Results of the tests based on the delivered samples indicated that the use of chicken manure and wood chips obtained in Negoland resulted in the same power generation efficiency achieved with the chicken manure and wood chips procured in Arbitria (Red was immediately informed of the results). Neither Red nor Blue performed further investigations. An application for subsidy was filed for the construction of a biomass power generation plant, with the application claiming a projected power output capacity of 30,000 kilowatts and incinerating 500,000 tons of chicken manure.

21. For the biomass power generation project, steps were taken to make it eligible for the CDM pursuant to the provisions of the Kyoto Protocol. At the same time, Red and Blud discussed the purchase, pursuant to Article 12.3(b) of the Kyoto Protocol, of emissions reductions (emissions credits) accruing from this project. It was agreed that Blue would purchase the entire emissions credits accruing from this project, but discussions focused on two related issues, namely, the pricing of emissions credits and whether Blue must make upfront payment. With respect to the pricing of emissions credits, Blue offered 8 US dollars per ton, while taking the market price of the secondary markets into account, on the grounds that the contract would be a bulk purchase agreement involving purchases over a long period of time and that commitments to such purchases would be made prior to the actual construction launch of the plant. Red, on the other hand, insisted on 14 US dollars per ton and further demanded that Blue make upfront payment of US$1.5 million, which would be allotted to partially cover the construction cost of the plant.

The following exchanges took place between Smith and Brown regarding this point.

Brown: We never made upfront payment for any past projects. Construction hasn't begun yet and it is extremely uncertain whether emissions credits will be issued at all. Given these factors, it is difficult for us to make upfront payment. We believe it is reasonable for the joint venture company to assume the risk associated with the possibility of emissions credits not being issued, don't you agree?

Smith: That may be so for ordinary projects, but this project will be carried out within the comprehensive framework of cooperation between Blue and Red, and the main entity of the project is the joint venture firm to be formed by Blue and Red together. Therefore, it is reasonable that you too be required to shoulder certain risk.

Brown: It is important for us to be able to buy emissions credits on an ongoing basis over a long period of time inexpensively. How about 10 US dollars? If you accept this, and we are

able to be registered with the United Nations CDM Executive Board, then we could give in and bear the risk of not being able to obtain a satisfactory number of emissions credits, which will be decided after actual performance of the plant is monitored. But please add a provision to the contract to the effect that in such case the upfront payment shall be returned to us. Otherwise, we cannot make any upfront payment. In addition, though the upfront payment is made to Green, please give us the guarantee of Red for the repayment of the upfront payment by Green, because the upfront payment is made due to your request.

Smith: All right. We agree.

After rounds of exchanges like these, an agreement concerning the purchase of emissions credits, which appears in Exhibit 7, was signed in August 2009. In addition, Red submitted the paper which appears in Exhibit 8 to Blue, which was handed over by Nomura to Ota when Ota visited Red for the execution of the agreement as shown in Exhibit 7.

22. However, serious problems sprang out of these projects in 2010.

The fact that Blue had licensed to Negoland Electric Power the same technology for the reduction of CO2 emission which had been licensed to Red was publicly announced in March 2010. The license fee was US$300,000. Though Negoland Electric Power had paid US$300,000 as the license fee to Blue, no work for introducing the technology (such as design and purchase of parts etc.) has started yet. Negoland Electric Power had not incurred any cost for the introduction of the technology from Blue other than the above license fee.

Upon this announcement, the Negoland government informed Red that the internal decision of commendation as the best contributor to environment protection with the prize of US$1 million, which had been relayed to Red in January 2001, was cancelled, because Red was not considered as the “best” contributor to environment protection for it turned out that Red only introduced the same technology as Negoland Electric did.

Negoland Electric Power had not known the details of the license agreement between Red and Blue regarding the technology in question and the fact that the government had internally decided to award US$1 million to Red.

Red immediately notified Blue that, despite the Basic Agreement between Red and Blue, which stipulates that Blue may not engage in a transaction with a party other than Red until the end of January 2011, Blue granted a license to Negoland Electric Power in violation of the promise made, and therefore, Red demanded that Blue immediately cancel the license agreement with Negoland Electric. Also, Red notified that US$1 million should be paid by Blue as Red would have been awarded the same amount by the government, the payment of which was cancelled due to Blue’s license to Negoland Electric Power (It was certain that Red had been awarded US$1 million if Blue had not licensed the technology to Negoland Electric Power and Blue knew it before the execution of the license agreement with Negoland Electric Power).

Blue made the following counterarguments:

(1) The Basic Agreement between Red and Blue already had completed its expected role, since the

three topics listed in the said agreement yielded certain results with the execution of the three agreements as shown in Exhibits 5, 6 and 7.

(2) The grant of the technological license in question to Negoland Electric Power was made in response to a strong request by the government of Negoland, and the licensing fee was set at an exceptional level.

With respect to Point (2), it was revealed later that Prince Robert, the eldest son of Nego III and a major shareholder of Negoland Electric Power, had made a strong request to Ota, who thought the request made directly by a royal family member with strong influence on the politics of Negoland could not be denied. On the next day when Ota was approached by Prince Robert, Ota met with Nomura at a party held in Negoland, which was attended by the members of the electric power industry groups. Ota asked Nomura, "Generally, is it possible to refuse a request from Prince Robert?" and Nomura replied, "No. In the electricity industry, even a request from Orange could not be ignored. It would be very difficult and in fact impossible to refuse a request from Prince Robert, who has strong influence on the politics of Negoland as a whole. Did anything happen?" Ota said, "The Prince asked me to meet someone from Negoland Electric Power." Nomura replied, "It seems that you have no choice but to meet them.

To make matters even worse, it was discovered that the CO2 emissions at the thermal power plants where the technology licensed from Blue was in use failed to achieve the planned level of reductions stated in the application for subsidy submitted to the government of Negoland. The shortfall was caused by the lack of sufficient investigation prior to the application filing. The investigations conducted prior to the application filing were made on the thermal power plants at three locations only. Although the CO2 emissions at these three locations were in line with the planned figures, the rest of the thermal power plants i.e., locations on which no on-site surveys had been performed, were able to reduce only 10% in CO2 emissions due to their decrepit facilities. It is not disputed that if Blue had performed the survey on the rest of the power plants, Blue could have confirmed that such plants would be able to reduce only 10% in CO2 emissions

As a result, the government of Negoland ordered Red to return US$15 million (half of US$30 million previously paid as subsidy), which represented the portion of the subsidy for the power plants that failed to achieve the planned emissions level.

Red asserted that the order to return the subsidy occurred because the technology supplied by Blue was not of a standard that could satisfy the initially planned emission reductions and because Blue failed to dispense advice (that on-site surveys must be performed on all of the thermal power plants) required of a professional operator. Red is seeking damages amounting to US$15 million from Blue. Blue refuted the allegations of Red by claiming that Blue had communicated to Red that on-site surveys must be performed at all thermal power plants and that Red, despite Blue's warning, demanded that limited investigations be performed due to a lack of sufficient time. Blue further noted that if Red's selection of the sites to be surveyed had included decrepit thermal power plants, this outcome would have been avoided, and therefore it was Red that should be held responsible for the shortfall in emissions reductions. In fact, neither party contested the fact that the return of the subsidy would have been avoided if on-site surveys had been performed on decrepit power plants.

Red, however, made a counterargument, claiming that, if decrepit power plants must be added to the list of power plants to be surveyed, Blue should have clearly communicated that to Red.

23. The registration process for the biomass power generation went smoothly, and it was registered as a CDM project by the CEM Executive Board of the UN. In addition, the project was granted a 30% subsidy by the government of Negoland on its construction cost of US$30 million, that is US$9 million. The construction was completed without encountering much difficulty. Once the plant went into operation, however, it was discovered that its power output was way below expectations. Red and Blue ran a joint investigation and concluded that the chicken manure and wood chips used for the actual operations were quite different from those procured in Arbitria in terms of the constituents of these materials and the additive didn't work well because of this difference. There is no dispute that these are the factors behind the less-than expected output. It was also discovered that the samples of chicken manure and wood chips that Red provided to Blue and Blue used for its testing, differed from the chicken manure and wood chips used for the actual operation of the power plant. It was found that the chicken manure and wood chips actually used for the operation were obtained in the neighboring country, while the samples were procured in Negoland. The farm that provided the chicken manure and wood chips, which were then delivered to Blue as samples for initial testing, was a leading farm in Negoland. Although the farm was expected to play a central role in supplying chicken manure and wood chips for the operation of the biomass power generation plant, it was unable to do so due to a large-scale flood that hit the farm and the surrounding area when the construction was almost completed. Smith immediately communicated this to Brown by e-mail. Since the Joint Venture Agreement states that the responsibility of procuring chicken manure and wood chips rests on Red, Red had to search for sources to fulfill its promise of obtaining them on its own responsibility. The following exchanges took place between Red and Blue before Red went out to search for chicken manure and wood chips.

Brown: We heard there was a large-scale flood. Can you get chicken manure and wood chips all right?

Smith: We're trying everything possible. I think we'll pull it off somehow.

Brown: Please make sure to get hold of them, as we can't produce power without them. If you think it's difficult to secure them please tell us far in advance before it becomes too late.

Smith: OK.

In its haste, Red located new farms and managed to obtain some amount of chicken manure and wood chips in Negoland, but Red mostly had to resort to sources outside Negoland in a neighboring country since it was no longer easy to obtain the needed amount of chicken manure and wood chips only in Negoland. This attempt led to a difference in the constituents of the chicken manure and wood chips. Red did not explain to Blue that it had procured chicken manure and wood chips from sources in a neighboring country.

24. The Negoland Energy Agency, which took note of the considerable shortfall in actual output compared with the planned figure, conducted an investigation to decide whether the subsidy should

be canceled. The day following the investigation, Bob Orange contacted Nomura.

"The subsidy will be canceled without a doubt if nothing's done to ameliorate the situation," said Orange. "The cancellation will cost you a lot and will tarnish the corporate image of Red, especially after what happened to Red with the thermal power plant project, but I can use my influence to put your headache to rest, if Red is willing to demonstrate its 'sincerity' to me."

Every senior manager of any corporation in Negoland knows that the "sincerity" hinted by Orange means about US$50,000 in cash. Nomura informed Ota of the conversation Nomura had with Orange and asked Ota to shoulder 1/2 of the required US$50,000.

"That would constitute a bribe," remarked Ota. "Bribes aren't allowed under the national law of Arbitria. Blue never bribes anybody. And I beg you to refrain from bribing Orange. The project is a joint venture between Red and Blue. Blue may be suspected of conspiring with Red in bribing, if Red is caught bribing anyone."

"Well, giving out a small amount of money is something that everybody does in my country," replied Nomura. "Bribery is illegal in Negoland as well, but no high-ranking government officials like Orange have ever been caught for bribery charges; besides, bribery is never discovered as long as no whistle-blowing is made internally."

"What scares me most is internal whistle-blowing," replied Ota. "Internal whistle-blowing is not a rarity in my country. And as for the power generation output, I am confident we will be able to achieve the same level of power generation output that we achieved in Arbitria with chicken manure and wood chips available in Negoland, if you can wait for six months. Right now, my former associates who now work for the joint venture are negotiating with the Energy Agency. They are trying to persuade the Agency to wait for six more months to see satisfactory results. According to my former associates, the people at the Energy Agency told them that they would wait for six more months. So, please do not try to bribe Orange in a rush. If you pay, we'll be forced to discontinue all cooperation with you."

"Will you hold yourself responsible if the subsidy is canceled?" asked Nomura.

"I doubt that it will happen, but we will fulfill all responsibility that needs to be assumed by us," replied Ota.

"All right," said Nomura. "I'll do as you tell me in deference to you."

Nomura did not give any monetary gift to Orange.

25. A month passed from the call from Orange. The Energy Agency sent a notification to the joint venture informing of its decision to cancel the subsidy. According to the notice, the joint venture had to return the subsidy amounting to US$9 million to the government within six months. Officers of the joint venture rushed to the Energy Agency to inquire the reason for the cancellation, but the Agency simply stated that the "decision was made in line with our rules." In Negoland, no practical means are available to contest governmental decisions such as this. Moreover, Green has no available funds now and can't pay any amount to repay the subsidy. Under Negoland law, in the event Green is unable to refund the subsidy, Red and Blue as shareholders shall be obliged to refund the amount of the subsidy.

Red told Blue that the cancellation was attributable to the failure by the plant to achieve the performance as promised by Blue and to the refusal to pay a bribe to Orange. Red demanded that Blue pay the entire US$9 million. Blue, claiming that the expected performance was not attained because Red did not allow Blue sufficient time for its investigations and because Red provided samples which were different from those used in the actual operation of the plant, argued that US$9 million should be incurred by Red, or otherwise be shouldered equally by the two parties pursuant to the Joint Venture Agreement. Regarding the latter point, Red claimed that it was not aware that the constituents of chicken manure and wood chips vary depending on location and it was never informed that such difference would affect the biomass power generation efficiency.

26. This problem remained unsettled as the deadline for the return of the subsidy approached. In addition, Red informed Blue that Red did not have enough cash on hand to immediately disburse US$4.5 million. A penalty would be imposed in the event of a failure to return the subsidy by the deadline. Moreover, it was anticipated that the failure to pay would adversely affect future business of the venture in Negoland. Regarding this, the following exchanges took place between Smith and Brown.

Brown: What do you mean by 'no cash on hand to pay US$4.5 million'?

Smith: We mean it would be difficult to come up with a sum that large immediately to make the payment. Above all, Blue is responsible for what happened in this case, so Red is under no obligation to pay the sum that large.

Brown: A penalty will be imposed if we don't make the payment deadline, and this may impact the future of the joint venture.

Smith: On that point, I can ask Orange to wait a little longer. Red doesn’t intend to contribute to the payment, unless it is clarified between us who is responsible for each matter in question.

Brown: Are you trying to bribe Orange? We can't accept that. If you insist, Blue will return the money in full, but we will charge you for your share later.

Smith: You can make whatever payment you please at your liberty, but we do not intend to contribute toward the payment.

After the above exchanges, Blue paid US$9 million to the government of Negoland. Blue claims that of the US$9 million, Red ought to shoulder its share amounting to US$4.5 million.

27. In addition to everything else, no emissions credits were issued by the CDM after it monitored the project and determined that its performance outcome was less than satisfactory. As a result, Blue demanded the payment of the upfront payment amount in full, pursuant to the guarantee by Red. Red refused to pay it on the grounds of the promise made orally with Blue that the upfront payment need not be returned as long as the project becomes a registered one by the CDM Executive Board, and on the fact that the failure by the plant to achieve satisfactory performance was attributable to Blue. In addition, Red argued that the amount which could be paid by Red is one half of the upfront payment at most even if Red has to make such payment because Green is a joint venture

company equally owned by Red and Blue 50:50.

28. Red and Blue attempted to resolve the above disputes through negotiations, but their attempts ended up in failure. It was agreed that the dispute concerning the CO2 emissions reduction technology and the dispute concerning the biomass power generation plant would be brought to arbitration, with Red as claimant and Blue as respondent for the former, and with Blue as claimant and Red as respondent for the latter.

The arbitrator informed the parties that he would hear both parties' cases regarding the following specific points on December 4 and instructed the parties to prepare for the hearing and to submit a written brief, summarizing their respective assertions, by the designated deadline (In preparing the brief, necessary consideration must be made regarding each party's claims and assertions appearing in this Problem, regardless of who must bear the burden of proof with respect thereto).

I. Issue 1: Regarding the CO2 emissions reduction technology transaction

(1) Should the Red's claim that Blue shall immediately terminate the license agreement with Negoland Electric Power and/or Blue pay US$1 million be allowed?

(2) Is Blue under obligation to pay US$15 million to Red?

II. Issue 2: Regarding the biomass power generation transaction

(1) Is Red under obligation to pay US$9 million or US$4.5 million to Blue?

(2) Is Red under obligation to pay US$1.5 million as the upfront payment to Blue?

29. It was announced that in principle hearings for arbitration would take place in the following order. However, modifications may be made if the arbitrator and the parties concerned so arrange on the said day.

13:00 - 13:10: Preparation
13:10 - 13:15: Opening statement regarding Issue 1 by Red
13:15 - 13:20: Opening statement regarding Issue 1 by Blue
13:20 - 14:40: Hearing regarding Issue 1
14:40 - 15:00: Recess
15:00 - 15:05: Opening statement regarding Issue 2 (Blue's counterclaim) by Blue
15:05 - 15:10: Opening statement regarding Issue 2 by Red
15:10 - 16:30: Hearing on Issue 2
16:30 - 16:40: Closing arguments by Red and Blue
16:40 - 17:00: Comments by the arbitrator(s)

<Negotiation>

30. The disputes between Red and Blue have already been submitted to arbitration, but arbitration proceedings for the disputes have not yet commenced. It was decided that Red and Blue would sit together once again in hopes of settling the disputes by themselves through negotiation. If no settlement is reached through negotiation by the designated deadline, the only recourse left to them is to commence arbitration proceedings, albeit half-heartedly. Red has already accepted the fact that the technology aiding CO2 emission reductions for thermal power plants was licensed to Negoland Electric Power, and it was agreed that one half of the US$15million subsidy, which Red is forced to return to the government would be shouldered by Blue. The following two issues still remain unsolved.

(1) Whether Red will pay US$4.5 million to Blue in connection with the return of the subsidy linked to biomass power generation; and

(2) Whether Red will return to Blue the upfront payment with respect to the emissions credit purchase agreement.

31. Subsequent to the initial occurrence of the disputes, several new events have taken place concerning the CO2 emission reduction technology and biomass power generation.

In the area of CO2 emission reduction technology, Grape Electric Power of Japan reportedly developed a technology capable of achieving the same level of emissions reductions as Blue's technology. Grape Electric Power of Japan has concentrated on electric power business within Japan and it has never licensed its technology to foreign electric power generator enterprises, including those in Negoland.

32. In the sphere of biomass power generation, the impact of the flood has disappeared, and chicken manure and wood chips can now be procured from sources within Negoland. In the meantime, Green has already been successful in developing a new technology which yields high fuel efficiency using the chicken manure and wood chips available in Negoland. At present, it is capable of producing the initially planned output of 30,000 kilowatts with ease. The Government of Negoland has recently announced a new policy, underscored by greater involvement by the State in the energy sector, which is needed for ensuring energy security. Specific policy measures were announced, including those concerning joint ventures with foreign concerns. The government is encouraging a greater stake to be held by the domestic partner of a joint venture so that the domestic partner's stake will exceed 50%, and as an incentive, the government announced a 15% tax break to joint ventures where domestic concerns hold over 50% of the entire stake compared to joint ventures where domestic concerns' stakes are 50% or less. In light of the new policy by the government, Red has proposed that Red's stake in the venture be raised to 60% and Blue's stake be reduced to 40%.

33. Aside from the progress made toward the settlement of the disputes described above, some new developments have also emerged. Red thought it would like to focus on the construction of

hydro-electric power plants as well, which will be beneficial from an environmental conservation point of view. As for Blue, it needs to purchase emissions rights. A proposal that fills the needs of both Blue and Red, namely the construction of small hydro-electric power plants at ten locations, is on the agenda now.

Discussion centers on pricing. No upfront payment is planned for the proposed project. The proposed hydro-electric power plants will not be put into service before the end of 2011. Therefore, emissions credits to be obtained under the framework of the Kyoto Protocol, whose commitment period will expire at the end of 2012, will be limited to those issued in 2012. As for the credit which will be delivered in 2012, Red is offering US$14 per ton, while Blue offers US$8. For 2013 and beyond, nothing concrete has been decided with respect to the future of the Kyoto Protocol. However, the governments of Negoland and Arbitria announced that the two nations would sign a bilateral treaty, which would call for a bilateral framework to come into force in 2013 allowing emission reduction achievements made in Negoland by corporations to be treated as if they were achievements made in Arbitria as part of their reduction commitments in Arbitria. They also need to discuss post-2012 issues.

34. In addition, the parties need to discuss whether a new basic agreement should be signed in connection with the Basic Agreement dated February 2009. In any event, the Basic Agreement of February 2009 is already outdated, and therefore the two must decide what to do with it.

35. The last point concerns Orange. Orange still serves as a high-ranking officer in the Energy Agency and his resignation from that position seems unlikely. Rumor has it that Orange has nursed a grudge against Red and Blue caused by their refusal to offer a bribe to Orange in connection with biomass power generation. Red stated that it would be important to mend their relationship with Orange and for this purpose, sending, upon consultation with Orange, of a certain amount of "gifts" would be unavoidable. Orange may repeat demands similar to the last one as the business continues to evolve in Negoland. The difference in opinion on this point too needs to be ironed out between Red and Blue.

36. At the negotiation on December 5, the following members will be present:
For Red:
Nahgata, the head of the power generation business department, the head of the corporate planning department, the head of the environment department and the head of the legal department.
For Blue:
The Vice President, the head of the international department, the head of the technology development department, the head of the environmental department and the head of the legal department

Exhibit 1

Outline of Red

| | |
|---|---|
| Name: | Red Electric Power Company |
| Incorporation: | May 1, 1998 |
| Paid-in Capital: | US$1.1 billion |
| Shares: | Listed on the Negoland Stock Exchange |
| Net sales: | US$2,415 million (2009) |
| Electric power sold: | 34.5 billion kWh (2009) |
| Power generation plants: | |
| | Thermal power plants at 20 locations |
| | Hydro-electric power plants at 3 locations |
| | Wind power plants at 1 location |
| CO2 emissions: | 0.73 kg-CO2 per 1kWh of electric power sold (2009) |
| President: | Nomura |

Change in financial conditions

(00,000,000s of US Dollars)

| | 2005 | 2006 | 2007 | 2008 | 2009 |
|---|---|---|---|---|---|
| Net Sales | 15.00 | 17.45 | 19.01 | 21.25 | 24.15 |
| Operating income | 1.73 | 1.82 | 2.23 | 2.20 | 2.25 |
| Ordinary income | 0.82 | 0.94 | 1.04 | 1.05 | 1.18 |
| Net income | 0.32 | 0.45 | 0.61 | 0.63 | 0.75 |

Exhibit 2

Outline of Blue

| | |
|---|---|
| Name: | Blue Electric Power Company |
| Incorporation: | April 1, 1951 |
| Paid-in Capital: | US$4.5 billion |
| Shares: | Listed on the Arbitria Stock Exchange |
| Net sales: | US$200 billion (2009) |
| Electric power sold: | 140 billion kWh (2009) |
| Power generation plants: | |
| | Hydro-electric power plants at 130 locations (20%) |
| | Thermal power plants at 15 locations (49%) |
| | Nuclear power plants at 3 locations (28%) |
| | Biomass power plants at 2 locations (3%) |
| CO2 emissions: | 0.32 kg-CO2 per 1kWh of electric power sold (2009) |
| President: | Ota |

Change in financial conditions

(00,000,000s of US Dollars)

| | 2005 | 2006 | 2007 | 2008 | 2009 |
|---|---|---|---|---|---|
| Net Sales | 244 | 240 | 240 | 245 | 245 |
| Operating income | 33 | 36 | 30 | 23 | 22 |
| Ordinary income | 18 | 25 | 22 | 19 | 15 |
| Net income | 12 | 15 | 14 | 10 | 8 |

Exhibit 3

List of CDM projects with Blue's involvement

| Project Name | Host Country | Date of approval by Arbitria | Anticipated emission reductions at the time of application (Metric tons of CO2/year) | Status | Number of CERs already issued |
|---|---|---|---|---|---|
| Hydro-electric Power Generation Project | Country A | November 2009 | 180,000 | Under examination by CDM Executive Board | |
| Hydro-electric Power Generation Project | Country A | November 2009 | 22,000 | Registered by CDM Executive Board | None |
| Hydro-electric Power Generation Project | Country B | July 2009 | 66,000 | Approved by the host country | |
| Hydro-electric Power Generation Project | Country B | July 2009 | 100,000 | Registered by CDM Executive Board | None |
| Hydro-electric Power Generation Project | Country B | December 2008 | 25,000 | Approved by the host country | |
| Coal Mine Methane Utilization Project | Country B | October 2008 | 190,000 | Registered by CDM Executive Board | 2009: 95130; 2010:152427 |
| Hydro-electric Power Generation Project | Country B | September 2008 | 68,000 | Approved by the host country | |
| Hydro-electric Power Generation Project | Country C | July 2008 | 48,000 | Registered by CDM Executive Board | |
| Hydro-electric Power Generation Project | Country A | November 2007 | 36,000 | Registered by CDM Executive Board | |
| Landfill Gas Project | Country D | July 2007 | 582, 00 | Registered by CDM Executive Board | 2008: 40131 2009: 180368 |
| Hydro-electric Power Generation Project | Country B | July 2006 | 42,000 | Registered by CDM Executive Board | |
| Hydro-electric Power Generation Project | Country B | July 2006 | 52,000 | Registered by CDM Executive Board | 2009: 15350 |

Exhibit 4

# AGREEMENT

This Agreement is entered into as of January 15, 2009 by and between Red Electric Power Co.("Red"), a Negoland corporation, and Blue Electric Power Co.("Blue"), an Arbitria corporation.

1. Red and Blue agree that both companies shall cooperate each other to enhance their business in Negoland and Arbitria in the following business areas:
(a) reduction of the emission of greenhouse gas, including but not limited to carbon dioxide, methane, nitrous oxide, hydro-fluorocarbons, per-fluorocarbons and sulfur hexafluoride; and
(b) biomass power generation project(s).

2. The parties shall hold periodic meetings at least once every one (1) month to review and update the status of on-going activities of the parties concerning the above business areas and to discuss additional areas for cooperation between the parties.

3. The parties shall commence discussion for the purpose of entering into a formal agreement on the following projects as soon as possible:
(a) Reduction of the emission of greenhouse gas
Blue is expected to grant a license of its technology to Red for the reduction of the emission of greenhouse gas at Red's thermal power generation facilities; and
(b) Biomass power generation
The parties will jointly prepare a plan of the construction of a biomass power generation facility in Negoland.

4. In relation to the biomass power generation, the parties shall apply for the credit under the Clean Development Mechanism, and Blue shall purchase all Certified Emission Reduction which could be obtained from the project, subject to the terms and conditions to be agreed later.

5. Red is responsible for obtaining the subsidy from the Negoland government and shall use its best efforts to obtain such subsidies from the Negoland government for the projects conducted under this Agreement.

6. The parties agree to deal exclusively with each other in good faith with respect to the projects contemplated herein for a period of two years from the date of the Agreement.

7. The parties will keep all confidential information obtained in connection with this Agreement, excluding the information in public domain, strictly confidential and will not use such confidential information for other purposes of the joint activities of the parties.

| Red Electric Power Co. | Blue Electric Power Co. |
| --- | --- |
| _____ | _____ |

Exhibit 5

## LICENSE AGREEMENT

THIS AGREEMENT, made and entered into as of 1st day of May, 2009, by and between Red Electric Power Co., a Negoland corporation ("LICENSEE") and Blue Electric Power Co., an Arbitria corporation ("LICENSOR"):

### ARTICLE 1 DEFINITIONS

As used throughout this Agreement, the following terms shall have the meanings set forth respectively as follows:

1. "Technology" means all information, data, material and know-how regarding the reduction of the emission of Carbon Dioxide from the Facilities which LICENSOR is obliged to disclose or give to LICENSEE pursuant to Article 2, paragraph 2 of this Agreement.
2. “Facilities” means the thermal power plants owned and managed by LICENSEE in the Territory as listed in Schedule 1 of this Agreement.
3."Territory" means Negoland.
4.”Effective Date" means 10th day of May, 2009.

### ARTICLE 2 DISCLOSURE

1. Within thirty (30) days after the Effective Date of this Agreement, LICENSOR shall provide LICENSEE with all information, data, materials and know-how which LICENSOR possesses at its free disposal regarding the Technology.
2. LICENSOR agrees that, at reasonable intervals and during regular business hours and at convenient times arranged in advance by mutual consent of the parties hereto and at LICENSEE's expense, personnel of LICENSEE may visit the Facilities of LICENSOR where the Technology is used or otherwise available, and may inspect such Facilities and consult with technical personnel of LICENSOR who are skilled in the Technology.

### ARTICLE 3 GRANT OF LICENSE

LICENSOR hereby grants to LICENSEE a license in the Territory to use the Technology in the Facilities.

## ARTICLE 4 CONSIDERATION

LICENSEE shall pay to LICENSOR the sum of five hundred thousand United States Dollars (U.S.$500,000) within thirty (30) days after the Effective Date of this Agreement.

. . .

## ARTICLE 7 REPRESENTATIONS AND DISCLAIMERS

1. LICENSOR represents that the Technology shall be the best technology that LICENSOR possesses at the time of its disclosure to LICENSEE.
2. Except as otherwise provided herein, LICENSEE shall hold LICENSOR harmless against all liabilities, demands, damages, expenses, or losses arising out of the application or use by LICENSEE of the Technology disclosed pursuant to this Agreement.
3. The parties agree that it shall be the sole responsibility of LICENSEE to comply with all Negoland laws and regulations relating to the use of the Technology in the Territory.

. . .

## ARTICLE 10 FORCE MAJEURE

If either party is rendered unable, wholly or in part, to carry out any of its duties or obligations under this Agreement by the reason of "Force Majeure", such party shall forthwith give written notice thereof to the other party (such notice briefly to describe the circumstances causing such inability), and thereupon, to the extent that the party giving such notice is unable to perform such circumstances and shall not be held liable for the failure caused by such Force Majeure.
"Force Majeure" means requisition or interference by any government, state or local authority, war, strike, lockout, riot or epidemic diseases, act of God, or any other circumstances whatsoever over which LICENSOR or LICENSEE, as the case may be, shall have no control.

## ARTICLE 11 ARBITRATION

In the event of any controversy or claim arising out of or relating to any provision of this Agreement or the breach thereof, the parties shall try to settle the problem amicably

among themselves. Should they fail to agree, the matter in dispute shall be finally settled by arbitration to be held in Tokyo, Japan, pursuant to the UNCITRAL Arbitration Rules.

## ARTICLE 12 TERMINATION

1. Either party may forthwith terminate this Agreement by giving a written notice thereof in the following cases:

(i) In case of bankruptcy or insolvency of the other party or

(ii) In case of voluntary or involuntary liquidation of the other party.

2. Either party may forthwith terminate this Agreement by giving written notice of termination to the other party, if such other party has failed to fulfill any of its obligations hereunder and has not corrected such default within sixty (60) days after written notice thereof by the non-defaulting party.

## ARTICLE 13 APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with UNIDROIT Principles of International Commercial Contracts 2004.

## ARTICLE 14 WAIVER

No waiver by either party of any breach of any of the terms or conditions herein provided to be performed by the other party shall be construed as a waiver of any subsequent breach, whether of the same or of any other term or condition hereof.

## ARTICLE 15 MODIFICATION

No change in, modification or waiver of any of the terms or conditions of this Agreement shall be effective unless agreed to in writing and signed by a duly authorized representative of each of the parties.

## ARTICLE 16 TERM

This Agreement shall take effect upon the Effective Date and, unless earlier terminated as hereinbefore provided, shall remain effective until the expiration of the fifth (5th) year after the Effective Date

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Red Electric Power Co.

By _____

Title: _____

Blue Electric Power Co.

By _____

Title: _____

Exhibit 6

## JOINT VENTURE AGREEMENT

THIS AGREEMENT made as of July 1, 2009, by and between Red Electric Power Co., a corporation duly incorporated and existing under the laws of Negoland ("Red") and Blue Electric Power Co., a corporation duly incorporated and existing under the laws of Arbitria ("Blue").

THE PARTIES AGREE as follows:

### 1. Joint Venture Company

1.1 Red and Blue shall cause establish a business corporation under the laws of Negoland in accordance with the terms of this Agreement to be named Green Biomass Power Corporation ("Green").

1.2 The purpose of Green is the construction and operation of biomass electric power generation in Negoland.

1.3 The initial paid-in capital of Green shall be US$2,000,000. Red shall contribute US$1,000,000 and Blue shall contribute US$1,000,000.

1.3 Transfer of Green shares shall be subject to the approval of the Board of Directors of Green.

### 2. Corporate Governance of Green

2.1 As the organs of the company, Green shall have 1) General Meeting of Shareholders, 2) Board of Directors, 3) a Representative Director and 4) Statutory Auditors.

4.2 The number of directors of Green shall be four. Two directors shall be nominated by Red and the remaining two by Blue.

. . .

### 6. Important Corporate Actions of Green

6.1 The following actions shall require an affirmative majority vote of the Meeting of the Board of Directors:

a) Adoption and modification of annual business plans, budgets and capital expenditure budgets;

b) Borrowing, lending or extending credit, at any one time, in excess of US$ 100,000;

c) A transaction which would cause the total borrowing, lending, credits, guaranty and indemnity outstanding to exceed US$ 100,000;

d) Any agreement relating to intellectual property rights covered by the License

Agreement dated May 1, 2009 between Blue and Red;
e) Initiating or terminating litigation, arbitration or administrative proceedings;
f) Any decision which would materially affect the scope of business of Green or which would materially affect the financial condition of Green.
6.2 The following actions shall require unanimous vote of the shareholders of Green:
a) Amendment to the Articles of Incorporation;
b) Change in the number of shares that Green is authorized to issue;
c) Creating different classes of shares including preferred shares;
d) Listing and delisting of the shares of Green on a stock exchange;
e) Sale, transfer or disposal of a material part of the business or assets of Green;
f) Dissolution or liquidation of Green.

. . .

**9. Business Plan and Budget**

9.1 The Representative Director each year shall submit to the Board of Directors detailed reports of the business activities and financial conditions of Green and shall also submit for approval a business plan and the budget for the following fiscal year. If the parties fail to agree on the business plan and budget for the following year, the dissatisfied party may propose purchase of that party's entire share in Green by the other. Unless the offeree promptly responds favorably, the process provided for dealing with deadlock shall be followed as expeditiously as possible depending on the urgency of the matter.

. . .

**11. Deadlock**

11.1 If a decision is not made at a Meeting of Shareholders or by the Board of Directors because of a tie vote, the directors of Green shall seek to find a way of resolving the relevant issues. If they are not successful after three business days, the matter shall be referred to a meeting of the top managements of Red and Blue.

. . .

**14. Responsibilities of Parties**

14.1 Both parties shall use their best efforts and shall cooperate with each other in good faith to make the business of Green to be successful.
14.2 Blue shall provide Green necessary technologies, information, patents and know-how to build and operate the biomass power generation facility.

14.3 Red shall procure bird manure and wood waste which are necessary to operate the power generation facility.
14.4 In case that Green becomes liable to the third party other than the Parties because of its acts or omissions, both parties shall equally share the liability and take necessary steps to discharge such liability immediately, including but not limited to pay necessary amount of money to Green or such third party to compensate the loss caused by the illegal, negligent or inappropriate acts by Green.

. . .

**16. Confidentiality**

16.1 Each party shall keep in confidence and shall bind all the employees of Red, Blue and Green to keep in confidence all technologies disclosed to it in connection with the performance of this Agreement, other than information:
a) which is generally available to the public at the time of disclosure;
b) which has become generally available to the public through no fault of the receiving party;
c) which the receiving party can show was in its possession before the disclosure; or
d) which the receiving party can demonstrate was received from a person without an obligation of confidentiality.

**17. Force Majeure**

17.1 In the event of any failure or delay in the performance of this Agreement due to war, civil commotion, labor dispute, fire, natural disaster, or any other cause whatsoever beyond the reasonable control of a party so affected, the said party shall not be liable for such failure or delay, or results thereof. Upon the occurrence of any of the above events, the party affected by such event shall, without delay, notify in writing the other party of the same, and the parties hereto shall meet and discuss appropriate or necessary steps or actions to be taken to cope with the situation.

**18. Assignment**

18.1 Any assignment of any right or obligation under this Agreement without prior written approval of the parties shall be void.

**19. Termination of the Agreement**

19.1 This Agreement shall terminate when:
a) Sale of shares of Green has failed and the offeror chooses to terminate;
b) Failure to agree on the business plan and budget has occurred and the effort to resolve deadlock has not been successful;

c) Material breach of this Agreement except that due to Force Majeure is not cured within 30 days and the party not in breach chooses to terminate;
d) Red and Blue agree on termination; or

e) Liquidation of Red or Blue voluntarily or otherwise; insolvency or bankruptcy of Red or Blue.

**20. Settlement of Disputes and Governing Laws**

20.1 Any dispute, controversy or difference which may arise between the parties out of or in relation to this Agreement or for the breach thereof shall be amicably settled by consultation among the parties.
20.2 All such disputes, controversies and differences, if not settled amicably, shall be finally settled by arbitration to be held at Tokyo, Japan, under UNCITRAL Arbitration Rules by three arbitrators.
20.3 In resolving disputes, the arbitrators shall take into consideration the UNIDROIT Principles of International Commercial Contracts 2004 and shall apply rules of reason that the arbitrators find applicable.

**21. Miscellaneous**

21.1 This Agreement does not limit either party from independently engaging in activities involving the same subject matter as the present joint venture.
21.2 This agreement constitutes the entire agreement of the parties hereto with regard to the subject matter hereof, and there are no promises, terms, conditions , obligations or understandings, oral or written, express or implied, other than those contained herein except those mutually agreed to in writing between the parties after the execution of this Agreement.
・・・

IN WITNESS WHEREOF,

Red Electric Power Co. Blue Electric Power Co.
By: By:

Exhibit 7

CER Purchase Agreement

**Date**: August 10, 2009
**Parties:** Green Biomass Power Corporation, a company incorporated under the laws of Negoland (Project Entity) and Blue Electric Power Co., a company incorporated under the laws of Arbitria (Buyer), agreed as of August 1, 2009 as follows:

## 1 Definitions and Interpretation

### Definitions

1.1 In this Agreement:

"CDM Executive Board" means the executive board of the Clean Development Mechanism that is constituted under Article 12, paragraph 4 of the Kyoto Protocol.

"CDM Registry" means the registry established and maintained by the CDM Executive Board pursuant to the International Rules to ensure the accurate accounting of CERs and the issuance, holding, transfer and acquisition of CERs.

"CER Unit Price" means the price nominated as such in Schedule 1.

"Certified Emission Reduction" or "CER" means the certified emission reductions issued by the CDM Executive Board in relation to the Project.

"Clean Development Mechanism" or "CDM" means the mechanism defined as such in Article 12 of the Kyoto Protocol.

"Convention" means the United Nations Framework Convention on Climate Change adopted in New York on May 9, 1992.

"Convention Secretariat" means the secretariat of the Convention established under Article 8 of the Convention at the first session of the Conference of Parties in 1995.

"COP/MOP" means the conference of the parties to the Convention serving as the meeting of the parties to the Kyoto Protocol.

“Crediting Period” means the period nominated as such in the PDD upon Registration.

“Delivery Schedule” means Schedule 2.

“Delivery Year” means each Year in which the Project Entity is required to Deliver CERs to the Buyer, where the first Delivery Year shall commence after the last day of the first Generation Year and where the last Delivery Year ends on the last day of the Term.

“Designated Operational Entity” or “DOE” means an entity designated by the CDM Executive Board on a provisional basis or designated by COP/MOP, based on the recommendation by the CDM Executive Board, as qualified to conduct:
(a) Validation of proposed CDM project activities in the same sector as the Project; and/or
(b) Verification and Certification of GHG Reductions from CDM project activities in the same sector as the Project. Force Majeure Event means any act of God, peril of the sea, war, riot, insurrection, civil commotion, martial law, flood, earthquake, epidemic, quarantine, radiation or radioactive contamination, but does not include the fact that a Party lacks funds.

“Force Majeure Event” means any act of God, peril of the sea, war, riot, insurrection, civil commotion, martial law, flood, earthquake, epidemic, quarantine, radiation or radioactive contamination, but does not include the fact that a Party lacks funds.

“GHG Reductions” means the removal, limitation, reduction, avoidance, sequestration or mitigation of Greenhouse Gas emissions achieved by the Project, measured in metric tons of Carbon Dioxide Equivalence.
“Greenhouse Gas” or “GHG” means any of carbon dioxide, methane, nitrous oxide, hydro-fluorocarbons, per-fluorocarbons and sulphur hexafluoride, and any other substance recognized as a greenhouse gas under the international rules.

“Host Country” means Negoland.

“Kyoto Protocol” means the protocol to the Convention, adopted at the Third Conference of the Parties to the Convention in Kyoto, Japan on December 11th 1997.

“Project” means the biomass power generation project conducted by the Project Entity as a joint venture company in accordance with the Joint Venture Agreement as of August 1, 2009 between Red Electric Power Co. and Blue Electric Power Co..

"Registration" means the formal acceptance by the CDM Executive Board of the Project as a CDM project activity.

"Registry Account" means the account nominated by the Buyer (prior to Delivery) in the CDM Registry or any other registry under the international rules, and to which the CERs sold under this Agreement are to be Delivered directly upon issuance by the CDM Executive Board.

## 2 Sale and Purchase of CERs

2.1 The Project Entity agrees to sell to the Buyer, and the Buyer agrees to buy from the Project Entity, the CERs at the CER Unit Price.

2.2 Every Delivery Year, the Project Entity will deliver to the Buyer all CERs issued in respect of the Project in that Delivery Year

2.3 Unless otherwise instructed by the Buyer, the Project Entity will deliver any CERs deliverable to the Buyer in a Delivery Year immediately after the issuance of those CERs.

2.4 Delivery of the CERs will be completed upon receipt of CERs directly into the Registry Account following issuance by the CDM Executive Board.

2.5 The Buyer must pay the Project Entity:
(a) Upfront payment in the amount of US$1,500,000; and
(b) The CER Unit Price for each delivered CER within thirty(30) business days of receipt of the delivery

## 3 Buyer's Remedies for Non-Delivery

3.1 If the Project Entity does not deliver all of the CERs which it was obligated to deliver within fifteen (15) business days of the date on which it was required to deliver those CERs under this Agreement, the Buyer may terminate this Agreement.
3.2 In the case this Agreement is terminated under Article 3.1, the Project Entity shall return US$1,500,000 which has been paid by the Buyer in accordance with Article 2.5 (a) of this Agreement.

## 4 Undertakings

4.1 The Project Entity must:
(a) use its best endeavors to obtain Registration of the Project;
(b) obtain and comply with all necessary approvals, licenses, permits, consents and authorizations necessary to implement and operate the Project and to perform its obligations under this Agreement;
(c) appoint the DOEs and provide the DOEs with true and accurate information and necessary assistance with respect to the Project;
(d) at all times operate and maintain its plant(s), machineries and equipments and other properties;
(e) perform the Project with full consideration for the protection and preservation of the environmental and ecological systems of the Host Country; and
(f) keep the Project insured in accordance with applicable laws and prudent industry practice in the Host Country.

4.2 The Buyer must:
(a) assist the Project Entity as may reasonably be required in achieving Registration of the Project;
(b) use its best endeavors to obtain written approval from the Arbitria government for the Project; and
(c) take all steps reasonably necessary to assist the Project Entity to deliver CERs sold under this Agreement into the Registry Account.

## 5 Force Majeure Event

5.1 If a party (“Affected Party") is, or anticipates that it will be, unable to perform an obligation under this Agreement due to the occurrence of a Force Majeure Event, it must provide the other party (the "Non-Affected Party") with written notice providing full details of the Force Majeure Event (the "Force Majeure Notice") within five (5) business days of becoming aware of the relevant Force Majeure Event.

5.2 The Affected Party must take all reasonable steps to remove or mitigate the relevant effects of the Force Majeure Event.

5.3 If the Affected Party is unable to perform an obligation under this Agreement due to the occurrence of a Force Majeure Event, such non-performance:
(a) will be permitted during the time and to the extent that performance is prevented, wholly or in part, by the Force Majeure Event; and
(b) will not give rise to any liability of the Affected Party to the Non-Affected Party for

any losses or damages arising out of, or in any way connected with, such non-performance.

## 6 Termination

6.1 This Agreement terminates upon:
(a) December 31, 2012; or
(b) the date specified in a written notice by a party entitled to terminate the Agreement earlier in accordance with any provisions of this Agreement.

## 7 General

7.1 This Agreement is governed by and construed in accordance with UNIDROIT Principles for International Commercial Contract 2004.

7.2 This Agreement may only be varied by a document signed by or on behalf of each of the parties.

7.3 Any waiver or consent given by any party under this Agreement will only be effective and binding on that party if it is given or confirmed in writing by that party.

7.4 No waiver of a breach of any term of this Agreement will operate as a waiver of another breach of that term or of a breach of any other term of this Agreement.

7.5 Any consent referred to in, or required under, this Agreement from any party may not be unreasonably withheld, unless this Agreement expressly provides for that consent to be given in that party's absolute discretion.

7.6 To the extent permitted by law, this Agreement embodies the entire understanding of the parties and constitutes the entire terms agreed upon between the parties and supersedes any prior agreement or representations (whether or not in writing) between the parties, but nothing in this clause limits or excludes any liability for fraud in relation to this Agreement.

| | |
|---|---|
| Green Biomass Power Corporation | Blue Electric Power Co. |
| BY | BY |

Exhibit 8

August 9, 2009

To Blue Company

Relating to the agreement concerning the purchase of emission credits, Red will guarantee jointly and severally with Green, the payment of US$1.5 million which was paid by Blue to Green as the upfront payment, in the event Green is obliged to repay such amount to Blue.

Red Company
Smith