

MEMORANDUM

1. Overview

- 1.1 Red Corp (“Red”) is considering contracting with Blue Inc (“Blue”) to expand its online apparel retailing platform and to jointly develop a line of care robots.
- 1.2 Initial correspondence has produced preliminary agreements on both matters [*Record* (“R”) ¶43 & ¶45]. The purpose of the December 4 2016 meeting is to investigate the commercial viability of these ventures and gather ideas for future development.
- 1.3 In the event agreements cannot be reached, Red will still seek to maintain a positive and collaborative business relationship with Blue. This will involve making representations to show Red is open to other mutually beneficial corporate deals in the future.

2. E-Commerce Site Development

2.1 Main Objective: A “Fresh Start”

Red currently uses Blue’s online apparel retailing platforms Blue Village (Arbitria) and Blue Village (Negoland). Red’s eventual aim is to move from Blue’s platforms to its own online stores. Current projections show Red will obtain increased profit margins with growth trends in the e-commerce market should we move to our own platform [*Red Confidential Information* (“Red CI”) ¶1].

Red’s main objective aligns with Blue’s interests in further developing and establishing its e-commerce support services. However, this plan conflicts with Blue’s interests because Red will be leaving Blue Village (Negoland). Red also recognises that Blue may perceive Red as an emerging competitor in the online apparel business [*R* ¶39]. If this becomes problematic during negotiations, Red will emphasise the potential for future collaboration, such as engaging Blue to build further websites for Red’s increasingly international operations [*R* ¶5].

2.2 Secondary Objective: “Ideas Boom”

Red’s secondary objective is to explore innovative ways of creating an omni-channel marketing and purchasing system. Red wishes to capitalise on the increasing smartphone usage in the target demographic group [*R* ¶38], and the advantages this brings in increasing customer engagement and satisfaction. It is in the interests of both Red and Blue to move away from Blue’s standard e-commerce site logistics and infrastructure and seek innovative ideas, given the problems with the Blue Village (Negoland) online store.

Red will seek assurances from Blue that the Red's new online store will be qualitatively different from Blue Village (Negoland).

Red recognises it may not be commercially sound to move to our own platform in the short term [Red CI ¶1], and a re-development of Blue Village (Negoland) may be more practical. In this case, Red will seek to ensure that Blue shares its consumer information so we can make use of this data.

2.3 Payment for Website Development

Payment for the website has two components: the lump-sum fee for site development paid on completion and the commission paid for site maintenance. Our initial position is to pay Blue \$10 million upon completion and a 20% commission [R ¶41]. As our instructions allow for up to \$30 million lump-sum fee, Red can use staged increases in the lump-sum fee to leverage concessions elsewhere.

2.4 Terms of Ongoing Service

Due to the lack of know-how within Red, it is in our interests to stay with Blue in the short term so Blue can set up incidental operations regarding logistics, payment and distribution [Red CI ¶2(2)]. In order to ensure Red's interests are protected, we will seek to have all such information transferred to us at the end of the contract.

2.5 Omni-Channel Strategy Proposal: The "Three Tiered Approach"

This part of the negotiation will be **exploratory**. Red's Director of Apparel Business will present our "three-tier approach" to sales, which ties together the website, the physical stores and mobile devices for a holistic shopping experience. This approach also capitalises on the growth in smartphone usage in the target demographic group (ages 20–49) and in the online apparel retailing industry generally [Exhibit 2]. However, Red will remain perceptive to the significant role of physical store sales to its annual revenue [Exhibit 1]. Red will propose a **custom mobile application** that tracks customers' shopping patterns within its stores, and will seek Blue's expertise to develop this idea further. Specific go-live dates of new services are to be determined at a later date [Red CI ¶2(3)].

2.6 BATNA

Red has the alternative option of developing its website with Yellow Corp ("Yellow"). Yellow is not an apparel specialist, and may not be able to successfully develop the omni-channel strategy [Red CI ¶4]. On the other hand, Yellow's contract will be at a much lower cost. If Blue insists on an unreasonably high price, Red will contract with Yellow.

2.7 Offers

While remaining flexible, Red plans to make the following staged offers:

Offers	Website Cost (\$)	Commission	Term of Service
Current Offer [R ¶41]	10 million	20%	1 year
Stage 2 Offer	15 million*	20%	1 year
	10 million	22.5%*	1 year
	10 million	20%	2 years*
Limit of Instructions	30 million	25%	3 years
BATNA (Yellow) [Red CI ¶4]	5 million	10%	3 years

*Stage 2 offer dependent on Blue's interests

3. Robot Development Venture

3.1 Main Objective: "Nursing Home is the Priority for Now"

Red has experienced sluggish growth in its nursing home business compared to its assisted living rental residences business [Exhibit 1]. Red's interests are to reduce costs and increase patient satisfaction in our nursing care services. Thus, Red's main objective is for Blue to prioritise development of "care support" type robots [R ¶45, Red CI ¶3(1)].

Red has lesser interests in Blue developing "independence support" and "communication and security" type robots. Red's interests are at odds with Blue, who wish to give priority to the development of "communication and security" type robots [R ¶45]. Red recognises that "independence support" type robots may reduce demand for nursing care services. If Blue insists on developing "independence support" type robots only, Red recognises that it can use these robots in our assisted-living rental residences.

3.2 Secondary Objective: "Market Leader"

Red wishes to establish itself as a market leader within two years [Red CI ¶3(1)]. Introducing "care support" type robots in our nursing home business will differentiate Red from its competitors, as well as address the caregiver shortage [Red CI ¶3(1)]. Red also recognises that other robots may be useful in our facilities. In any event, Red will seek to use Blue's new products under a three-year exclusive contract [Red CI ¶3(2)].

3.3 Type of Robots to be Jointly Developed

According to current projections [*Exhibit 23*], it is difficult to justify a business case for solely developing “care support” type robots. Demand for “care support” type robots will only eclipse demand for “independence support” type robots post-2025 in Negoland, and demand will always be lower in Arbitria.

If Blue rejects our offer of prioritising the development of “care support” type robots, Red will take a **mediated approach**. Red will seek development of “care support” type robots starting from 2018 or later for two years in exchange for increased support. This offer may also become a useful bargaining tool to assist in gaining concessions elsewhere.

An alternative option is to leverage the development of “care support” type robots with increased payments for the **E-Commerce Site Development** (see 2.4 above), whereby Red subsidises development costs currently borne by Blue [R ¶45(2)].

3.4 Ownership of IP & Exclusivity Licence Period

As Red does not wish to own the intellectual property rights to the robots [*Red CI ¶3(2)*], we will initially attempt to exchange these rights for a three-year exclusivity licence [*Red CI ¶3(2)*]. If this offer is rejected, Red will propose installing robots in Red’s nursing homes and assisted-living residences in exchange for the licence [*Red CI ¶3(4)*].

3.5 BATNA

Red has the alternative option of purchasing “care support” type robots from Orange Inc (“Orange”). However, these robots may be lower quality, more expensive, and without an exclusivity license [*Red CI ¶5*]. Competitors would also have access to Blue’s new robots. As a result, Red is willing to make higher concessions in order to secure a deal with Blue.

3.6 Offers

Whilst keeping flexible, Red plans to make staged the following offers:

Offers	Type	Development Period	Exclusivity
Initial Offer [<i>Red CI ¶3</i>]	Care Support	2 years (Jan 2017–Dec 2018)	3 years (Jan 2019–Dec 2022)
Stage 2 Offer	Independence Support Care Support	1 year (2017) 2 years (Jan 2018–Dec 2019)	3 years (Jan 2020–Dec 2023)
BATNA (Orange) [<i>Red CI ¶5</i>].	Care Support	2 years (2017–2019)	N/A