



*2017-2018 Negotiation Competition  
Complete National Problem Set (Four Rounds)*

**Contains Confidential Information**

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**HomeLove, Ltd. and Elias Fagan**  
**CONFIDENTIAL SUMMARY FOR JUDGES**

These tables summarize each party’s goals and priorities for the negotiation, highlighting the areas for potential agreement and disagreement.

*Issue #1: What Type and How Many Housing Units Will be Pledged*

<b>HomeLove</b>	<b>Fagan</b>	<b>Possible Outcome</b>
HomeLove would like for the agreement with Fagan to allow for the use of a total of 2-4 of the housing units that can house 6 or more people, along with some of the smaller units, or at least 7 total units, even if most of the units are smaller units. The total number of housing units will include both the subsidized units and the volunteered units.	Fagan would like for the total number of units covered by the parties’ agreement to be between 4 and 8 of his properties, and he wants to offer no more than 3 of the units that can house 6 or more people. If the final agreement uses only 1 or none of the 6+ occupancy units, Fagan will commit more total units, such as 7 or 8 units. The more 6+ occupancy units that the parties agree to use, the fewer number of total units Fagan will commit to.	HomeLove’s attorneys will likely try to get a commitment for a larger number of the 6+ occupancy units and fewer of the smaller units. Fagan’s attorneys will likely offer more of the smaller units and very few, if none, of the 6+ occupancy units. The final configuration of the number and type of housing units offered will likely vary quite a bit from round to round.

*Issue #2: Amount of the Subsidy That HomeLove Will Provide to Fagan*

<b>HomeLove</b>	<b>Fagan</b>	<b>Possible Outcome</b>
HomeLove will offer between \$150,000 and \$350,000 as a subsidy to Fagan to help defray some of Fagan’s lost costs in offering housing as part of HomeLove’s initiative. The more housing that Fagan volunteers, the less subsidy money that HomeLove will offer.	Fagan would like to receive between \$250,000 and \$450,000 as a subsidy from HomeLove to help defray some of the lost costs of volunteering his housing toward HomeLove’s initiative. If HomeLove offers a subsidy on the higher end of Fagan’s scale, Fagan will likely offer a little less in volunteered housing.	The parties will likely agree for HomeLove to pay Fagan a subsidy of between \$250,000 and \$350,000.

***Issue #3: Length of Time That The Housing Will be Offered***

<b>HomeLove</b>	<b>Fagan</b>	<b>Possible Outcome</b>
<p>HomeLove would like for the larger units (6+ occupancy) to be available for 10-12 months, while the smaller units (less than 6 occupants) may be available for as little as 6 months (though more would be better).</p> <p>HomeLove is not willing to agree for any subsidized housing to be offered for less than 6 months, but concedes that Fagan may volunteer certain units for any time period he chooses.</p>	<p>For the subsidized housing units, Fagan is willing to offer the units for between 4 and 11 months, with larger units (6+ occupancy) being available for between 9-11 months and smaller units (less than 6 occupants) being available for between 4-8 months. As for any housing units that are considered to be “volunteered” by Fagan, he will insist that he be able to make those units available for any time period he chooses, even if it is shorter than HomeLove may like.</p>	<p>For the subsidized housing units, the parties will likely agree that the larger units (6+ occupancy) will be offered for either 10 or 11 months and the smaller units (less than 6 occupants) will be offered for between 6-8 months. The parties should also agree that Fagan may offer his volunteered housing for as much time as he wishes.</p>

***Issue #4: Costs for Repairing and Cleaning the Housing Units***

<b>HomeLove</b>	<b>Fagan</b>	<b>Possible Outcome</b>
<p>For the subsidized units, HomeLove is willing to agree to pay for between 50-90% of the costs of repairing any damage to the units and normal wear and tear and cleaning after the refugees move out.</p> <p>HomeLove is not willing to cover these same costs for the volunteered units.</p>	<p>Fagan would like for HomeLove to agree to pay between 60-100% of the costs of repairing and cleaning the subsidized units after the refugees move out. Fagan is willing to cover all of the costs of cleaning and repairing the units that he volunteers.</p>	<p>The parties will likely agree for HomeLove to pay for between 60-90% of the costs of cleaning and repairing the subsidized units, and that Fagan will cover all of the costs of cleaning and repairing the units that he volunteers.</p>

*Issue #5: Non-Disclosure Agreement*

<b>HomeLove</b>	<b>Fagan</b>	<b>Possible Outcome</b>
HomeLove wants the agreement with Fagan to include a non-disclosure agreement as to both the existence and amount of the subsidy that HomeLove will pay to Fagan.	Fagan’s facts do not mention a non-disclosure agreement, but he should be willing to agree to this, as nothing in his facts suggests that he is opposed to it or that he wants to share information about his subsidy from HomeLove.	The parties will likely agree that Fagan will be subject to a non-disclosure agreement regarding the existence and amount of the subsidy that he will receive from HomeLove.

**General Information for Both Parties**

In the past several years, millions of refugees have fled from their war-torn homes in the Middle East to countries around Europe, and many of these refugees are still displaced today. The high number of individual and family refugees searching for safe, temporary housing or being moved from camp to camp has been a consistent news story over the years. The instability in housing for refugees living temporarily in cities around Europe and other places in the world has been striking to Tony Maddron, the CEO of HomeLove, Ltd. HomeLove is an online company that provides a room-sharing platform for people across the globe, allowing individual and commercial property owners to rent out their homes, apartments, hotel rooms, or even extra bedrooms to travelers. Though HomeLove itself does not own any lodging, it has over 1,000,000 lodging listings in cities all over the world.

After reading yet another news story about refugees in crisis, Maddron felt moved to do what he could to help. At his direction, HomeLove publicly pledged to provide free, short-term housing for 300,000 refugees over the next 5 years in an effort to help displaced individuals and families reintegrate into society. As part of its public pledge, HomeLove issued a statement to its listed property hosts asking for volunteers to open their listed properties to those in need. Though over 4,000 hosts in various cities and countries have volunteered their properties for free as part of HomeLove’s pledge, the company has found that certain cities have a higher need for refugee housing than others because these cities have a higher population of refugees. In an effort to help provide more housing in cities where the most refugees are in need, Maddron decided that HomeLove would subsidize some costs of the housing needed in certain cities to help fill the gap between the free housing offered voluntarily by hosts versus the need for temporary housing for refugees.

The European city of Maldovia is one of the cities where stable and safe refugee housing is in high demand. Though many of the HomeLove hosts with units in Maldovia have volunteered housing, Maddron has decided that HomeLove will seek out more hosts in Maldovia and offer to subsidize some of their housing for short-term use for refugees. One such host is Elias Fagan. Through his property management company EF Management, which Fagan is the sole owner of, Fagan owns a collection of properties in Maldovia that can house approximately

100 people. The properties are a collection of apartment units, individual houses, and duplexes that are spread throughout a defined area of the city, with all of the housing units being within a 15-mile radius of each other.

Maddron reached out to Fagan and invited him to coffee to discuss a proposal for Fagan to offer some portion of his available housing units on a short-term basis either for free or for a subsidized rate to refugees living in the city of Maldovia. At the meeting, Maddron passionately shared his vision of the role that HomeLove (and indeed, humankind) should play in helping fellow human beings in distress. Fagan, moved by Maddron’s impassioned plea for help in providing stability and comfort to refugees, agreed that he could provide some of his housing units towards HomeLove’s mission to temporarily house refugees living in Maldovia. At the end of the meeting, the men agreed that Fagan would provide Maddron with more specific details of what housing units he had, what occupancy each unit could hold, and approximately how much each unit would rent for on the open market.

A week after their meeting, Fagan provided Maddron with the following chart, which shows information about all of Fagan’s housing units in the City of Maldovia:

<b>Housing Unit Type</b>	<b>Number of Units</b>	<b>Occupancy Limit per Unit</b>	<b>Weekly Rent per Unit</b>
4-bedroom house	3	8	\$2,000
3-bedroom house	2	6	\$1,700
2-bedroom house	2	4	\$1,500
2-bedroom duplex	2	8 total for the duplex - 4 for each side	\$1,800 total for the duplex - \$900 for each side
3-bedroom duplex	1	12 total for the duplex - 6 for each side	\$2,200 total for the duplex - \$1,100 for each side
1-bedroom apartment	7	2	\$1,200
2-bedroom apartment	4	4	\$1,400

Excited about the prospect of partnering with Fagan to provide housing to some of the many refugees in Maldovia, Maddron and his team at HomeLove studied the chart for several days in relation to the city’s need for refugee housing. Maddron then called Fagan and asked to set a meeting to discuss the specifics of what housing would be offered as part of HomeLove’s pledge and on what terms. Fagan agreed, and the men set a date for the meeting. To represent the parties at the meeting, HomeLove is sending its company attorneys and Fagan is sending the attorneys who help him with landlord-tenant, contract, and other issues related to managing the properties.

At the outset, both parties have instructed their attorneys that, although the properties are located in Europe, general U.S. contract law should govern any agreement that the parties reach. HomeLove is incorporated and headquartered in the United States, Fagan lives in the United

States, and all meetings held by the parties regarding the use of Fagan's properties as part of HomeLove's initiative to help refugees will have taken place in the United States.

### **Confidential Information for HomeLove and Tony Maddron**

Tony Maddron is thrilled that Fagan responded positively to Maddron's invitation to join in HomeLove's pledge to provide free, short-term housing to refugees. Maddron is proud of his company's efforts to help with the humanitarian crisis posed by the displacement of millions of individuals and families around the world. Maddron is also aware of the security and safety risks associated with having a large, transient population within a city, and he hopes that offering some form of stable housing, even if just short term, will alleviate some of those risks. In looking at Fagan's list of properties in Maldovia, Maddron is excited by the possibilities that are available to help families in particular, as Fagan owns many properties that could be used to hold an entire family of refugees. Some of the most heartbreaking stories that Maddron has heard out of the refugee crisis are stories of families being split apart, not knowing if or when they would be reunited.

At their initial meeting, Maddron and Fagan had agreed that their best approach would be to work together to maximize the housing offered to refugees. The parties' vision is that Fagan would offer some of his housing as a volunteer in the pledge initiative and HomeLove would provide a subsidy to Fagan to help make more of his housing units available for refugee housing. Maddron's ultimate goal for HomeLove in partnering with Fagan is to find a way to provide as much housing as possible for refugees. Though Maddron knows that any combination of housing units will be useful, Maddron would like to reach an agreement with Fagan that, between both the subsidized and volunteered housing, uses 2-4 of the units that can house 6 or more people, along with some of the smaller units. Maddron expects that many of the refugee families in Maldovia include both nuclear family units and extended family members and thus hopes to provide housing that can accommodate larger groups. But Fagan may be reluctant to commit too many of his larger units to the agreement because a larger portion of his revenue stream is likely dependent upon rental income from the larger units. If HomeLove's attorneys are unable to receive a commitment for 2-4 of the 6+ occupancy units, Maddron would like them to get a commitment of at least 7 total units to help provide housing for as many refugees as possible, again with the total number of units being a combination of both subsidized and volunteered housing.

As far as the subsidy that HomeLove will offer, based on the chart that Fagan provided, Maddron has calculated that, if Fagan rented out all of his units every week of the year, the rental income would exceed \$1.6 million annually. Maddron has not pried into the details of Fagan's income from the properties, but Fagan had implied that his housing units collectively are typically not rented out all year round. Maddron wants to commit to a subsidy amount that will help defray a meaningful percentage of Fagan's lost income from the properties that are volunteered. To that end, Maddron has instructed HomeLove's attorneys that HomeLove is willing to pay anywhere from \$150,000 to \$350,000 as a subsidy to Fagan for housing. On behalf of HomeLove, Maddron has earmarked a total of \$3.5 million dollars to be used as housing subsidies as part of its pledge to help refugees, and Maddron wants to reserve most of

that money to help provide housing in other cities and to hopefully be able to continue providing housing for several years to come as part of HomeLove's initiative. Maddron isn't concerned about knowing exactly how much income Fagan receives annually from his properties, but feels confident that offering up to \$350,000 should be a significant enough subsidy to help defray some of Fagan's lost income in offering his housing toward the refugee crisis. Maddron has further instructed HomeLove's attorneys that the more generous Fagan is in volunteering housing, the less subsidy money should be offered to him. Maddron wants to reduce the subsidy offer based off of Fagan's volunteer offer so that the difference can then be put "back in the pot" to be used to help refugees in other ways and places. Maddron is leaving it in the attorneys' discretion as to when and how to adjust HomeLove's subsidy offer based off of Fagan's volunteer offer, and he has stressed to them that this partnership with Fagan will be a "win-win-win scenario" for everyone involved.

Another term of the agreement that the parties should discuss is the length of time that the housing will be offered. HomeLove's pledge is to provide "short-term housing," so Maddron does not expect that Fagan will pledge to provide housing for longer than a year. Ideally, Maddron would like to see Fagan's units available between 8-12 months to provide the greatest amount of stability to the occupants, and each individual units to vary in the time period of availability. For the larger housing units (6+ occupancy), Maddron would like to see an availability time period of 10-12 months as a way to help keep families together for the longest amount of time possible and to promote minimal disruption in the lives of children. For the smaller housing units (less than 6 occupants), Maddron would be willing to agree to an availability time period as low as 6 months (though more would be better), but is not willing to agree that any of the subsidized housing will be offered for less than 6 months. If Fagan wants to offer his volunteered housing for less than 6 months, Maddron understands that he is free to do so and will be grateful for the offer regardless of the shorter time period.

Additionally, Maddron expects that Fagan may ask HomeLove to help cover the cost of repairing any property damage that the units may sustain while the refugees are living in them and the cost of performing normal wear and tear and cleaning in the units after the refugees move out. In their initial meeting, Fagan had expressed concern over having to pay these expenses out-of-pocket for such a large number of units because the refugees would not be putting down deposits when they moved into the units. Maddron thinks this is a valid concern and he is willing to have HomeLove commit to paying some or even all of the costs of repairing and cleaning the subsidized units, but not the volunteered units. Maddron has instructed HomeLove's attorneys to offer to pay between 50% and 90% of the costs for the subsidized housing units.

Finally, Maddron would like for the contract with Fagan to include a non-disclosure agreement as to both the existence and amount of the subsidy that HomeLove will provide. Maddron's intention is that HomeLove's pledge to provide housing will be driven largely by volunteer hosts who offer their housing for free, and any public statements by Fagan that HomeLove is willing to offer a subsidy for housing would likely undermine the volunteer effort. Maddron wants to retain HomeLove's ability to exercise discretion in seeking out certain hosts to offer subsidies for housing.

## **Confidential Information for Elias Fagan**

Elias Fagan is inspired by HomeLove's admirable pledge to help provide housing to the thousands of refugees who are displaced around the world, and he is happy that Maddron approached him individually to discuss partnering to help provide housing for refugees in Maldivia. Fagan knows that his collection of properties in the city make him uniquely situated to provide help, and he is confident that his negotiation with HomeLove will produce an agreement that will provide relief and comfort to the refugees who are able to benefit from it.

That being said, Fagan's properties generate quite a lot of income for himself and the property management business that he owns, EF Management, Inc. EF Management is the owner of record of all of the properties listed in the chart that Fagan provided to HomeLove, and Fagan is the sole owner of EF Management. Fagan has full authority to make decisions about the properties as they are managed by EF Management, but any final agreement with HomeLove should be through EF Management, rather than Fagan himself. In terms of the income that properties generate, if EF Management rented out all of the units every week of the year, the rental income would exceed \$1.6 million annually. However, the properties are typically not rented every single week of the year. Maldivia is a popular tourist destination, which creates a stable rental market for the properties, but the tourist seasons ebb and flow, cancellations occur, etc., and the properties are sometimes left open. Though the total annual income from the properties varies from year to year, EF Management will typically make about \$1.3 million in annual gross rental revenue from the Maldivia properties, which is used to pay mortgages on the properties, various other expenses related to maintaining the properties, and to provide Fagan with a salary, among other things.

At their initial meeting, Maddron and Fagan had agreed that their best approach would be to work together to maximize the housing offered to refugees. The parties' vision is that Fagan would offer some of his housing as a volunteer in the pledge initiative and HomeLove would provide a subsidy to Fagan to help make more of his housing units available for refugee housing. While Fagan does want to provide housing for a meaningful number of refugees, he cannot overcommit his properties to the HomeLove initiative while still maintaining a healthy balance sheet. Therefore, Fagan has instructed his attorneys that he would like to reach an agreement with HomeLove that, between both the subsidized and volunteered housing, uses 4 to 8 of his properties. Specifically, Fagan wants to offer no more than 3 of the units that can house 6 or more people. The larger units make up a larger portion of EF Management's revenue stream, and Fagan isn't willing to give up very much of that income as part of this initiative. If his attorneys are able to reach an agreement with HomeLove that uses 1 or none of the 6+ occupancy units, then Fagan has given his attorneys permission to offer a total number of units that is on the higher end of his limit, such as 7 or 8, since the units involved in the agreement will be the smaller, lower revenue-generating ones. However, the more of the 6+ occupancy units that his attorneys commit to, the fewer total units his attorneys should offer.

As far as the amount of the subsidy that HomeLove will provide to EF Management, Fagan has looked over his company's financial information and believes that EF Management would need a subsidy of between \$250,000 and \$450,000 to defray enough of the lost rental



income from the properties to make EF Management's endeavor with HomeLove work. Fagan intends to volunteer a good portion of the housing, and he suspects that the more housing he offers on a volunteer basis, the less subsidy money he will likely receive. But if HomeLove is willing and able to offer a subsidy on the higher end of his desired scale, Fagan has instructed his attorneys to offer less in volunteered housing. After all, Fagan does have a business to run, and the business needs a certain amount of income to stay in good standing.

Another term of the agreement that the parties should discuss is the length of time that the housing will be offered. Fagan wants to limit the offer of any of his housing to less than a year, and he believes that Maddron will generally be amenable to this. HomeLove's pledge is to provide "short-term" housing, which in Fagan's mind implies a time period of one year or less. In Fagan's mind, for any of the housing units that he volunteers to offer, he should be free to decide for what time period he is willing to make those units available, no matter how short the time period may be. As for the subsidized housing units, Fagan recognizes that Maddron may insist on certain time frame parameters. To help accommodate this possibility, Fagan is willing to offer the subsidized housing units for at least 4 months and is willing to consider offering some of the units for up to 11 months. Fagan is willing to offer the larger units (6+ occupancy) for a time frame of between 9-11 months because there will be fewer of them, but has instructed his attorneys that the smaller units should be offered for a time frame of 4-8 months.

As a final matter, Fagan is concerned about possible property damage to the housing units, especially since the refugees staying in the units will not be putting down deposits and Fagan will likely have no or little recourse against them should they damage the property. In addition to covering any potential larger property damage to the units, Fagan will have to perform normal "wear and tear" repairs and cleaning on each of the units once they are unoccupied. Again, without money from deposits to cover these expenses, EF Management will be paying these costs out of pocket. Fagan would like for HomeLove to agree to cover some of the costs of any property damage, normal "wear and tear" repairs, and cleaning after the refugees have moved out. Fagan hopes that his attorneys can get HomeLove to commit to paying 100% of the costs for cleaning and repairing each subsidized unit after the refugees move out, and Fagan would cover 100% of the costs for cleaning and repairing the units that he volunteers. If Maddron is reluctant to make a commitment of covering 100% of the costs for the subsidized housing, Fagan is willing to accept a commitment for HomeLove to cover as little as 60% of the costs, which Fagan thinks is fair considering that he is willing to cover in full the costs for the volunteered housing.

**The Strategic Security Institute and Dr. Hannah White**

**CONFIDENTIAL SUMMARY FOR JUDGES**

**These tables summarize each party’s goals and priorities for the negotiation, highlighting the areas for potential agreement and disagreement.**

***Issue #1: Length of Time That White Will Work for SSI***

<b>SSI</b>	<b>White</b>	<b>Possible Outcome</b>
<p>The SSI wants White to commit to working on the Project full-time for between 1-2 years. The SSI also wants White to agree that, once her full-time commitment ends, she will agree to work on the Project on an as-needed basis until the Project is complete.</p>	<p>White wants to commit to full-time work for the SSI for a timeframe of between 6-18 months, and she would prefer for her full-time commitment stay as close to 1 year as possible. White is additionally willing to commit to doing work for the task force on a part-time or as-needed basis beyond her full-time commitment.</p>	<p>The parties will likely agree that White will work full-time for the SSI for between 12-18 months, and that she will finish any remaining work on the Project on an as-needed basis after her full-time commitment ends.</p>

***Issue #2: White’s Compensation***

<b>SSI</b>	<b>White</b>	<b>Possible Outcome</b>
<p>The SSI will offer White compensation of between \$4,500 and \$6,500 a month for her full-time work on the Project. The SSI will not offer any benefits to White.</p> <p>Though the fact patterns do not address whether and how to compensate White for any work that she does on an as-needed basis, the students representing SSI have been told that they are authorized to offer compensation to White for any “as-needed” work that she performs and that they may structure that compensation however they see fit.</p>	<p>White hopes to receive compensation of between \$5,500 and \$7,500 a month for her work on the Project. White does not expect to receive any benefits from the SSI.</p>	<p>The parties will likely agree that White will be paid between \$5,500 and \$6,500 for her full-time work on the Project and that she will not receive benefits.</p>

**Issue #3: Travel Requirements for White**

<b>SSI</b>	<b>White</b>	<b>Possible Outcome</b>
The SSI wants White to agree to spend between 5-10 months on overseas work for the Project, and the SSI is flexible about how and when White performs her overseas work, such as allowing her family to accompany her when she travels. If White commits to spend 7 or more months traveling overseas, the SSI will agree to pay for her family's travel expenses.	White would like for her work on the Project to require overseas travel of between 3-8 months, and she would like at least 2 weeks' notice of any travel obligations that the SSI may require. Additionally, White would like for her family to be able to travel with her, if desired.	The parties will likely agree for White to commit to between 5-8 months of overseas travel for her work, with the SSI giving her at least 2 weeks' notice of any required travel and allowing her family to travel with her. If White commits to 7 or 8 months of travel, the SSI should agree to pay for her family's travel expenses.

**Issue #4: Ownership of Intellectual Property Rights**

<b>SSI</b>	<b>White</b>	<b>Possible Outcome</b>
The SSI will insist that it retain the copyright to all written work that is produced by the task force that White will serve on. The SSI is willing to give White credit as an author or co-author of any written works that she produces for the task force, and the SSI is flexible on whether White may publish or republish, with express permission from the SSI, any of her written works that she authors while serving on the task force.	White is willing to give up the copyright for any written works that she produces or helps produce for the task force to the SSI, but she would like to retain the ability to get credit for her authorship (or co-authorship) and to pursue publication opportunities for any writings she produces for the task force.	The parties will likely agree that the SSI will have the copyright to all written works that White authors or co-authors for the task force. The parties will also likely agree that the SSI will name White as an author or co-author and grant White permission to pursue publication opportunities, with express permission from the SSI, for the written works she produces for the task force.

**General Information for Both Parties**

The Strategic Security Institute (SSI) is an American think tank focused on national security and global infrastructure that, over the past three decades, has served as a bipartisan, nonprofit research organization dedicated to providing strategic insights and policy solutions to help decision makers chart a course toward a better world. The SSI's large network of affiliated scholars, experts, and consultants conduct research and analysis to develop policy initiatives that

look to the future of an interconnected world and anticipate needed changes in how the U.S. should approach strategy regarding a multitude of sensitive issues that affect security.

Currently, the SSI is developing a task force that will focus on how to build resilience in countries that are especially vulnerable to catastrophic events, whether the events stem from natural disasters, political unrest, economic failure, or failures in cybersecurity. Gregory Main, a long-time director of the SSI's Humanitarian Agenda, has been named as the Senior Advisor of the new task force, which the SSI has recently named the Global Sustainability Project (the "Project"). One of Main's immediate responsibilities is to assemble a team of experts for the Project. Main has already selected a handful of team members for the Project from within the SSI, but he has also begun looking to acquire outside talent to serve in a short-term, contract-based role on the Project.

One such person that Main has identified as a well-suited candidate to serve on the Project is Dr. Hannah White. Dr. White, who was previously a professor at the University of Calivada, currently serves as a consultant for a private firm called CSR (Corporations for Social Responsibility) that performs research on the impact of business on climate change and offers individualized solutions to companies looking for ways to decrease their carbon footprint. Dr. White's areas of expertise include understanding human-environment relations for water governance and urban sustainability, including specifically examining human and social aspects of sustainability, environmental management and planning, and climate change impacts on water stability in impoverished regions. Main reached out to White via email to explain the Project and invite White to discuss whether White could fill a potential role on the SSI's work on the Project. White quickly responded to Main, and the two engaged in a series of Skype calls, emails, and telephone calls about the Project. White expressed enthusiasm about serving as a member of the Project and tentatively agreed that she wished to join Main and the other members of the SSI in their important work.

In the conversations between Main and White, one main topic of discussion was how White would adjust her work with CSR around the work that she would perform on the Project if selected to serve as a member of the team. Main has explained to White that his goal is for each person named as an outside consultant on the Project to be able to work full-time in that capacity for at least one year. White responded that she would be concerned as to how she will fulfill her obligations in her consulting role at CSR if she accepts a role on the Project.

Despite her concern about balancing her work for CSR with the obligations she would have to the Project if selected, White is interested in trying to find a way to make herself a viable candidate for consultant work on the Project. White knows that the SSI is a respected organization and she admires the work it does in the area of developing national security policy recommendations, and she believes that affiliating herself with the SSI on one of its projects will serve as a major boost to her career. Curious as to how the project manager at CSR whom White

reports to would feel about her pursuing this opportunity, White scheduled a long sit-down meeting with him and explained specifically what her work on the Project would involve and her enthusiasm in wanting to further explore the opportunity.

White's project manager was receptive to her interest in working on the Project. Over the course of several days, White and her project manager discussed and negotiated a set of terms and conditions for White to suspend her work as a consultant for CSR so that White may pursue a position as a consultant on the Project. Having an agreement with CSR in place, White then contacted Main and asked to schedule a more formal meeting to discuss what the specific terms of her role on the Project might be and to hopefully negotiate a satisfactory agreement between the parties. At the meeting between White and Main, White will be represented by her own personal attorneys, and the SSI will be represented by attorneys from its general counsel.

### **Confidential Information for the Strategic Security Institute and Gregory Main**

Gregory Main is excited to be assembling a team of experts for the Project and has agreements in the works with several individuals whom he thinks will serve a vital role in this sustainability initiative. Main is especially impressed with Hannah White's passion for her area of expertise in issues relating to water stability and environmental management and can see that she is becoming an established and respected scholar in these areas. He knows that White's commitment to the Project must accommodate her existing obligations with CSR, and he is hopeful that the parties will be able to reach satisfactory terms to allow White to serve on the task force for the Project.

That being said, Main has instructed the SSI's attorneys that the SSI cannot be entirely flexible to White's needs for accommodating her obligations with CSR around the obligations she would have for her work on the Project. Main needs to be assured that everyone who commits to work on the Project is able to meet certain minimum obligation requirements so that the Project can achieve its objectives in a timely manner. Main knows that one of the larger issues for White will be the amount of time for her commitment to the Project. Main expects that the work that the task force will do on the Project will take anywhere from 1-3 years to complete. Ideally, Main would like for every person who joins the task force to commit to working full-time on the Project until its completion, but he knows that it is unrealistic to expect that the outside consultants (i.e. non-SSI employees) on the task force, such as White, will be able to leave their regular positions for an unknown amount of time that could last up to several years. Therefore, Main has instructed the SSI's attorneys that, to join the task force, White does not need to commit to working full-time on the project indefinitely, but she must be willing to commit to at least one year of full-time work on the Project. Main further explained that if the SSI's attorneys are able to get White to commit to up to two years of full-time work on the Project that would be preferable, but not required. Main would also like to include a term

providing that once White completes her full-time commitment, White will continue to work on the Project on an as-needed basis until the Project is completed.

Another term that must be discussed at the meeting is what White's compensation will be for her work on the Project if she joins the task force. To help incentivize outside talent to join the task force, Main has the authority to offer a financial stipend to outside consultants for their work on the Project. The stipend that Main has authorized the SSI's attorneys to offer to White likely will not surpass or even rival her regular salary; the SSI is, after all, a non-profit organization. Nonetheless, the SSI's attorneys are authorized to offer White a stipend of between \$4,500 and \$6,500 a month for her full-time work. Main considers White to be a top prospect for the task force, so he is happy to pay her a stipend that is on the higher end of his authorized range, but if White is willing to accept a lower stipend, then that is all the better for the Project's budget. Benefits are not at issue because, as a current contractor for CSR, White has explained that she already provides her own health insurance and retirement plans, and the SSI is not in a position to offer benefits.

Additionally, the parties should discuss whether White is able to work overseas on certain aspects of the Project. Main had told White during one of their early discussions that her work on the Project would likely require her and other members of the task force to spend time in some of the countries that would be the focus of their work. White expressed some hesitation to making a commitment to spend a large amount of time overseas working on the Project, but the parties had never discussed this topic again since then. Main is sure that White understands that the nature of the work that the task force will be doing inherently involves visiting some of the countries that will be the focus of the task force's work. Therefore, Main would like for any agreement with White to include a provision for White to commit to spending at least 5 months on overseas work related to the Project. In the best case scenario, Main would like for White to commit to spending up to 10 months on overseas works, and Main is open to being flexible about how and when White performs her overseas work. For example, if White would prefer to do some of the overseas work with her husband or family accompanying her, Main is willing to allow that and he has given the SSI's attorneys discretion to create an arrangement that will accommodate White's needs. If White wants her family to travel with her, Main has additionally authorized the SSI's attorneys to offer to pay for her family's travel expenses if White commits to 7 months of travel or more.

Finally, another important point of negotiation should be the ownership of any writings, reports, memorandums, or articles that the task force may produce during the course of its work. A non-negotiable term of any agreement between the SSI and White will be that the SSI will retain the copyright to all written work that is produced by the task force related to the Project, no matter who the specific author or authors may be. Main is not sure that the written works produced by the task force would ever be published as a collective work that would qualify any individual's writing on the task force as a "work made for hire," but nonetheless, Main has instructed the SSI's attorneys to stand firm that the SSI must own the copyright to any writings

that White produces as part of her work on the task force. Main is certainly willing to give White credit as an author or co-author for any of the written works that she produces while serving on the task force, and Main is willing to be flexible on whether White could publish or republish, with express permission from the SSI, any of the written works that she authors while serving on the task force. So long as any agreement with White regarding the written works produced by the task force provides that the SSI retains the copyright to the written works, Main is leaving it in the SSI's attorneys' discretion as to what permissions they may grant White on the works that she authors or co-authors as a member of the task force.

### **Confidential Information for Dr. Hannah White**

Dr. Hannah White was flattered and intrigued when Gregory Main approached her with information about the Project and invited her to engage in discussions about her possible inclusion on the task force that would work on the Project. White cares deeply about global sustainability issues, particularly those that relate water stability, especially in impoverished or underdeveloped regions of the world, and the human impact on environmental management. White has spent years of her professional career researching these issues and traveling to areas of the world most impacted by them, with a focus on providing solutions and recommendations that are useful in the short-term, but also adaptable in a changing world. Because of her passion for concepts related to sustainability, White would love to have her voice included on the task force. The SSI does important work in many areas that affect both national and global security, and White believes that the Project has the potential to influence important policy decisions about the U.S.'s role in promoting sustainability worldwide.

White is pleased that her conversation with her project manager resulted in a satisfactory agreement for White to temporarily suspend her consulting work with CSR so that she may pursue this endeavor. In fact, the timing of Main's invitation for White to work on the Project couldn't have been better. Two months ago, White and a team at CSR wrapped up a two-year consulting project with over 50 tech firms, and the next big project that White hopes to work on with CSR, colloquially referred to within CSR as SID (Sustainability Initiative for Developers) is not quite ready to launch yet. SID is a project that White has been helping to develop for over a year and one that she is highly invested in personally. Therefore, White wants to be careful in how much time she commits to being away from CSR. Currently, the timeline for SID is for CSR to launch it within the next six months, and the entire project is scheduled to last nearly five years. One of the conditions of White's agreement to suspend her work with CSR is that if she is gone full-time for more than 18 months, she will forfeit her role on SID. Therefore, White is not willing to commit to more than 18 months of full-time work on the Project with the SSI.

Thus, White's decision in how big of a full-time commitment she will make to the Project carries significant implications for the future of her work with CSR. White doesn't want to compromise her work on SID. But White also recognizes that an opportunity like the one she has

been offered with the SSI may only come around once in a career. If White takes a position on the task force, she strongly believes that not only will her work help create important and meaningful policy recommendations, but also it will pave the way for other opportunities like this in the future. Therefore, White has instructed her attorneys that ideally, she would commit to no more than 6 months of full-time work on the Project and that the rest of her work on the task force would be completed on a part-time or as-needed basis. If White's offer of a 6-month commitment is not enough for Main, she is willing to commit to full-time work on the project of up to the 18 months of leave that she received from CSR, but would prefer for her commitment to stay closer to a year or less if possible.

From some of her previous conversations with Main, White knows that the SSI will offer her a stipend for her work on the Project. White is not concerned with earning a high income for this work because she believes in the importance of the work the task force will be doing and knows that its impact on real people's lives will be valuable. White will, however, need to replace some of the income she will lose while taking leave from CSR because her pay will be suspended while she is on her leave of absence. Currently, White's salary with CSR is \$120,000 a year. When Main discussed the stipend previously, he had talked about it being paid in monthly increments. White's salary broken down monthly is \$10,000, but she does not expect that the SSI will provide a monthly stipend of that much money. For her own comfort, White hopes that she can negotiate a monthly stipend of \$7,500, but she and her family could survive for a short time on a monthly stipend of no less than \$5,500. Benefits are not at issue because, as a current contractor for CSR, White already provides her own health insurance and retirement plans.

Another important topic for White will be the ownership of any writings that she produces during her work on the task force. As a former professor and expert in her field, White still publishes scholarly work and is accustomed to retaining the copyright of her original written work, such as scholarly articles, presentation papers, etc., and granting a license to publish to any journals, reporters, or manuals where the written works are ultimately published. Of course, White understands that many different kinds of agreements can be made between the author of a written work and the publisher to determine who owns the work and who has the right to publish, edit, or reproduce it. For example, there have been occasions when White has produced a writing as part of a work commissioned by CSR that was considered a "work made for hire" where the copyright was retained by CSR. Based on her understanding of copyright principles, White doesn't believe that any writings she produces for the task force would qualify as "works made for hire" such that she would be *required* to give up the copyright for the work to the SSI. Nonetheless, White wants to ensure that she retains enough rights in any writings that she produces as part of her work on the task force so that she can (1) get credit for her authorship of the writing and (2) pursue publication opportunities for her writings, should any come available. Ideally, White would like to achieve these goals by retaining the copyright in any writings she produces for the task force, but she expects that the SSI will likely want to hold the copyright for all of the writings produced by the task force. Therefore, White is willing to give up any individual copyright she may be entitled to in her writings for the task force so long as she is able to retain enough rights in her written works so as to achieve her two goals stated above.



A final matter that White wants to clarify as part of any agreement between her and the SSI is what proportion of her work on the task force will need to be completed via overseas travel. Main had told White during one of their early discussions that her work on the Project would likely require her and other members of the task force to spend time in some of the countries that would be the focus of their work. White expressed some hesitation as to making a commitment to spend a large amount of time overseas working on the Project, but the parties have not discussed this topic again since then. Earlier in her career, White spent a large portion of her work traveling and in recent years, she has intentionally scaled back the amount of travel she does for work to accommodate her role as a wife and mother to two young girls. White still travels for work on a regular, though infrequent basis, and values having control over when and how long she is away from home. White understands that travel will be a necessary part of some of the work that she would perform on the task force and is willing to accept a commitment that includes a moderate amount of travel. Therefore, White is willing to agree that her role on the task force will require her to travel up to a total of 8 months. Even better for White would be for the travel commitment for the task force to be as low as 3 months, but she understands that Main may insist that she be available to travel for a longer period of time than that. Regardless of the amount of time that White commits to traveling on behalf of the task force, White would like to receive at least 2 weeks' notice of any travel obligations that Main would expect of her. As an additional matter, White would like her attorneys to ask whether Main would object to her husband and children traveling with her if their schedules permitted, as having her family come with her would lessen the sting of White's having to be away from home for an extended period of time. In the best case scenario, the SSI would agree to pay for her family's travel expenses if they accompany her during her work for the SSI, as White understands that it is typical for NGOs to sometimes offer to pay for family travel expenses, but White has instructed her attorneys that it is not necessary that any agreement she reaches with the SSI include a provision for her family's travel to be paid for by the SSI.

## Fagan/White Clarifications

### General Facts

Rd 1, p 1-2: Can we consider a 2-bedroom duplex a single high occupancy unit that can accommodate a family?

You may decide for yourselves whether you want to offer both sides of a duplex together as one single “unit” or if you want to split a duplex into two separate, smaller “units.” In fact, this may be a negotiating point between the parties. As such, you should consider which approach would best serve your client’s interests and develop your strategy accordingly.

### Fagan/White Confidential Facts

Rd 1, p 2-3: Page 2 of the general facts notes that Fagan owns 3 duplexes, which are counted as 3 “units” although the 2 sides of each unit can be rented separately. Page 3 of the confidential facts states that Fagan “wants to offer no more than 3 of the units that can house 6 or more people.” Are we required to treat the duplexes as 3 “units” for 6 or more people, or may each side of a duplex be considered a separate unit for purposes of negotiation?

You may decide for yourselves whether you want to offer both sides of a duplex together as one single “unit” or if you want to split a duplex into two separate, smaller “units.” In fact, this may be a negotiating point between the parties. As such, you should consider which approach would best serve your client’s interests and develop your strategy accordingly.

Rd 1, p 1: In Round 1, Confidential Facts for Fagan, page one, last paragraph, Fagan is willing to offer 4-8 properties to HomeLove, with no more than 3 units that can house 6 or more people. For purposes of this calculation, how will a duplex be treated? Will each side of a duplex be treated as 1 property (or 1 unit) or will the entire duplex be treated as 1 property (or 1 unit)?

You may decide for yourselves whether you want to offer both sides of a duplex together as one single “unit” or if you want to split a duplex into two separate, smaller “units.” In fact, this may be a negotiating point between the parties. As such, you should consider which approach would best serve your client’s interests and develop your strategy accordingly.

Rd 1, p 1-3: For the teams representing Fagen, is there a preference which units should be donated and which should be subsidized?

There is no preference as to which specific units should be donated or subsidized. As long as you stay within the limits that your client has given you, you may pick and choose which units to donate, subsidize, or do nothing with.

Rd 1, p 1: In Round 1, Confidential Facts for Fagan, page one, last paragraph, Fagan is willing to offer 4-8 properties to HomeLove, with no more than 3 units that can house 6 or more people. For purposes of this calculation, how will a duplex be treated? Will each side of a duplex be treated as 1 property (or 1 unit) or will the entire duplex be treated as 1 property (or 1 unit)?

You may decide for yourselves whether you want to offer both sides of a duplex together as one single “unit” or if you want to split a duplex into two separate, smaller “units.” In fact, this may be a negotiating point between the parties. As such, you should consider which approach would best serve your client’s interests and develop your strategy accordingly.

## HomeLove & SSI Clarifications

### General Facts

Rd 1, p 1-2: Can we consider a 2-bedroom duplex a single high occupancy unit that can accommodate a family?

You may decide for yourselves whether you want to offer both sides of a duplex together as one single “unit” or if you want to split a duplex into two separate, smaller “units.” In fact, this may be a negotiating point between the parties. As such, you should consider which approach would best serve your client’s interests and develop your strategy accordingly.

### HomeLove/SSI Confidential Facts

Rd 2, p 7: Are we authorized by SSI to provide compensation for "as needed" work, after the full time commitment has ended?

Yes, you have authorization to provide compensation to White for any “as-needed” work that she may perform.

Rd 2, p 7-8: For the time Dr. White is asked to spend overseas (5 mo. minimum, 10-12 mos. ideally), is that for total amount of time Dr. White agrees to work with SSI, be it 1-3 years, or per year that she agrees to work with SSI, i.e. 5 months of each year? /

You will be negotiating the total amount of time that Dr. White will spend overseas during her work on the Project, not the amount of time she will spend overseas on a per-year basis.

Rd 2, p 7-8: If Dr. Hannah White agrees to work on an as-needed basis after her term of employment with SSI, can SSI agree to pay a prorated amount of her monthly stipend?

You have authorization to provide compensation to White for any “as-needed” work that she may perform. How you decide to structure that compensation is up to you.

Rd 2, p 8: To accommodate travel for Dr. White's family, must the 7 month stay be a consecutive 7 months, or will SSI accommodate travel for multiple trips that total a 7 month stay?

SSI will pay for White’s family to travel with her if White commits to 7 months or more of overseas work. SSI is willing to pay for multiple trips that total 7 months or more.

**Bio-Tech Solutions and Global Shipping Logistics**

**CONFIDENTIAL SUMMARY FOR JUDGES**

**These tables summarize each party’s goals and priorities for the negotiation, highlighting the areas for potential agreement and disagreement.**

***Issue #1: Resolution of Bio-Tech’s Lost Costs for the Ruined Bird Flu Vaccines, and Shipment Costs Owed to GSL***

<b>Bio-Tech</b>	<b>GSL</b>	<b>Possible Outcome</b>
<p>Bio-Tech does not want to pay the remaining balance owed to GSL for the bird flu shipping costs (which is \$4,000 based on the parties’ original agreement). Additionally, Bio-Tech wants GSL to pay for all or some of the Bio-Tech’s lost cost for the ruined vaccines. The total cost of the ruined vaccines is \$32,000, but Bio-Tech is willing to accept a payment from GSL of as little as \$10,000 to cover the cost of the vaccines.</p>	<p>GSL will need to inform Bio-Tech that the remaining balance for the shipment of the bird flu vaccines increased by \$4,000 because the vaccines had to be rerouted, bringing the total remaining balance for the shipment to \$8,000. GSL feels entitled to receive at least 60% of its remaining balance on the shipping costs because it successfully shipped 60% of the vaccines, but is willing to waive the remaining balance to help smooth things over.</p> <p>As a customer service measure, GSL is willing to offer a payment of up to \$20,000 to Bio-Tech to help offset the cost of the ruined vaccines.</p>	<p>The parties will likely agree that GSL will waive its remaining shipping balance and pay between \$10,000-20,000 to Bio-Tech to help cover the cost of the ruined vaccines.</p>

**Issue #2: Amendments to Current Contract**

<b>Bio-Tech</b>	<b>GSL</b>	<b>Possible Outcome</b>
<p><b>1. LENGTH OF CONTRACT TERM:</b> Bio-Tech would like to amend this provision to be a month-to-month contract. If GSL wants a certain timeframe commitment, Bio-Tech is willing to offer between a 3-6 month commitment that converts to month-to-month once the initial commitment ends. Bio-Tech also wants to remove the provision that allows the contract to presumptively renew.</p> <p><b>2. VACCINE SHIPMENT SCHEDULE:</b> Bio-Tech wants to amend this provision to eliminate the shipment of flu vaccines 6 times a year. Ideally, Bio-Tech would also like to amend this provision to allow for Bio-Tech to ship vaccines on an ad hoc basis in response to disease outbreaks.</p> <p><b>3. NOTICE FOR VACCINE SHIPMENTS:</b> Bio-Tech has no requested changes to this term as it relates to the regularly scheduled vaccine shipments. If the parties amend the contract to allow for Bio-Tech to ship vaccines on an ad hoc basis, Bio-Tech would like to be required to give only 3 days' written notice for the ad hoc vaccines, but will agree to up to 8 days' written notice.</p>	<p><b>1. LENGTH OF CONTRACT TERM:</b> GSL would like to keep this contract term intact, but would like for Bio-Tech to agree to finish out the remaining 6 months on the parties' existing contract. At a minimum, GSL is willing to agree to no less than a 3 month contract term. Additionally, GSL would like this term to include a provision that allows GSL the right to meet with Bio-Tech at the expiration of the contract to discuss whether the contract will be renewed.</p> <p><b>2. VACCINE SHIPMENT SCHEDULE:</b> GSL is willing to amend this term to allow Bio-Tech to ship vaccines on an ad hoc basis, so long as the parties agree to clear terms for notice and payment of the shipments (addressed in terms 3 and 6).</p> <p><b>3. NOTICE FOR VACCINE SHIPMENTS:</b> GSL has no requested changes to this term as it relates to the regularly scheduled vaccine shipments. If the parties amend the contract to allow for Bio-Tech to ship vaccines on an ad hoc basis, GSL would prefer to have 10 days' written notice, but is willing to agree to as little as 5 days' written notice.</p>	<p><b>1. LENGTH OF CONTRACT TERM:</b> The parties will probably agree on a contract length of between 3-6 months that is not presumptively renewable, but that allows for the parties to meet at the expiration of the contract to discuss whether the contract will be renewed.</p> <p><b>2. VACCINE SHIPMENT SCHEDULE:</b> The parties will likely agree to omit the provision for the shipment of flu vaccines 6 times a year and add a provision allowing for Bio-Tech to ship vaccines on an ad hoc basis.</p> <p><b>3. NOTICE FOR VACCINE SHIPMENTS:</b> The parties will likely agree to amend the contract to add a provision requiring between 5-8 days' written notice for vaccines shipped on an ad hoc basis.</p>

<p>4. SHIPPING CONTAINERS PROVIDED BY GSL: Bio-Tech doesn't have any requested changes for this term, but, if asked, is willing to adjust the number of shipping containers down from 5 to 3. If the number of shipping containers is reduced, the number of vaccines shipped (addressed in term #6) will also have to be adjusted.</p> <p>5. TIMEFRAME FOR SHIPMENTS: Bio-Tech has no requested changes for this term.</p> <p>6. PAYMENT FOR SHIPMENTS: Bio-Tech wants to amend this term to eliminate the payments for the flu vaccine shipments.</p> <p>Also, Bio-Tech is willing to amend this term to temporarily reduce the shipment of the number of childhood vaccines from 10,000 to 6,000 to accommodate a reduction in GSL's shipping containers, while continuing to pay \$.50 per vaccine to ship the childhood vaccines.</p> <p>Additionally, Bio-Tech wants to amend this provision to address payments for ad hoc vaccine shipments. For the ad hoc shipments, Bio-Tech is willing to agree to a shipping cost of between \$.50-.90 per vaccine.</p>	<p>4. SHIPPING CONTAINERS PROVIDED BY GSL: GSL needs to amend this term to temporarily reduce the number of shipping containers it provides from 5 to 3. Once GSL is able to replace its lost shipping containers, the number of containers provided can go back up to 5.</p> <p>5. TIMEFRAME FOR SHIPMENTS: GSL has no requested changes for this term.</p> <p>6. PAYMENT FOR SHIPMENTS: Because GSL has temporarily lost two of its shipping containers, GSL will need to reduce the number of childhood vaccines that can be shipped from 10,000 to 6,000. GSL wants to retain the shipping cost of \$.50 per vaccine for the childhood vaccines.</p> <p>As for any ad hoc vaccine shipments, GSL would like to secure a shipment cost of between \$.60-\$1.00 per vaccine, with an additional provision that Bio-Tech will pay an additional \$.20 per vaccine if Bio-Tech makes any changes in where the vaccines should be shipped after the notice cut-off provided in term #3.</p>	<p>4. SHIPPING CONTAINERS PROVIDED BY GSL: The parties will likely agree to temporarily reduce the number of shipping containers that GSL provides from 5 to 3 until GSL is able to replace its lost containers.</p> <p>5. TIMEFRAME FOR SHIPMENTS: The parties will not amend this term.</p> <p>6. PAYMENT FOR SHIPMENTS: The parties will likely agree to eliminate the shipment terms for the flu vaccines.</p> <p>Additionally, the parties will likely agree to temporarily reduce the number of childhood vaccines shipped from 10,000 to 6,000 until GSL replaces its lost shipping containers, and that Bio-Tech will continue to pay \$.50 per vaccine to ship the childhood vaccines.</p> <p>Finally, the parties will agree that Bio-Tech will pay between \$.60-.90 per vaccine for the ad hoc vaccine shipments, and</p>
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<p>7. ADDED TERM – LIQUIDATED DAMAGES: Bio-Tech wants to add a term to the contract that requires Bio-Tech to pay liquidated damages in the amount of \$50,000 or the actual cost of the ruined vaccines (whichever is higher) for any future ruined shipments that result from a failure of GSL’s shipping containers or its failure to ship the vaccines within 72 hours.</p>	<p>7. ADDED TERM – LIQUIDATED DAMAGES: GSL’s facts do not contain any requirement of an additional term for liquidated damages, or any specific opposition to such a term being added to the contract.</p>	<p>that Bio-Tech will pay an additional \$.20 per vaccine if Bio-Tech makes any changes in where the vaccines should be shipped after the notice cut-off provided in term #3.</p> <p>7. ADDED TERM – LIQUIDATED DAMAGES: GSL will likely agree to add a liquidated damages clause to the contract.</p>
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**General Information for Both Parties**

Bio-Tech Solutions is a pharmaceutical company located in the U.S. that has a special focus on researching, developing, and testing vaccines. Although Bio-Tech enjoys strong revenues from sales of its pharmaceutical products, it is also committed to providing humanitarian relief in developing areas of the world by providing basic vaccines at little to no cost. Five years ago, Bio-Tech’s CEO made a commitment that Bio-Tech would join a handful of other pharmaceutical companies in providing basic childhood vaccines and flu vaccines to certain impoverished countries around the world. The small network of pharmaceutical companies that made this commitment decided to name its collective undertaking the Global Childhood and Basic Health Initiative, and each company has the freedom to arrange the logistics of how and when it will provide vaccines. Most of the cost of providing these vaccines is borne by the pharmaceutical companies themselves, though some of the expense is offset by a few non-profit organizations that focus on global health and disease prevention.

During the past eighteen months that Bio-Tech has been providing vaccines as part of the Initiative, it has partnered with Global Shipping Logistics (GSL) to ship the vaccines to locations around the world. GSL is a U.S.-based shipping company with a global reach that has a strong reputation for quality in its shipping practices. In addition to its ability to ship globally, Bio-Tech chose to use GSL because of GSL’s highly advertised “cold shipping capabilities” that allow it to ship temperature-sensitive contents to far-away locations. At the beginning of their partnership,



Bio-Tech and GSL entered into a one-year, presumptively renewable contract that renewed for a second year when neither party had any complaints about the arrangement, nor requested any changes to the contract. The relevant terms of the current contract between the parties, which will presumptively renew again in six months, are as follows:

- 1. LENGTH OF CONTRACT TERM:** The contract between Bio-Tech and GSL for the shipment of vaccines as part of Bio-Tech's participation in the Global Childhood and Basic Health Initiative will extend for one year from the date of the contract's enactment by the parties. The contract will presumptively renew each year, unless at least one month before the date of the contract's renewal, one or both parties submits in writing to the other party an intention to either renegotiate the terms of the contract or to terminate the contract.
- 2. VACCINE SHIPMENT SCHEDULE:** Bio-Tech intends to ship vaccines on a regular schedule throughout the year-long term of the contract, with flu vaccines being shipped a total of six times, twice each month in the months of September, October, and November, and regular childhood vaccines being shipped twice a month year-round.
- 3. NOTICE FOR VACCINE SHIPMENTS:** Before each scheduled vaccine shipment, Bio-Tech will provide GSL with at least fourteen days' written notice (which can include email) of where the vaccines should be shipped and on what specific date the vaccines should arrive at their intended destination.
- 4. SHIPPING CONTAINERS PROVIDED BY GSL:** GSL will provide, for each scheduled shipment, a fleet of up to five temperature-controlled shipping containers that can create a regulated shipping temperature of between 32 and 45 degrees Fahrenheit for up to 72 hours in shipment. Each shipping container can hold up to 2,000 vaccines.
- 5. TIMEFRAME FOR SHIPMENTS:** Because GSL's temperature-controlled shipping containers can only regulate the shipping temperature for up to 72 hours, GSL will ship each scheduled vaccine shipment to its intended destination within 72 hours.
- 6. PAYMENT FOR SHIPMENTS:** For each successful shipment of regular childhood vaccines, which will consist of 10,000 total vaccines and should be kept at a shipping temperature of 35 degrees Fahrenheit, Bio-Tech will pay GSL a flat rate of \$5,000. For each successful shipment of flu vaccines, which will consist of 6,000 total vaccines and should be kept at a shipping temperature of 40 degrees Fahrenheit, Bio-Tech will pay GSL a flat rate of \$3,000. For each shipment, Bio-Tech will pay half of the shipping

cost up front and the other half of the shipping cost upon the successful completion of the shipment.

For the first seventeen months of the parties' relationship, everything went more or less as expected. Bio-Tech found GSL to be reliable and prompt in shipping the vaccines and in keeping the vaccines at the correct temperature and, in turn, GSL found Bio-Tech to be reasonable in its shipping expectations. This all changed, however, when a recent shipment of flu vaccines to an Asian country experiencing a large outbreak of a unique strain of bird flu ended in disaster. Within the past month, as the bird flu outbreak began, Sally Vawter, Bio-Tech's director in charge of coordinating vaccine shipments for the Initiative, decided that Bio-Tech needed to help stop the spread of the outbreak and aid those affected. About three weeks ago, Vawter had spoken with Michael Hirsch, her main point of contact at GSL to coordinate shipments of the vaccines, on the phone about whether GSL could handle a shipment of 10,000 bird flu vaccines that were not part of the parties' regularly scheduled vaccine shipments covered by the contract. Hirsch had asked Vawter to send him the details of what country and city the shipment needed to go to, the specific dates on which the shipment would be ready and when the shipment needed to arrive at its destination, and what temperature the vaccines needed to be kept at during shipment. Vawter had responded promptly via email with all of the requested information, including specific instructions that the vaccines should be shipped within 48 hours instead of 72 hours because of the urgent nature of the bird flu outbreak. After a few days of checking logistics, Hirsch had called Vawter back and confirmed that GSL would be able to make the shipment. During this phone call, the parties had agreed that Bio-Tech would pay GSL \$8,000 for the bird flu shipment, and Hirsch followed their phone call up with an email confirming the parties' agreement. Even though this particular shipment was not covered by the parties' contract, Bio-Tech had paid for half the cost of the shipment up front and planned to pay for the other half of the cost of the shipment upon its successful completion, similarly to any other shipment.

The shipment went off the rails almost immediately. The evening of the day that the vaccines had been picked up for shipment, Vawter realized that she had made a mistake in what city she had told Hirsch that GSL should ship the vaccines to. In her haste to make arrangements for the vaccines to be shipped, Vawter had misread some of the information that had been provided to her by the global health organization spearheading the response to the bird flu outbreak. In the information put out by the global health organization, it identified multiple cities in a specific Asian country where the organization would be working to combat the bird flu outbreak. One of the cities in particular, Shusang, was listed as the city where all vaccine shipments should be made, while one of the other cities, Lonyan, was listed as the city where all monetary donations should be made and where the organization's headquarters would be located. Vawter had mistakenly told Hirsch that the vaccines should be shipped to Lonyan instead of Shusang. After realizing her mistake, Vawter frantically attempted to contact Hirsch to make the correction. She called both his office and cell phones, leaving messages after he did not answer. She also texted him, telling him of her mistake and asking him to contact her immediately. After about an hour, Hirsch called her back and the two had a tense conversation about whether the shipment's destination could be corrected in time for the vaccines to arrive at the correct city within the agreed-upon time frame of 48 hours. Over the course of the evening and after several

phone calls and texts, Hirsch was finally able to tell Vawter that he had been able to contact the GSL personnel who were handling the bird flu shipment and inform them of the corrected destination. Because the new destination city is several hundred miles away from the original destination city and is not directly accessible by air, Hirsch informed Vawter that, at this point in the shipment process, it would not be possible for GSL to deliver the vaccines to Shusang within the promised 48-hour timeframe, but that the vaccines could be rerouted to Shusang within the 72-hour timeframe that the temperature-controlled shipping containers were able to operate in.

Vawter, embarrassed at her own mistake and frustrated that the shipment would be arriving later than she had hoped, acknowledged that under the circumstances, getting the vaccines to Shusang within 72 hours was the best that could be done. She and Hirsch agreed to keep in close contact over the next several days to monitor the situation. Unfortunately, three days later, Hirsch called her back with more bad news. At some point between Lonyan and Shusang, two of GSL's temperature-controlled shipping containers had failed, and all of the vaccines in them, 4,000 in total, had been ruined. Vawter was furious when she received word of the ruined vaccines. As Vawter ranted on the phone to Hirsch about how much wasted money and, more importantly, wasted *medicine* resulted from GSL's failure to ensure that its shipping containers would work properly, Hirsch indignantly responded that if Bio-Tech had told GSL the right city where the vaccines were supposed to go in the first place, then the vaccines wouldn't have even been on the shipping trucks at the time the shipping containers failed anyway. With both parties pointing fingers at the other for who was to blame for the failed shipment, they eventually ended the call amidst angry demands from both sides that "you need to fix this and make sure this never happens again!"

A few days later, after a long conference call with directors at the other pharmaceutical companies participating in the Initiative, Vawter had to admit that it was imperative for Bio-Tech to attempt to restore its relationship with GSL, at least temporarily, in order to continue to respond to the growing, immediate demand for vaccines to combat the bird flu outbreak in Asia. Vawter called Hirsch and the two had a tense, but productive conversation in which they agreed that they should quickly schedule a meeting to discuss what went wrong on the last shipment, what could be done to prevent a problem like this from happening again, and to re-examine the terms of the contract between their companies. They further agreed that they would each meet with their respective company attorneys before the meeting and send their attorneys to the meeting on each company's behalf.

### **Confidential Information for Bio-Tech and Sally Vawter**

Sally Vawter is extremely upset about the recent events with GSL. Her work for Bio-Tech as part of the Global Childhood and Basic Health Initiative is incredibly important to her, as she has dedicated her career to the prevention of disease outbreak and she is especially passionate about providing vaccines to help improve community health in poor and vulnerable

countries in the world. Though the total number of vaccines that Bio-Tech provides through the Initiative represents a small number of the total vaccines needed in impoverished areas of the world, Vawter is determined that every single vaccine sent by Bio-Tech will be used to make a meaningful difference in the health of the individual who receives it.

Of course, Vawter's vision of each vaccine being put to good use was shattered when she discovered that 40% of Bio-Tech's most recent shipment of flu vaccines for the bird flu outbreak in Asia had gone to waste. She is furious that GSL was not able to ship all of the vaccines at the necessary temperature to keep them from being ruined, and her anger is all the more pronounced by the fact that these vaccines were specially made to combat the unique strain of flu present in the bird flu outbreak, which is quickly becoming a health crisis in certain areas of Asia. Vawter has to admit, however, that Bio-Tech's efforts to respond to the bird flu outbreak are part of what triggered the problems with GSL in the first place. Vawter is acutely aware that her mistake in telling Hirsch the wrong delivery city is the primary reason that things went wrong with this shipment, and she knows she is lucky that the rest of the vaccines arrived at the correct city without being ruined, despite her mistake. Nevertheless, GSL's shipping containers were supposed to keep the vaccines at the regulated temperature for up to 72 hours, and their failure is ultimately what caused the vaccines to be ruined. Each of the bird flu vaccines had cost Bio-Tech \$8 to make (which is relatively inexpensive, considering the specialty nature of the vaccine), so the 4,000 ruined vaccines amounted to a \$32,000 loss for Bio-Tech. Despite the fact that Vawter had initiated the problem by providing the wrong destination city, she has no intention of paying GSL the remaining \$4,000 for the shipment; in fact, Vawter believes that GSL should pay Bio-Tech in full for the lost cost of the vaccines. Vawter anticipates that GSL will resist a demand that it pay for the ruined vaccines, citing her error in providing the wrong destination city, but she is adamant that GSL pay *something* towards the lost vaccines. Vawter is willing to accept a minimum of \$10,000 in repayment for the vaccines, but the more Bio-Tech's attorneys can get GSL to pay for them, the better.

In addition to discussing how to resolve the issues between the parties relating to the bird flu shipment, Vawter wants Bio-Tech's attorneys to address the current contract between the parties. In anticipation of the parties' meeting, Vawter had sent a letter to Hirsch informing him of her intent to renegotiate the terms of the parties' existing contract, and Hirsch had responded in kind. In their letters, both parties agreed not only that their letters served as notice sufficient to suspend the presumptively renewable nature of the contract as provided in term #1, but also that the current contract between the parties should be amended, with the amendments being effective immediately. After the failure of GSL's temperature-controlled shipping containers, Vawter might have simply sent Hirsch a notice of her intent to terminate the contract at its expiration in six months, but the parties have had a good working relationship for over a year. Vawter is willing to come to the table with GSL and at least attempt to work things out between them for shipments going forward. In addition, Vawter isn't confident that she can find another shipping company with the same cold-shipping capabilities and global reach that GSL has, and Bio-Tech plans to continue its involvement with the Initiative for several years to come. In fact, the bird flu epidemic has triggered Vawter and some of her colleagues to reconsider the approach that Bio-Tech currently takes to providing vaccines for the Initiative. Rather than simply providing pre-

determined vaccines on a regular schedule, Vawter and her colleagues want Bio-Tech to be able to respond to emerging health threats on an as-needed basis. Therefore, what Vawter hopes Bio-Tech's attorneys can achieve at the meeting regarding Bio-Tech's current contract with GSL is an agreement to amend the terms of the existing contract effective immediately according to the following guidelines for each of the relevant terms of the contract:

- 1. LENGTH OF CONTRACT TERM:** Bio-Tech would like to request several changes to this term of the contract. In light of the failure of GSL's shipping containers, Vawter wants to amend the contract length to something shorter than a year, and she wants to remove the provision that allows for the contract to presumptively renew. Right now, Vawter is not comfortable making a long-term commitment to using GSL for Bio-Tech's vaccine shipments, and she wants to renegotiate this term so as to keep Bio-Tech's options open in the event that Bio-Tech would like to change shipping partners. Ideally, Vawter would like for this provision to be amended so as to operate on a month-to-month basis, with either party being free to terminate the contract before the next month's term begins. If GSL pushes for a more certain long-term commitment, Vawter is reluctant to oblige. Vawter would prefer to make no longer than a three-month commitment that converts to a month-to-month commitment after that, but she is willing to consider up to a six-month commitment that converts to a month-to-month commitment, especially if GSL is able to accommodate some of Bio-Tech's other requested amendments.
- 2. VACCINE SHIPMENT SCHEDULE:** Vawter also wants to make several amendments to this term of the contract. As mentioned previously, Vawter and several of her colleagues would like to see Bio-Tech be able to respond to emerging health threats and virus outbreaks around the world, in addition to shipping certain vaccines on a regular schedule. Though Vawter and her colleagues have decided that Bio-Tech should still ship the regular childhood vaccines twice a month year-round, they have decided that Bio-Tech is going to suspend its shipments of flu vaccines. Shipping the flu vaccines has proven to be costly and sometimes ineffective, as the strains of the flu virus in the countries that have received Bio-Tech's vaccines do not always match the strains that the vaccine is designed to protect against. Instead of shipping flu vaccines six times a year, Bio-Tech would like for this term of the contract to be amended to allow Bio-Tech to ship vaccines on an ad hoc basis in response to specific disease outbreaks. If GSL is unable or unwilling to make this amendment, Bio-Tech simply wants to amend this term so as to omit the provision for the flu vaccine shipments. In the event that GSL cannot accommodate Bio-Tech's desire to ship vaccines on an ad hoc basis, Bio-Tech will actively search for a new shipping partner that can make such an accommodation, with the intent of eventually moving all of Bio-Tech's shipping business to the new partner.
- 3. NOTICE FOR VACCINE SHIPMENTS:** Bio-Tech has no issue with this term as it relates to the regularly scheduled vaccine shipments, but, if GSL is able to accommodate

ad hoc vaccine shipments, Bio-Tech knows that this term should be amended so as to also address what notice will be required for any non-scheduled vaccine shipments. For the non-scheduled shipments, Bio-Tech would prefer to for this term to require only three days' written notice because when responding to a sudden disease outbreak, Bio-Tech may not have all of the pertinent shipment information until very late in the process, but, to accommodate GSL and its need to be able to arrange for shipping logistics, Bio-Tech would be willing to agree to as many as eight days' written notice.

4. **SHIPPING CONTAINERS PROVIDED BY GSL:** Bio-Tech has no desired changes to this term of the contract. Vawter is aware, of course, that two of GSL's temperature-controlled shipping containers are currently not working. If GSL needs to reduce the number of shipping containers that it provides for Bio-Tech's shipments from five to three, Bio-Tech is willing to accommodate that. Of course, if GSL reduces the number of shipping containers it provides, the parties will need to also adjust the number of total vaccines that will be shipped in each regular shipment and the cost of each shipment, covered in term #6.

5. **TIMEFRAME FOR SHIPMENTS:** Bio-Tech has no requested changes to this term of the contract.

6. **PAYMENT FOR SHIPMENTS:** The first amendment that Bio-Tech needs to make for this term is to drop the language relating to the flu vaccines, as Bio-Tech no longer plans to ship those vaccines as part of the Initiative. The second amendment that Bio-Tech needs to make is to add a provision addressing the payment terms for any non-scheduled vaccine shipments Bio-Tech renders in response to a disease outbreak, assuming that GSL will be amenable to adding that type of shipping service. Of course, the total number of vaccines that Bio-Tech can ship in a non-scheduled shipment will depend on the number of shipping containers that GSL has available for any one shipment, and as long as GSL can commit to providing at least three shipping containers at all times, Bio-Tech would not ask to ship a higher volume than GSL can handle. The bigger priority for Bio-Tech is to negotiate a set shipping rate for any non-scheduled shipments so that Bio-Tech can accurately estimate the cost of those shipments. The current flat-rate shipment cost that Bio-Tech has with GSL for the childhood vaccines essentially breaks down to \$.50 per vaccine. Bio-Tech hopes to keep the shipment cost for non-scheduled shipments as low as \$.50 per vaccine, but recognizes that GSL will probably need to charge a higher rate for these shipments because of the more last-minute nature of the logistics scheduling. Therefore, Bio-Tech will agree to a shipping rate of up to \$.90 per vaccine, but hopes that its attorneys can secure as low a shipping rate as possible. As to the shipping volume and cost for Bio-Tech's shipment of childhood vaccines, if GSL needs to temporarily reduce the volume of childhood vaccines that it can ship from 10,000 to 6,000, Bio-Tech is willing to agree to that, with the understanding that the volume will increase back to the original number as soon as GSL is able to handle it. Additionally, Bio-Tech is sure that GSL will want

Bio-Tech to pay the same shipping cost for the childhood vaccines, \$.50 per vaccine, at the reduced volume, and Bio-Tech is willing to oblige.

As a final matter, Bio-Tech would like for its attorneys to secure one additional term in the parties' contract. Based on the failure of GSL's shipping containers in the most recent shipment and the resulting lost cost to Bio-Tech of the ruined vaccines, Bio-Tech wants its contract with GSL to include a liquidated damages clause that provides that, for any ruined vaccines resulting from a failure of GSL's temperature-controlled shipping containers or a failure of GSL to ship the vaccines within the 72-hour timeframe that the shipping containers will operate in, GSL agrees to pay damages to Bio-Tech in the amount of \$50,000 or the actual cost of the ruined vaccines, whichever amount is higher.

### **Confidential Information for GSL and Michael Hirsch**

Michael Hirsch cannot believe that GSL experienced a failure of its temperature-controlled shipping containers, especially after he had gone out of his way to help accommodate Vawter's desire for Bio-Tech to ship the bird flu vaccines. GSL had been providing excellent service to Bio-Tech for nearly a year and a half when this fiasco occurred, and Hirsch hopes that this meeting can provide GSL with an opportunity to smooth things over between the parties. Hirsch's goal is to assure Bio-Tech that GSL is still a reliable partner for its shipping needs and make any necessary adjustments to the way the parties conduct business to allow them to move forward together. Though GSL enjoys a stable customer base beyond its contract with Bio-Tech, Hirsch and the rest of the team at GSL are strongly committed to customer service, and he wants to retain Bio-Tech's business if at all possible. In addition to GSL's relationship with Bio-Tech, Hirsch is especially concerned that GSL may develop a bad name in the cold-shipping industry based on the failure of its cold-shipping containers, which makes it even more important for GSL to find a way to reach a positive resolution with Bio-Tech.

The first step toward repairing the relationship with Bio-Tech will be to address the bird flu shipment. Hirsch cannot imagine how Vawter managed to misunderstand what city the vaccines needed to be shipped to—surely the information that had been given to her was not *that* confusing. Plus, Hirsch would have thought that Vawter would have double-checked all of the details of the shipment, especially considering the time-sensitive nature of shipping the vaccines for the bird flu outbreak. Hirsch thinks it is a testament to GSL's commitment to customer service that he was able to quickly respond to Vawter's frantic calls and texts and arrange for the shipment to be rerouted to the correct city and scheduled to arrive only 24 hours later, all after the shipment had already been in route for over half a day. One thing that Hirsch has not yet had an opportunity to tell Vawter is that GSL's last-minute rerouting of the shipment had been expensive, increasing the total shipping cost for the bird flu vaccines by an additional \$4,000.

This means that Bio-Tech's outstanding balance for the shipment stands at \$8,000, not \$4,000. Hirsch understands that Bio-Tech will likely claim that it owes nothing more for the shipment because 40% of the vaccines were ruined, and he is willing to accommodate that claim to an extent. The failure of GSL's shipping containers did play a prominent role in the problems with the shipment, but GSL was able to ship 60% of the vaccines to the correct city within 72 hours, a timeframe that Vawter had agreed was acceptable after the parties had begun the process of rerouting the vaccines. During the phone call when Vawter and Hirsch had exchanged heated words, Vawter had fumed about the lost money that Bio-Tech was going to incur as a result of the ruined vaccines, and Hirsch believes that she will ask GSL to reimburse Bio-Tech for the lost cost of the vaccines. Hirsch does not have an estimate for the how much the ruined vaccines may have cost Bio-Tech, but he does not believe that GSL is solely responsible for absorbing that cost. Further, Hirsch does believe that GSL is owed at least 60% of its outstanding shipping costs. Nonetheless, acknowledging that the failure of GSL's shipping containers contributed to Bio-Tech's lost vaccines cost and in the interest of helping the parties to move forward together, Hirsch had authorized GSL's attorneys to, at minimum, waive the outstanding balance of Bio-Tech's shipping costs and, at maximum, offer up to \$20,000 as a settlement of Bio-Tech's lost cost for the ruined vaccines.

In addition to discussing how to resolve the issues between the parties relating to the bird flu shipment, Hirsch wants GSL's attorneys to address the current contract between the parties. A few days ago, Hirsch had received a letter from Vawter informing him of her intent to renegotiate the terms of the parties' existing contract, and Hirsch had responded in kind. In their letters, both parties agreed not only that their letters served as notice sufficient to suspend the presumptively renewable nature of the contract as provided in term #1, but also that the current contract between the parties should be amended, with the amendments being effective immediately. As Bio-Tech is well aware, GSL is currently experiencing a loss of two of its cold-shipping containers. Though GSL has other cold-shipping containers of various sizes and temperature-regulation capabilities, all of the other containers are already dedicated to other contracts that GSL has with other companies. Therefore, until GSL is able to replace its two broken containers, it can only provide three cold-shipping containers for its shipments with Bio-Tech. Hirsch has already begun the process of replacing the two lost containers, but the company that manufactures them is backlogged and has told Hirsch to expect the containers to be ready in the next 4-6 months. In the meantime, GSL will simply have to temporarily reduce the volume of cold shipping that it can offer Bio-Tech. Therefore, Hirsch hopes that GSL's attorneys can negotiate amendments to the terms of the current contract between GSL and Bio-Tech according to the following guidelines for each of the relevant terms of the contract:

1. **LENGTH OF CONTRACT TERM:** GSL would prefer to keep this contract term intact, but Hirsch anticipates that Bio-Tech will request several amendments to this provision, especially after Vawter made it clear how angry she was over the ruined vaccines. For GSL, having a set commitment for a shipping agreement helps it to manage its fleet of shipping trucks, containers, personnel, etc., which in turn provides for a more reliable service experience for the customer. Therefore, although Hirsch acknowledges that GSL may not be able to secure a year-long, presumptively renewable contract with



Bio-Tech right now, he would like to obtain a commitment from Bio-Tech to at least finish out the remaining six months of the parties' contract. If Bio-Tech is hesitant to commit to a six-month contract with GSL, Hirsch is willing to offer a contract term of a minimum of three months, but he has instructed GSL's attorneys not to agree to any term shorter than that. For GSL's budget projections for this year, it is relying on the income from its current contract with Bio-Tech. Hirsch believes that GSL could recover financially from losing a portion of this contract, given a little time to find a replacement client, but GSL can't afford to lose the entire contract. No matter what term length the parties ultimately agree on, Hirsch would like for GSL to retain the right to at least meet with Bio-Tech at the expiration of the contract term to discuss whether and under what terms the contract may be renewed.

2. **VACCINE SHIPMENT SCHEDULE:** In response to the problems that arose between the parties because of the shipment of the bird flu vaccines, GSL would like to amend this term of the contract to address any desire that Bio-Tech might have to ship vaccines outside of the regular shipment schedule between the parties, such as shipments made in response to a sudden disease outbreak. Hirsch is confident that with clear and fair provisions for both notice and payment of any "non-scheduled" vaccine shipments (which should be addressed in terms #3 and #6 below), GSL could successfully handle any such shipments (and Hirsch believes the parties could likely have avoided the problems with the bird flu shipment).

3. **NOTICE FOR VACCINE SHIPMENTS:** GSL has no issue with this term as it relates to the regularly scheduled vaccine shipments, but will insist that this term be amended so as to also address what notice will be required for any non-scheduled vaccine shipments. For the non-scheduled shipments, GSL would prefer to have ten days' written notice of where the vaccines should be shipped and on what specific date the vaccines should arrive at their intended destination in order to plan logistics for the shipment, but, to accommodate Bio-Tech and the last-minute nature of these types of vaccine shipments, GSL would be willing to agree to as little as five days' written notice.

4. **SHIPPING CONTAINERS PROVIDED BY GSL:** It will be important for GSL to amend this term of the contract because GSL currently has only three temperature-controlled shipping containers that can be dedicated to its shipments for Bio-Tech. Once GSL receives the two new containers that it has ordered, which it expects to receive within 4-6 months, it can once again provide a fleet of five temperature-controlled shipping containers.

5. **TIMEFRAME FOR SHIPMENTS:** GSL has no requested changes to this term of the contract.

6. **PAYMENT FOR SHIPMENTS:** The first amendment that GSL needs to make to this term is that, until it receives its two replacement shipping containers, it will not be able to accommodate any vaccine shipments of more than 6,000 vaccines. Thus, as to the current agreement to ship regular childhood vaccines at a total volume of 10,000 vaccines per shipment, GSL will need to reduce the shipment volume to no more than 6,000 vaccines per shipment temporarily. Once GSL receives its replacement shipping containers, the total number of childhood vaccines shipped per shipment can be adjusted back up to 10,000. For the childhood vaccines, the current flat-rate shipment cost that GSL has with Bio-Tech essentially breaks down to \$.50 per vaccine. GSL does not intend to reduce the per-vaccine shipping cost for the childhood vaccines, but of course the total cost for each shipment will be less if the number of vaccines shipped is reduced. The second amendment that GSL needs to make to this term is to address any non-scheduled vaccine shipments that Bio-Tech may want to make. As far as the volume of vaccines that GSL could handle in a non-scheduled shipment, that number will be limited by the number of temperature-controlled shipping containers that GSL has available to it at the time that Bio-Tech requests the shipment. As far as the cost to make a non-scheduled shipment, GSL will insist that the cost be more than the \$.50 per vaccine for the regular shipments. GSL will almost certainly have a higher cost to make a non-scheduled shipment because of the more last-minute nature of scheduling shipping logistics, so GSL would like for the shipping cost of the non-scheduled shipments to be no less than \$.60 per vaccine, but preferably as high as \$1.00 per vaccine. One final provision that GSL would like to add to this term is that, for any non-scheduled vaccine shipments, if Bio-Tech submits any change in information of where the vaccines need to be shipped or on what day the vaccines need to arrive after the notice cut-off provided in term #3, GSL will automatically increase the shipment cost for that specific shipment by \$.20 per vaccine.

**The Citizen’s Forum and Becky Clark**

**CONFIDENTIAL SUMMARY FOR JUDGES**

**These tables summarize each party’s goals and priorities for the negotiation, highlighting the areas for potential agreement and disagreement.**

***Issue #1: Restoring Clark’s Page to the Website***

<b>The Citizen’s Forum</b>	<b>Clark</b>	<b>Possible Outcome</b>
<p>The Citizen’s Forum (aka “the website”) will restore Clark’s page because the videos she posted did not violate the website’s policy as it was written at the time. The website is going to amend its terms and conditions to disallow videos, messages, or other propaganda that depicts or appears to depict terrorist activity. Under the new policy, videos of the type that Clark posted will not be allowed, and if Clark violates these terms, her page will be shut down permanently.</p>	<p>Clark will insist that her page be restored to the website immediately because the videos she posted do not violate the website’s terms and conditions, and she will willing to offer proof of this if necessary.</p>	<p>The parties will likely agree that Clark’s page should be restored to the website immediately and that Clark will be subject to the website’s new policy that disallows the type of videos that she posted.</p>

**Issue #2: Restrictions on Clark's Page**

<b>The Citizen's Forum</b>	<b>Clark</b>	<b>Possible Outcome</b>
<p>As a condition of restoring Clark's page to the website, The Citizen's Forum will insist that she be subject to certain restrictions.</p> <p>First, Clark must submit all videos that she wants to post to the website's user content managers to be vetted before she will be allowed to post the videos. This vetting process should last between 30-90 days. The vetting process should include a term providing that Clark will respect the results of the process for any videos she wants to post and that, if she posts any content deemed unacceptable after being vetted, she will forfeit her right to have a page on the website.</p> <p>Second, Clark must provide proper attribution for all videos she posts on her page, and, upon having her page restored, she must post a statement explaining the source of the videos that resulted in her page being shut down.</p>	<p>Clark wants her page to be restored without any limitations on her use of its features and functions, but she understands that she will be expected to abide by the website's regular policies and restrictions. Clark is willing to agree to a temporary vetting process before posting videos on her page, and she would like the vetting process to be in place for between 20-60 days. Additionally, Clark wants the website to make its decisions during the vetting process within 24 hours.</p>	<p>The parties will likely agree that, as a condition to having her page restored, Clark will agree to be subject to a vetting process before posting any videos to her page that will last between 30-60 days. The parties should also agree that the website will make its decisions in the vetting process within 24 hours and that Clark will respect the results of the vetting process or forfeit her page permanently. Finally, the parties should agree that Clark will give proper attribution for all videos she posts on her page, and, upon having her page restored, she will post a statement explaining the source of the videos that resulted in her page being shut down.</p>

***Issue #3: Compensation for Shutting Clark’s Page Down***

<b>The Citizen’s Forum</b>	<b>Clark</b>	<b>Possible Outcome</b>
<p>Though the website would prefer not to pay Clark any damages for shutting her page down, it may offer her up to \$5,000 as a settlement to appease her. The website wants Clark sign a release of any claims she has against it for shutting her page down and a non-disclosure agreement as to any financial settlement.</p>	<p>Clark feels entitled to receive up to \$10,000 in damages for the website wrongfully shutting her page down. As a last resort, if the website strongly resists paying her any monetary damages, Clark will agree to forgo any money payment if the website will take measures to assure advertisers that Clark’s page is a reliable place to advertise. If the website agrees to pay her some monetary damages, Clark will sign a release of any claims she has against the website for shutting her page down, but she will not sign a release if the website does not agree to pay her any money.</p>	<p>The parties will probably agree that the website will pay Clark damages in the amount of \$5,000 or less, and Clark will probably agree to both a release of her claims against the website for shutting her page down and a non-disclosure agreement related to the payment of damages.</p>

***Issue #4: Clark’s Defamatory Comments Against The Citizen’s Forum***

<b>The Citizen’s Forum</b>	<b>Clark</b>	<b>Possible Outcome</b>
<p>The website, in lieu of any damages for Clark’s defamatory statement, wants Clark to publicly recant her statement about the website having not paid her ad revenue that she is entitled to. If Clark agrees to make this statement, the website will sign a release of any claims it may have against her for her defamatory statements about the website.</p>	<p>Clark is willing to offer a settlement to the website for her defamatory statements about it in the form of either (1) forfeiting some of her ad revenue for a while, or (2) making a public apology or statement recanting her comments.</p>	<p>The parties will likely that Clark will issue a public statement recanting her defamatory comments and the website will sign a release of any claims it may have against her for her defamatory statements about the website.</p>

## General Information for Both Parties

Patrick Wagner is the CEO of a social media website called The Citizen's Forum, which he specifically created to serve as a place for its members to engage in political discourse and to debate current events in politics, both nationally and internationally. The Citizen's Forum, which has approximately 100 million users, allows each user to create his or her own page, which each individual user can fill with posts, pictures, and videos, and users can "like" and follow other user's pages. As with most other social media websites, users of The Citizen's Forum can engage in discussion with each other through direct messages, posts to other user's pages, and comment threads on content posted by users. In addition to allowing pages by individual users, The Citizen's Forum also allows pages created by political organizations who want to push a specific political agenda and individuals who are running for office. One unique feature of The Citizen's Forum is that certain users are able to monetize their pages. For any user with over 50,000 "likes" and followers, the website gives that user the option to allow ads on his or her page, with the user getting a 4% cut of the ad revenue. Almost all of the ads allowed on The Citizen's Forum are political, such as campaign ads by people running for office or ads that advocate for certain political action on various topics. The users who choose to allow ads on their pages have no say in what ads can be placed on their page, but the website allows those placing the ads to pick and choose what pages they want to advertise on.

One of The Citizen's Forum's most popular users is Becky Clark. Clark is a self-created political commentator whose main speaking platforms are her various social media sites. Having originated her persona on YouTube, Clark started a page on The Citizen's Forum four years ago, and quickly became one of the site's most followed and controversial users. Clark is well-known for her highly-opinionated and often finger-pointing commentary on hot-button current events and political topics. Multiple times a week, she posts videos of herself from her YouTube channel going on rants about different political topics and shares links to political news stories and video clips, accompanied by lengthy posts expressing her opinions about the story or video. Clark's page, which she has chosen to monetize by allowing ads, has 1.2 million subscribers and in the past year, her videos have been viewed over 12 million times.

On The Citizen's Forum, Clark's page is often the source of much debate. Each of her posts and videos garners thousands of comments and shares, with users hotly debating each other about the topics that Clark raises. Because of the angry and accusatory nature of her video rants, Clark is often spotlighted and discussed on late-night talk shows and cable news shows and has become well-known even beyond her social media followers.

Two weeks ago, Clark posted a link to a video that appeared to show a terrorist organization violently holding a hostage against his will, along with one of her stereotypical rants where she argued that the government was failing at the war on terror. Within hours of Clark's posting the video, The Citizen's Forum removed the video from Clark's page and sent her a direct message instructing her of its policy that videos, messages, or any other propaganda

that originates from a terrorist organization are not allowed to be posted or shared on the website. Before The Citizen's Forum removed the video, the video had nearly half a million views and was trending rapidly on the site. The next day, Clark posted one of her signature "rant" videos directed at The Citizen's Forum itself, expressing her outrage that the website removed the video. As part of her rant, Clark alleged that The Citizen's Forum is "run by a bunch of sissies and crooks," and that not only did the website "want to hide the truth about ISIS and the world's terrorists," but also that the website "has refused to pay me thousands of dollars of ad revenue that it owes me."

A week later, Clark posted a similar video—one that appeared to have been created by a terrorist organization and that showed violent imagery. Again, The Citizen's Forum removed the video within a few hours and sent Clark another message about the website's policy not to allow such content. Three days ago, Clark yet again posted a video showing violent content appearing to come from terrorists. Within an hour, Wagner, who has spoken with Clark directly on about her page on prior occasions, called Clark, demanded that she remove the video, and angrily told her that if she couldn't follow the website's rules, her page would be shut down indefinitely. Clark retorted that none of the videos she has posted originate from terrorists—they're simply videos depicting fake, staged terrorist acts, which she posted as a form of "shock advertising" to draw attention to her commentary—and thus the website couldn't stop her from posting them. Wagner, fed up with Clark's ignoring the website's instructions not to post the videos, told her that he didn't care whether the videos were real or not and that the whole point of the website's policy was to prevent the exact kind of imagery that Clark was exploiting. The two continued to argue for several minutes before Wagner finally vowed that he would shut down Clark's page if she didn't take the video down within an hour and hung up the phone. Clark left the video on her page and an hour later, The Citizen's Forum, true to Wagner's word, shut down Clark's page completely. Outraged about the removal of her page from the website, Clark immediately called Wagner back and demanded that Wagner restore her page to the website. Clark again claimed that none of the videos she has posted originate from terrorists and do not violate the company's policy, and thus the company had no right to shut down her page on that basis. In response, Wagner retorted that Clark's statements about the website refusing to pay her money are entirely baseless and The Citizen's Forum is considering bringing defamation charges against her if she doesn't recant her allegations. After exchanging more heated words over the phone, the parties hung up. Over the course of the next day, in an exchange of emails, the parties have arranged for an urgent meeting between their attorneys to address the problems that exist between them.

### **Confidential Information for The Citizen's Forum and Patrick Wagner**

Patrick Wagner is anxious to resolve the dispute between The Citizen's Forum and Becky Clark. Because of Clark's visibility in the regular news media, the fact of her posting videos that appear to depict terrorist activity and the ensuing dispute between Clark and the website have been spotlighted on cable news shows and have been the topic of much debate. The Citizen's Forum has received quite a bit of negative press lately following its shutdown of Clark's page

(though it has also received quite a bit of praise for its actions), and Wagner is hopeful that the meeting with Clark can help establish clear parameters of what content the website will and will not allow. In addition, Clark, as controversial as she is, has one of the website's most profitable pages and brings a lot of ad revenue to The Citizen's Forum, which Wagner doesn't want to lose.

Wagner wants to make it clear to Clark that one of the core values that the website embraces is free speech, particularly political speech, but, though the website welcomes and encourages the discussion of many topics and all opinions, the website also believes it has a responsibility to help all of its users feel safe by disallowing certain content. The Citizen's Forum's decision to ban videos, messages, or any other propaganda that originates from a terrorist organization is not meant to ban broad, general discussion on the topic of terrorism or how terrorism affects domestic and foreign politics. Rather, the ban is meant to make The Citizen's Forum a hostile place for terrorists or terrorist supporters who may try to create user accounts and pages in an effort to distribute terrorist propaganda.

Wagner knows that one of the main points of contention between the parties is whether and under what terms The Citizen's Forum will allow Clark's page to be restored to the website. The Citizen's Forum's current "terms and conditions" permit the website to shut down any user's page for violating express content restrictions, such as its policy disallowing content originating from a terrorist organization, and *only* for violating express content restrictions. Wagner had initially felt entirely justified in the website's decision to shut down Clark's page based on the videos she posted, especially after she had received multiple warnings not to post them, but in the days since then, a team of content researchers for the website has identified the source of the video, and, as Clark has claimed, it is not a terrorist organization. In fact, the source of all of the videos Clark posted appears to be a group of American men who stage terrorist activity in order to film short videos for shock value. Therefore, although the content of the videos is precisely the sort of thing that The Citizen's Forum's ban on content originating from terrorist groups is meant to prevent, none of the videos Clark posted violate the policy when read in its strictest sense.

Therefore, Wagner has reached two decisions. First, he intends to restore Clark's page to the website, with certain restrictions. Second, he intends to amend The Citizen's Forum's policy on banning videos, messages, or any other propaganda originating from a terrorist organization to include a provision that also disallows videos, messages, or other propaganda that depicts or appears to depict terrorist activity. Therefore, the videos that Clark has been posting, wherever she's getting them from, will not be allowed under the new policy, and Wagner has instructed The Citizen's Forum's attorneys to inform her that The Citizen's Forum is taking a zero-tolerance approach with respect to these videos. Essentially, if Clark posts any other videos from this same group, or any videos depicting similar activity, The Citizen's Forum will shut her page down permanently and she will be banned from the site. Though this approach may seem extreme, Wagner feels it is necessary to enforce the website's policy regarding terrorist content.



Wagner hopes, however, that things will never get to the point of Clark's page being permanently shut down. Because she did not technically violate the website's policy, Wagner will allow her page to be restored, but he will insist that she be subject to two restrictions. First, for at least 30 days, Wagner will require that Clark submit all videos that she posts to her page to the website's user content managers to be vetted before she will be allowed to post the video, although Wagner would like to get Clark to agree to the vetting process for as long as 90 days. So long as Clark agrees to the vetting process as a condition of getting her page restored to the website, he is flexible on exactly how the vetting process should be set up. He is willing to leave the details as to how the vetting process will work in the discretion of the website's attorneys and he would also like them to listen to input from Clark on this matter, but he wants the vetting agreement to include a term providing that Clark must respect the results of the vetting process and, if she posts any content deemed unacceptable after being vetted, she forfeits her right to be a user of The Citizen's Forum. Second, Wagner will insist that Clark provide proper attribution for *all* videos that she posts to her page. Clark's act in posting the videos and implying through her commentary that they showed real terrorist activity is troubling to Wagner in several ways. For starters, her falsely representing the nature of the videos essentially amounts to lying and hurts the website's brand. Wagner does not want The Citizen's Forum to become a place where its users are known for making bold, false statements and who are willing to lie at will. Also, Clark's posting the videos without attribution of their source exposes both her and the website to copyright violations, which of course Wagner wants to protect The Citizen's Forum from. In fact, as a stop-gap measure, Wagner will require that Clark, upon having her page restored, post a statement explaining the source of the videos that created this mess, so as to hopefully prevent any potential copyright violations from her posting the videos to begin with.

Wagner anticipates that Clark may argue that The Citizen's Forum owes her monetary damages for wrongfully shutting her page down, causing her to lose both visibility with her fan base and ad revenue. Though Wagner concedes that the website wrongfully shut down her page based on the policy that was in place at the time she posted the videos, he cannot imagine that any damages she suffered as a result amount to very much. Clark averages an income of \$6,000 a month from ad revenue from her page, which breaks down to a little over \$200 a day. Her page has only been shut down for three days so far, and she is getting enough news coverage for these events outside of the website that Wagner cannot imagine her connection to her fan base has been hurt. If anything, she probably has had better visibility to both her fan base and the general public because of these events. Wagner would prefer not to pay Clark anything for shutting down her page, and he wants the website's attorneys to try and resolve this issue with her without offering her any money, but he has given them permission to offer up to \$5,000 as a settlement in order to placate her. Whether the website agrees to pay Clark any amount of damages or not, Wagner has instructed the website's attorneys that Clark should agree to sign a release of any claim she may have against the website for shutting down her page as part of the agreement to restore her page to the website, and an agreement to keep confidential the terms of any financial settlement as well as the fact that there was any financial settlement at all.

Another issue that The website's attorneys should discuss at the meeting is Clark's statements about the website being run by "crooks" and that the website has not paid her ad revenue money that she is owed. Wagner has checked with the website's accountants, who have

informed him that Clark has been paid everything she is entitled to from the ad revenue from her page. Wagner isn't sure why Clark would publicly claim that she hadn't been paid what she was owed, other than to make The Citizen's Forum look bad, and if she has a basis in fact for her statements, she will have to produce evidence of it. Because the website can show that Clark's statement is false, it has a strong claim of defamation against her. However, Wagner really has no interest in getting the website caught up in litigation against one of its users for a single errant comment, even if it was verifiably false. Wagner also doesn't feel compelled to pressure Clark to pay some amount of damages to settle the website's potential claim for her statement. At this point, Wagner really has no estimate of whether and how much the website suffered financially from Clark's statement, and he doesn't think it's worth it to invest the effort to find out. He would be much more interested in having Clark publicly recant her statement in exchange for the website's release of any claim it might have against her for her statement.

### **Confidential Information for Becky Clark**

Becky Clark is furious that The Citizen's Forum shut down her page based on the videos she posted. The website's policy is clear: videos, messages, or any other propaganda *that originate from* a terrorist organization are not allowed to be posted or shared on the website. Becky has already told Wagner that the videos are not from a terrorist organization; in fact, the source of all of the videos Clark posted is a group of American men who stage terrorist activity to film short videos for shock value. The group of men who film these videos sometime post the videos on their website, which is not easy to find, gets very little web traffic, and caters to a small, niche audience of people who consider themselves to be separatists. Occasionally, the group will send Clark its videos, asking her to post its videos to further its political messages, along with messages about the group's political ideologies. For the most part, Clark ignores what the group sends her, but following a recent terrorist attack in a foreign country that killed dozens, she had become so angry about the government's approach to handling terrorism that she decided to post the videos as a way to get attention for her accompanying commentary on the subject. Her strategy worked: her posts involving the videos received hundreds of thousands of views before being shut down, the comment threads on her page garnered thousands of comments on the subject of terrorism and how the government handles it, and Clark was the topic of much discussion on a variety of cable news shows.

Thus, because the videos do not violate The Citizen's Forum's policy on terrorist content, Clark is adamant that her page be restored in full immediately. Clark sees part of her mission as a political commentator as engaging the public in critical thought and debate over serious topics that affect the country, and she holds firm to her First Amendment right to share her political opinions. She is aware that her commentary uses a tone that is off-putting and often offensive to some people, but she also knows she is effective in getting people to talk about important issues,

whether they agree with her point of view or not. Clark is prepared to provide proof that the videos are not from a terrorist organization if that's what it takes to get her page restored.

Additionally, she believes that she is entitled to damages for the website's act in wrongfully shutting down her page. The Citizen's Forum's current "terms and conditions" give the website the right to shut down any user's page for violating express content restrictions, such as its policy disallowing content originating from a terrorist organization, and *only* for violating express content restrictions. Because the videos Clark posted do not violate the policy, Clark believes she could pursue a claim against the website that essentially amounts to a breach of contract. With Clark's page being monetized, the website's shutting down her page has caused her to lose out on ad revenue, a loss that continues to accrue every day that her page is shut down. Right now, Clark averages an income of \$6,000 a month from ad revenue from her page, which breaks down to a little over \$200 a day. Her page has only been shut down for three days so far, so her actual damages are minimal. However, Clark believes she has a strong argument that, because her page was abruptly shut down and has still not been restored, the value of her page as a place for advertising will be hurt in the long run and she will lose out on ad revenue that she would have otherwise had, though she recognizes that calculating an amount of damages based on this theory would be largely speculative.

Therefore, she has instructed her attorneys to ask for up to \$10,000 in damages to settle any claim that she would have against the website for shutting down her page. Clark believes strongly that The Citizen's Forum should pay her some monetary amount to compensate her for shutting down her page, but she expects that Wagner will resist paying her any damages. Clark's biggest concern is about getting her page restored to the website as quickly as possible and, though she wants her attorneys to fight hard to get some monetary damages, she is willing, as a last resort, to agree to forgo any payment of damages if The Citizen's Forum will take some measures to assure advertisers that her page is still a reliable place to advertise. As a final matter on this issue, if the website agrees to pay her monetary damages, Clark will sign a release of any claim she has against it for shutting her page down, but if the website does not pay her any monetary damages, she will not sign a release of her claim.

As one final matter on the issue of her website, Clark expects that The Citizen's Forum will give her back the full use of her page when her page is restored. Because she did not actually violate any of the website's policies, there would be no reason for the website to limit any of the functions or features of her page and Clark intends to stand firm on that, with the understanding that she would, of course, be limited to the website's regular policies and restrictions. Clark does, however, suspect that Wagner may seek to institute a temporary process whereby Clark must seek approval from the website before placing videos on her page, a vetting process of sorts, because Wagner had mentioned this in one of his emails to her. So long as The Citizen's Forum agrees not to limit any of the features or functions that Clark has on her page, she is willing to agree to a vetting process for all videos that she wants to post to her page. As part of this agreement, Clark believes that the length of time that the vetting process should be in place

should be limited in duration to no more than 20 days. After all, the point of the vetting process would only be to assure the website that Clark isn't going to try and post illicit content, and 20 days should be plenty of time for Clark to make that assurance, although Clark has given her attorneys authority to agree to a 60-day duration for the vetting process if necessary. Clark is willing to leave the details as to how the vetting process will work in her attorneys' discretion, but she wants the vetting agreement to include a term providing that The Citizen's Forum will issue a decision within 24 hours of receipt of the video from Clark whether her proposed videos will be allowed or not.

A final matter that Clark's attorneys should discuss with The Citizen's Forum is Clark's statement that the website has not paid her all of the ad revenue that she is entitled to. Wagner threatened a defamation suit against her based on this statement, and Clark wants her attorneys to use this meeting as an opportunity to clear the air and hopefully resolve any potential defamation claim that The Citizen's Forum may be considering. Clark's statement that the website has not paid her ad revenue that she is entitled to is false and was something that Clark said in the heat of the moment when she was angry about the website's decision to remove the video she had posted. About a year ago, Clark disagreed with one of the website's account managers over how much she should be paid from ad revenue, but they were able to resolve the issue to Clark's satisfaction. In fact, she doesn't think that particular account manager even works for the website anymore, so she hasn't had any further problems getting paid. Clark really hopes that the website is not serious about pursuing monetary damages for her statement, as she is not in a financial position to pay out a judgment, even a small one. If Wagner does want some kind of monetary payment in settlement of the website's claim, then Clark has suggested that her attorneys offer to forfeit some of her ad revenue going forward to cover the amount. However, if Wagner is willing to accept some non-monetary consideration in settlement of the website's claim, such as an apology or public statement, then Clark has authorized her attorneys to oblige.