

IN THE ASIAN INTERNATIONAL ARBITRATION CENTER

21ST LAWASIA INTERNATIONAL MOOT COMPETITION 2026

THE CASE BETWEEN

NOVA LIVE ASIA PTE LTD

(CLAIMANT)

v

AURORA ENTERTAINMENT CO. LTD.

(RESPONDENT)

MEMORIAL FOR CLAIMANT

TABLE OF CONTENTS

TABLE OF CONTENTS	i
ABBREVIATIONS AND SYMBOLS.....	v
INDEX OF AUTHORITIES.....	vi
STATEMENT OF JURISDICTION.....	xi
QUESTIONS PRESENTED	xii
STATEMENT OF FACTS.....	xiii
SUMMARY OF PLEADINGS	xvi
PLEADINGS	1
ISSUE 1: ARBITRATION IS THE MORE APPROPRIATE FORUM	1
A. Arbitration has jurisdiction, given the existence of a tacit arbitration agreement	1
I. The Parties’ repeated pattern of conduct in previous dealings constitutes a valid arbitration agreement	1
a. The established history of dispute settlement by arbitration between the Parties implies an arbitration agreement included in the Agreement	2
b. There is no form requirement for the tacit arbitration agreement to be valid	3
II. The Respondent’s objection to the existence of an arbitration agreement is estopped...	3
B. Arbitration is the appropriate forum as the Parties have the most substantial connection with it.....	4
I. The Parties have the most substantial connection with arbitration	5
a. Arbitration aligns with the Parties’ mutual priority for confidentiality	5

b. Arbitration is expeditious, given the Parties’ familiarity with AIAC Rules	6
c. Arbitration is capable of handling the law concerned in the dispute	6
II. Disadvantages caused by arbitration to the Respondent, if any, would not be vexatious	7
ISSUE 2: THE TRIBUNAL SHOULD NOT GRANT AN ORDER FOR SECURITY FOR COSTS	8
A. The Claimant has the prospect of success on its claims	8
I. The first claim of the Claimant is reasonable and has legal basis	8
II. The second claim of the Claimant is reasonable and has legal basis	9
B. There is little evidence of exceptional circumstances where, without the order, the Respondent would suffer harm not adequately reparable by a costs award.....	9
I. The rumors surrounding the Claimant’s non-payment and fund misappropriation are not adequate to justify an order for security	10
a. The rumors fail to present evidence that the Claimant cannot satisfy adverse costs .	10
b. Even assuming arguendo the rumors are confirmed, they do not necessarily evidence exceptional circumstances that warrant an order for security	11
II. Contrary to the rumors, the Claimant is in fact financially able to satisfy adverse costs by leveraging the concert revenues.....	12
C. The potential harm of the order to the Claimant outweighs the harm the Respondent may suffer without the order	12
I. An order for security might impose an undue, excessive amount on the Claimant compared to the amount the Respondent might incur	13

II. An order for security would stifle the Claimant’s claims while still allowing the counterclaims to advance	13
a. The Respondent’s counterclaims concern essentially the same issues as the claims. 14	
b. This overlap allows the Respondent’s counterclaims to advance without any barriers while the Claimant may have to abandon its claims due to the order.	14
D. The condition of urgency is not met	15
ISSUE 3: THE RESPONDENT’S DEPLOYMENT OF HOLOGRAMS DID CONSTITUTE BREACH OF THE AGREEMENT	16
A. The Respondent’s deployment of holograms was in breach of its assigned obligations due to defective performance.	16
I. The Respondent breached its obligation to procure the performance of ECLIPSE in the Concert.	16
a. The Respondent’s deployment of holograms is contrary to the common intention of the Parties regarding the meaning to be given to Article 3.1.1 of the Agreement.	17
b. Although Article 3.1.1 permits the use of production technologies, it does not authorize the Respondent to substitute the live performance with holograms.....	18
II. The performance failed to meet industry standards and audience expectations.	19
B. The breach of the Respondent finds no justification in either the Agreement or the Claimant’s purported verbal consent.	22
I. The Respondent’s use of holograms does not fall within the scope of force majeure as defined in the Agreement.....	22

II. The Respondent’s failure is not justified by the Claimant's verbal consent.	23
ISSUE 4: RESPONDENT’S COUNTERCLAIM SHOULD NOT BE GRANTED.....	25
A. The Claimant’s exercise of its right to lawful termination has discharged its payment obligations	25
I. The Claimant has legally terminated the Agreement because of the Respondent’s fundamental non-performance	25
a. The Respondent’s non-performance substantially deprived the Claimant of what it was entitled to expect under the Agreement and such a result is foreseeable.....	26
b. The breached obligations are critical under the contract.....	27
c. The non-performance is reckless.....	28
II. The Claimant’s duty to pay performance fee and make a royalties calculation had not arisen before the termination	29
B. The Respondent’s invoice for other alleged costs is unfounded.....	30
C. In the alternative, and without prejudice to the Claimant’s primary position, should the Tribunal find the Claimant liable for any costs, the Claimant maintains that it is not required to pay the full amount demanded by the Respondent.....	30
I. The Claimant is entitled to set off the Revenue against damages.	30
II. The Claimant is not liable for the rental of outfits, styling and accessories, as these costs are included in the performance fee.....	32
PRAYERS FOR RELIEF	33

ABBREVIATIONS AND SYMBOLS

Abbreviations and symbols	Meaning
¶	paragraph
¶¶	paragraphs
n	Same as the footnote mentioned
ibid	Same as the immediately preceding footnote

INDEX OF AUTHORITIES

Authority	Citation	At ¶
<i>Statutes and rules</i>		
AIAC Arbitration Rules 2026	AIAC Rules	22
Concert Promotion and Performance Agreement	Agreement	4, 10, 118, 137, 140
UNIDROIT Principles of International Commercial Contracts	Principles	4, 136
<i>Judicial decisions and arbitral awards</i>		
<i>BJ Crabtree v GPT Communication Systems</i> [1990] 59 BLR 43	<i>Crabtree</i>	60
<i>Dirk Herzig as Insolvency Administrator over the Assets of Unionmatex Industrieanlagen GmbH v Turkmenistan</i> (Decision on Security for Costs, ICSID Case No ARB/18/35, 27 January 2020)	<i>Dirk Herzig</i>	33, 42, 49
<i>Enka Insaat Ve Sanayi AS v OOO Insurance Company Chubb</i> [2020] UKSC 38	<i>Enka</i>	9
<i>EuroGas Inc and Belmont Resources Inc v Slovak Republic</i> (Procedural Order No 3, ICSID Case No ARB/14/14, 23 June 2015)	<i>EuroGas</i>	42, 44, 49
<i>Gulf Oil Corp v Gilbert</i> , 330 US 501 (1947)	<i>Gilbert</i>	23

<i>Hutchison Telephone v Ultimate Response</i> [1993] BCLC 307	<i>Hutchison</i>	62
<i>Kabab-Ji SAL v Kout Food Group</i> [2021] UKSC 48	<i>Kabab</i>	
<i>Koster v Lumbermens Mut Cas Co</i> , 330 US 518 (1947)	<i>Koster</i>	18, 28
<i>Manuel García Armas and others v Bolivarian Republic of Venezuela</i> (Procedural Order No 9, PCA Case No 2016-08, 20 June 2018)	<i>Manuel</i>	33, 35, 57
<i>Maritime National Fish Ltd v Ocean Trawlers</i> [1935] AC 524	<i>Ocean Trawlers</i>	105
<i>RSM Production Corporation v Saint Lucia</i> (Decision on Security for Costs, ICSID Case No ARB/12/10, 13 August 2014)	<i>RSM</i>	33, 52, 68
<i>Sembcorp Marine v PPL Holdings Pte Ltd and another and another appeal</i> [2013] SGCA 43	<i>Sembcorp</i>	77, 83, 88
<i>Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v The Government of Mongolia</i> (Order on Interim Measures, UNCITRAL, 02 September 2008)	<i>Sergei Paushok</i>	35
<i>South American Silver Limited v Bolivia</i> (Procedural Order No 10, PCA Case No 2013-15, 11 January 2016)	<i>SAS</i>	42. 44
<i>Spiliada Maritime Corp v Cansulex Ltd</i> [1987] AC 460	<i>Spiliada</i>	1, 18, 26

<i>St Pierre v South American Stores (Gath & Chaves) Ltd</i> [1936] 1 KB 382 (CA)	<i>St Pierre</i>	1, 18, 29, 31
<i>Sulamérica Cia Nacional de Seguros SA v Enesa Engenharia SA</i> [2012] EWCA Civ 638	<i>Sulamérica</i>	9
<i>Tennant Energy LLC v Government of Canada</i> (Procedural Order No 4, PCA Case No 2018-54, 27 February 2020)	<i>Tennant</i>	33, 57
<i>Universe Tankships Inc of Monrovia v International Transport Workers Federation</i> [1983] 1 AC 366	<i>Universe</i> <i>Tankships</i>	107

Books, commentaries, and journal articles

Amani Amin Rida, ‘Actor - Costume Relationship: Costumes as Live Scenery on Stage?’ (The Asian Conference on Arts & Humanities 2015)	Amani	145
Charles J Goetz & Robert E Scott, ‘The Mitigation Principle: Toward a General Theory of Contractual Obligation’ (1983) 69(6) VA L Rev 967	Charles	110
CIArb, <i>CIArb Guidelines on Application for Security for Costs</i> (CIArb 2016)	CIArb guidelines	35
‘Compiled summaries of selected cases’ in International Bar Association, <i>Perspectives in Practice of the UNIDROIT Principles</i>	PICC	116

2016 (International Bar Association 2019)	selected cases	
Elizabeth Cooke, <i>The Modern Law of Estoppel</i> (OUP 2000)	Elizabeth	13
Gary B Born, <i>International Commercial Arbitration: Volume I</i> (Kluwer Law International 2009)	Born I	6
Gary B Born, <i>International Commercial Arbitration: Volume II</i> (Kluwer Law International 2009)	Born II	35, 55
Maskow D, 'Hardship and Force Majeure' (1992) 40 The American Journal of Comparative Law 658	Maskow	105
Mathilde Pavis, 'Is There Any-Body on Stage? A Legal (Mis)understanding of Performances' (2016) 19 World Intellectual Property 99	Mathilde	90
Neil Andrews, <i>Contract Law</i> (2 nd edn, CUP 2015)	Neil	13
Ronald A Brand & Scott R Jablonski, <i>Forum Non Conveniens: History, Global Practice, and Future under the Hague Convention on Choice of Court Agreements</i> (OUP 2007)	Ronald	1, 18, 23, 26, 28, 29
Sharon F Carton, 'Damning with Fulsome Praise: Assessing the Uniqueness of an Artist or Performer as a Condition to Enjoin Performance of Personal Service Contracts in Entertainment Law'	Sharon	96, 98

(1998) 5(2) Villanova Sports & Entertainment Law 197

Sven Lange & Felipe Volio Soley, ‘When Enough Is Enough: The
Arbitral Tribunal’s Power to Stay or Terminate Proceedings due to
Party Non-compliance with Procedural Obligations’ in Christer
Danielsson & Patrik Schöldström (eds) *Stockholm Arbitration
Yearbook 2023* (SCCL PUBLICATIONS 2023)

Lange 65

UNIDROIT, *UNIDROIT Principles of International Commercial
Contracts 2016* (UNIDROIT 2016)

PICC 6, 27,
commentary 103

STATEMENT OF JURISDICTION

The Parties, Nova Live Asia Pte Ltd (**“Claimant”**) and Aurora Entertainment Co. Ltd. (**“Respondent”**), have agreed, impliedly by practice established between themselves, that any disputes arising from or connected with the Concert Promotion and Performance Agreement dated 07.01.2026 (**“Agreement”**) shall be resolved by arbitration under the AIAC Arbitration Rules 2026 (**“AIAC Rules”**).

QUESTIONS PRESENTED

- I. Whether the *forum non conveniens* lies in the court proceeding or arbitration?
- II. Whether an order for security for costs ought to be granted?
- III. Whether the Respondent's deployment of a holographic replacement constituted a breach of the Agreement?
- IV. Whether the Respondent's counterclaim ought to be granted?

STATEMENT OF FACTS

Claimant and **Respondent** are the “**Parties**” to this arbitration.

Claimant is a premier concert promotion and live events company with an established reputation for organizing large-scale entertainment productions. It is known for high-level coordination and production quality, having successfully hosted private performances for presidential delegations.

Respondent is a leading R-Pop entertainment agency distinguished by its pioneering use of artificial intelligence (AI) and holographic technology for idol training and performance enhancement. The Respondent manages ECLIPSE, one of the most commercially valuable co-ed R-Pop groups of its generation.

January 2, 2026

In the meeting, two Parties agreed that the Concert would take place on a fixed date and deliver the authentic ECLIPSE live concert experience expected by audiences and sponsors. The Respondent acknowledged this expectation, undertook to prepare contingencies to ensure the Concert proceeded as scheduled, and agreed that promotional matters and related payments would be resolved separately after the Concert.

January 5, 2026

In a follow-up Zoom meeting, both Parties agreed that given the compressed timeline, the written contract would capture only the "essential terms".

January 7, 2026

The Parties executed the Agreement without a dispute resolution

clause because of the urgency of finalising the contract although the Parties had historically resolved disputes through arbitration and, on only one occasion, mediation.

January 24, 2026

Despite being responsible for ensuring the security of ECLIPSE's members, the Respondent allowed an overzealous fan to breach security and make unsolicited physical contact with Im Luna during the meet-and-greet event.

January 27, 2026

Although the Respondent immediately recognised Luna's condition and arranged daily therapy sessions, it did not disclose her condition to the Claimant.

February 4, 2026

Three days before the Concert, the Respondent lost contact with Luna. It was only then that the Respondent notified the Claimant and convened a meeting to discuss the situation and possible contingency measures.

February 5, 2026

At the emergency meeting, with the Concert only days away and no viable alternative to avoid commercial consequences, the Claimant reluctantly agreed to the Respondent's proposal to use a holographic replacement, subject to strict conditions regarding its quality and confidentiality.

February 6, 2026

The Claimant's representatives attended the only rehearsal before the Concert due to the extreme time constraints.

February 7, 2026	The concert was executed.
February 13, 2026	The Respondent subsequently issued an invoice for USD 3.6 million, including charges that were not contemplated under the Agreement.
February 13, 2026	A social media post highlighting a brief visual irregularity sparked online speculation that the Respondent used a holographic replacement for Luna. As the speculation gained momentum, members of the public began questioning the Claimant's conduct, forcing the Claimant to undertake extensive public relations while facing mounting refund demands.
February 18, 2026	Madam Ye Bin heard rumours concerning the Claimant's alleged financial difficulties that she regarded as inappropriate and highly speculative herself.
April 1, 2026	After conducting a comprehensive review of the Respondent's performance and its contractual compliance, the Claimant terminated the Agreement and commenced arbitration proceedings. The Respondent then engaged in the arbitration by filing a counterclaim.

SUMMARY OF PLEADINGS

ISSUE 1: ARBITRATION IS THE MORE APPROPRIATE FORUM

Firstly, the arbitration has jurisdiction because the Parties' consistent past practice established a tacit arbitration agreement, which is valid under the Principles and cannot be denied by the Respondent due to estoppel. Arbitration is also the more appropriate forum as it best reflects the Parties' longstanding preference for confidentiality, familiarity with AIAC procedures, and the application of the Principles. Any inconvenience to the Respondent amounts only to ordinary procedural inconvenience, not injustice. By contrast, court proceedings would undermine confidentiality and require the application of foreign law, rendering litigation a less appropriate forum.

ISSUE 2: THE TRIBUNAL SHOULD NOT GRANT AN ORDER FOR SECURITY FOR COSTS

The Respondent fails to satisfy the requirements for Security for Costs. The Claimant has a prima facie case because its claims for breach of contract and damages have a reasonable legal basis under the Agreement and the Principles. No exceptional circumstances exist, as the Respondent relies solely on unsubstantiated rumours of the Claimant's financial difficulties, while the Claimant remains capable of satisfying any adverse costs. The requested security is disproportionate because it would impose an excessive burden and effectively stifle the Claimant's claims while allowing the Respondent's counterclaims to proceed. Finally, the application lacks urgency, as no credible evidence demonstrates any real risk of non-payment.

ISSUE 3: THE RESPONDENT’S DEPLOYMENT OF HOLOGRAMS DID CONSTITUTE BREACH OF THE AGREEMENT

The Respondent breached the Agreement by failing to provide the live performance of all five ECLIPSE members as contemplated by the Parties’ common intention and the Agreement. The contractual permission to use production technology did not extend to replacing a performer with a hologram. The substitution also failed to satisfy industry standards and reasonable audience expectations, as audience approval resulted only from their unawareness of the replacement. Neither force majeure nor the Claimant’s verbal consent excuses the breach. Luna’s absence resulted from the Respondent’s own failure to ensure her safety, while the Claimant’s consent was obtained only after the Respondent withheld material information, under severe time pressure, and on the express assumption that the hologram would perform flawlessly.

ISSUE 4: THE RESPONDENT’S COUNTERCLAIM SHOULD NOT BE GRANTED

The Respondent’s counterclaim should be dismissed because the Claimant lawfully terminated the Agreement following the Respondent’s fundamental non-performance. The Respondent’s failure to provide a genuine live performance, concealment of Luna’s absence, and reckless reliance on defective hologram technology substantially deprived the Claimant of the contract’s essential benefit. In any event, the Claimant’s payment obligations had not yet arisen because the Agreement made payment and royalty calculations subject to further confirmation, which never occurred. Consequently, upon termination, the Claimant was discharged from all obligations that had not yet accrued. The Respondent’s additional claims for promotional expenses and styling-related costs have no basis. Alternatively, any amount found payable must be reduced by setting off the Claimant’s damages arising from the Respondent’s breach, while outfits, styling, and accessories are already covered by the agreed Performance Fee.

PLEADINGS

ISSUE 1: ARBITRATION IS THE MORE APPROPRIATE FORUM

1. Courts in their *forum non conveniens* analyses have held that a forum is the appropriate forum when the Parties have the most substantial connection with it, while the forum that may cause injustice to the Parties is not an appropriate forum.¹ However, before a forum can be found to be appropriate, it has to establish proper jurisdiction to hear the case.
2. The Claimant submits that arbitration is the more appropriate forum, because **(A)** arbitration has jurisdiction, given the existence of a tacit arbitration agreement, **(B)** arbitration is the appropriate forum as the Parties have the most substantial connection with it, and **(C)** the court cannot deliver justice to the Claimant.

A. Arbitration has jurisdiction, given the existence of a tacit arbitration agreement

3. The Claimant submits that arbitration has compulsory jurisdiction, because **(I)** the Parties' repeated pattern of conduct in previous dealings constitutes a valid arbitration agreement and **(II)** the Respondent's objection to the existence of such agreement is estopped.

I. The Parties' repeated pattern of conduct in previous dealings constitutes a valid arbitration agreement

4. The Parties in this case did not expressly include a dispute resolution clause in the Agreement due to the compressed timeline and expected that remaining details could be revisited afterward.² In this respect, the Principles, the governing law of the Agreement,³ is applicable. Pursuant to Article 4.8 of the Principles, where the Parties have not agreed

¹ *Spiliada*, 477-478; *St Pierre*, 398; Ronald, 13, 22.

² Moot problem, ¶¶32, 34.

³ Agreement, Article 9.

on a salient term, an appropriate term shall be supplied with regard to the intention of the Parties,⁴ the circumstances of which include practices established between the Parties.⁵

5. The Claimant submits that the application of this rule would result in a valid arbitration agreement, not express but implicit, because (a) the established history of dispute settlement by arbitration between the Parties implies an arbitration agreement included in the Agreement, and (b) there is no form requirement for the tacit arbitration agreement to be valid.

a. The established history of dispute settlement by arbitration between the Parties implies an arbitration agreement included in the Agreement

6. Where the Parties have routinely included arbitration agreements in repeated past dealings, the Tribunal should take it as they impliedly included the same clause in the present dealing.⁶ The same rule about practice established between the Parties is reflected in Article 1.9 of the Principles about practice established between the Parties.⁷
7. Here, the Parties have repeatedly resorted to AIAC arbitration to settle disputes in past collaborations. All previous agreements between the Parties expressly contained arbitration clauses providing for arbitration under the AIAC Rules.⁸
8. Therefore, the Tribunal should take the Parties' intent as also binding themselves to arbitration under the AIAC Rules in this dispute, constituting a tacit arbitration agreement included in the Agreement between the Parties.

⁴ Principles, Article 4.8.

⁵ Principles, Article 4.3.

⁶ Born I, 667.

⁷ PICC commentary, 24.

⁸ Moot problem, ¶34; Additional Clarification 9.

b. There is no form requirement for the tacit arbitration agreement to be valid

9. To examine the form requirement for an arbitration agreement, the governing law has to be identified. The Claimant urges the Tribunal to adopt the approach in *Sulamérica* to identify the law applicable to the arbitration agreement. The court in *Sulamérica*, later upheld by *Enka* and *Kabab*, determined that, without any indication to the contrary, the Parties have inferred the law governing the underlying contract to also govern the arbitration agreement.⁹
10. In this case, the Parties intended the governing law of the Agreement to be the Principles and made no indication that the application of the Principles is excluded elsewhere.¹⁰ Therefore, the law applicable to the arbitration agreement is also the Principles.
11. Although the Claimant acknowledges that several laws require an arbitration agreement to be in written form, nothing in the Principles, nor the AIAC Rules, requires the arbitration agreement to be in a particular form. Article 1.2 of the Principles provides that it can be proved by any means.
12. Therefore, it is not compulsory for the tacit arbitration agreement to come in any form or means to be valid. Any objection to the formal validity of the tacit arbitration agreement should be accordingly rejected by the Tribunal.

II. The Respondent's objection to the existence of an arbitration agreement is estopped

13. The principle of estoppel prevents one party from acting inconsistently with its previous statements or conducts on which the other party relies his conducts.¹¹ This principle is also demonstrated in Article 1.8 of the Principles about inconsistent behavior.

⁹ *Sulamérica*, ¶11; *Enka*, ¶170(iv); *Kabab*, ¶28.

¹⁰ Agreement, Article 9.

¹¹ Neil, 121; Elizabeth, 1-2.

14. Throughout past collaborations, both Parties have consistently referred to AIAC arbitration as the method of dispute settlement.¹² The Parties also agreed that, due to the compressed timeline, any remaining details or refinements could be revisited later.¹³
15. It is because of this mutual understanding that the Claimant proceeded with the Agreement without the dispute resolution clause.¹⁴ Due to this background, the Claimant had a reasonable expectation that an arbitration agreement remained the Parties' preferred dispute resolution mechanism in the Agreement. Indeed, an arbitration agreement was formed later, which is the tacit agreement proven above.
16. However, when the Claimant commenced arbitration, the Respondent raised an objection concerning the existence of an arbitration agreement.¹⁵ Clearly, this objection is inconsistent with the Respondent's previously established consent to arbitration and, therefore, is excluded by the estoppel principle.
17. Hence, the Respondent's objection to the existence of the tacit agreement is invalid.

B. Arbitration is the appropriate forum as the Parties have the most substantial connection with it

18. An appropriate forum is one with which the action concerned has the most substantial connection.¹⁶ However, a forum that may cause oppressive or vexatious disadvantages to a party tend to be accorded less deference.¹⁷

¹² Moot problem, ¶34; Additional Clarification 9.

¹³ Moot problem, ¶32.

¹⁴ Moot problem, ¶34.

¹⁵ Moot problem, ¶66.

¹⁶ *Spiliada*, 477-478; Ronald, 22.

¹⁷ *St Pierre*, 398; *Koster*, 524; Ronald, 13, 47.

19. The Claimant submits that arbitration is the appropriate forum because **(I)** the Parties have the most substantial connection with arbitration, and **(II)** even if there were disadvantages caused by arbitration to the Respondent, they would not be vexatious.

I. The Parties have the most substantial connection with arbitration

20. An appropriate forum is one with which the action concerned has the most substantial connection, while the forum that may cause injustice to the Parties is not an appropriate forum.¹⁸ The Claimant argues that substantial connection is demonstrated by (a) arbitration's alignment with the Parties' mutual priority for confidentiality, (b) arbitration's expeditiousness given the Parties' familiarity with AIAC Rules, and (c) arbitration's capability of handling the law concerned.

a. Arbitration aligns with the Parties' mutual priority for confidentiality

21. Confidentiality has significant weight in the Parties' relations. Under Article 7.2 of the Agreement, the Parties are under an obligation to keep confidential all non-public information relating to the other Party and not to disclose to third parties. This priority for confidentiality is further illustrated by the Claimant's request that the use of hologram remains strictly confidential.¹⁹ Although the Claimant acknowledges that there have been rumors and speculation circulating online,²⁰ they should merely be taken as external factors not altering the Parties' mutually agreed priority in their relations. Most importantly, the Parties' choice of arbitration and mediation in previous collaborations was to serve the purpose of avoiding publicity.²¹

¹⁸ n 1.

¹⁹ Moot problem, ¶44.

²⁰ Moot problem, ¶¶54-56.

²¹ Exhibit 1, page 4.

22. Given the Parties' mutual priority for confidentiality and the AIAC Rules' requirement that all matters relating to arbitration shall be kept confidential by the Parties,²² arbitration would best align with that priority. Conversely, the open and public nature of the court misaligns with that priority, making it inappropriate.²³

b. Arbitration is expeditious, given the Parties' familiarity with AIAC Rules

23. An appropriate forum should be able to make the hearing of a case easy and expeditious.²⁴
24. As stated above, the Parties have an established history of dispute settlement by arbitration under the AIAC Rules. The only time the Parties mediated was also carried out under the AIAC Mediation Rule.²⁵ This pattern of conduct demonstrates not only the Parties' familiarity with the dispute resolution mechanisms of AIAC, but also their continued preference for resolving disputes within the AIAC framework..
25. Given the Parties' familiarity with AIAC and its rules, the hearing of the present case in arbitration would be more facilitated and expeditious for the Parties.

c. Arbitration is capable of handling the law concerned in the dispute

26. The substantive governing law is a significant factor in determining the appropriate forum.²⁶
27. The substantive law in this case is the Principles. In practice, international arbitrations are familiar and efficient in dealing with the Principles and similar soft law frameworks designed for international commercial contracts.²⁷ Therefore, arbitration is an appropriate forum to hear the case.

²² AIAC Rules, Rule 52.

²³ Clarification 2.

²⁴ *Gilbert*, 508-509; Ronald, 46.

²⁵ Additional Clarification 10.

²⁶ *Spiliada*, 478; Ronald, 22.

²⁷ PICC commentary, 3.

II. Disadvantages caused by arbitration to the Respondent, if any, would not be vexatious

28. Forums that may cause vexatious disadvantages to a party tend to be less appropriate.²⁸

The Claimant submits that this is not the case for arbitration in the present dispute.

29. The court in the case *St Pierre* found that factors including the place where the dispute arose, the parties' connection to the defendant's choice of forum, and access to witnesses were apparently in favor of the defendant's choice. However, the court concluded that these grounds merely concern convenience and did not evidence vexation to the defendant if the case proceeded in the plaintiff's choice of forum.²⁹

30. In this case, it might appear at first glance that arbitration may cause vexation to the Respondent, given that the place where this dispute arose, the Parties' place of business, and the place where witnesses can be obtained are mostly in Reyna.

31. However, these factors only concern the matter of convenience, as supported by the court's position in *St Pierre*. They do not amount to vexatious disadvantages to the Respondent in the event the case proceeds in this international arbitration.

32. Therefore, disadvantages caused by arbitration to the Respondent, if any, would not be vexatious and not deprive arbitration of appropriateness.

²⁸ *St Pierre*, 398; *Koster*, 524; Ronald, 13, 47.

²⁹ *St Pierre*, 397, 398; Ronald, 13.

ISSUE 2: THE TRIBUNAL SHOULD NOT GRANT AN ORDER FOR SECURITY FOR COSTS

33. Tribunals have frequently overlapped on four factors when considering a security for costs order: the prospect of a successful claim, exceptional circumstances where the respondent would suffer harm not adequately reparable by an award of damages without the order, proportionality, and urgency.³⁰
34. In the present case, the Respondent has failed to satisfy these requirements. Accordingly, the Tribunal should not grant a security for costs order because **(A)** the Claimant has the prospect of success on its claims; **(B)** there is little evidence of exceptional circumstances where, without the order, the Respondent would suffer harm not adequately reparable by a costs award; **(C)** the potential harm of the order to the Claimant outweighs the harm the Respondent may suffer without the order; and **(D)** the condition of urgency is not met.

A. The Claimant has the prospect of success on its claims

35. The prospect of success, or the existence of *prima facie* case on the merits, requires that the claims are not frivolous or have reasonable grounds and legal basis.³¹ The claims of the Claimant, including **(I)** a breach of contract by the Respondent and **(II)** damages totalling USD 2.2 million, have demonstrated such prospect of success.

I. The first claim of the Claimant is reasonable and has legal basis

36. The first claim about contractual obligations of the Respondent is governed by Article 3 of the Agreement. In particular, under Article 3, the Respondent's obligation is to carry out the ECLIPSE performance in accordance with "reasonable audience expectations for a live music concert."

³⁰ Manuel, ¶191; Tennant, ¶172; Dirk Herzig, ¶53, 66, 67; RSM, ¶58; CIArb guidelines, Article 1.

³¹ Sergei Paushok, ¶55; Manuel, ¶202; Born II, 1991.

37. The Claimant has reasonable grounds to believe that the replacement of a member of the Act with a hologram does not satisfy a “live” music concert. Hence, the first claim of the Claimant has reasonable grounds and legal basis.

II. The second claim of the Claimant is reasonable and has legal basis

38. Although the second claim about damages is not governed by any provisions in the Agreement, the Agreement itself is governed by the Principles.³² Relevant to damages, Article 7.4.2 of the Principles governs “full compensation for harm sustained as a result of the non-performance.”
39. In this case, the Claimant is seeking damages on the basis of the Respondent’s non-performance of the obligation to conduct the “live” music concert. Hence, the second claim of the Claimant has reasonable grounds and legal basis.

B. There is little evidence of exceptional circumstances where, without the order, the Respondent would suffer harm not adequately reparable by a costs award

40. The Respondent requested security on the basis that the Claimant refused to release any payment due to the Respondent under the Agreement.³³ However, seeking an order for security requires the Respondent to establish exceptional circumstances where the Respondent would suffer harm not adequately reparable by an award of damages without the order.³⁴
41. The Claimant argues that such circumstances are not present here. First, **(I)** the rumors surrounding the Claimant’s non-payment and fund misappropriation are not adequate to

³² Agreement, Article 9.

³³ Moot problem, ¶69.

³⁴ n 31.

justify an order for security. Second, **(II)** contrary to the rumors, the Claimant is in fact financially able to satisfy adverse costs. In the alternative.

I. The rumors surrounding the Claimant's non-payment and fund misappropriation are not adequate to justify an order for security

42. The Respondent has to introduce evidence together with exceptional circumstances to prove the Claimant's financial inability to satisfy adverse costs.³⁵ Here, the relevant evidence that the Respondent can rely on is the rumors about the Claimant's previous non-payments with other agencies and temporary liquidity issue.³⁶

43. However, the Respondent cannot leverage the rumors to prove its case here. First, *(a)* the rumors fail to present evidence that the Claimant cannot satisfy adverse costs. Furthermore, *(b)* even assuming *arguendo* the rumors are confirmed to be true, they do not necessarily evidence exceptional circumstances that warrant an order for security.

a. The rumors fail to present evidence that the Claimant cannot satisfy adverse costs

44. In accordance with international arbitration jurisprudence on provisional measures, it is necessary to present evidence that the Claimant cannot satisfy adverse costs in this or other arbitrations to justify an order for security.³⁷ Such evidence is lacking in this case.

45. Here, the Respondent requested security for costs on the basis of a social media post about alleged delayed payments from the Claimant to other overseas agencies recently and a conversation with a senior of TF Entertainment about the Claimant's liquidity issues.³⁸

46. The information the Respondent obtained from the post or the conversation was received by its Head of Operations and Marketing, Madam Ye Bin, personally and was not backed

³⁵ *Dirk Herzig*, ¶155; *EuroGas*, ¶123; *SAS*, ¶61, 63.

³⁶ Moot problem, 62, 68.

³⁷ *EuroGas*, ¶123; *SAS*, ¶61.

³⁸ Moot problem, ¶¶62, 68.

or confirmed by any plausible proof, official investigation reports, adverse awards against the Claimant, or any documents of credible authority. The sources of these rumors remain unknown.³⁹

47. Moreover, the content of the rumors is irrelevant. The rumor from the Blueddit thread was about alleged delayed payments to other agencies, not to costs of any arbitration proceedings.⁴⁰ Likewise, the rumor about fund misappropriation by the chief financial officer only speculates that liquidity issues are temporary.⁴¹

48. Hence, the Tribunal should not consider the information as evidence to prove the Claimant's inability to satisfy costs.

b. Even assuming arguendo the rumors are confirmed, they do not necessarily evidence exceptional circumstances that warrant an order for security

49. Even if *arguendo* the alleged delayed payments and fund misappropriation are confirmed to be true, the Claimant submits that the impossibility to show available economic resources, or economic risks or difficulties that affect the finances of a company do not *per se* constitute exceptional circumstances that justify an order for security.⁴²

50. In this case, both the rumors about alleged delayed payments and fund misappropriation essentially concern the lack of economic resources or risks to the finance of the Claimant. Accordingly, they do not *per se* evidence exceptional circumstances.

51. Hence, the rumors, even *arguendo* true, do not necessarily constitute exceptional circumstances that justify an order for security.

³⁹ Clarification 12.

⁴⁰ Moot problem, ¶68.

⁴¹ Moot problem, ¶62.

⁴² *Dirk Herzig*, ¶55; *EuroGas*, ¶123; *SAS*, ¶63.

II. Contrary to the rumors, the Claimant is in fact financially able to satisfy adverse costs by leveraging the concert revenues

52. The Tribunal should decline the Respondent's request for security if a costs award can adequately compensate the Respondent should it prevail in the case.⁴³
53. All tickets were sold out two weeks after the launching of the concert,⁴⁴ meaning that the financial situation and the revenue yield from the concert are very positive. At the present, the Claimant is keeping all revenues from the concert, which the Respondent is disentitled to claim due to its own breach of contract. Even if there was actual harm caused to the Respondent regarding costs in case it prevails, the Claimant can still leverage the concert revenues to compensate for the damages awarded to the Respondent.
54. Therefore, because the Claimant can in fact satisfy adverse costs, a costs award is adequate to compensate for the harm caused to the Respondent, if any, without having to resort to security for costs.

C. The potential harm of the order to the Claimant outweighs the harm the Respondent may suffer without the order

55. The Respondent may have made the request for security for the purpose of protecting its right to recover legal costs in case it incurs damages from these legal costs.⁴⁵ However, in this case, an order for security inflicts more damages on the Claimant than the Respondent may have to incur without the order.
56. First, **(I)** an order for security might impose an undue, excessive amount on the Claimant compared to the amount the Respondent might incur without an order. Furthermore, **(II)**

⁴³ RSM, ¶58.

⁴⁴ Moot problem, ¶35.

⁴⁵ Born II, 2004.

such an order would stifle the Claimant's claims while still allowing the Respondent's counterclaims to advance.

I. An order for security might impose an undue, excessive amount on the Claimant compared to the amount the Respondent might incur

57. Tribunals tend to decline security for costs if the measure might place an undue, excessive burden on the requested party compared to the harm the requesting party might incur.⁴⁶

58. The Respondent requested security for costs worth USD 2 million. It should be noted that, as proven above, there is little concrete evidence that the Claimant will not be able to satisfy adverse costs. In other words, there is little risk regarding legal costs that the Respondent might have to incur if the order is not granted.

59. Therefore, the USD2 million sum requested by the Respondent is a remarkably large and excessive amount imposed on the Claimant compared to the amount the Respondent might suffer without the order.

II. An order for security would stifle the Claimant's claims while still allowing the counterclaims to advance

60. The Tribunal should decline the Respondent's request for security because an order for security would stifle the Claimant's claims. The principle established by *Crabtree* further supports this position. The *Crabtree* principle states that an order for security should be declined to prevent unfairness and protect a party's access to justice if the requesting party raises counterclaims of the same issues as the claims of the requested party.⁴⁷

⁴⁶ *Manuel*, ¶191; *Tennant*, ¶172.

⁴⁷ *Crabtree*, 52.

61. In particular, (a) the Respondent's counterclaims concern essentially the same issues as the claims. Hence, (b) this overlap allows the Respondent's counterclaims to advance without any barriers while the Claimant may have to abandon its claims due to the order.

a. The Respondent's counterclaims concern essentially the same issues as the claims.

62. In assessing the overlap between the claims and counterclaims, the Tribunal needs to consider whether the Respondent is simply defending itself or filing an independent claim on its side.⁴⁸

63. In this case, the first claim of the Claimant is about the Respondent's breach of contract.⁴⁹ The counterclaim raised by the Respondent includes seeking full payment by the Claimant of the invoice.⁵⁰

64. The Respondent made this counterclaim on the basis that it had fully fulfilled its contractual obligations and that the Claimant had already benefitted from the performance. Therefore, the counterclaim is merely a defence raised by the Respondent with regard to the question: whether the Respondent has fulfilled or breached its contractual obligations, which overlaps the Claimant's claim.

b. This overlap allows the Respondent's counterclaims to advance without any barriers while the Claimant may have to abandon its claims due to the order.

65. Here, if the Claimant did not comply with the order for security, the present proceedings would most possibly be stayed or terminated,⁵¹ forcing the Claimant to abandon its claims. Conversely, the counterclaims of the Respondent can still advance, even without the order.

⁴⁸ *Hutchison*, 317.

⁴⁹ Moot problem, ¶65.

⁵⁰ Moot problem, ¶67.

⁵¹ *Lange*, 274.

66. In other words, an order for security may prevent the Claimant from pursuing its claims while still allowing the Respondent to proceed with the same issues.
67. It follows that, consistent with the *Crabtree* principle, an order for security in this case would stifle the Claimant's claims, while the Respondent can still advance its counterclaims even without the order.

D. The condition of urgency is not met

68. Security for costs is urgent when there is a risk of substantial harm to the Respondent due to the Claimant's inability to satisfy costs at the end of arbitral proceedings.⁵²
69. Such urgency is not present in this dispute. As proven above, the rumors should not be considered clear evidence of the Claimant's financial inability to satisfy a cost award, and the Respondent also has failed to present any credible proof to that effect. Neither does the history of non-payment in contractual relationships with other agencies prove the risk the Claimant will not and cannot satisfy costs at the end of the proceedings. There is essentially no concrete evidence of the Claimant's inability to satisfy adverse costs in the future.
70. Therefore, an order for security for costs is not urgent in this case.

⁵² RSM, ¶78.

ISSUE 3: THE RESPONDENT'S DEPLOYMENT OF HOLOGRAMS DID CONSTITUTE BREACH OF THE AGREEMENT

71. Pursuant to Article 7.1.1 and Article 7.1.7 of the Principles, the Claimant submits that the Respondent's deployment of holograms has breached the Agreement as **(A)** this conduct constitutes a non-performance; and **(B)** such non-performance is not excused by the Agreement and Claimant's verbal consent.

A. The Respondent's deployment of holograms was in breach of its assigned obligations due to defective performance.

72. Pursuant to Article 3.1.1 of the Agreement, the Respondent was obligated to procure the performance of ECLIPSE meeting both generally accepted industry standards and reasonable audience expectations, while permitted to employ production technologies in connection with the Concert.

73. The Claimant submits that the Respondent breached its obligation when failing **(I)** to procure the live performance of ECLIPSE in the "Concert"; and **(II)** to meet both industry standards and audience expectations.

I. The Respondent breached its obligation to procure the performance of ECLIPSE in the Concert.

74. Under Article 5.1.4 of the Principles, where a party assumes an obligation of result, it must achieve the specific outcome contracted for. The Respondent was therefore required to strictly comply with the obligations in the Agreement.

a. The Respondent's deployment of holograms is contrary to the common intention of the Parties regarding the meaning to be given to Article 3.1.1 of the Agreement.

75. Apart from the obligations under Article 3.1.1, under the definition of “Concert” in the Agreement, a concert is explicitly defined as a “live performance” of the 5 specifically named members of ECLIPSE, which encompasses rehearsals and soundchecks.
76. However, there was no precedent between the Parties of such related circumstance that needed to interpret the “live” element.
77. In *Sembcorp*, terms that need to be interpreted must contain a “true gap” which could arise when the parties did not contemplate the issue at all and so left a gap.⁵³ Therefore, it is necessary to clarify the definition of “live” in this context since Im Luna’s mental instability had not been discussed yet.
78. Under Article 4.1(1) of the Principles, a contract shall be interpreted according to the common intention of the parties. However, where the contractual text does not clearly reflect such intention, Article 4.3 provides that in applying Article 4.1 and 4.2, regard shall be given to preliminary negotiations.
79. Firstly, during the pre-agreement coordination meeting, both parties explicitly defined the objective as aligning expectations prior to the drafting phase, specifically addressing the scope, timing, and risk management protocols for unforeseen contingencies. Consequently, both parties understood the formal contract to be a mere formalisation of their prior mutual understanding. By reviewing and subsequently executing the agreement, the Respondent effectively manifested its assent to the Claimant’s interpretation of the contractual obligations.

⁵³ *Sembcorp*, ¶94.

80. Specifically, the Claimant contends that the common intention that arose from this meeting was to organize a concert featuring the physical presence of all five members of ECLIPSE. This is evidenced when the parties specifically addressed logistical concerns, including potential travel difficulties and delays for ECLIPSE in the pre-agreement meeting. Also, the Respondent provided unequivocal assurances regarding the guaranteed minimum attendance of ECLIPSE throughout the entire event series.

81. Secondly, the organization of promotional activity having full physical presence of ECLIPSE clearly suggests the mutual understanding that the Concert would also include physical presence of ECLIPSE.⁵⁴

82. Therefore, under Article 3.1.1 of the Agreement, the Parties intended that Respondent's obligation was to procure the full physical presence of ECLIPSE at the Concert.

83. When interpreting terms of a contractual gap arising from the contract's silence on a particular issue, the court must fill in the gap to give effect to the parties' presumed intentions.⁵⁵ Therefore, the initial intention to organize a live concert with human presence must be strictly preserved.

b. Although Article 3.1.1 permits the use of production technologies, it does not authorize the Respondent to substitute the live performance with holograms.

84. Under Article 4.4 and Article 4.5 of the Principles, contractual terms must be interpreted within its contractual scope and so as to give effect to all the terms rather than to deprive some of them of effect.

85. The permission to use technology therefore extends to tools that support and enhance the performance of physical humans, including sound systems, lighting, backing tracks,

⁵⁴ Moot problem, ¶136.

⁵⁵ *Sembcorp*, 29.

screens, and effects. It does not extend to tools that replace a performer, because that understanding would render the initial common intention meaningless.

86. During the pre-agreement meeting on 2 January, when the Respondent suggested that utilizing digital elements could satisfy audience expectations, drawing from its past concert experiences, the Claimant immediately and explicitly rejected this notion. The Claimant argued that such a move would likely trigger adverse public perception and jeopardize relationships with sponsors, who are notoriously sensitive to brand image. By doing so, the Claimant effectively communicated its non-concurrence with the Respondent's view. It was clear that the two concerts were fundamentally different in nature, and the Claimant never accepted digital elements as a viable substitute for the expected live performance.

II. ECLIPSE's performance failed to meet industry standards and audience expectations.

87. The Respondent is bound by Article 3.1.1 to also ensure that the performance meets industry standards and audience expectations.
88. To ascertain the specific scope of these obligations, one must look to the common intention of the parties during the drafting phase.⁵⁶
89. During the meeting on 2 January, the Claimant repeatedly emphasized the criticality of satisfying audience expectations and industry standards, to which the Respondent provided unequivocal commitments. The Respondent further asserted that its superior resources would guarantee the physical presence of ECLIPSE, thereby promising the highest level of performance of duty.
90. The Claimant further submits that the criteria established to measure audience satisfaction are contingent upon the performers being human. Under industry norms, there is an

⁵⁶ Ibid.

inherent and rebuttable presumption that a “live concert” features physical presence.⁵⁷

Once the Respondent substituted the artists with holograms, these criteria became fundamentally inconsistent. Any perceived satisfaction from the audience was not a validation of the Respondent's performance, but rather a byproduct of the audience's lack of informed consent, as they remained unaware that Im Luna was a digital projection.

91. The Respondent may invoke the one-off concert featuring holographic renditions of a first-generation R-Pop group from the genre's formative years; however, this concert and ECLIPSE's concert do not share the same nature and purpose as it was announced clearly and aimed paying tribute to the first-generation members.⁵⁸ By equating the nature and purpose of these two events, the Respondent has shown a flagrant disregard for both human presence and the actual needs of the audience.
92. As a trend-setter in the entertainment industry, the Respondent defined a 'professional and acceptable' performance as one that is flawless, exhibiting a high level of polish and uniformity in choreography, vocal delivery, and stage presence.⁵⁹ However, the Respondent failed to uphold its own standards.
93. While the technical glitch lasted less than a second and was captured on video, its impact was disproportionate, triggering a massive public outcry.⁶⁰ Given ECLIPSE's global stature, such a failure constitutes a direct breach of the agreed-upon standards and reflects a profound lack of professionalism.

⁵⁷ Mathilde, 106.

⁵⁸ Moot problem, ¶16.

⁵⁹ Moot problem, ¶¶18, 19, 24.

⁶⁰ Moot problem, ¶¶54, 55, 56.

94. The Respondent may argue that the Claimant's praise during rehearsals and public celebrations of the concert's success imply an acceptance of the performance. This is a mischaracterization.
95. First, the Claimant's admiration for the hologram technology during the rehearsal was merely an acknowledgement of its technical sophistication.
96. In the entertainment industry, fulsome praise is frequently employed as a tool for professional encouragement rather than a formal confirmation of a performance's quality or completeness. Whether a performance meets the required standards is not a matter of subjective courtesy, but an objective matter of law to be verified against specific, pre-defined contractual criteria.⁶¹ Such appreciation for a technical tool must not be construed as a waiver of the Claimant's right to a live, in-person performance, which constitutes the very essence of the contract.
97. Second, the Claimant's initial praise was contingent upon the Respondent's representation that the hologram would be indistinguishable from a live performance and that the event would proceed seamlessly.⁶² It was only after the subsequent discovery of the technical glitch which triggered widespread public skepticism regarding the performance's authenticity, that the Claimant initiated legal action. The Claimant's shift in position constitutes a reasonable reaction to subsequently discovered facts.
98. A party cannot be expected to seek legal redress for a violation that was hidden or latent at the time of the initial performance.⁶³ The Claimant's actions were triggered exclusively when the Respondent's breach became apparent.

⁶¹ Sharon, 223.

⁶² Moot problem. ¶43.

⁶³ Sharon, 198.

99. Consequently, these actions are not inconsistent with the Claimant's subsequent decision to suspend the contract or initiate legal proceedings, as they occurred at different times and under different sets of knowledge.

B. The breach of the Respondent finds no justification in either the Agreement or the Claimant's purported verbal consent.

100. The Respondent's failure to perform in accordance with the Agreement finds no valid justification, as neither **(I)** the force majeure clause under Article 8 nor **(II)** the Claimant's purported verbal consent can be sustained upon scrutiny.

I. The Respondent's use of holograms does not fall within the scope of force majeure as defined in the Agreement.

101. Article 8 of the Agreement provides that neither Party shall be liable for any failure to perform due to events beyond their reasonable control, including acts of God, natural disasters, war, civil unrest, riots, or government actions rendering performance impossible.
102. The force majeure clause under Article 8 is expressly limited to events that are both beyond a party's reasonable control and of an exceptional, external nature - such as natural disasters, armed conflict, or governmental intervention.
103. Article 7.1.7 of the Principles also only considers the external circumstances that parties could not reasonably expect or beyond their control.⁶⁴
104. The absence of Im Luna from the performance does not fall within any of the enumerated categories, nor does it arise from circumstances of a comparable magnitude.
105. Luna's absence was not the product of an unforeseeable external event, but rather a consequence of the Respondent's own failure to provide adequate protection to the

⁶⁴ PICC commentary, 241.

performer. Where a party's inability to perform is attributable, even in part, to its own omissions or shortcomings, it cannot invoke force majeure as a shield against liability.⁶⁵

To permit otherwise would allow a party to benefit from its own breach, a result inconsistent with both the plain language of Article 8 and general interpretation of the Principles.⁶⁶

106. Therefore, the Respondent's failure to perform does not qualify for force majeure protection under Article 8 of the Agreement, as Im Luna's absence was not caused by an external event beyond the Respondent's reasonable control, but rather by the Respondent's own failure to fulfill its duty of protection toward the performer.

II. The Respondent's failure is not justified by the Claimant's verbal consent.

107. Consent obtained through the deliberate concealment of material facts is vitiated and cannot operate as a valid defence. Further, where a party is left with no reasonable alternative at the time of consent, such acquiescence lacks the voluntariness requisite for it to be legally operative.⁶⁷

108. First, although the Claimant orally consented to use holograms under the condition that it must be kept confidential from the public.⁶⁸ The Claimant's consent was strictly predicated on the Respondent's assurance that their technology was flawless. However, the Respondent's technical deficiencies resulted in visible glitches detected by the audience, thereby failing to satisfy the very condition upon which the Claimant's consent was granted.

⁶⁵ *Ocean Trawlers*, 531.

⁶⁶ *Maskow*, 664.

⁶⁷ *Universe Tankships*, 384.

⁶⁸ Moot problem, ¶44.

109. Second, the Claimant's consent was not freely given, as the Respondent deliberately withheld material information until Im Luna's situation was irreversible, effectively depriving the Claimant of any opportunity to seek alternative arrangements.⁶⁹ Consent procured in such circumstances where one party is deliberately kept uninformed until no viable options remain is not genuine consent but rather acquiescence under informational compulsion.
110. Third, and relatedly, the Agreement expressly fixed the date of the concert,⁷⁰ leaving the Claimant with no practical ability to cancel or reschedule without incurring significantly worse consequences. Therefore, the Claimant must reluctantly agree to the Respondent's last-minute disclosures. Consent given under such circumstances, where refusal would trigger greater harm,⁷¹ lacks the voluntariness required for it to serve as a legitimate defence.
111. Accordingly, the Claimant's verbal consent does not justify the Respondent's failure to perform. The consent was undermined by the Respondent's poor execution, procured through deliberate concealment of material facts, and given under circumstances that afforded the Claimant no genuine freedom of choice to minimize risk.

⁶⁹ Moot problem, ¶41.

⁷⁰ Moot problem, ¶30.

⁷¹ Charles, 973.

ISSUE 4: RESPONDENT’S COUNTERCLAIM SHOULD NOT BE GRANTED

112. Pursuant to Article 36 of the AIAC Rules, the Tribunal should dismiss the Respondent’s counterclaim as the Respondent has failed to provide any evidence to substantiate its claim. Specifically, **(A)** the Claimant’s payment obligations have already been discharged, and **(B)** the counterclaim is unfounded as the amount claimed by the Respondent lacks any basis under the Agreement.

A. The Claimant’s exercise of its right to lawful termination has discharged its payment obligations

113. Pursuant to Article 7.3.5 of the Principles, the Claimant owes no payment obligations as **(I)** the Agreement was lawfully terminated, and **(II)** the payment obligations had not yet accrued.

I. The Claimant has legally terminated the Agreement because of the Respondent’s fundamental non-performance

114. The Respondent committed two distinct breaches of its contractual obligations. First, it failed to procure the live performance of ECLIPSE at the Concert. Second, it deployed a holographic substitute in a manner that concealed the absence of Im Luna from the live performance.

115. According to Article 7.3.1(2) of the Principles, such non-performances are fundamental, as evidenced by the following characteristics: *(a)* the non-performance substantially deprives the aggrieved party of what it was entitled to expect under the contract; *(b)* strict compliance with the obligation which has not been performed is of essence under the contract; *(c)* the non-performance is reckless.

116. It should further be noted that a breach need not satisfy every criterion set out in Article 7.3.1 of the Principles in order to constitute a fundamental non-performance. Instead, the fulfillment of any one of them may be sufficient to justify termination. This approach was endorsed in *Lunagar Promoción y Gestión SL v Urbanizadora Castellana SA*, where the Court held that termination is justified where the breach deprives the aggrieved party of the contract's economic purpose or substantially deprives it of what it was entitled to expect under the contract.⁷²

117. The Claimant therefore had a right to terminate the contract pursuant to Article 7.3.1(1).

a. The Respondent's non-performance substantially deprived the Claimant of what it was entitled to expect under the Agreement and such a result is foreseeable

118. The Agreement itself makes clear what the Claimant was entitled to expect which was “the live performance of the Act”.⁷³ Here, the “Act” was five members of ECLIPSE. Nothing in the Agreement suggests that simulated attendance would be treated as equivalent to physical participation.

119. Such understanding is reinforced by the parties' negotiations. The Claimant stated that, with ECLIPSE, it did not expect surprises. The concealed holographic substitution of Luna in this case was precisely the kind of surprise the Claimant sought to avoid.

120. The inability to provide a live performance featuring all five actual members failed to fulfill Claimant's contractual expectations.

121. The Respondent further disappointed the Claimant by committing a second instance of non-performance.

⁷² PICC selected cases, *Lunagar Promoción y Gestión SL v Urbanizadora Castellana SA* (Case No. 638/2013, 18 November 2013), 270.

⁷³ Agreement, Article 1.

122. Due to a technical failure attributable to the Respondent, information regarding the substitution was ultimately followed by the emergence of public rumours due to a technical failure attributable to the Respondent. As a result, the Claimant's expectations were no longer safeguarded.
123. Such a result was clearly foreseeable to the Respondent. In light of the clear contractual terms, the parties' exchanges, and prevailing audience expectations, the Respondent knew that the Claimant placed particular importance on a genuine live concert experience. Subsequently, having proposed a holographic substitution in place of a physical performer, the Respondent was fully aware that the Claimant's acceptance depended on the replacement operating seamlessly and without disruption.

b. The breached obligations are critical under the contract

124. The promised performance was inherently person-specific. The facts make clear that ECLIPSE's commercial appeal derived not merely from its music, but from the members themselves - their chemistry, unity, and the audience's emotional attachment to them as a group.⁷⁴ Fans attended not simply to hear songs, but to experience the interaction and presence of the five members who collectively constituted ECLIPSE.
125. Moreover, the Claimant expressly stated that sponsors were "buying into the ECLIPSE brand as much as the event." This shows the bargain was not merely for music to be played in a stadium, but for the commercial identity and star power of ECLIPSE as a complete group. Sponsors associated themselves with the recognised members of the group.
126. In that context, the actual presence of all five members was plainly central to the contractual bargain. In circumstances where recourse to replacement technology became unavoidable,

⁷⁴ Moot problem, ¶23.

the requirement that hologram technology be indistinguishable from Luna's actual participation was essential. Any technical malfunction during the performance would trigger audience suspicion, generate public rumours, and undermine the commercial and reputational value that the Claimant sought to preserve by proceeding with the Concert.

127. The facts further demonstrate that, once rumours regarding the use of the hologram began to circulate, some audience members raised demands for refunds.⁷⁵ This directly affected the Claimant's economic interests, particularly as the commercial values of the Concert constituted one of the principal objectives of the Agreement.

c. The non-performance is reckless

128. At the outset, the Agreement expressly required the Respondent to ensure the safety of ECLIPSE's members. However, in fact, Luna was approached and physically touched by an overzealous individual who managed to breach the security barrier, causing her psychological shock and rendering her unable to participate in the Concert. This incident reflects a first instance of negligence on the Respondent's part.
129. The Respondent's conduct thereafter further demonstrates recklessness. Having resorted to a holographic substitution, the Respondent failed to adequately test and ensure the reliability of its technology. Instead, it proceeded with undue confidence that the hologram would remain indistinguishable throughout the performance. This lack of proper verification resulted in a technical glitch, thereby constituting a second instance of negligence.

⁷⁵ Moot problem, ¶156.

II. The Claimant's duty to pay performance fee and make a royalties calculation had not arisen before the termination

130. Under Article 5 of the Agreement, the obligation to pay the performance fee and calculate the royalties is expressly made “subject to further confirmation.”
131. This requirement constitutes a condition within the meaning of Article 5.3.1 of the Principles, namely a future uncertain event upon which the corresponding payment obligations would arise. In the present case, that condition was never fulfilled.
132. In practice, the Claimant has not provided any such confirmation; on the contrary, it was still “reviewing the matter”. Accordingly, the condition for the arising of the aforementioned obligations has not been satisfied.
133. As demonstrated above, the Respondent's defective performance gave rise to serious concerns regarding the integrity and quality of the Concert, including audience dissatisfaction, reputational harm, and potential refund claims. The requirement of further confirmation exists precisely to allow the parties to assess whether the Concert was performed in accordance with the contractual standard before payment obligations arise.
134. In such circumstances, the contemplated confirmation could not reasonably be given. The Claimant's decision to continue “reviewing the matter” therefore cannot be characterised as an attempt to evade its contractual obligations, but rather as a direct consequence of the Respondent's own non-performance.
135. Consequently, the event triggering the payment obligations never occurred, with the result that those obligations did not arise.
136. For the foregoing reasons, it is clear that the Claimant effected a lawful termination of the Agreement and was therefore released from any obligations that had not yet arisen prior to

the termination,⁷⁶ in particular, any obligation to pay the performance fee or to calculate royalties.

B. The Respondent's invoice for other alleged costs is unfounded

137. The Agreement provides only for the Claimant's payment obligations in respect of two categories of remuneration, namely the performance fee and royalties.⁷⁷ No provision of the Agreement imposes any obligation on the Claimant to bear additional costs such as expenses for promotional activities or for the rental of outfits, styling, and accessories.

C. In the alternative, and without prejudice to the Claimant's primary position, should the Tribunal find the Claimant liable for any costs, the Claimant maintains that it is not required to pay the full amount demanded by the Respondent.

138. According to Article 7.4.2 and 8.1 of the PRINCIPLES and Article 1.1 of the Agreement, the cost should be reduced, as **(I)** any amount allegedly owed to the Respondent must be set off against the Claimant's damages; and **(II)** the Claimant is not liable for the rental costs of outfits, styling, and accessories, as such costs are already included in the Performance Fee.

I. The Claimant is entitled to set off the Revenue against damages.

139. Pursuant to Article 7.4.2 of the Principles, the Claimant is entitled to seek compensation from the Respondent for the losses caused by such non-performance.

140. The Respondent's non-performance caused measurable loss to the Claimant. In particular, the Claimant suffered reputational harm in hosting ECLIPSE's first concert in Reyna,⁷⁸ and faced the risk of deterioration in its relationships with sponsors. This was further

⁷⁶ Principles, Article 7.3.5(1).

⁷⁷ Agreement, Article 5.1.

⁷⁸ Agreement, Preamble.

compounded by the need for the Claimant to undertake additional public relations and media management efforts to contain the situation, incurring further costs.

141. Especially, as rumours regarding the use of the hologram spread online, some spectators began raising demands for refunds. This clearly indicates a risk for further financial loss for the Claimant.⁷⁹
142. According to Article 8.1 of the Principles, the Claimant is entitled to set off its claim for damages against any payment allegedly due to the Respondent with two conditions: (a) the first party is entitled to perform its obligation; and (b) the other party's obligation is ascertained as to its existence and amount and performance is due.
143. First, the Claimant is entitled to perform its obligation within the meaning of Article 8.1(a) of the Principles. To the extent that the payment obligation was considered to have arisen, it would be due and thus capable of being set off.
144. Second, the Respondent's obligation to compensate is established as to its existence, as the Respondent's defective performance constitutes non-performance under the Principles. While the precise quantum of damages has not yet been determined, it is clear that the Claimant has suffered substantial loss, including reputational harm, deterioration in sponsor relationships, and additional public relations costs. Accordingly, the Claimant does not assert that a formal set-off has already been effected at this stage; rather, it submits that such losses will have to be set off against any amount claimed by the Respondent once they are quantified.

⁷⁹ Moot problem, ¶156.

II. The Claimant is not liable for the rental of outfits, styling and accessories, as these costs are included in the performance fee

145. The Agreement expressly provides that the performance fee includes “any preparation required to meet the standard reasonably expected of a headline act of similar stature.” It would be difficult to contend that a performance meeting such a standard could dispense with essential elements such as outfits, styling, and accessories. As recognised in theatre scholarship, costumes are not merely articles of clothing but integral artistic elements of a live performance, contributing to the audience’s perception of the production as a whole.⁸⁰

146. Accordingly, these items fall within the scope of the performance fee and cannot be claimed as separate, additional payments.

⁸⁰ Amani, 2.

PRAYERS FOR RELIEF

In light of the submissions above, the Claimant respectfully requests the Tribunal to declare that:

- I. Arbitration is the more appropriate forum;
- II. The Tribunal should not grant the Respondent's request for security for costs;
- III. The Respondent's deployment of a holographic replacement constituted a breach of the Agreement; and
- IV. The Respondent's counterclaim ought to not be granted.