

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 RESPONDENT

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ABBREVIATIONS AND SYMBOLS

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

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STATEMENT OF JURISDICTION

The Parties, Nova Live Asia Pte Ltd (**“Claimant”**) and Aurora Entertainment Co. Ltd. (**“Respondent”**), have not in any way reached any agreement that 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

During the initial coordination meeting, the Claimant’s Managing Director admitted the company was in a "very delicate state" and that a cancellation would lead to its "downfall". The Claimant emphasized that the show must proceed "come rain or storm"

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. Notably, despite being prepared by professional legal counsel, the document intentionally omitted a dispute resolution clause, signaling

a departure from prior practices for this specific project.

January 24, 2026

During a meet-and-greet event managed by the Claimant, a security breach occurred where a fan made unsolicited physical contact with Im Luna. This failure of the Claimant's security was the direct cause of Luna's subsequent psychological distress.

January 27, 2026

The Respondent immediately prioritized Luna's welfare, arranging for daily therapy sessions to mitigate the harm caused at the Claimant's event.

February 4, 2026

Three days before the concert, Luna expressed a firm refusal to perform due to overwhelming anxiety. The Respondent acted transparently by immediately arranging an urgent video conference to inform the Claimant and propose a technological solution.

February 5, 2026

In an emergency meeting, the Claimant's representatives, desperate to avoid commercial ruin, agreed to proceed with the hologram on the condition of confidentiality

February 6, 2026

The Claimant's representatives attended the full rehearsal, observed the holographic rendering, and were "astonished" by its quality. At no point did they exercise their right to terminate the agreement before the show.

February 7, 2026	The concert was executed flawlessly. 90,000 fans attended, the performance was cohesive, and no audience members raised concerns. Afterwards, the Claimant publicly praised the event as a "success" on social media
February 10, 2026	The Respondent issued an invoice for USD 3.6 million. The Claimant benefited from the full gross revenue of the sold-out show but failed to settle the payment
February 13, 2026	A social media user noted a "minor glitch" lasting less than a second-an irregularity the Claimant later used as a pretext to avoid their payment obligations
February 18, 2026	The Respondent learned through industry peers that the Claimant was facing liquidity issues and that their CFO had allegedly misappropriated company funds. Other agencies reported that the Claimant had failed to pay them for over three months
March 31, 2026	After over a month of silence, the Claimant issued a notice of termination and commenced arbitration. The Respondent maintains this is a tactical maneuver to delay paying the USD 3.6 million debt while the Claimant is in a state of financial instability

SUMMARY OF PLEADINGS

ISSUE I: THE COURT IS THE MORE APPROPRIATE FORUM

The Reyna's High Court should be the more appropriate forum. In accordance with international practice and arbitral jurisprudence, a court may retain jurisdiction where no valid arbitration agreement exists, where it has the closest connection to the dispute, and where arbitration cannot adequately protect the parties' interests. Under Article 1.9 of the Principles or Article 26 of the AIAC Rules, the Agreement omits any arbitration clause, and past dealings don't create a binding tacit agreement. Reyna is where both Parties are domiciled, the contract was formed and performed, and the damages arose. Arbitration also poses risks: high costs, uncertain enforceability, no appeal, and reliance on a foreign seat for a domestic dispute. Therefore, the Court is the more appropriate forum.

ISSUE 2: THE TRIBUNAL SHOULD GRANT AN ORDER FOR SECURITY FOR COSTS

The Tribunal should order the Claimant to post security for costs. Under Article 11 of the AIAC Rules and the four-factor test, security for costs is granted where there's a substantial risk the claimant cannot satisfy adverse costs, and the request is fair, necessary, and proportionate, provided the respondent shows a prima facie defense. The Claimant's withholding of trust-held Revenue, delayed payments, and bypassing of agreed dispute-resolution steps show financial instability and bad faith. The USD 2 million request is proportionate to expected costs and merely protective. The Respondent's defenses, contractual authorization for hologram use and a valid counterclaim for unpaid fees, demonstrate genuine prospects of success. The Tribunal should grant the Respondent's request for security.

ISSUE 3: THE RESPONDENT'S DEPLOYMENT OF A HOLOGRAM DOES NOT CONSTITUTE A BREACH OF THE AGREEMENT

Negotiations show the parties intended "digital" production technology to include holograms, and the concert met audience expectations and industry norms despite later online speculation. Luna's sudden psychological distress was unforeseeable, uncontrollable, and not risk-assumed by the Respondent, constituting hardship; the parties renegotiated and agreed to the hologram as a solution. Even if deemed non-performance, it qualifies as force majeure since the Respondent promptly notified Claimant and met all conditions under the *Principlé*. The hologram's use was contractually authorized, a valid hardship response, or alternatively excused by force majeure, thus no breach occurred.

ISSUE 4: THE RESPONDENT'S COUNTERCLAIM SHOULD BE GRANTED

The Claimant never challenged jurisdiction over the counterclaim, raising only merits-based arguments, and since both claims share the same contract, parties, and facts, jurisdiction should extend to it. On the merits, the Respondent's hologram use was not a breach, so the Claimant's payment obligations remained valid. Even if it were non-performance, it wasn't fundamental. The Respondent substantially performed, the Claimant received the full commercial benefit, and termination would impose disproportionate loss on the Respondent, mirroring the substantial-performance principle in *Hoenig v Isaacs*. The Claimant's public celebration and continued enjoyment of the Concert's benefits also confirmed the Performance Fee and Royalties were due, barring later repudiation. Additional promotional fees were validly agreed through online communications under Article 1.2 of the Principles, despite lacking formal contractual specification.

PLEADINGS

ISSUE I: THE COURT IS THE MORE APPROPRIATE FORUM

1. The Respondent submits that the Reynan's High Court (*hereinafter* "Court") is the more appropriate forum when **(A)** the Court has territorial jurisdiction, **(B)** it has the most substantial connection with the dispute and **(C)** the AIAC (*hereinafter* "Arbitration") cannot fully protect the interests of both parties.

A. The Court is an available alternative forum for this dispute

2. Across legal systems, it is universally acknowledged that the core element of the forum non conveniens doctrine is the requirement that an alternative available forum exists to litigate the dispute.¹
3. The Court fully satisfies the criteria for an available alternative forum to resolve this dispute on the grounds that **(I)** the Contract contains no arbitration agreement, **(II)** the Court is vested with inherent jurisdiction, and **(III)** The Court can provide remedy straightly to the Parties.

I. There is no valid arbitration agreement

4. While the historical practices between the parties demonstrate a recourse to Arbitration for dispute resolution, (a) this prior course of dealing does not possess binding legal force over the present dispute; furthermore, (b) a tacit agreement is legally unsupportable.

a. Prior arbitration agreements cannot be deemed as grounds in this case

5. Article 1.1 of the Principles on freedom of contract establishes that the parties are free to enter into a contract and to determine its content.

¹ *Spiliada*, 476; *Piper*, 255; *Gilbert*, 506-507; *Amchem*, 921.

6. Article 1.9 of the Principles stipulates that the parties to a contract are bound by any practices and usages established between themselves.
7. However, Article 1.9 does not imply automatic or arbitrary application. Whether a practice is deemed "established" must be assessed in light of the specific circumstances and factual context of the dispute.²
8. Although the prior agreements similarly concerned joint cooperation for concerts organization and designated arbitration for dispute resolution, it cannot be assumed that their contractual terms and the resulting disputes are equivalent.
9. An overbroad interpretation of Article 1.9 risks depriving the parties of their right to access alternative forums for dispute resolution.
10. Where a new contract is meticulously drafted yet conspicuously omits an arbitration clause, it can hardly be argued that past practices automatically override the newly executed written agreement.
11. The parties' assertion that the written text merely reflects the "essential terms" does not support Claimant's broad extrapolation of an arbitration agreement. On the contrary, the very exclusion of the arbitration clause from the list of essential terms demonstrates that the parties did not consider arbitration to be a mandatory component of this specific transaction.
12. The fact that the Claimant chose mediation in a dispute between the parties reinforces that arbitration is not a predetermined forum for all their controversies.³
13. Therefore, past arbitration agreements are insufficient to establish arbitral jurisdiction over the current dispute.

² PICC commentary, 24.

³ Clarification 6.

b. A tacit arbitration agreement is not recognized under the AIAC Rules

14. Article 26 of the AIAC Rules empowers the arbitral tribunal to determine the validity of an arbitration agreement, operating on the principle that such an agreement must be incorporated either as a clause within a contract or as a separate legal document.
15. Consequently, an arbitration agreement must be in writing.
16. Even assuming *arguendo* that an implied agreement existed, it would still fail to establish jurisdiction.
17. The material terms of such a tacit agreement, specifically the scope of disputes, procedural mechanisms, and the framework for appointing arbitrators, cannot be definitively ascertained.⁴

II. The Court should be vested with jurisdiction

a. It is the forum with the closest and most real connection to the dispute

18. First, both the *lex loci contractus* and the *lex loci solutionis* heavily favor this forum, given that the contract was executed in Reyna and the contractual obligations were intended to be performed within its territory.⁵ Consequently, the dispute regarding the breach of said contract directly arose in Reyna.
19. Second, regarding the tortious or extra-contractual elements of the claim, both the *lex loci actus* and the *lex loci damni* are squarely satisfied. The underlying wrongful conduct took place in Reyna, and crucially, both the disputed funds and the resulting financial damages are physically and legally located within Reyna.

⁴ *Fiona*, ¶9.

⁵ Moot problem, ¶26.

20. Furthermore, the dispute arose within the R-pop industry, a sector recognized as an iconic pillar of Reyna's cultural identity.⁶ Consequently, the domestic courts of Reyna possess unparalleled expertise and a profound understanding of the industry's specific customs and practices, making them the most qualified forum to adjudicate this matter.

b. A stay of proceedings inherently presupposes that the Court possesses jurisdiction over the dispute

21. A decision to stay proceedings generally follows the commencement of court proceedings, meaning the court has already been seised of the dispute and is in a position to determine whether a valid arbitration agreement justifies a stay. Thus, the court now is an available forum over this dispute.

c. The Respondent is entitled to the full protection of the local jurisdiction

22. The Respondent is entitled to the right of access to domestic justice in the absence of explicit consent to arbitration; therefore, court jurisdiction should take precedence.

23. The seat of arbitration is the legal place of arbitration chosen by the parties, which consequently governs the procedural framework of the proceedings.⁷ Since the *lex arbitri* in this context is the AIAC Rules, the Arbitration qualifies as a foreign forum.

24. Choosing a foreign forum to resolve a domestic dispute could be viewed as an instance of forum shopping.⁸

III. The Court has the ability to provide a remedy to the Claimant

25. It is a fundamental principle that the ultimate object of any binding decision is to secure actual compliance with the monetary and contractual obligations owed between the parties.

⁶ Moot problem, ¶10.

⁷ Mundi, ¶2, 3.

⁸ Brett, page 895.

A determination that cannot be enforced against a non-complying party is a determination in form only, devoid of any practical remedial value.

26. Under Article 7.4.1 of the Principles, an aggrieved party is entitled to full compensation for harm sustained as a result of non-performance. However, Article 7.4.1 does not imply automatic or self-executing relief. Whether an entitlement to damages constitutes an "effective remedy" must be assessed in light of the coercive mechanisms available to compel actual payment.
27. Although an arbitral tribunal constituted under the AIAC Rules may render a final and binding award under Article 34 of AIAC Rules, it cannot be assumed that such an award guarantees immediate recovery. An overbroad reliance on the contractual undertaking of the parties to carry out the award "without delay" risks depriving the prevailing party of actual satisfaction where voluntary compliance is withheld.
28. Where a losing party declines to honor an award, the arbitral process alone possesses no inherent coercive authority to enforce its own determinations.
29. Since both parties hold assets and maintain their principal place of business in Reyna, the prevailing party must, of necessity, initiate separate recognition and enforcement proceedings before a competent court, rendering the arbitral remedy contingent and indirect.
30. The Court, by contrast, is vested with the inherent judicial and state authority necessary to compel compliance directly. A judgment rendered by the Court does not require a separate recognition stage as a precondition to enforcement; it can be executed immediately through the coercive machinery of the state, including the attachment of assets.

31. Therefore, since the AIAC Tribunal's award remains dependent on subsequent judicial enforcement, the Court constitutes the only forum genuinely capable of providing the Claimant with an effective and complete remedy.

B. The Court is the forum most capable of safeguarding the Parties' interests in this dispute

32. The Respondent submits that the Court offers the most comprehensive protection of the Parties' interests in resolving this dispute, on the grounds that **(I)** the Parties have no legitimate concerns regarding confidentiality should the dispute be resolved before the Court, **(II)** the Court is not foreign to the law applicable to this dispute, and **(III)** the Court offers greater procedural convenience than arbitration in resolving this dispute.

I. The parties have no concerns regarding confidentiality if the dispute is resolved in the Court

33. Under Article 7.2.2 of the Agreement, the Parties are expressly prohibited from disclosing information relating to the other Party, the Act, and the Concert without prior written consent, save where such disclosure is required by law or by court order.

34. This provision demonstrates that the Parties themselves anticipated and expressly carved out an exception permitting disclosure pursuant to judicial proceedings.

35. It follows that resorting to the Court does not, in itself, breach the confidentiality regime established under the Agreement; rather, the Agreement's own text confirms that court involvement was contemplated as a legitimate and foreseen exception to the general confidentiality obligation.

36. Moreover, confidentiality concerns in this dispute are not merely contractual but carry a broader dimension of national interest, given the sector in which the Parties operate. The

R-pop industry constitutes a significant vehicle of Reyna's cultural influence, having established recognition across Asia, Europe, and North America.⁹

37. In a manner comparable to the K-pop industry's substantial contribution to the South Korean economy and its role in shaping global youth culture,¹⁰ the R-pop industry carries considerable economic and reputational significance for Reyna. Consequently, safeguarding the Parties' sensitive information from unwarranted public exposure is not only a private contractual concern but also a matter touching upon national economic and reputational interests.
38. The Court, sitting within the same domestic legal order that recognises and can give effect to these interests, retains full authority to conduct proceedings in a manner that preserves confidentiality, including through private hearings where warranted by the circumstances. This is a determination well within the ordinary procedural discretion of a domestic court and is in no way foreclosed by the choice of judicial, rather than arbitral, resolution.
39. Accordingly, since the Agreement already permits disclosure pursuant to a court order, and since the Court is equally capable of conducting the proceedings with the necessary discretion to protect both the Parties' contractual confidentiality and Reyna's broader reputational and economic interests, confidentiality provides no basis to prefer arbitration over the Court. The Court fully and efficiently protects the interests of the Parties on this ground.

⁹ Moot problem, ¶4.

¹⁰ Noraini, 107.

II. The Court is not foreign to the applicable law in this dispute

40. Under the Article 9 of the Agreement, the Agreement is governed by the Principles and with respect to issues not covered by such Principles, by generally accepted principles of international commercial law.
41. The Principles is merely a model law for contracts and does not provide remedies for non-contractual damages.¹¹
42. In this dispute, the Respondent duly fulfilled its obligations as the concert was successfully held;¹² thus, any damages that may have arisen constitute non-contractual damages.
43. Consequently, since the core dispute revolves around the resolution of non-contractual damages, the Laws of Reyna shall prevail over the application of the Principles.
44. Although the parties agreed to utilize the Principles, it does not cover the scope of this dispute.
45. Therefore, the Court is entirely capable of resolving the issue thoroughly.

III. The Court always offers greater procedural convenience in this dispute

46. The Respondent submits that the Court is the more procedurally efficient forum to resolve this dispute due to its coercive authority and proximity to the evidence.
47. First, the Court possesses superior power to compel evidence. Unlike a private arbitral tribunal, which lacks coercive jurisdiction over third parties, the Court can directly compel unwilling witnesses to testify. Resolving this through arbitration would force the parties to seek ancillary court assistance, introducing unnecessary procedural layers and delays.
48. Second, convenience and proximity strongly favor the Court. Since both parties hold assets and maintain their principal place of business in Reyna, the vast majority of material

¹¹ Eckart, 154.

¹² Moot problem, ¶¶49, 50.

witnesses and evidence are concentrated here. Conducting foreign-seated arbitration would impose heavy logistical burdens, excessive costs, and delays.

49. Thus, because the Court alone secures direct, unimpeded access to evidence without judicial assistance, it offers a far more convenient and efficient venue than arbitration.

C. The Arbitration cannot fully protect the interests of both parties when taking into account proceedings costs, the enforcement of judgement and the possibility of appeal

50. The Respondent submits that the AIAC Arbitration cannot fully protect the interests of both Parties, having regard to **(I)** the burdensome costs the Arbitration would impose given the Parties' respective circumstances, and **(II)** the substantial risk that any resulting arbitral award may ultimately prove unenforceable.

I. Given both parties' circumstances, the costs of arbitration are overly burdensome

51. Although the Respondent has fulfilled its contractual obligations, it has yet to receive the contractual fees and ticket sales proceeds currently held by the Claimant. Consequently, forcing the Respondent to participate in an expensive arbitration proceeding without any guarantee that the final award will grant the recovery of these outstanding amounts would be both unjust and financially burdensome.
52. Furthermore, given the adverse financial rumors surrounding the Claimant, initiating a lawsuit through costly arbitration renders it an inappropriate forum.

II. The arbitral award may be unenforceable

53. The Respondent submits that any eventual arbitral award faces a high and unpredictable risk of non-enforcement in Reyna,

54. Because an arbitral tribunal lacks coercive power, the Claimant must seek recognition and enforcement before the Courts of Reyna. Under domestic law, this is a substantive judicial inquiry where enforcement can be refused.
55. Since the existence of a valid arbitration agreement is the very core of this jurisdictional dispute, there is a strong likelihood that a Reynan court will refuse enforcement on the basis that the Tribunal lacked jurisdiction *ab initio*.
56. The open-textured and discretionary nature of the public policy defense makes enforcement inherently unpredictable and subject to case-by-case denial.
57. Reyna's non-signatory status to the New York Convention creates an insurmountable structural barrier.¹³ Enforcement of a foreign-seated AIAC award in Reyna depends entirely on unproven domestic rules of reciprocity between Reyna and the arbitral seat, of which there is zero evidence on the record. The open-textured and discretionary nature of the public policy defense makes enforcement inherently unpredictable and subject to case-by-case denial.
58. Absent a treaty-based framework and given the high likelihood of domestic refusal, any arbitral award rendered in this dispute remains commercially illusory. Only a judgment directly rendered by the Court guarantees immediate, coercive enforcement.

¹³ Additional Clarification 1.

ISSUE 2: THE TRIBUNAL SHOULD GRANT AN ORDER FOR SECURITY FOR COSTS

59. Security for costs is a provisional measure where the Tribunal orders a party to post security to guarantee the counterparty's right to recover legal expenses should that party ultimately prevail in the proceeding.¹⁴
60. Tribunals have established that the authority to "recommend" interim measures is equivalent to the power to "order" provisional measures necessary to preserve a party's rights.¹⁵
61. According to Article 11.1 AIAC Rules, the Tribunal here in this dispute has the power to order security for cost to preserve the Respondent's right.
62. As settled in *Tennant*, the Tribunal applies a four-factor test to determine an order for security for costs: (i) the respondent's prima facie likelihood of success; (ii) a risk of irreparable harm absent the order; (iii) the balance of hardships favoring the respondent; and (iv) the existence of urgency.¹⁶
63. According to Article 11.4 of the AIAC Rules, the Tribunal in this dispute should grant an order for Security for Costs as **(A)** there is a substantial risk of the Claimant's default on an adverse costs award; **(B)** the request is fair, necessary, and proportionate; and **(C)** the Respondent maintains a prima facie defence in good faith.

A. There is a substantial risk that the Claimant may be unable to satisfy an adverse costs award if the Respondent succeeds in its defence

64. There is a clear probability that the Claimant will default on the legal costs, given multiple signs of financial instability, including the **(I)** withholding of ticket sales proceeds and **(II)**

¹⁴ Mundi II, ¶1.

¹⁵ Mundi II, ¶4.

¹⁶ *Tennant*, ¶16.

such a state is further underscored by a range of other conducts by the Claimant, thereby (III) providing the Respondent with sufficient grounds to meet the “reason to believe” standard.

I. The Claimant cannot rely on the Gross Concert Revenue (hereinafter “the Revenue”) to establish its creditworthiness

65. Article 4.1.5 of the Agreement stipulates the Claimant’s obligation to "hold on trust the Gross Concert Revenue for the purpose of proper accounting and payment of sums due to the Respondent."
66. This specific language clearly establishes a trust fund, creates a fiduciary relationship rather than a mere debtor-creditor relationship.
67. The Revenue retained by the Claimant does not constitute its own assets; instead, it is a legal entity where the property is held for the exclusive benefit of the Respondent.
68. In *Barclays*, the English court clarified that when money is advanced or held for a specific purpose, it does not become part of the holder’s general assets. It must be applied solely for the purpose specified in the contract. In this case, for proper accounting and payment to the Respondent.¹⁷

II. The Claimant’s conducts imply its poor financial standing

69. The Claimant’s financial instability is demonstrated by a sequence of actions that underscores a pre-planned abuse of trust, namely (a) its failure to make payments to the Respondent, (b) a long-standing intention to illicitly benefit from the contract, and (c) clear signs of abuse of process in bypassing other mechanisms to initiate arbitration directly.

¹⁷ *Barclays*, 581.

a. The Claimant's failure to settle payments¹⁸ serves as a clear indication of its potential inability to fulfill an adverse award

- 70. Under Article 5.3 of the Agreement, the Respondent has an unrestricted right of access to all accounting records and documents.
- 71. Under Article 5.1 of the Agreement, the Respondent is entitled to a specific amount of money.
- 72. The *Modern Engineering* court argues that “at common law there is a right of set off in such circumstances, but that right can be excluded by contract”.¹⁹
- 73. Therefore, the Claimant's set-off right should be excluded.
- 74. There is no plausible reason for the Claimant to hold both the funds and the audit report; it follows that the Claimant has applied this amount toward alternative ends.

b. The Claimant's shows a long-standing intention to illicitly benefit from the contract

- 75. Under Article 4.1.1 of the Agreement, the Claimant's obligation was crowd management.
- 76. However, the Claimant failed to fulfill this obligation by allowing an obsessive fan to harass Im Luna. Notably, it was a single individual who managed to breach the security protocols.²⁰
- 77. Given that the Respondent had raised this concern with the Claimant three days prior to the concert and both parties had held discussions on the matter.
- 78. The aforementioned incident, coupled with the Claimant's failure to provide written consent for the use of holograms, indicates a long-standing intention on the Claimant's part to manipulate the Respondent's trust.

¹⁸ Moot problem, ¶¶52, 63.

¹⁹ *Modern Engineering*, 696.

²⁰ Moot problem, ¶36.

79. Furthermore, Claimant's history of delayed payments to other agencies suggests a systemic liquidity issue.²¹

c. Signs of abuse of process by the Claimant further implies its financial instability

80. Out of six cooperation contracts, four contain a dispute resolution clause requiring negotiation before submitting the matter to arbitration. On one prior occasion, the parties even resolved their dispute through mediation upon the tribunal's recommendation.

81. This demonstrates that all past disputes were settled with mutual consent regarding the resolution method and strictly adhered to the prescribed procedural framework.

82. In this particular dispute, however, the Claimant neither renegotiated the contract with the Respondent nor utilized any alternative dispute resolution mechanisms as they had previously done. Instead, they initiated arbitration directly, which underscores a preconceived motive and constitutes a tactical move to delay payment for other purposes.

III. The risk of non-enforcement of costs based on the "reason to believe" standard

83. The "reason to believe" standard requires an objective risk of non-payment upon an adverse award, rather than proof of certain insolvency.²²

84. Taken together, these factors above constitute sufficient evidence of the Claimant's financial instability, sufficient to establish a "reason to believe".

B. The Respondent's request for security for costs is fair, necessary and proportionate

85. According to Article 11.1, 11.3(c), 11.4 of the AIAC Rules and Article 4 of the CI Arb Guidelines on Application for Security for Costs,²³ the Respondent submits that its request is **(I)** for fairness, **(II)** urgent and necessary and **(III)** proportionate.

²¹ Moot problem, ¶¶62, 68.

²² RSM, ¶76.

²³ AIAC Rules, Rule 11.1, 11.3(c), 11.4; CI Arb guidelines, Article 4.

I. The request is for fairness during the arbitration process

86. The Respondent applies for security for costs as (a) a direct consequence of the Claimant's conduct; furthermore, (b) this request does not render the proceedings unfair.

a. The Claimant's inconsistent conduct

87. Fairness demands that a party who holds all the disputed funds cannot simultaneously force the other party to bear all legal costs of recovering them.²⁴

88. The Claimant retains the entirety of the profits generated from the concert, and its reputation remains untarnished. The current public discourse consists merely of unsubstantiated rumors rather than any definitive proof regarding the use of holograms; furthermore, both fans and concert attendees have confirmed that no such holograms were utilized.²⁵

89. The Claimant has not yet suffered any actual damage (the Revenue, reputation), whereas the Respondent's entitled revenue is currently being withheld.

90. The Claimant accepted and benefited from a full performance, also publicly celebrated it,²⁶ and then refused payment while blaming the very technology it approved.²⁷

91. Accordingly, granting security for costs would be the most effective safeguard for the Respondent, given that the Claimant has suffered no actual damages and is currently in a precarious financial position.

²⁴ Ibid.

²⁵ Moot problem, ¶156.

²⁶ Moot problem, ¶150.

²⁷ Moot problem, ¶144.

b. Respondent's counterclaim does not make security unfair

92. Claimant claims USD 2.2 million for alleged breach, while Respondent seeks payment for services already rendered. Even if the issues overlap, the imbalance stems from Claimant's control of the funds.

II. The request is urgent and necessary

93. Based on the Claimant's conduct and market reputation, its financial standing is demonstrably weak, raising significant doubts as to its ability to satisfy a costs award in favor of the Respondent should the claims be dismissed.
94. The Respondent has incurred substantial costs without receiving payment and must now fund a complex arbitration. If Respondent prevails but Claimant becomes insolvent, its legal costs will be unrecoverable. Therefore, the Respondent requires assurance that funds will be available to recover its legal costs in the event of a favorable award.

III. The order is proportionate in purpose

95. The Claimant shows financial instability and procedural bad faith. The USD 2 million sought is proportionate to Respondent's expected legal costs and serves a protective, not punitive, purpose.²⁸

C. The Respondent has prospects of success for defences

96. Pursuant to the Article 11.4 (b) of AIAC Rules and the Article 2 of CIArb guidelines, the Tribunal can preliminarily assess the underlying merits to see if the claim is baseless or if the Respondent holds a stronger position.

²⁸ AIAC Rules, Rule 11.4(a).

97. Therefore, the Respondent submits that the claims of the Respondent, including (I) its full performance in accordance with contract and (II) its counterclaim for full payment, have demonstrated such prospect of success.

I. The Respondent's defense against the breach of contract claim is reasonable and has a legal basis

98. The Respondent's performance obligations are defined in Article 3.1.1 of the Agreement, which explicitly allows Respondent to employ "digital or other production technologies" in connection with the Concert.

99. The deployment of the AI-powered hologram is a legitimate exercise of this contractual right.

100. Furthermore, the performance met "reasonable audience expectations" as required by the contract, evidenced by the fact that 90.000 fans attended the sold-out show without raising any concerns about the performance quality or the absence of a live member.²⁹

101. Since the Claimant publicly praised the concert as a success and observed the technology during rehearsals without terminating the Agreement immediately,³⁰ they cannot now claim a fundamental breach.

II. The Respondent's counterclaim for full payment is reasonable and has a legal basis

102. The Respondent's right to payment is established under Article 5.1 of the Agreement, entitling the Respondent to a USD 2.5 million Performance Fee plus royalties.

103. Under Article 7.1.2 of the Principles, a party cannot rely on the non-performance of the other party to the extent that such non-performance was caused by the first party's own act or omission.

²⁹ Moot problem, ¶¶35, 49.

³⁰ Moot problem, ¶65.

104. The primary reason for Im Luna's inability to perform live was the security breach at a promotional event managed by Claimant, which caused her severe psychological distress.³¹
105. Since Claimant's failure to provide adequate security contributed to the need for a technological solution, and because Claimant accepted the benefit of the successful, sold-out performance and retained all revenue, Respondent is entitled to full compensation.

³¹ Moot problem, ¶36.

ISSUE 3: THE RESPONDENT'S DEPLOYMENT OF A HOLOGRAM DOES NOT CONSTITUTE A BREACH OF THE AGREEMENT

106. In its defense, the Respondent submits that **(A)** the use of the hologram was consistent with the obligations of the Respondent under the Agreement; **(B)** the deployment of the hologram was to deal with the hardship posed by Luna's mental situation to ensure the concert's success; and **(C)** even assuming *arguendo* the deployment of the hologram constituted the Respondent's non-performance, it is excused under Article 8 of the Agreement.

A. The use of the hologram was consistent with the obligations of the Respondent under the Agreement

107. The Respondent has fulfilled the obligation under Article 3.1.1 of the Agreement, because **(I)** the Parties' intention was to allow for the deployment of holograms as a production technology in the Concert and **(II)** the hologram lived up to industry standards and audience expectations for a live concert.

I. The Parties' common intention was to allow for the deployment of holograms as a digital production technology in the Concert

108. To assess whether the Agreement allows the use of holograms requires an interpretation of Article 3.1.1, which provides that "*Aurora may employ stage, sound, lighting, visual, digital or other production technologies.*"³² Pursuant to Article 4.1 and 4.3 of the Principles, the term "*digital*" must be interpreted in the Parties' common intention, with consideration of their preliminary negotiations.³³

³² Agreement, Article 3.1.1.

³³ Principles, Article 4.1 and 4.3(a).

109. In their negotiations, Ye Bin on Respondent's side said "*AI-assisted analysis and digital modelling*" are used to ensure consistency, to which Choi and Kim on Claimant's side agreed, stating that the practice is common and used in a lot of shows recently.³⁴ The Tribunal should take this as a reasonable ground that the Parties have shown a common intention in their negotiations to extend the scope of "*digital*" to digital modelling technologies, including holograms.
110. Therefore, the written Agreement allowed the use of hologram as a digital production technology in connection with the concert.

II. The hologram lived up to industry standards and audience expectations for a live concert

111. Article 3.1.1 also provides that the concert has to satisfy "*generally accepted industry standards and reasonable audience expectations*" for a live music concert.³⁵ An interpretation of this term would result that (a) the Respondent has fulfilled audience expectations and industry standards with the hologram. Moreover, (b) the speculations circulating online after the concert have no effect on the fulfilment of the requirements.

a. The Respondent has fulfilled audience expectations and industry standards with the hologram

112. Also in the common intention of the Parties, "*audience expectations*" can be interpreted through their negotiations.³⁶
113. With regard to audience expectations, in the negotiations, the Parties agreed that what the audience expects is the energy and the "vibe" felt during the performance, not the mechanics.³⁷ It follows that the audience's expectation is about their own experience in the concert, not about human authenticity or the existence of a hologram replacement.

³⁴ Exhibit 1, page 3.

³⁵ Agreement, Article 3.1.1.

³⁶ Principles, Article 4.3(a).

³⁷ n 34.

114. The Respondent submits that this expectation has been met. The concert was filled with fan chants and the hologram was consumed enthusiastically by the crowd.³⁸ Throughout the concert, there was no report of disruption, dissatisfaction, or irregularity with regard to the performance or the absence of any member of ECLIPSE.³⁹
115. With regard to industry standards, the Tribunal should take into account the facts that leading companies in the R-Pop industry have increasingly integrated holographic technologies into performance preparation, that the one-off concert of the Respondent featuring holographic renditions of an old R-Pop group received widespread acclaim, and that holographic technology is considered by many to enrich audience experience without undermining artistic authenticity.⁴⁰ These facts show that the use of holograms in concerts should be considered an industry norm.
116. Therefore, the use of hologram in the concert by the Respondent meets the requirement about audience expectations and industry standards for a live concert.

b. The speculations circulating online after the concert have no effect on the fulfilment of the requirements

117. The Respondent acknowledges that there were speculations and dissatisfaction after a video analysing the hologram footage was released on RooTube.⁴¹ However, as proven above, audience expectation is about the energy felt during the concert, not the mechanics. Meanwhile, the footage analysis only emerged several days after the concert and only pointed out details lasting less than a second, imperceptible in real time to the audience.⁴²

³⁸ Moot problem, ¶48.

³⁹ Moot problem, ¶49.

⁴⁰ Moot problem, ¶¶11, 16, 17.

⁴¹ Moot problem, ¶¶55-56.

⁴² Moot problem, ¶54.

Most importantly, the concert still successfully delivered the energy expected by the audience.⁴³

118. Therefore, the Tribunal should not regard the speculations arising from the footage analysis as grounds that the Respondent's hologram does not satisfy "*audience expectations*" under the Agreement.

B. The deployment of the hologram was to deal with the hardship posed by Luna's mental situation to ensure the concert's success

119. Luna's unexpected situation caused hardship for the Respondent in conducting the concert. Under Article 6.2.3 of the Principles, the Respondent is entitled to request renegotiation to adapt to the hardship.⁴⁴
120. The Respondent submits that the hologram was a legitimate measure to deal with Luna's situation, because **(I)** Luna's situation constituted hardship for the Respondent and **(II)** the Parties renegotiated and agreed to deploy the hologram to overcome the hardship.

I. Luna's situation constituted hardship for the Respondent

121. Under Article 6.2.2 of the Principles, hardship is defined as an event fundamentally altering the equilibrium of the contract because the cost of a party's performance has increased or the value of performance a party receives has diminished, together with four conditions: the events occur or become known to the disadvantaged party after the conclusion of the contract; the events could not reasonably have been taken into account by the disadvantaged party at the time of the conclusion of the contract; the events are beyond the

⁴³ Moot problem, ¶¶48, 53.

⁴⁴ Principles, Article 6.2.3; PICC commentary, 223.

control of the disadvantaged party; and the risk of the events was not assumed by the disadvantaged party.⁴⁵

122. The Respondent submits that Luna's situation constituted hardship for the Respondent because (a) Luna's situation only occurred after the conclusion of the Agreement; (b) Luna's situation was beyond the Respondent's control; (c) Luna's situation could not reasonably have been taken into account by the Respondent upon conclusion of the Agreement; (d) the Respondent could not have assumed the risks of Luna's situation happening; and, therefore, (e) the Respondent had to exercise greater effort to perform the Agreement and realize the concert.

a. Luna's situation only occurred after the conclusion of the Agreement

123. The contract was concluded on January 7th, 2026,⁴⁶ while Luna only fell into psychological distress and refused to perform after January 24th,⁴⁷ more than two weeks afterwards. Therefore, Luna's situation only occurred after the conclusion of the Agreement.

b. Luna's situation was beyond the Respondent's control

124. After the incidents occurred a few days, Luna was informed to be staying at her residence and firmly refused to attend the concert. There was no other way the Respondent could contact Luna but only through her mail and phone. In fact, through those means, the Respondent attempted to persuade her with additional security and alternative arrangements, but to no avail.⁴⁸ Essentially, the Respondent exhausted all possible measures to persuade her to perform but did not succeed. Therefore, Luna's situation was beyond the Respondent's control.

⁴⁵ Principles, Article 6.2.2.

⁴⁶ Agreement, Preamble.

⁴⁷ Clarification 15.

⁴⁸ Moot problem, ¶41.

c. Luna's situation could not reasonably have been taken into account by the Respondent upon conclusion of the Agreement

125. The Respondent acknowledges that, in the negotiations, the Parties agreed to ensure the security and safety of ECLIPSE at promotional activities.⁴⁹ However, this understanding of the Parties did not extend to events arising outside of, even resulting from, these promotional activities.

126. Here, even if the Parties could take into account the risk of security breaches at the fan meet-and-greet, there was no reasonable way they could have foreseen the subsequent aggravation, which is Luna's complicated mental distress and firm refusal to perform.

127. Therefore, Luna's situation could not reasonably have been taken into account by the Respondent upon conclusion of the Agreement.

d. The Respondent could not have assumed the risks of Luna's situation happening

128. When the risk was outside of a party's sphere of control, it cannot be considered that the risk was assumed by that party.⁵⁰ In other words, when a risk was already beyond a party's control, it cannot be expected that the party could still accept to bear its consequences.

129. Therefore, even if *arguendo* the Respondent could have taken into account Luna's situation, it could not have assumed that risk or accepted to bear its consequences, because Luna's situation was beyond the Respondent's control as proven above.

130. Therefore, the Respondent could not have assumed the risks of Luna's situation happening.

⁴⁹ Exhibit 1, page 2.

⁵⁰ PICC selected cases, Supreme Court of Spain (Case No 333/2014, 30 June 2014), Cherkasy Regional Commercial Court (Ukraine) (Case No 02/2625, 30 November 2009).

e. The Respondent had to exercise greater effort to perform the Agreement and realize the concert

131. Because of the circumstances above, the cost of the Respondent's performance of the Agreement has increased. The cost of performance is not necessarily an amount of money, but it can also refer to the effort taken to perform the Agreement.⁵¹
132. Here, in order to persuade Luna to perform at the concert, the Respondent had to take extra measures which, without Luna's situation, it would not have had to take: trying to contact Luna, mentally comforting Luna, arranging therapy sessions, allowing Luna temporary leave from rehearsals, offering Luna additional security and alternative arrangements, and, finally, deploying the hologram at the concert.⁵²
133. Hence, the cost of the Respondent's performance of the Agreement has increased due to Luna's situation, constituting a hardship for the Respondent.

II. The Parties renegotiated and agreed to deploy the hologram to overcome the hardship

134. To adapt to the hardship, Article 6.2.3 of the Principles allows the Respondent to request renegotiation with the Claimant, provided that the request is made without undue delay and indicates its grounds.⁵³ The Respondent submits that the Respondent requested renegotiation without undue delay and indicated the grounds of its request, and accordingly the Parties agreed to deploy the hologram to overcome the hardship.
135. When Luna refused to perform just three days before the concert on February 4th, Mr Jack on the Respondent's side informed and arranged an emergency meeting with the Claimant immediately the next day, February 5th, citing Luna's refusal to perform and the imminent date of the concert and proposing proceeding with the concert by deploying a holographic

⁵¹ PICC commentary, 219.

⁵² Moot problem, ¶¶38-43.

⁵³ Principles, Article 6.2.3.

replacement of Luna.⁵⁴ Therefore, the Respondent has made the request for renegotiation without undue delay and indicated its grounds in accordance with Article 6.2.3 of the Principles.

136. In response to the Respondent's proposal, the Claimant ultimately agreed to proceed on the condition that the hologram remains strictly confidential, despite initial objections.⁵⁵ Here, the Parties successfully renegotiated and agreed to deploy the hologram in place of Luna.

137. Therefore, the Respondent's deployment of the hologram is a measure that the Parties have agreed on to overcome the hardship posed by Luna's situation.

C. Even assuming *arguendo* the deployment of the hologram constituted the Respondent's non-performance, it is excused under Article 8 of the Agreement

138. Even *arguendo* in case the hologram deployment constitutes the Respondent's non-performance, this non-performance does not constitute a breach of the Agreement, because it is excused under Article 8 of the Agreement on force majeure. In particular, **(I)** the list of force majeure circumstances in Article 8 of the Agreement does not exclude Luna's mental situation and **(II)** Luna's situation has satisfied the conditions so that the Respondent's resulting non-performance, if any, is excused by force majeure.

I. The list of force majeure circumstances in Article 8 of the Agreement does not exclude Luna's mental situation

139. Article 8 of the Agreement provides that the Parties shall not be liable for any failure to perform due to events beyond their reasonable control, including acts of God, natural

⁵⁴ Moot problem, ¶¶42, 43; Additional Clarification 3.

⁵⁵ Moot problem, ¶44.

disasters, war, civil unrest, riots or government actions rendering performance impossible.⁵⁶

140. On the surface, this provision apparently excludes Luna's refusal to perform from the list of force majeure circumstances. However, the term "including" is understood as "without limitation".⁵⁷

141. It follows that the circumstances listed in Article 8 are not exhaustive and do not necessarily exclude Luna's situation. Therefore, Luna's situation may be considered force majeure under Article 8 if it satisfies the requirements under the Principles.

II. Luna's situation has satisfied the conditions so that the Respondent's resulting non-performance, if any, is excused by force majeure

142. Article 7.1.7 of the Principles sets out conditions to excuse non-performance due to force majeure: *first*, non-performance was due to an impediment beyond the Respondent's control; *second*, the Respondent could not reasonably have taken the impediment into account upon conclusion of the Agreement or to have avoided its consequences; and *third*, the Respondent also has to give notice to the Claimant of the impediment and its effect on performance.⁵⁸

143. The Respondent submits that the first and second conditions correspond to the requirements on control, consideration, and assumption of risk in hardship and have been proven in that part. The Respondent now examines the third condition about notice to the Claimant.

⁵⁶ Agreement, Article 8.

⁵⁷ Agreement, Article 1.3.

⁵⁸ Principles, Article 7.1.7(1) and 7.1.7(3).

144. Following Luna's firm refusal to perform, the Respondent has immediately informed the Claimant of the situation on February 5th and proposed using a holographic replacement of Luna.⁵⁹ This shows that the Respondent has duly given notice to the Claimant of Luna's situation and the replacement of Luna with her hologram.
145. Therefore, with three conditions satisfied, Luna's situation is a force majeure, excusing the Respondent's non-performances, if any.

⁵⁹ Moot problem, ¶¶42, 43.

ISSUE 4: THE RESPONDENT'S COUNTERCLAIM SHOULD BE GRANTED

146. Pursuant to Article 33.3 and Article 36 of the AIAC Rules, the Tribunal should grant the Respondent's counterclaim.

A. Without prejudice to the Respondent's primary position, should the Tribunal determine that it has jurisdiction over the present dispute, such jurisdiction extends to the Counterclaim

147. In accordance with Article 26.2 of the AIAC rule, should the Tribunal determine that it has jurisdiction over the present dispute, it necessarily has jurisdiction over Respondent's Counterclaim as: (i) The Claimant's own position necessarily accepts the Tribunal's authority over the Counterclaim; and (ii) excluding the Counterclaim would adopt an unduly formalistic approach inconsistent with the efficient administration of justice.

I. The Claimant's own position necessarily accepts the Tribunal's authority over the Counterclaim

148. Under the AIAC Rules, a plea that the Tribunal lacks jurisdiction over a counterclaim must be raised no later than the defence to the counterclaim.⁶⁰

149. It seems that Claimant showed its acceptance of the Tribunal's authority to determine the Counterclaim. Had Claimant genuinely considered that the Tribunal lacked jurisdiction over the Counterclaim, it would have raised a timely jurisdictional objection in accordance with the AIAC Rules. In fact, Claimant advanced only merits-based and procedural arguments, instead of contending that the Tribunal lacked jurisdiction to hear Respondent's counterclaim.⁶¹

⁶⁰ AIAC Rules, Rule 26.2.

⁶¹ Moot problem, ¶¶70.

150. Accordingly, if the Tribunal accepts Claimant's argument that the Parties consented to arbitration through Respondent's conduct, such consent was not limited to Claimant's affirmative claims.

II. Excluding the Counterclaim would adopt an unduly formalistic approach inconsistent with the efficient administration of justice

151. Finally, excluding Respondent's counterclaim from the scope of the Tribunal's jurisdiction would constitute an unduly formalistic approach. Claimant's claims and Respondent's counterclaim arise from the same Concert Agreement, involve the same Parties, and are grounded in the same factual matrix.

152. This concern was recognised in ICC Case No 5971,⁶² where the tribunal emphasised that an excessively formalistic approach to closely connected claims may deny justice to the parties.

B. The counterclaim should be granted as it has strong legal merit

153. The Counterclaim has strong legal merit. First, as a preliminary matter, Respondent did not breach the Agreement. Secondly, even if the Tribunal finds that Respondent committed a non-performance, the Counterclaim should nevertheless be granted because (i) the non-performance was not fundamental; (ii) in any event, Claimant's obligations to pay the Performance Fee and calculate the Royalties had already accrued before any termination took effect; and (iii) the additional promotional fees, although not expressly specified in the Agreement, were separately agreed by the Parties.

⁶² ICC Case No 5971 in Alexander.

I. As a preliminary matter, Respondent maintains that its use of hologram technology did not constitute a breach of the Agreement

154. As demonstrated in issue 3, Respondent acted consistently with the Parties' contractual arrangements and the commercial purpose of the Concert. Consequently, Claimant had no contractual basis to terminate the Agreement.

155. Because the Agreement remained valid and binding, Claimant was required to perform its payment obligations in accordance with its terms.

II. In the alternative, and without prejudice to the Respondent's primary position, should the Tribunal find the Respondent's action constitute a non-performance, the Counterclaim must still be granted

a. The non-performance should not be deemed as a fundamental non-performance

156. Under the UNIDROIT Principles, in determining whether a non-performance is fundamental, the Tribunal must take into account whether the aggrieved party's termination would cause the non-performing party disproportionate harm.⁶³

157. In the present case, the Concert had already been successfully held, Respondent had substantially performed its obligations, and Claimant had received the commercial benefits contemplated by the Agreement, including the promotion and exploitation of the Concert. By contrast, permitting termination would deprive Respondent of the Promotional Activities Fee and Royalties arising from a performance that had already been rendered. Such a result would impose a manifestly disproportionate loss on Respondent relative to the alleged breach.

⁶³ Principles, Article 7.3.1(e).

158. This approach is consistent with the common law principle of substantial performance, as recognised in *Hoenig*. In that case, the Court of Appeal held that where a party has substantially performed its contractual obligations, minor defects do not justify depriving that party of the contract price altogether.⁶⁴ The underlying rationale is to prevent an unjust forfeiture where the performing party has already conferred the substantial benefit of the bargain.

159. Likewise, allowing the Claimant to terminate at that stage would deprive Respondent entirely of the Promotional Activities Fee and Royalties despite its substantial performance, resulting in a manifestly disproportionate and inequitable loss.

160. Accordingly, the alleged non-performance cannot be characterised as fundamental, and Claimant was not entitled to terminate the Agreement.

b. If there is a lawful termination, the Claimant's duty to pay performance fee and make a royalties calculation had arisen before such termination

161. Claimant's obligation to pay subjects to "the performance of the Concert".

162. In intellectual property scholarship, a live performance and its subsequent recording are regarded as two distinct subject matters. A performance is understood as an event occurring at a specific time and place, which, once concluded, exists only in the memory of those who directly witnessed it. A recording is therefore not the performance itself, but its fixation, thereby distinguishing the audience of a live performance from viewers of a subsequent recording.⁶⁵

163. The Agreement defines the "Concert" as "the live performance of the Act," including rehearsals, soundchecks, and related appearances. Respondent's performance must be

⁶⁴ *Hoenig*, 180.

⁶⁵ Jansen, 5.

assessed against the contractual standard agreed upon by the parties - the live performance itself. The relevant inquiry is therefore whether the Concert, as experienced by the live audience at the National Stadium, satisfied the contractual requirements.

164. Therefore, nothing in the Agreement suggests that the contractual standard for performance is to be evaluated through later recordings or social media footage. Meanwhile, the holographic performance appeared authentic and successful in an audience's perspective.⁶⁶
165. Under the Agreement, Claimant's obligation to pay the Performance Fee and calculate the Royalties was also made "subject to further confirmation."⁶⁷
166. In practice, however, Claimant's conduct constituted that confirmation. By publicly celebrating the Concert's success, promoting the quality of the performance, and continuing to enjoy the financial benefits arising from the event, Claimant unequivocally acknowledged that the Concert had been satisfactorily performed.⁶⁸
167. In practice, contractual "confirmation" need not always be expressed. It may be inferred from a party's objective conduct. In *Miller*, the court considered that the defendants' continuous supervision of the work, their failure to raise any objection throughout the performance, and their subsequent acknowledgment that the work complied with the contractual requirements objectively demonstrated that they had accepted the contractor's performance.⁶⁹
168. Accordingly, where a party consistently behaves as though the other party's performance has been accepted, such conduct may constitute acceptance even in the absence of an express statement or formal written confirmation.

⁶⁶ Moot problem, ¶49.

⁶⁷ Agreement, Article 5.

⁶⁸ Moot problem, 50.

⁶⁹ *Miller*, 7.

169. From that moment, Claimant's obligations to pay the Performance Fee and calculate the Royalties accrued and became enforceable. Any subsequent termination of the Agreement could not extinguish those payment obligations, as they had already arisen prior to such termination.⁷⁰

c. The fees not expressly specified in the Agreement were reasonably incurred and must be paid by the Claimant

170. During exchanges, Respondent informed Claimant that the promotional activities would incur additional charges, and Claimant's representative expressly acknowledged and accepted that such activities were fee-based.⁷¹

171. Under Article 1.2 Principles, contractual agreements are not required to be concluded in any particular form and may be established through any means. Accordingly, the Parties' online communications are sufficient to evidence Claimant's agreement that the promotional activities would be subject to additional charges.

⁷⁰ Principles, Article 7.3.5(1).

⁷¹ Exhibit 1, page 4.

PRAYERS FOR RELIEF

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

- I. The *forum non conveniens* lies in the court;
- II. The Tribunal should grant the Respondent's order for security for costs;
- III. The Respondent's deployment of a holographic replacement does not constitute a breach of the Agreement; and
- IV. The Respondent's counterclaim ought to be granted.