SK2606-R

21ST LAWASIA INTERNATIONAL MOOT COURT COMPETITION 2026

ASIAN INTERNATIONAL ARBITRATION CENTRE

BETWEEN

NOVA LIVE ASIA PTE LTD ……………………………………………………………**CLAIMANT**

and

AURORA ENTERTAINMENT CO. LTD ………………………………………………**RESPONDENT**

MEMORIAL *for* RESPONDENT

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STATEMENT OF JURISDICTION

The CLAIMANT (NOVA) has submitted the dispute to the Asian International Arbitration Centre ("AIAC"), pursuant to the Rule 1.1(a) of Arbitration Rules, 2023 of the AIAC which states:

"1.1. Where the Parties have agreed in writing, by an arbitration agreement or otherwise, to refer their dispute to arbitration in accordance with the AIAC Arbitration Rules, then: (a) such dispute shall be settled or resolved by arbitration in accordance with the AIAC Arbitration Rules."

The RESPONDENT contests the jurisdiction of this Tribunal, all of which is urged in detail in the written submission and is submitted most respectfully.

QUESTIONS PRESENTED

[ISSUE -1]

WHETHER THE FORUM NON CONVENIENS LIES IN THE COURT PROCEEDING OR ARBITRATION?

[ISSUE -2]

WHETHER AN ORDER FOR SECURITY FOR COSTS OUGHT TO BE GRANTED?

[ISSUE -3]

WHETHER AURORA'S DEPLOYMENT OF A HOLOGRAPHIC REPLACEMENT CONSTITUTED A BREACH OF THE AGREEMENT?

[ISSUE -4]

WHETHER AURORA'S COUNTERCLAIM OUGHT TO BE GRANTED?

STATEMENT OF FACTS

PARTIES

1. Aurora Entertainment Co. Ltd. (hereinafter "Aurora" and **RESPONDENT**) depending on the issue) is a leading entertainment company incorporated in Reyna, renowned for its use of artificial intelligence and holographic technology in developing and managing R-Pop artists. Nova Live Asia Pte Ltd. (hereinafter "Nova" and **CLAIMANT**) is an international concert promoter incorporated in Reyna, specializing in organizing large-scale music events across Asia. Aurora manages the globally acclaimed R-Pop group ECLIPSE, while Nova sought to organize ECLIPSE's first stadium concert in Reyna.

THE CONCERT PROMOTION AGREEMENT

2. Following negotiations in January 2026, Aurora and Nova executed a Concert Promotion and Performance Agreement governed by the UNIDROIT Principles of International Commercial Contracts (2016). The Agreement appointed Nova as the exclusive concert promoter and required Aurora to procure ECLIPSE's performance at the National Stadium on 7 February 2026. Owing to the compressed timeline, the Agreement omitted any dispute resolution clause, although the parties' previous collaborations had consistently referred disputes to arbitration under the AIAC Arbitration Rules.

ENSUING EVENTS

3. Approximately two weeks before the concert, one of ECLIPSE's members, Im Luna, was physically assaulted by an overzealous fan during a promotional event. The incident caused severe psychological distress, rendering Luna unwilling to perform despite therapy and repeated assurances from Aurora. Three days before the concert, Aurora informed Nova that

Luna refused to appear and proposed replacing her with an AI-generated holographic replica capable of reproducing her voice, choreography, expressions and stage presence. Although Nova initially objected on authenticity grounds, it ultimately consented on the express condition that the use of holographic technology remain strictly confidential.

4. The concert proceeded on schedule using the holographic rendering of Luna. Neither the audience nor industry observers detected the substitution, and the performance was widely celebrated as a commercial success. Aurora subsequently issued an invoice of USD 3.6 million and sought payment together with an accounting of concert revenues for royalty computation. Several days later, however, online speculation emerged after a minor visual glitch in the concert footage prompted allegations that Luna had been replaced by a hologram. Nova thereafter withheld payment, asserting that Aurora had fundamentally breached the Agreement by failing to provide a genuine live performance.

DISPUTE BETWEEN THE PARTIES

5. Nova terminated the Agreement and commenced arbitration, claiming USD 2.2 million in damages on the basis that the Agreement contemplated live performances by all five members of ECLIPSE and that Aurora's unilateral deployment of AI-generated holographic technology constituted a fundamental contractual breach. Aurora disputed both the alleged breach and the tribunal's jurisdiction, arguing that the parties had never concluded a binding arbitration agreement because the written Agreement contained no arbitration clause. Nevertheless, Aurora filed a counterclaim without prejudice to its jurisdictional objections, seeking payment of the outstanding invoices and royalties.

6. Aurora additionally sought security for costs of USD 2 million after learning of allegations that Nova was experiencing serious financial difficulties and had delayed payments to other

entertainment agencies. Nova opposed the application, contending that it remained financially solvent and that Aurora's participation in arbitration amounted to acceptance of the tribunal's jurisdiction. Simultaneously, Aurora instituted court proceedings to recover the unpaid invoices, while Nova sought a stay of those proceedings on the ground that the dispute was subject to mandatory arbitration. The Reyna High Court granted a stay pending determination by the arbitral tribunal.

SUMMARY OF PLEADINGS

I. THE REYNA HIGH COURT HAS JURISDICTION OVER THE PRESENT DISPUTE.

The RESPONDENT submits that this Tribunal lacks jurisdiction as no valid arbitration agreement exists between the parties. The governing law of the Agreement extends to the arbitration clause, and neither the parties' prior dealings nor their conduct establishes a binding agreement to arbitrate under the AIAC Rules. Even if such an agreement is assumed to exist, the Reyna High Court remains the more appropriate forum because the dispute, parties, evidence, and contractual performance are predominantly connected with Reyna. The Respondent's participation in these proceedings has consistently been under protest and does not constitute submission to the Tribunal's jurisdiction.

II. THE RESPONDENT IS ENTITLED TO SECURITY FOR COSTS.

The RESPONDENT submits that security for costs is warranted to safeguard its ability to recover costs in the event of success. The AIAC Rules confer broad discretion to grant such interim relief where justified. The Respondent has established a credible risk of non-recovery through evidence of the CLAIMANT'S deteriorating financial position, while the CLAIMANT has failed to produce any convincing evidence of solvency. The amount sought is proportionate to the anticipated costs of this arbitration and does not unjustifiably restrict the CLAIMANT'S access to justice.

III. AURORA DID NOT BREACH THE AGREEMENT.

The RESPONDENT submits that the Agreement permitted the use of digital production technologies and did not require the physical presence of every performer in all circumstances. The holographic performance was adopted only after consultation with, and approval by, the CLAIMANT, who observed the rehearsal, proceeded with the concert, and publicly celebrated its success. Aurora acted in good faith to address an unforeseen crisis and delivered the concert in accordance with commercial expectations. Even if some technical non-performance is found, it does not amount to a fundamental breach capable of justifying termination. The CLAIMANT is further estopped from alleging breach after approving and benefiting from the performance.

IV. THE RESPONDENT'S COUNTERCLAIM SHOULD BE GRANTED.

The RESPONDENT submits that it fully performed its contractual obligations and is therefore entitled to payment of the outstanding Performance Fee and royalties. Alternatively, the doctrine of substantial performance entitles the Respondent to the contract price, subject only to any proven deduction, which the CLAIMANT has failed to establish. The CLAIMANT cannot retain the commercial benefits of the sold-out concert while refusing payment. Accordingly, the Respondent's counterclaim should be allowed in full, together with royalties, costs, and all consequential relief.

PLEADINGS

I. THE REYNA HIGH COURT IS THE FORUM THAT HAS JURISDICTION OVER THE CURRENT DISPUTE.

1. Aurora's case rests on two independent grounds. First, no valid arbitration agreement ever bound Aurora to AIAC arbitration [**A**]. Second, even assuming one existed, the Reyna High Court remains the more appropriate forum [**B**]. Aurora has taken part in this arbitration only under continuing protest, and that protest forecloses any argument that it has submitted to this Tribunal's jurisdiction.

A. THERE IS NO VALID ARBITRATION AGREEMENT BINDING AURORA TO AIAC ARBITRATION.

i. Kompetenz-Kompetenz does not oust the courts' supervisory role.

2. Nova has the right to ask this Tribunal to rule on its own jurisdiction first.[1] However, that ruling is not final and is subject to review.

3. Article 16(3) of the Model Law preserves the courts' power to make the final call on whether an arbitration agreement exists, as does the Malaysian Arbitration Act 2005.[2] The principle of competence-competence pertains to self-determination of the tribunal for its good standing to hear the matter, not about who has the last word.

4. A tribunal may decide its own jurisdiction "for its own purposes." However, a court asked to enforce or support resolution of the dispute can, and sometimes must, reach its own view.[3]

[1] UNCITRAL Model Law on International Commercial Arbitration (adopted 21 June 1985, amended 7 July 2006) (UNCITRAL Model Law) art 16. (1); Arbitration Act 2005 (Malaysia) s 18(1).
[2] UNCITRAL Model Law 16(3); Arbitration Act 2005 (Malaysia) ss 18(8)–(9).
[3] *Dallah Real Estate and Tourism Holding Co v Ministry of Religious Affairs, Government of Pakistan* (2010) UKSC 46.

Consent to arbitrate is a question for ordinary judicial determination.[4] It cannot be manufactured by the tribunal's own say-so. Therefore, the Reyna High Court was entitled to examine whether Aurora ever consented to AIAC arbitration.

ii. <u>The governing law of the Agreement extends to the arbitration clause.</u>

5. Determination of the governing law's extension to the arbitration clause is tested by a three-stage hierarchy: express choice, then implied choice, then closest connection.[5] Applied properly, this test resolves the case at the first stage against Nova.

a. The choice of UNIDROIT PICC extends to the arbitration clause.

6. A general choice-of-law clause normally governs the arbitration clause in the same contract.[6] This extends to when the arbitration clause is silent, and where a different seat is named. Separability affects validity. It does not disturb this starting presumption.[7]

7. An argument that UNIDROIT PICC governs "substantive rights only" inverts the analysis. The Parties made one choice of governing rules for the entire Agreement which necessarily extends to the dispute resolution clause. The Agreement contains no separate choice-of-law provision for arbitration, and nothing displaces that presumption.

8. It is contended that UNIDROIT PICC cannot itself serve as a *lex arbitri*.[8] This confirms that no valid choice of national arbitration law can be drawn from this Agreement, which removes the anchor Nova needs for its implied-incorporation argument at the next stage.[9]

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[4] *Dallah*, (30)–(31) (Lord Mance).
[5] *Enka Insaat Ve Sanayi AS v OOO Insurance Company Chubb* (2020) UKSC 38, (170)–(176).
[6] *Kabab-Ji SAL v Kout Food Group* (2021) UKSC 48, (35)–(39).
[7] Kabab-Ji, ¶40–45; cf *Sulamérica CIA Nacional de Seguros SA v Enesa Engenharia SA* (2012) EWCA Civ 638, (26)–(31).
[8] Gary B Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) 489–91.
[9] UNIDROIT Principles of International Commercial Contracts 2016 arts 1.1, 1.9; *Kabab-Ji* (n 6) (45)–(48).

b. No implied incorporation of AIAC Rules arises from prior dealings.

9. Nova must show a "consistent prior practice" of submitting disputes to AIAC arbitration.[10] In *Habas Sinai v VSC Steel*, it is maintained that a sustained and unbroken course of dealing is required, under near-identical clauses, across numerous contracts within the same relationship.[11] A thin, disputed run of past communications does not fulfil this requirement.

10. The rational-businessmen presumption operates only once the parties have actually agreed to arbitrate; it presupposes the very thing in dispute.[12] The presumption construes an existing clause and does not manufacture a clause from conduct that falls short of clear agreement.

11. Article 7(5) applies only where one party alleges an arbitration agreement and the other fails to deny it.[13] Aurora denied any AIAC arbitration agreement at the earliest opportunity. There is no unrebutted allegation to invoke, and no recorded course of conduct in any retrievable form, as Article 7(3) separately requires.[14]

c. In arguendo, the closest-connection test does not favour Malaysia

12. The closest-connection test does not hand Malaysian rules an automatic win. The real inquiry is where the substance of the parties' relationship is actually centred.

13. That relationship, AI-generated performances and the royalty accounting that flows from it, was substantially performed and administered within Reyna. Malaysia's only connection is a seat clause whose very existence remains in dispute, and a contested seat carries little weight at this stage of the analysis.

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[10] *Habas Sinai Ve Tibbi Gazlar Istihsal Endustrisi AS v VSC Steel Company Ltd* (2013) EWHC 4071 (Comm).
[11] *Habas Sinai* (n 10) (107)–(111).
[12] P*remium Nafta Products Ltd v Fili Shipping Co Ltd* (2007) UKHL 40.
[13] UNCITRAL Model Law, art 7(5).
[14] UNCITRAL Model Law, art 7(3).

B. ARGUENDO, A VALID ARBITRATION AGREEMENT EXISTS, THE REYNA HIGH COURT IS THE MORE APPROPRIATE FORUM.

14. In the case where this Tribunal finds that a valid arbitration agreement existed, it is contended that the Reyna High Court is the natural forum [i], Aurora is not estopped from challenging the Tribunal's jurisdiction [ii], and there was no mandatory requirement for the parties to arbitrate [iii].

i. The Reyna High Court is the natural forum.

15. The test to determine the correct forum asks where the dispute has its most real and substantial connection, [15] measured against the parties, the witnesses, the evidence, and the law most closely tied to the facts.[16]

16. Every one of those factors points to Reyna. The witnesses, the business records, and the royalty accounts all sit within Reyna's jurisdiction. Malaysia's only connection is a disputed seat clause, and a disputed connecting factor cannot be treated as settled or holding weight.

17. Commercial certainty does not rescue Nova's position either. There must be a "strong cause" for displacing a forum the parties actually agreed to,[17] which presupposes an agreement to displace. It cannot manufacture one and then use that same manufactured agreement to escape scrutiny.

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[15] *Spiliada Maritime Corp v Cansulex Ltd* (1987) AC 460 (HL).
[16] *The Eleftheria* (1970) P 94, 99–100; *Rickshaw Investments Ltd v Nicolai Baron von Uexkull* (2007) 1 SLR(R) 377, (42)–(45).
[17] *Donohue v Armco Inc* (2001) UKHL 64, (24).

ii. <u>There was no mandatory obligation to refer the Parties to arbitration.</u>

18. Under Article 8(1) of the Model Law, Courts need not refer parties to arbitration where the agreement is "null and void, inoperative or incapable of being performed."[18] The Malaysian Arbitration Act 2005 says the same.

19. If Aurora never gave valid consent, the agreement is null and void for want of consent, and the mandatory referral duty never arises in the first place. Article 8(1) cannot compel referral to a process whose very existence is the question the parties are disputing.

20. In the further alternative, an arbitration agreement can also be incapable of performance where a condition precedent has not been met. A dispute-resolution clause may be premature until earlier agreed steps are completed.[19] Aurora reserves the right to rely on this if the record discloses any such unmet precondition.

21. Whichever route this Tribunal takes the governing-law hierarchy, the forum test, Article 16(2) of the Model Law, or the Article 8(1) exception- the destination is the same. No valid arbitration agreement binds Aurora on Nova's terms, and the Reyna High Court remains the proper forum for this dispute.

II. SECURITY FOR COSTS SHOULD BE GRANTED.

22. Security for costs is a routine exercise of a tribunal's remedial discretion [**A**]. Aurora has produced credible, corroborated evidence of a risk that any costs award in its favour would go unpaid [**B**]. And granting security would only protect the value of a costs award Aurora may well obtain, in an amount that is itself proportionate [**C**].

[18] UNCITRAL Model Law, art 8(1); Malaysian Arbitration Act 2005, s 10.
[19] *Channel Tunnel Group Ltd v Balfour Beatty Construction Ltd* (1993) AC 334 (HL).

A. <u>SECURITY FOR COSTS FALLS WITHIN THIS TRIBUNAL'S DISCRETION, AND SHOULD BE EXERCISED HERE.</u>

23. Rule 16.1 of the AIAC Arbitration Rules 2021 lets this Tribunal order "any interim measures it deems necessary or appropriate."[20] This language provides broad discretion to the Tribunal without any preconceived conditions or exceptions.

24. Where a tribunal's discretion is left general, as it is here, it should be exercised on ordinary principles: necessity, appropriateness, and fairness to both sides.

25. A three-member tribunal, applying the very "exceptional circumstances" standard, ordered security once credible evidence of financial risk was proved.

B. <u>AURORA HAS ESTABLISHED A REAL AND CREDIBLE RISK OF NOVA'S NON-RECOVERY.</u>

i. <u>The threshold does not require proof of insolvency.</u>

26. A tribunal need not find that a CLAIMANT is presently insolvent. It need only have "reason to believe" that a costs order might go unpaid, assessed against the whole of the circumstances.[21] The classic multi-factor test asks: is the claim genuine, would security unfairly stifle it, and did the RESPONDENT cause the CLAIMANT'S financial trouble.[22] None of that requires certainty only a fair, evidence-based view of risk.

ii. <u>Aurora's evidence goes beyond speculation</u>

27. Aurora accepts that unverified rumour, standing alone, would not suffice. But the material before this Tribunal is not rumour standing alone. It is corroborated by independently

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[20] AIAC Arbitration Rules 2021, Rule 16.1; AIAC Arbitration Rules 2023, Rule 8; AIAC Arbitration Rules 2026, Rule 11.1.

[21] *Sir Lindsay Parkinson & Co Ltd v Triplan Ltd* (1973) QB 609 (CA).

[22] *Keary Developments Ltd v Tarmac Construction Ltd* (1995) 3 All ER 534 (CA), 539–540 (Peter Gibson LJ).

observable signs of Nova's deteriorating financial position, and taken together, that evidence moves well past speculation.

28. Amended ICSID Rule 53 tells tribunals to weigh "all relevant circumstances," including third-party funding.[23] That rule exists because such circumstances matter when considered together, not in isolation.

iii. <u>The burden now shifts to.</u>

29. Once a RESPONDENT shows a genuine, evidenced basis for doubting recovery, the burden shifts. The CLAIMANT must then show it can actually raise the money from shareholders, directors, or elsewhere.[24]

30. Nova has made no attempt to meet that burden. It has offered no audited accounts, no evidence of related-party support, nothing beyond a bare assertion of solvency. On Nova's own authorities, that falls short.[25]

C. <u>GRANTING SECURITY WOULD NOT IMPEDE ACCESS TO JUSTICE, AND THE AMOUNT SOUGHT IS PROPORTIONATE.</u>

i. <u>A properly evidenced order protects the proceedings, not just Aurora.</u>

31. A tribunal that declines to protect a RESPONDENT'S ability to recover its costs risks a different injustice altogether: a RESPONDENT that wins the case yet is left to bear its own bill.[26] Access

[23] ICSID Arbitration Rule 53 (2022).
[24] *Goldtrail Travel Ltd v Onur Air Tasimacilik AS* (2017) UKSC 57, (18).
[25] *Keary Developments* (n 28).
[26] *Sir Lindsay Parkinson v Triplan* (n 27) 626 (Lord Denning MR).

to justice matters for both sides here, not Nova alone. An order that simply ensures Aurora is not left out of pocket does not stifle Nova's claim.[27]

ii. The amount sought matches the anticipated costs of this proceeding.

32. The amount reflects a reasoned estimate of Aurora's likely defence costs, given the complexity of this dispute, cross-border royalty accounting, the valuation of AI-generated performances, and detailed expert evidence.[28]

33. The ICC Commission's guidance says a costs figure is disproportionate only where it is "wholly" out of step with the necessary costs of defence.[29] A considered estimate tied to the real scale of this dispute does not meet that description.

34. For these reasons, Aurora has established a credible, corroborated risk of non-recovery. The discretion to order security is properly engaged, and the amount sought is proportionate. This Tribunal should grant Aurora's application for security for costs.

III. AURORA'S DEPLOYMENT OF THE HOLOGRAPHIC REPRESENTATION OF IM LUNA DID NOT CONSTITUTE A BREACH OF THE AGREEMENT

35. It is submitted that Aurora did not breach the Agreement. *First*, on its proper interpretation, the Agreement did not impose an absolute obligation of unmediated physical presence by every member of the Act, and expressly permitted the technology that Aurora in fact used [**A**]. *Second*, and in any event, Aurora's response to Im Luna's sudden incapacity was a good faith, cooperative exercise of its obligations, undertaken jointly with Nova, and not a unilateral

[27] *Keary Developments* (n 28); *Goldtrail Travel* (n 32).
[28] ICC Commission on Arbitration and ADR, *Report on Decisions on Costs in International Arbitration* (ICC Publication, 2015).
[29] ICC Commission Report (n 36), citing Zivilprozessordnung (German Code of Civil Procedure) § 1057(1).

concealment [**B**]. *Third*, even if the Tribunal were to find some technical non-performance, that non-performance falls well short of the fundamental non-performance that Nova would need to establish before it could lawfully terminate the Agreement [**C**]. *Fourth*, and independently, Nova is precluded by its own conduct from now asserting a breach that it approved, observed without objection, and publicly celebrated [**D**].

A. THE AGREEMENT DID NOT REQUIRE THE PHYSICAL PRESENCE OF EVERY MEMBER OF THE ACT, AND EXPRESSLY PERMITTED THE TECHNOLOGY AURORA USED.

i. The common intention of the parties and their conduct permits such exigent measures.

36. Article 4.1(1) UNIDROIT provides that a contract shall be interpreted according to the common intention of the parties.[30] Only where such an intention cannot be established does Article 4.1(2) fall back on the meaning that reasonable persons of the same kind as the parties would give the contract in the same circumstances.[31] In ascertaining the common intention, these considerations compound one another and point to a single, consistent intention in the present case.

37. Clause 3.1.1 of the Agreement required Aurora to procure a performance meeting "generally accepted industry standards and reasonable audience expectations for a live music concert of a similar scale and nature"[32] and expressly permitted Aurora, "in discharging such obligation", to "employ stage, sound, lighting, visual, digital or other production technologies in connection with the Concert." The standard is thus framed by reference to the delivered experience, not

[30] UNIDROIT Principles of International Commercial Contracts 2016 (UNIDROIT) arts 4.1(1).
[31] UNIDROIT arts 4.1(2).
[32] Moot Proposition, Agreement, Cl. 3.1.1.

the internal mechanics of delivery, and the means available to Aurora include an open, unqualified category, “digital or other production technologies”, containing no carve-out for performer representation. A holographic rendering is, on any ordinary reading, a species of “digital... production technology.”

38. The definition of “Act” names five specific members does not compel a different reading.[33] The named-member definition identifies the group as collective entity for contractual purpose, it does not specify that each member must be physically present on stage in all circumstances as read together with clause 3.1.

39. Clause 1.1 defines “Concert” as “the live performance of the Act”, but nowhere defines “live” as requiring the unmediated physical presence of every named member.[34] Read against clause 3.1.1, “live” is naturally understood to denote a performance delivered in real time before a contemporaneous audience, as distinct from a pre-recorded or delayed broadcast, which is precisely how the performance was delivered in fact.[35] This interpretation accords with commercial practice of holographiuc and AI-assited performances by named living artists have been commercially deployed and publicly accepted, most notably in ABBA Voyage where CGI “ABBAtars” perform in place of the living artists before the live audiences.[36] Furthermore, in the same industry where NOVA operates has therefore accepted “Live performance” by a named act may be technologically mediated without ceasing to constitute “Live performance” for contractual purposes.

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[33] Moot Proposition, Agreement, Cl. 1.1.
[34] Moot Proposition, Agreement, Cl. 1.1.
[35] Moot Proposition ¶47.
[36] Matthews, J., & Nairn, A. (2023). Holographic ABBA: Examining Fan Responses to ABBA’s Virtual “Live” Concert. *Popular Music and Society*, *46*(3), 282–303.

40. The pre-contractual exchange confirms this reading. Representatives disclosed Aurora's reliance on AI-assisted analysis and digital modelling in performance delivery, and Nova's representatives in turn acknowledged that such technology was common across the industry and that they had observed digital elements deployed in recent shows.[37] Nova's own Director of Sponsorship, Park, then articulated precisely the standard that clause 3.1.1 would go on to codify: "From an audience perspective, people come expecting the ECLIPSE experience... They don't analyse the mechanics. They just know if it feels right. It's the vibes, that is most important", and Aurora's Ye Bin agreed: "Alright I get it, it's the ECLIPSE concert experience. We can definitely deliver that".

41. It is acknowledged that these minutes were neither circulated to nor separately agreed by Nova as a document.[38] That qualification goes to the status of the minutes as a document, not to the reliability of their content: the minutes are recorded as an essentially verbatim,[39] contemporaneous account of what both parties in fact discussed, and are accordingly admissible and a reliable contemporaneous interpretive record for purposes of Article 4.3(a) of the preliminary negotiations that immediately preceded,[40] and that the parties expressly intended to "formalise" the written Agreement executed five days later.[41]

42. The parties' conduct after the Agreement was concluded points the same way. Nova's representatives observed a full rehearsal of the holographic rendering the day before the Concert and were "astonished by the reconstructive abilities" of the technology;[42] they raised

[37] Exhibit 1, Moot Proposition, ¶3.
[38] Clarifications to the Moot Problem, ¶11.
[39] Id.
[40] UNIDROIT arts 4.3(a).
[41] Exhibit 1, Moot Proposition, ¶5.
[42] Moot Proposition ¶45.

no objection that this mode of performance fell outside clause 3.1.1. Nova then proceeded to stage the Concert on that footing, and immediately afterwards described the event as a success on its own social media, praising "the energy of the group and the audience response".[43] Under Article 4.3(c),[44] this contemporaneous and unqualified acceptance is itself compelling evidence that both parties understood clause 3.1.1 to permit exactly the technology that was in fact used.

43. Article 4.3 UNIDROIT directs the Tribunal, in applying Article 4.1, to have regard to the preliminary negotiations between the parties,[45] their contract after the conclusion of the contract,[46] and the nature and purpose of the contract.[47] All three factors reinforce the same conclusion. The Agreement fixed a non-extendable performance date within a compressed timeline in which, as both parties recognised from the outset, "cancellation becomes... not really an option" and would risk "laying down the groundwork for (Nova's] downfall".[48] Nova's own representatives anticipated this kind of contingency: Kim observed that "in recent events, there's always something going on... We need to manage that. It is important for us that the concert goes on".[49] and Ye Bin confirmed that "we always plan contingencies in advance. We must discuss the what-ifs",[50] to which Choi added, "you adapt, or you cancel, and cancellation is the worst-case scenario".[51] A contract concluded on this shared understanding

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[43] Moot Proposition ¶50.
[44] UNIDROIT arts 4.1(2).
[45] UNIDROIT arts 4.3(A).
[46] UNIDROIT arts 4.3(c).
[47] UNIDROIT arts 4.3(d).
[48] Exhibit 1, Moot Proposition, ¶2.
[49] Exhibit 1, Moot Proposition, ¶3.
[50] Id.
[51] Id.

cannot sensibly be read to prohibit the very contingency mechanism, holographic substitution, that in fact delivered the non-cancellation outcome both parties required.

ii. <u>In arguendo, the common intention and conduct of the parties is insufficient; the same conclusion can be driven from the objective standard test.</u>

44. In the alternative, if the Tribunal is not satisfied that a common intention can be established on the material above, the same result follows from the objective standard in Article 4.1(2), if an act under Article 4.1(1) cannot be established. Article 4.3 directs regard to all the circumstances, cumulatively including the preliminary negotiations between the parties, the conduct of the parties after the conclusion of the contract, and the nature and purpose of the contract.

45. Aurora and Nova are commercial actors in the R-Pop industry. Nova is a leading concert promoter whose capabilities extend to staging a private performance for a presidential delegation,[52] and Aurora is a highly established player distinguished by its technological innovation and "an industry pioneer" whose advancements have "spurred smaller companies to explore sourcing overseas equipment" to replicate them.[53] A reasonable organiser in Nova's position would interpret Clause 3.1.1 to include holographic performance technology. Nova contracted with an Aurora agency that was known for its advanced technological capabilities.

46. Across the R-Pop industry, companies of all sizes were increasingly adopting AI technologies for idol training, particularly after Aurora's success,[54] before the contract was signed, Aurora also expressly referred to its "AI-assisted analysis and digital modelling",[55] would understand

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[52] Clarifications to the Moot Problem ¶4.
[53] Clarifications to the Moot Problem ¶3.
[54] Additional Clarifications to the Moot Problem ¶5.
[55] Supra n.9.

clause 3.1.1's reference to "digital... production technologies" to extend to holographic performance technology.

47. That reading is further supported by Article 35(3) of the UNCITRAL Arbitration Rules 2013 (AIAC Arbitration Rules, Part II), which directs the Tribunal, in deciding in accordance with the terms of the contract,[56] to take into account the usage of trade applicable to the transaction, here an industry where AI and digital performance technologies were increasingly widely and well-known in this industry.

48. Accordingly, whether tested by the common intention of the parties or, in the alternative, by the standard of a reasonable person of the same kind in the same circumstances, clause 3.1.1 of the Agreement permitted the holographic rendering that Aurora deployed, and Aurora has not contravened the Agreement.

B. IN ANY EVENT, AURORA'S DEPLOYMENT OF THE HOLOGRAM WAS A GOOD FAITH, COOPERATIVE RESPONSE TO AN UNFORESEEN CRISIS, NOT CONCEALMENT.

49. Article 5.1.4 UNIDROIT distinguishes a duty to achieve a specific result from a duty of best efforts, the latter requiring only such efforts as would be made by a reasonable person of the same kind in the same circumstances.[57] Article 5.1.3 requires each party to cooperate with the other where such cooperation may reasonably be expected for the performance of its obligations.[58] Article 1.7 imposes an overriding duty of good faith and fair dealing that the parties may not exclude.[59] Clause 3.1.1's obligation, framed in terms of "generally accepted industry standards and reasonable audience expectations",[60] is characterised as an obligation

[56] UNCITRAL Arbitration Rules 2013, arts 35(3).
[57] UNIDROIT arts 5.1.4.
[58] UNIDROIT arts 5.1.4.
[59] UNIDROIT arts 1.7.
[60] Moot Proposition, Agreement, Cl. 1.1.

to achieve a specific, delivered result, namely a concert experience of the required standard, rather than a duty to perform by any single, fixed method.

50. The Concert proceeded as scheduled, was executed in accordance with the pre-approved production plan,[61] and was met with unqualified audience and commercial success.[62] Even if, contrary to the foregoing, some element of clause 3.1.1 is characterised as a best-efforts obligation as to the particular mode of delivery, Aurora's conduct reflects the effort a reasonable operator in Aurora's position would make when confronting a similar talent crisis: it arranged daily therapy for Im Luna upon the meet-and-greet incident,[63] implemented enhanced security measures and reduced Im Luna's exposure to further stressful engagements,[64] and, once Im Luna's refusal to perform became apparent, attempted repeatedly to persuade her to attend with additional security assurances before resorting to any contingency.[65] Therefore, Aurora's conduct was, throughout, cooperative rather than unilateral. Upon discovering Luna was uncontactable, Aurora escalated the matter internally the same day[66] and informed Nova of the situation the same day, convening an urgent joint call.[67] The contingency of holographic deployment was proposed to Nova, discussed, and expressly agreed by Nova, subject only to Nova's own condition that the arrangement remain confidential.[68] It is Nova's own condition of confidentiality, not any unilateral decision by Aurora, that explains why the audience was not informed. A jointly agreed, commercially

[61] Moot Proposition ¶ 46.
[62] Moot Proposition ¶¶ 49-53.
[63] Moot Proposition ¶ 38.
[64] Moot Proposition ¶ 39.
[65] Moot Proposition ¶ 41.
[66] Moot Proposition ¶ 40.
[67] Moot Proposition ¶ 42.
[68] Moot Proposition ¶ 43-44.

sensible crisis response of this kind cannot, consistently with Article 1.7 good faith, be recast by Nova after the fact as concealment practised upon it.

51. It follows that Aurora's deployment of the hologram, even if considered independently. Separately, Article 7.1.4 UNIDROIT provides that a non-performing party may cure its non-performance,[69] provided it gives notice without undue delay and the cure is appropriate. The concert was indistinguishable from full physical performance and no prejudice resulted. A non-performance cured entirely without residual harm cannot found a right of termination. Discharges rather than breaches Aurora's obligations of cooperation and good faith under Articles 5.1.3, 5.1.4, and 1.7 UNIDROIT.

C. EVEN IF NON-PERFORMANCE IS FOUND, IT DOES NOT AMOUNT TO A FUNDAMENTAL NON-PERFORMANCE ENTITLING NOVA TO TERMINATE.

52. Non-performance is defined broadly by Article 7.1.1 UNIDROIT as "failure by a party to perform any of its obligations under the contract, including defective performance or late performance",[70] and any non-performance gives the aggrieved party a right to damages under Article 7.4.1.[71] The right to terminate the contract, by contrast, arises under Article 7.3.1(1) only where the failure "amounts to a fundamental non-performance."[72]

[69] UNIDROIT arts 7.1.4.
[70] UNIDROIT arts 7.1.1.
[71] UNIDROIT arts 7.4.1.
[72] UNIDROIT arts 7.3.1(1).

53. Nova's notice of termination[73] can only be justified if Nova establishes fundamental non-performance; a lesser non-performance found only results in damages, an issue addressed further at Issue [d] below.

54. Article 7.3.1(2) directs regard to whether the non-performance substantially deprives the aggrieved party of what it was entitled to expect under the contract,[74] unless the other party did not foresee and could not reasonably have foreseen that result, whether strict compliance with the unperformed obligation was of the essence of the contract, whether the non-performance was intentional or reckless, and whether the non-performing party would suffer disproportionate loss on termination.

55. Article 25 of the CISG, which defines a fundamental breach in materially the same terms, by reference to detriment that "substantially deprives" the aggrieved party of its contractual expectation.[75] The concept of fundamentality is to be interpreted restrictively, and that, in case of doubt, no fundamental breach should be found. The same restrictive approach should inform the Tribunal's application of Article 7.3.1(2). Applying these factors, no fundamental non-performance is made out.

i. <u>Substantial deprivation:</u>

56. Nova received the commercial equivalent of what it bargained for. The Concert was executed in accordance with the pre-approved production plan;[76] the holographic integration was seamless and indistinguishable under live conditions, replicating Im Luna's voice,

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[73] Moot Proposition ¶ 65.
[74] UNIDROIT arts 7.3.1(2).
[75] CISG Article 25.
[76] Moot Proposition ¶ 46.

choreography, and stage presence, including the group's signature audience call-and-response;[77] no audience member raised any concern during the show, and there were no reports of disruption or dissatisfaction.[78] Nova itself publicly declared the Concert a success immediately afterwards, and industry commentary described it as one of Nova's most successful events in recent years.[79] The only irregularity identified anywhere in the record is a "fleeting visual irregularity lasting less than a second", imperceptible to the live audience and detected only through frame-by-frame social media analysis days later.[80] This falls far short of substantial deprivation of Nova's contractual entitlement to a headline ECLIPSE concert experience.

ii. <u>Foreseeability:</u>

57. Aurora's holographic capability was neither hidden nor sprung on Nova. It was expressly discussed before the Agreement was signed,[81] and Aurora's technological reputation was well known industry-wide.[82] Nova cannot credibly claim that the use of such technology, in a genuine contingency, was an unforeseeable result.

iii. <u>Intentional or reckless conduct:</u>

58. Aurora's holographic capability was neither hidden nor sprung on Nova. It was expressly discussed before the Agreement was signed,83 and Aurora's technological reputation was well

[77] Moot Proposition ¶ 47-48.
[78] Moot Proposition ¶ 49.
[79] Moot Proposition ¶ 50, 53.
[80] Moot Proposition ¶ 54.
[81] Exhibit 1, Moot Proposition, p.3 and 4
[82] Moot Clarification No. 3.
[83] Exhibit 1, Moot Proposition, p.3 and 4

known industry-wide.84 Nova cannot credibly claim that the use of such technology, in a genuine contingency, was an unforeseeable result.

iv. <u>Disproportionate loss on termination:</u>

59. Aurora committed substantial resources to the Concert, including technical personnel, rehearsal schedules, and its proprietary technology,[85] and delivered a sold-out, commercially and critically successful event. To permit Nova to terminate the Agreement and withhold all payment in response to an undetectable, sub-second irregularity would visit a grossly disproportionate loss on Aurora relative to any conceivable detriment to Nova, exactly the imbalance Article 7.3.1(2)(e) is designed to guard against.

60. Therefore, it is submitted that even if the Tribunal were to find some technical non-performance in Aurora's use of the hologram, that non-performance is not fundamental within the meaning of Article 7.3.1(2). Nova accordingly had no right to terminate the Agreement under Article 7.3.1(1), and its purported termination of 26 February 2026 was itself invalid,[86] a point developed further under Issue (d) below.

D. <u>NOVA IS PRECLUDED, BY ITS OWN CONDUCT, FROM ASSERTING A BREACH THAT IT APPROVED, OBSERVED, AND PUBLICLY CELEBRATED.</u>

61. Under Article 1.8 UNIDROIT provides that a party cannot act inconsistently with an understanding it has caused the other party to have and upon which that party has reasonably acted in reliance.[87] Similarly, in the common law doctrine of estoppel by convention, recognised in *Amalgamated Investment & Property Co Ltd v Texas Commerce International*

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[84] Moot Clarification No. 3.
[85] Moot Proposition ¶35.
[86] Moot Proposition ¶ 65.
[87] UNIDROIT arts 1.8.

Bank Ltd, where parties who conduct their affairs based on a shared assumption are precluded from later denying that assumption where it would be inequitable to do so.[88]

62. Nova's conduct establishes this shared assumption. When Aurora informed Nova that Im Luna could not perform, Nova's Director of Events urged Aurora to "manage the situation and get her to do it"[89] and, faced with the alternative Aurora proposed, to proceed with the hologram, requiring only that its use remain confidential.[90] Nova's representatives then observed the full technical rehearsal without objection, and were "astonished" rather than concerned.[91]

63. Following the Concert, Nova publicly and enthusiastically declared the event a success,[92] and it was only after online speculation emerged and, more pointedly, only after Aurora demanded payment of its 10 February invoice,[93] that Nova pivoted to a breach narrative, a pivot that coincided with widely circulating reports of Nova's own liquidity difficulties,[94] that sit with Nova's own express warranty in Clause 6.2 of the Agreement that it "is financially capable of performing its payment obligations."

64. Having caused Aurora to rely on Nova's approval of and continued silence about the hologram arrangement through the staging of the Concert and beyond, Nova cannot now be permitted, consistently with Article 1.8, to retrieve from that stance once payment fell due.

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[88] *Amalgamated Investments v Texas Commerce Bank* (1982) QB 84.
[89] Moot Proposition, ¶ 42.
[90] Moot Proposition ¶44.
[91] Moot Proposition ¶45.
[92] Moot Proposition ¶50.
[93] Moot Proposition ¶51-52, 63.
[94] Moot Clarification No. 12; Moot Proposition ¶ 62, 68.

65. Therefore, Aurora's use of the holographic representation of Im Luna did not breach the Agreement. Nova expressly approved the arrangement, observed its implementation without objection, and publicly celebrated its success. Having induced Aurora to rely on that position, Nova is estopped from asserting that the very conduct it accepted amounted to a breach. In any event, even if the Tribunal finds some non-performance, it was not fundamental and cannot justify Nova's refusal to perform its own contractual obligations.

IV. AURORA'S COUNTERCLAIM SHOULD BE GRANTED.

66. As a preliminary matter, this counterclaim satisfies the requirement of rule 33.3 of the AIAC Arbitration 2026. It arises from the same Agreement and concert engagement as Nova's primary claim, and the tribunal has jurisdiction over it to the same extent as it has over that claim, subject to Aurora's reservations under Issue [a] This counterclaim is advanced strictly without prejudice to, and consistently with, Aurora's jurisdictional objection under Issue [a]. Accordingly, the submissions that follow are made in the alternative that if the Tribunal were to find that it has jurisdiction, Aurora submits that its counterclaim must also be granted, stating that it is entitled to full payment due to performing of agreed obligations [**A**], and if deficiency is found by the Tribunal, Aurora is still entitled to substantial payment [**B**]**.**

A. <u>AURORA IS ENTITLED TO FULL PAYMENT OF ITS INVOICED SUMS BECAUSE IT FULLY PERFORMED ITS OBLIGATIONS.</u>

i. <u>Nova is contractually obligated to pay Aurora and cannot avert that obligation as Nova's act caused the alleged non-performance.</u>

67. Article 7.2.1 UNIDROIT provides that where a party who is obliged to pay money does not do so, the other party may require payment.[95] This is a claim for an accrued debt, and it arises simply upon Nova's failure to pay a sum that has fallen due. It is provided that a party may not rely on the non-performance of the other party to the extent that the non-performance was caused by the first party's own act or omission, or by an event as to which the first party bears the risk.[96]

68. As established above, Aurora fully performed its obligations under clause 3.1.1: the Concert was delivered to the required standard, and no non-performance,[97] still less any non-performance of a kind that would justify withholding payment, is made out. In the absence of any established non-performance, no basis arises for Nova to withhold performance under Article 7.1.3, and no defence to payment can arise. Aurora accordingly submits, primarily, that it is entitled to payment in full of the USD3,600,000 invoiced on 10 February 2026,[98] together with the Royalties addressed at below.

69. Clause 5.1 of the Agreement states the payment is "subject to further confirmation and performance of the Concert". The Concert was performed, in full, in accordance with the pre-

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[95] UNIDROIT arts 7.2.1.
[96] *Jervis v Harris (*1996) Ch 195.
[97] Moot Proposition, Agreement, Cl. 3.1.1.
[98] Moot Proposition ¶ 51.

approved production plan,[99] and the requisite confirmation of that performance is found in Nova's own conduct, namely its immediate, public, and unqualified declaration that the Concert was a success,[100] reinforced by industry-wide commentary to the same effect.[101]

70. In the alternative, to the extent "further confirmation" is satisfied by Nova's own public declaration that the Concert was a success. Alternatively, the clause 5.2 and 5.3 accounting mechanism addresses Royalties, not fixed Performance Fee in Clause 5.1.1. The Performance Fee is not indefinitely conditional on Nova's unilateral approval.

71. To the extent Nova now seeks to characterise the holographic deployment as a non-performance, that state of affairs was substantially of Nova's own making. It was Nova's own Director of Events who repeatedly and emphatically insisted that Aurora "manage the situation and get her to do it",[102] and it was Nova that expressly agreed to and thereafter approved the contingency at rehearsal.[103] Having pressed for, agreed to, and observed the very measure it now impugns, Nova bears the risk of that outcome under Article 7.1.2 and cannot rely on it to resist payment.

ii. <u>Aurora is entitled to payment as it duly performed its obligations.</u>

72. Article 6.1.4(2) UNIDROIT provides that, where the performance of only one party requires a period of time,[104] that party is bound to render its performance first, unless the circumstances indicate otherwise.

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99 Moot Proposition ¶ 46-49.
100 Moot Proposition ¶ 50.
101 Moot Proposition ¶ 53.
102 Moot Proposition ¶ 42.
103 Moot Proposition ¶ 44-45.
104 UNIDROIT arts 6.1.4(2).

73. Aurora's performance, the staging of the Concert, necessarily preceded Nova's payment obligation, and Aurora duly performed first. The Concert took place on 7 February 2026, and Aurora's invoice followed on 10 February 2026.[105] Nova's payment obligation was accordingly due once Aurora's performance was rendered, and cannot now be treated as suspended indefinitely pending a dispute Nova raised only after that obligation had already crystallised.

iii. <u>Under no circumstances can Nova withhold Aurora's share of Gross Concert Revenue.</u>

74. A party holding funds on trust for another's benefit cannot lawfully withhold or use them to set off their own claims.[106] The recipient never acquires the unfettered right to deal with the money as its own, and to use it outside the specific purpose, including to satisfy the recipient's debt, is a breach of trust.[107]

75. Clause 4.1.5 of the Agreement requires Nova to "hold on trust the Gross Concert Revenue for proper accounting and payment of sums due to Aurora." Therefore, Nova never had an unfettered right to deal with the sum accrued as Gross Concert Revenue. Clause 4.1.5 accordingly operates independently of, and reinforces, Aurora's entitlement to payment under Clause 5.1.

76. Therefore, Aurora has established an enforceable entitlement to payment of USD 3,600,000. The Concert was performed, the payment obligation crystallised under Article 7.2.1 and Clause

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[105] Moot Proposition ¶46, 51.
[106] *Barclays Bank Ltd v Quistclose Investments Ltd.* (1968) UKHL 4.
[107] *Twinsectra Ltd v Yardley* (2002) UKHL 12.

5.1.1, any alleged non-performance was caused substantially by Nova's own acts under Article 7.1.2 and Nova holds the Gross Concert Revenue in trust under Clause 4.1.5 which it cannot lawfully retain. The counterclaim for full payment must be granted.

B. In arguendo, even if some deficiency in performance were found, Aurora remains entitled to substantial payment under the doctrine of substantial performance.

77. Common law principle that a party who has substantially performed an entire contract is entitled to the contract price, subject only to a deduction for the cost of remedying any proven defect, and is not to be denied payment altogether for a defect that does not go to the root of the contract.[108] In *Hoenig v Isaacs*[109] and *Dakin & Co Ltd v Lee*,[110] the Court held that only a breach going to the root of the contract relieves the paying party of its obligation to pay; short of that, the paying party must pay the price and bring a cross-claim, or set off, the value of any defect, following. The same principle, applied in a comparable reciprocal-contract setting, is reflected in *BK Tooling (Edms) Bpk v Scope Precision Engineering (Edms) Bpk,* where the exception of non-performance of contract was held not to operate as an all-or-nothing bar to payment once the recipient has accepted and utilised the performance in question; the paying party's remedy is a reduction of the price, calculated with reference to the cost of remedying the defect, not outright forfeiture of the payment claim.[111] Article 1.7 UNIDROIT does not permit a party to retain the full commercial benefit of a bargain while disclaiming the corresponding payment obligation under the same bargain.

[108] *Boone v Eyre* (1777) 1 H Bl 273.
[109] *Hoenig v Isaacs* (1952) 2 ALL ER 176.
[110] *Dakin v Lee* (1916) 1 KB 566.
[111] *BK Tooling (Edms) Bpk v Scope Precision Engineering (Edms) Bpk* 1979 (1) SA 391 (A).

78. Nova indisputably accepted and utilised Aurora's performance in full: it observed and approved the rehearsal,[112] staged the Concert to a sold-out audience,[113] and publicly declared the event a resounding success.[114] The only asserted imperfection anywhere is a sub-second visual irregularity that was not perceptible to the live audience and was identified only through subsequent frame-by-frame analysis.[115] No quantifiable loss, cost of remedy, or diminution in value attributable to that irregularity has been identified. Therefore, there is nothing to deduct from the price, and Aurora is entitled, at the very least, to the full invoiced sum even on Nova's own case.

79. Ordinary considerations of good faith support this conclusion as Nova has retained the entirety of the Gross Concert Revenue generated by Aurora's performance, including proceeds from tickets that sold out within two weeks of launch and associated sponsorship income,[116] while declining to pay Aurora.

80. Accordingly, even on the arguendo that some deficiency in performance is found, Aurora remains entitled to the full performance Fee of USD 3,600,00, subject only to deduction for the cost of remedying the specific defect proved by Nova. No such cost has been identified. The only asserted imperfection is a sub-second visual irregularity with no quantifiable remedy cost, so the deduction is nil and Aurora is entitled to the full invoiced sum even on Nova's own case of its invoiced sums.

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[112] Moot Proposition ¶45.
[113] Moot Proposition ¶ 35, 46.
[114] Moot Proposition ¶ 50.
[115] Moot Proposition ¶ 54, 56.
[116] Moot Proposition ¶¶ 35, 46-53.

C. AURORA IS SEPARATELY ENTITLED TO ROYALTIES.

81. Article 4.8 UNIDROIT provides that where parties have not agreed a term important to the determination of their rights and duties, an appropriate term shall be supplied, having regard, among other factors, to the intention of the parties, the nature and purpose of the contract, good faith and fair dealing, and reasonableness. Article 4.3(b) establishes that the Tribunal must interpret a contract with ambiguous terms in light of the practices the parties have established between themselves.

82. Clause 1.1 of the Agreement defines "Royalties" as a percentage of Gross Concert Revenue, and Clause 5.1.2 confirms Aurora's entitlement to Royalties "at a percentage to be agreed between Parties." The obligation to pay Royalties is thus established by the Agreement itself, and only the specific percentage was left open, consistent with the parties' own discussion that this detail would be "cross(ed]... when we get to it" and "settled once we discuss royalties".[117]

83. Aurora and Nova have collaborated on six prior concerts, including one prior ECLIPSE concert and five others featuring different Aurora-managed idols.[118] These practices the parties have established between themselves provide a principled basis on which the Tribunal can supply or direct the determination of an appropriate Royalty percentage consistent with the parties' own settled dealings.

84. Clause 4.1.5 requires Nova to hold the Gross Concert Revenue on trust for proper accounting and payment to Aurora. Clause 5.2 requires Nova to maintain accurate books and records of

[117] Exhibit 1, Moot Proposition, p.4.
[118] Moot Clarification No. 5.

that revenue, and Clause 5.3 gives Aurora the right to inspect and audit those records. Aurora exercised that entitlement promptly, requesting a full written accounting of gross concert revenue and the computation of Royalties by 13 February 2026 at the latest.[119] Nova has never provided that accounting. Aurora accordingly seeks an order compelling Nova to render the accounting required by clauses 5.2 and 5.3, together with a determination or direction as to the appropriate Royalty percentage under Article 4.8.

85. The Royalties claim is undisputedly separate from and additional to the USD3,600,000 invoice. It is, moreover, owed regardless of the outcome of the hologram dispute: the ticket and sponsorship revenue generating the Royalties was generated and has been retained by Nova irrespective of that dispute,[120] and Nova's objections to the hologram go, at most, to the Performance Fee for the manner of ECLIPSE's appearance, not to Nova's independent obligation to account for and share the revenue its own sold-out concert produced.

86. Accordingly, Aurora is entitled to Royalties in principle, to be quantified by the Tribunal following an accounting by Nova.

D. NOVA'S OWN CONDUCT AND THE TIMING OF ITS COMPLAINT INDEPENDENTLY SUPPORT THE COUNTERCLAIM.

87. The timing and sequence of Nova's conduct provides a standalone basis for granting the counterclaim, independent of the substantive performance analysis. Under Article 1.7 and 1.8 UNIDROIT, a party that has caused another to rely on a shared understanding may not resile from it when it becomes inconvenient. Three facts establish this independently.

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[119] Moot Proposition ¶ 52.
[120] Moot Proposition ¶ 35.

88. The sequence of events supports Aurora's counterclaim as Nova contravenes Articles 1.7 and 1.8. Nova publicly praised the Concert immediately after it concluded, and industry commentary independently described it as one of Nova's most successful events in recent years.[121] Nova raised no complaint whatsoever upon receipt of Aurora's 10 February invoice.[122] It was only after Aurora issued a formal follow-up demand on 25 February 2026[123] that Nova pivoted to a narrative of breach, a pivot that coincides precisely with widely circulating reports across the industry of Nova's own liquidity difficulties[124] and with an unrelated letter of demand received by Nova from a former C-suite employee for alleged breach of contract.[125]This sequencing sits with Nova's own express warranty, at Clause 6.2 of the Agreement, that it "is financially capable of performing its payment obligations."

89. That sequence supports the inference that Nova's preceding invocation of the hologram issue is a commercially motivated afterthought, prompted by Nova's own financial circumstances, rather than a genuine performance grievance. This inference reinforces Aurora's stance provided in the counterclaim above as it confirms that no genuine non-performance was in fact perceived by Nova at the relevant time [**A**], it removes any equitable basis for withholding even a reduced sum under the substantial performance doctrine [**B**], and it confirms that Nova's termination was opportunistic rather than principled **[limb C**].

90. Therefore, for all of the foregoing reasons, Aurora respectfully submits that its counterclaim should be granted in full. Aurora has established: an enforceable debt claim under Article 7.2.1

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[121] Moot Proposition ¶50, 53.
[122] Moot Proposition ¶51–52.
[123] Moot Proposition ¶63.
[124] Moot Clarification No. 12.; Moot Proposition ¶ 62, 68.
[125] Moot Additional Clarification No. 6.

UNIDROIT [A(i)]; performance of its primary obligation with payment crystallised under Clause 5.1.1 [A(ii)]; Nova's trust obligation under Clause 4.1.5 precludes withholding revenue (A(iii)]; in the alternative, substantial performance with nil deduction [B]; Royalties to be quantified on accounting [C]; and Nova's good faith obligations under Article 1.7 and 1.8 together with unjust enrichment independently preclude Nova from retaining concert revenue without payment [D]. The counterclaim is established and relief sought should be granted in full.

PRAYER FOR RELIEF

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

I. Declare that the Reyna High Court is the proper forum to determine the present dispute.

II. Grant the Respondent's application for security for costs.

III. Declare that the Respondent did not breach the Concert Promotion and Performance Agreement.

IV. Declare that the Claimant's termination of the Agreement was unlawful.

V. Grant the Respondent's counterclaim, including payment of the outstanding invoice, royalties, costs, and such other relief as this Hon'ble Tribunal deems fit and proper.

Respectfully submitted,

Counsels for Respondent