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INTERNATIONAL MOOT COURT COMPETITION 2026

ASIAN INTERNATIONAL ARBITRATION CENTRE

MEMORANDUM FOR RESPONDENT

NOVA LIVE ASIA PTE LTD ("CLAIMANT")

V.

AURORA ENTERTAINMENT CO. LTD ("RESPONDENT")

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¶¶	paragraphs
AIAC	Asian International Arbitration Centre
Art	Article
Agreement	Concert Promotion and Performance Agreement
Ch	Chapter
Cl.	Clause
CISG	Convention on International Sale of Goods
Id.	Same authority as immediately preceding footnote
ICSID	International Centre for Settlement of Investment Disputes
RHC	Reyna High Court
Tribunal	Arbitral Tribunal
UNCITRAL	United Nations Commission on International Trade Law

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STATEMENT OF JURISDICTION

The RESPONDENT respectfully submits that this Arbitral Tribunal lacks jurisdiction over the present dispute since there is no valid arbitration agreement exists between the Parties in relation to the Agreement dated 10 February 2026, and the RESPONDENT therefore objects to the Tribunal's jurisdiction in its entirety.

Accordingly, the RESPONDENT submits this Memorial solely for the purpose of contesting jurisdiction and without prejudice to its objection that these proceedings are not properly before this Tribunal.

QUESTIONS PRESENTED

ISSUE I

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

ISSUE II

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

ISSUE III

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

ISSUE IV

WHETHER AURORA'S COUNTERCLAIM OUGHT TO BE GRANTED?

STATEMENT OF FACTS

Aurora Entertainment Co. Ltd. ("Aurora") is a leading R-Pop entertainment company renowned for its innovative use of artificial intelligence and holographic technology in artist development and live performances. Among its flagship acts is the internationally acclaimed five-member group ECLIPSE, known for its sold-out concerts, exceptional performances, and global popularity.

To capitalize on ECLIPSE's success, Nova Live Asia Pte Ltd. ("Nova"), a concert promoter with whom Aurora had previously collaborated, engaged Aurora to organize ECLIPSE's first live concert in Reyna. On 7 January 2026, the parties executed the Concert Promotion and Performance Agreement governed by the UNIDROIT Principles of International Commercial Contracts 2016 ("UPICC"), under which Aurora agreed to deliver a performance meeting industry standards while Nova managed the concert's commercial operations.

Approximately two weeks before the concert, ECLIPSE member Im Luna suffered psychological distress after a fan breached security during a promotional event and made unwanted physical contact with her. Aurora immediately arranged therapy, enhanced security measures, and made every reasonable effort to support Luna's recovery while continuing preparations for the concert.

Three days before the concert, Luna became unable to perform due to severe anxiety. Aurora promptly informed Nova and proposed using its advanced AI-generated holographic technology to avoid cancelling the sold-out event and the significant commercial losses that would follow. Although Nova initially expressed concerns, it ultimately agreed to proceed with the holographic deployment on the condition that its use remained confidential. Nova also observed the technology during rehearsals and approved the concert proceeding as planned.

On 7 February 2026, the concert was successfully held before a sold-out audience. Aurora seamlessly integrated Luna's holographic rendering into the live performance, and the audience experienced no disruption or awareness of her absence. Following the concert, Nova publicly praised the event, while fans and industry commentators regarded it as a major success.

On 10 February 2026, Aurora issued an invoice for USD 3.6 million covering the agreed performance fees and promotional expenses. Despite receiving the full commercial benefit of the successful concert, Nova withheld payment.

Several days later, online speculation arose after a minor visual irregularity was noticed in circulated concert footage. Although the speculation was based solely on post-event analysis and not on any issue observed during the live performance, Nova subsequently alleged that Aurora had breached the Agreement by using the holographic rendering. Despite having consented to the deployment and benefited from the successful concert, Nova initiated these proceedings seeking damages, while Aurora denied any breach and counterclaims for the outstanding USD 3.6 million due under the Agreement.

SUMMARY OF PLEADINGS

I. THE TRIBUNAL LACK JURISDICTION OVER THE DISPUTE

The RESPONDENT respectfully submits that the Tribunal lacks jurisdiction over the present dispute. No valid arbitration agreement exists between the parties because the ECLIPSE Concert Agreement contains no arbitration clause and no clear consent to submit disputes to arbitration. The parties' prior dealings cannot incorporate an arbitration agreement into a new contract that is silent on dispute resolution, and Nova consistently objected to the Tribunal's jurisdiction throughout these proceedings. Accordingly, the Tribunal is not competent to hear this dispute.

II. NOVA SHOULD PROVIDE SECURITY FOR COSTS BECAUSE ITS CONDUCT CREATES A REAL RISK OF NON-RECOVERY AND PREJUDICE TO AURORA

The Respondent respectfully submits that Nova should be ordered to provide security for costs in the amount of USD 2 million. The Tribunal possesses the authority under the AIAC Arbitration Rules to grant security for costs as an interim measure where necessary to preserve procedural fairness and protect the integrity of the arbitral process. Nova's conduct creates a real risk that Aurora will be unable to recover its legal costs should it ultimately prevail. Nova has refused to pay Aurora's outstanding USD 3.6 million invoice while retaining the revenues generated from the Concert and simultaneously pursuing substantial damages claims against Aurora. These circumstances, together with concerns regarding Nova's financial position and prior payment practices, demonstrate a genuine risk of non-recovery. The requested measure is proportionate, does not determine the merits of the dispute, and is necessary to prevent prejudice, ensure equality between the parties, and safeguard the effectiveness of any future costs award.

III. AURORA'S DEPLOYMENT OF A HOLOGRAPHIC REPLACEMENT DOES NOT CONSTITUTE A BREACH OF THE AGREEMENT.

The Respondent further submits that Aurora's deployment of Luna's holographic replacement did not constitute a breach of the Agreement. The holographic performance became necessary due to security failures within Nova's responsibility, and the Agreement expressly permitted the use of digital and visual technologies. Aurora successfully delivered a sold-out concert that met industry standards and audience expectations. Moreover, Nova approved the holographic deployment, allowed the Concert to proceed, accepted its benefits, and publicly praised its success. Having consented to and affirmed the performance, Nova cannot now allege that Aurora breached the Agreement.

IV. AURORA IS ENTITLED TO RECOVER USD 3.6 MILLION IN OUTSTANDING PAYMENTS UNDER THE ECLIPSE CONCERT AGREEMENT

Aurora is entitled to recover the outstanding USD 3.6 million under the ECLIPSE Concert Agreement. The holographic substitution did not constitute a fundamental non-performance, as the concert was successfully delivered and Nova received the substantial benefit of the contract. Moreover, Nova approved and encouraged the holographic performance, publicly praised the event, and suffered no cognizable loss. Therefore, Nova has no legal basis to withhold payment, and Aurora is entitled to the full amount.

PLEADINGS

I. FORUM NON-CONVENIENS LIES IN THE COURT PROCEEDING, AND THE TRIBUNAL SHOULD DECLINE JURISDICTION

1. The dispute must be resolved through court proceedings and cannot be referred to arbitration, since **(A)** lack of binding arbitration agreement **(B)** CLAIMANT'S reliance on prior dealings and the RHC stay cannot cure the absence of consent **(C)** Aurora's counterclaim did not amount to waiver of it jurisdictional objection.

A. LACK OF BINDING ARBITRATION AGREEMENT OF THE PARTIES

2. The AIAC lack jurisdiction over the case since: **(1)** *The Agreement contains no express dispute resolution or arbitration clause* **(2)** *the arbitration clauses in previous agreements cannot automatically bind the parties in the present Agreement* **(3)** *Conduct of the submit the claim to RHC is not inconsistent.*

1. The Agreement contains no express dispute resolution or arbitration clause.

3. Parties are free to enter into a contract and determine its contents in accordance with the principle of party autonomy.[1] Further, that principle protects not only the freedom to contract but also the freedom not to be bound in the absence of manifested consent.[2] Moreover, in order for an arbitration agreement to exist, the parties must have validly consented to that agreement.[3]

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1 Stefan Vogenauer & Jan Kleinheisterkamp eds., Commentary on the UNIDROIT Principles of International Commercial Contracts, 118 (Oxford Univ. Press 2009).

2 Stefan Vogenauer & Jan Kleinheisterkamp eds., Commentary on the UNIDROIT Principles of International Commercial Contracts, 118 (Oxford Univ. Press 2009).

3 Gary B. Born, International Arbitration: Law and Practice, 74 (2d ed. 2016).

4. As supporting by the case *Al-Naimi*, the Court of Appeal confirmed that arbitral jurisdiction requires clear consent a court will not compel arbitration absent clear and unequivocal consent.[4]

5. In the present case, the agreement does not contain arbitration clause.[5] The omission of an arbitration clause cannot be displaced merely by any reference unless there a clear consent. Accordingly, the dispute falls within the jurisdiction of the RHC rather than this Tribunal.

2. *<u>There is no acceptance for arbitration agreement</u>*

6. A contract can be concluded through offer acceptance or sufficient conduct indicating agreement.[6] An arbitration agreement is considered a distinct contract and must meet standard validity requirements.[7] In addition, in determine, whether parties have validly consented to an arbitration agreement is governed by the generally applicable principles of contract law, particularly the rules governing contract formation.[8] Further, in *Sulamérica CIA Nacional de Seguros S.A.*, the Court of Appeal treated the arbitration agreement as a separate agreement and analysed its formation and governing law independently from the main contract.[9]

7. In the present case, the Agreement dated 7 January 2026 contains no arbitration clause,[10] nor does it otherwise demonstrate that the parties agreed to submit disputes arising

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4 Ahmad Al-Naimi (t/a Buildmaster Construction Services) v Islamic Press Agency Inc [2000] 1 Lloyd's Rep 522 **(CA).**

5 Exhibit 2.

6 UPICC, Art. 2.1.1.

7 Article 16(1) of the UNCITRAL Model Law (and Rule 26.1(a).

8 Gary B. Born, *International Arbitration: Law and Practice*, 74 (2d ed. 2016).

9 Sulamérica Cia Nacional de Seguros S.A. v. Enesa Engenharia S.A. [2012] EWCA Civ 638, [2013] 1 W.L.R. 102.

10 Exhibit 2.

under that Agreement to arbitration. Accordingly, the CLAIMANT has failed to establish the existence of a valid arbitration agreement.

3. RESPONDENT's *commencement of proceedings before the RHC does not constitute inconsistent conduct.*

8. CLAIMANT might argue that a party cannot act inconsistently with an understanding it has caused the other party to have and upon which that other party reasonably has acted in reliance to its detriment.[11] However, this provision, applies only where a party's prior conduct objectively creates a legitimate expectation that it will act in a particular manner, the other party reasonably relies on that expectation, and the subsequent inconsistent conduct causes detriment.[12]

9. In the present case, THE RESPONDENT never represented that disputes arising under the 7 January 2026 Agreement would be resolved through AIAC arbitration.[13] The previous arbitration clauses were contained in separate agreements and could not reasonably create an expectation that arbitration would automatically govern the present Agreement.[14] Accordingly, the essential elements of inconsistent behavior under Article 1.8 are not satisfied.

B. CLAIMANT'S RELIANCE ON PRIOR DEALINGS AND THE RHC STAY CANNOT CURE THE ABSENCE OF CONSENT

10. RESPONDENT submit that the tribunal lack jurisdiction since **(1)** Prior AIAC clauses were contained in separate agreements and were not incorporated into the present Agreement.

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11 UPICC, Art 1.8.

12 Şener Akyol, Dürüstlük Kuralı ve Hakkın Kötüye Kullanılması Yasağı (Vedat Kitapçılık) 58 (Vedat Kitapçılık, 2006). Şener Akyol, Dürüstlük Kuralı ve Hakkın Kötüye Kullanılması Yasağı (Vedat Kitapçılık) *Yasağı* 13 (Vedat Kitapçılık, 2007).

13 Exhibit 2.

14 Additional clarification.

Moreover, **(2)** The High Court stay was discretionary and intended to avoid parallel proceedings; it did not finally determine arbitral jurisdiction and (3) Nova cannot rely on commercial convenience to replace the requirement of consent to arbitration.

1. *<u>Prior AIAC clauses were contained in separate agreements and were not incorporated into the present Agreement</u>*

11. The parties are bound by any usage to which they have agreed and by any practices which they have established between themselves.[15] To be "established", a practice must have been ongoing at least for a limited time and at least on a limited number of occasions.[16] A binding practice arises only where a particular course of conduct has been observed with sufficient regularity over a period of time.[17] Moreover, the decisive test is not merely whether a particular conduct has been repeated, but whether the parties have reached the point where each could reasonably expect that the practice would continue to govern their relationship.[18]

12. In the present case, the CLAIMANT relies on six previous collaboration agreements containing AIAC arbitration clauses. However, those clauses governed only the disputes arising under their respective agreements. The execution of a new Agreement without any arbitration clause demonstrates that the parties did not manifest a common understanding that arbitration would automatically govern all future contracts. Accordingly, the prior agreements do not constitute an established practice capable of incorporating an arbitration agreement into the present Agreement.

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15 UPICC, Art.1.9 (1).

16 Stefan Vogenauer & Jan Kleinheisterkamp eds., Commentary on the UNIDROIT Principles of International Commercial Contracts (Oxford University Press 2009), 195.

17 Stefan Vogenauer & Jan Kleinheisterkamp eds., Commentary on the UNIDROIT Principles of International Commercial Contracts (Oxford University Press 2009), 194.

18 Stefan Vogenauer & Jan Kleinheisterkamp eds., Commentary on the UNIDROIT Principles of International Commercial Contracts (Oxford University Press 2009), 195.

2. The common intention of the parties have not established

13. Article 4.3(c) of UPICC merely identifies subsequent conduct as one factor relevant to contractual interpretation. This provision does not permit the Tribunal to replace the parties' original intention with subsequent conduct.[19] At most, subsequent conduct may support an inference as to that intention.[20]

14. In the present case, the omission of an arbitration clause from the Agreement is the most compelling indication of the parties' intention at the time of contracting. Although the parties previously resolved disputes through arbitration, those proceedings arose under separate agreements containing express arbitration clauses. Such prior conduct cannot establish that the parties intended the present Agreement, which is silent on dispute resolution, to be governed by arbitration.

3. The surrounding circumstances do not establish consent to arbitrate.

15. Pursuant to Article 4.1 of the UPICC, a contract shall be interpreted according to the parties' common intention. However, the rules of contractual interpretation cannot be used to create an arbitration agreement where the parties have not manifested their consent to arbitrate.[21] As recognised in *Sulamérica CIA Nacional de Seguros S.A.*, an arbitration agreement is legally distinct from the underlying contract and must be analyzed independently for the purposes of its existence and validity.[22]

16. Here, in determining the parties' common intention, the Tribunal should consider all relevant circumstances, including the omission of an arbitration clause from the 7 January 2026

[19] Stefan Vogenauer & Jan Kleinheisterkamp eds., Commentary on the UNIDROIT Principles of International Commercial Contracts (Oxford University Press 2009), 513.

[20] Stefan Vogenauer & Jan Kleinheisterkamp eds., Commentary on the UNIDROIT Principles of International Commercial Contracts (Oxford University Press 2009).

[21] Gary B. Born, International Commercial Arbitration (3d ed. 2021), 615-620.

[22] Sulamérica Cia Nacional de Seguros S.A. v. Enesa Engenharia S.A. [2012] EWCA Civ 638, [2013] 1 W.L.R. 102, [26]-[31].

Agreement,[23] the absence of any reference to the AIAC Arbitration Rules or incorporation of previous agreements, the parties' execution of a new standalone contract, and the absence of any express or implied manifestation of consent to arbitrate disputes arising under the present Agreement. Collectively, these circumstances indicate that the parties did not intend to submit disputes under the present Agreement to arbitration.

C. RESPONDENT'S COUNTERCLAIM DID NOT AMOUNT TO WAIVER OF IT JURISDICTIONAL OBJECTION

17. Under AIAC Rule 26.2, a party may raise a plea that the arbitral tribunal lacks jurisdiction.[24] The provision ensures that the act of filing a counterclaim, responding to procedural steps.[25] A submission made "without prejudice" cannot normally be used against the party as evidence of acceptance or waiver of rights. [26] The without-prejudice doctrine prevents procedural or settlement-related communications from being treated as admissions of liability, waiver, or consent.[27]

18. In our case, Nova has consistently and unequivocally objected to the arbitral tribunal's jurisdiction at every procedural stage.[28] Filed its counterclaim expressly "without prejudice" to that objection, [29] and simultaneously initiated court proceedings to preserve its rights.[30] This tripartite course of conduct demonstrates that Nova never accepted the tribunal's authority.

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23 Exhibit 2.

24 AIAC Arbitration Rules, Rule. 26.2.

25 AIAC Arbitration Rules, Rule 26.4.

26 Black's Law Dictionary 1870 (11th ed. 2019).

27 Unilever plc v. The Procter & Gamble Co. [2000] 1 W.L.R. 2436.

28 Moot Problem, ¶66.

29 Moot Problem, ¶67.

30 Moot Problem, ¶71.

19. Respondent argues that Nova without-prejudice counterclaim constitutes an acknowledgment of the tribunal's jurisdiction. Under AIAC Rule 26.4, participation in arbitral proceedings even by filing a substantive counterclaim does not defeat a jurisdictional challenge.[31] The counterclaim was a protective procedural step taken solely to preserve Nova's right to recover its USD 3.6 million invoice in the event the tribunal ultimately assumed jurisdiction over the parties' objection.

20. Therefore, Nova's submits a counterclaim "without prejudice," as a protection right while still arguing that the tribunal has no jurisdiction.[32]

II. NOVA SHOULD PROVIDE SECURITY FOR COSTS BECAUSE ITS CONDUCT CREATES A REAL RISK OF NON-RECOVERY AND PREJUDICE TO AURORA.

21. The respondent argues that Aurora meets the threshold set by Article 26(3) of the UNCITRAL Arbitration Rules (2021) for granting interim protection within the AIAC framework. The modern criteria for interim protection require the applicant to show that **(A)** the tribunal has the power to grant such measures, **(B)** Nova's financial instability justifies security for costs, **(C)** the requested security is necessary and proportionate, and **(D)** granting such measures would ensure procedural fairness and prevent abuse.[33]

A. THE TRIBUNAL HAS THE POWER UNDER THE AIAC RULES TO ORDER SECURITY FOR COSTS AS AN INTERIM MEASURE

31 Moot Problem, ¶66-67.

32 AIAC Arbitration Rules, Rule 26.4.

33 Maxi Scherer et al., Security for Costs in International Arbitration, in International Arbitration in Practice 135, 140-42 (2020); Christoph H. Schreuer et al., The ICSID Convention: A Commentary 1048-49 (2d ed. 2009).

22. Rule 11.1 empowers the Tribunal to order any interim measure it considers necessary or appropriate, while Rule 11.3 further recognizes measures intended to prevent prejudice to the arbitral process or preserve assets out of which a future award may be satisfied.[34]

23. Arbitral practice consistently recognizes that security for costs constitutes an exceptional but legitimate form of interim protection where circumstances demonstrate a genuine risk of non-payment or procedural unfairness.[35] Although tribunals exercise caution in granting such relief, they routinely consider whether the requesting party has established: **(1)** a real risk that the opposing party will be unable or unwilling to satisfy an adverse costs award; **(2)** urgency or necessity sufficient to justify interim protection[36]

24. Importantly, Aurora does not seek security as a disguised attempt to recover the disputed contractual payment in advance.[37]

1. Nova's Conduct Creates a Real Risk That Aurora Will Be Unable to Recover Its Costs

25. Arbitral tribunals routinely consider whether there exists a credible risk that the opposing party may be unable or unwilling to satisfy an adverse costs award. Importantly, Aurora is not required to conclusively establish Nova's insolvency.[38]

26. Nova allegedly delayed payments owed to TF Entertainment for more than three months, while concerns also circulated regarding Nova's liquidity position and financial

34 AIAC Arbitration Rules, Rules 11.1, 11.3.

35 Julian D.M. Lew, Loukas A. Mistelis & Stefan Kröll, Comparative International Commercial Arbitration 600-02 (2003).

36 Stefano Cacciaguidi-Fahy & Martins Paparinskis, Security for Costs, in Max Planck Encyclopedia of International Procedural Law ¶¶38-54 (Hélène Ruiz Fabri ed., Oxford Univ. Press 2020).

37 Nigel Blackaby et al., Redfern and Hunter on International Arbitration, ¶7.35 (7th ed. 2022).

38 Julian D.M. Lew, Loukas A. Mistelis & Stefan Kröll, Comparative International Commercial Arbitration 601-02 (2003).

management.[39] In particular, Nova has refused to pay Aurora's USD 3.6 million invoice despite retaining the concert revenue generated from the event.[40]

27. Moreover, Nova has commenced arbitration proceedings seeking approximately USD 2.2 million in damages while simultaneously withholding payment allegedly owed to Aurora.[41] Accordingly, the surrounding circumstances establish a sufficiently real risk of non-recovery to justify security for costs.[42]

2. *Interim Protection Is Necessary to Prevent Procedural Prejudice Against Aurora*

28. Alternatively, even if the Tribunal is not persuaded that severe financial distress presently exists, the combination of Nova's payment conduct, retention of disputed funds, and ongoing exposure of Aurora to unrecoverable legal expenses is sufficient to justify tailored interim protection.

B. NOVA'S FINANCIAL UNCERTAINTY AND PAYMENT CONDUCT JUSTIFY SECURITY FOR COSTS

29. Arbitral tribunals routinely consider whether objective circumstances demonstrate a real risk that the opposing party may be unable or unwilling to satisfy an adverse costs award. Rather, it is sufficient to demonstrate circumstances giving rise to a genuine risk of non-recovery and procedural unfairness.[43]

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39 Moot Problem, ¶¶18-21.

40 Moot Problem, ¶¶24-27.

41 Moot Problem, ¶¶28-30.

42 South American Silver Ltd. v. Plurinational State of Bolivia, PCA Case No. 2013-15, Procedural Order No. 10, ¶¶63-65 (Jan. 11, 2016).

43 Gary B. Born, International Commercial Arbitration 3098-3102 (3d ed. 2021); Chartered Inst. of Arbitrators, Guideline on Applications for Security for Costs 9-12 (2016); South American Silver Ltd. v. Plurinational State of Bolivia, PCA Case No. 2013-15, Procedural Order No. 10, ¶¶63-65 (Jan. 11, 2016).

30. Nova has retained all revenues generated from the Concert, including ticket sales and sponsorship proceeds, while simultaneously refusing to release payment of Aurora's USD 3.6 million invoice despite having accepted and benefited from the performance.[44]

31. Moreover, Nova has commenced arbitration seeking approximately USD 2.2 million in damages while simultaneously withholding payment allegedly owed to Aurora. Such conduct exposes Aurora to significant and potentially unrecoverable legal costs throughout the proceedings. Accordingly, the surrounding circumstances establish a sufficiently real risk of non-recovery to justify security for costs.[45]

C. THE REQUESTED SECURITY IS PROPORTIONATE AND NECESSARY.

32. The requested order is necessary to preserve procedural fairness and prevent prejudice to Aurora during the course of the arbitration.[46]

33. Absent interim protection, Aurora faces the immediate and ongoing risk of incurring considerable arbitration costs while Nova continues withholding both the disputed invoice payment and the concert revenues connected to the dispute.[47]

34. The requested amount of USD 2 million is proportionate to the value and complexity of the dispute. Nova seeks approximately USD 2.2 million in damages, while Aurora's unpaid invoice alone amounts to USD 3.6 million, exclusive of royalties claimed separately. The

44 Moot Problem, ¶¶24-30.

45 South American Silver Ltd. v. Plurinational State of Bolivia, PCA Case No. 2013-15, Procedural Order No. 10, ¶¶63-65 (Jan. 11, 2016); Moot Problem, ¶¶18-30.

46 AIAC Arbitration Rules, Rules 11.1, 11.3; Gary B. Born, International Commercial Arbitration 3109-11 (3d ed. 2021).

47 Moot Problem, ¶¶24-30.

requested security seeks only to secure Aurora's potential recovery of legal costs and does not constitute an advance payment of Aurora's contractual claims.[48]

D. GRANTING SECURITY WOULD PROTECT PROCEDURAL FAIRNESS AND PREVENT TACTICAL ABUSE

35. The arbitration process would become procedurally imbalanced if Nova were permitted to actively pursue claims against Aurora while simultaneously insulating itself from any meaningful exposure to adverse costs consequences. The Tribunal's intervention is therefore necessary to preserve equality between the parties and maintain the integrity of the arbitral proceedings.[49]

36. Aurora should not be forced to defend substantial claims without meaningful protection against the risk that a future costs award will remain unenforceable. Security for costs serves precisely this protective function and ensures that the arbitration proceeds on an equitable footing pending final determination of the dispute.[50]

37. Accordingly, granting security for costs would preserve procedural fairness, prevent tactical abuse of the arbitral process, and safeguard the integrity of these proceedings.[51]

III. AURORA'S DEPLOYMENT OF A HOLOGRAPHIC REPLACEMENT DOES NOT CONSTITUTE A BREACH OF THE AGREEMENT.

48 Moot Problem, ¶¶24-30; Nigel Blackaby et al., Redfern and Hunter on International Arbitration ¶7.35 (7th ed. 2022).

49 UNCITRAL, Art. 17A; Nigel Blackaby et al., Redfern and Hunter on International Arbitration ¶7.36 (7th ed. 2022).

50 Gary B. Born, International Commercial Arbitration 3110-11 (3d ed. 2021).

51 Chartered Inst. of Arbitrators, Guideline on Applications for Security for Costs 12-13 (2016); Nigel Blackaby et al., Redfern and Hunter on International Arbitration ¶7.36 (7th ed. 2022).

38. The RESPONDENT respectfully submits that its deployment of Luna's holographic substantially performed its contractual obligations and achieved the commercial purpose contemplated by the parties.[52]

39. In support of this position, Aurora will demonstrate that: **(A)** the circumstances necessitating the holographic deployment arose from security failures occurring within Nova's sphere of contractual responsibility; **(B)** the Agreement expressly authorized technologically assisted performance methods and did not prohibit holographic technology; **(C)** Aurora's performance satisfied both industry standards and reasonable audience expectations and therefore did not amount to fundamental non-performance; and **(D)** Nova knowingly consented to, accepted, and subsequently affirmed the holographic deployment, thereby precluding it from alleging breach after the fact; **(E)** The Deployment Does Not Amount to Fundamental Non-Performance; **(F)** Aurora acted reasonably and in good faith in response to Luna's condition.

A. NOVA'S FAILURE TO PROPERLY MANAGE SECURITY LED TO AURORA'S USE OF THE HOLOGRAPHIC REPLACEMENT.

40. The Need for a holographic replacement arose from Nova's Failure to Manage Crowd Safety. Before addressing the contractual permissibility of the holographic deployment, it is necessary to consider the circumstances that gave rise to Aurora's contingency measures. Notably, those circumstances originated from Nova's own failure to adequately discharge its obligations under the Agreement.[53]

41. Pursuant to Clause 2.2 of the Agreement, Nova accepted responsibility to organize, promote and stage the Concert in accordance with the Agreement and prevailing industry

[52] UPICC, Art. 7.3.1.

[53] Exhibit 2, cls. 2.2, 4.1.1.

standards. This obligation was further particularized under Clause 4.1.1, Nova assumed responsibility for "all logistics, venue booking, staging, sound, lighting and crowd management in connection to the Concert".[54] Crowd management necessarily includes maintaining adequate security measures during promotional activities organized in connection with the Concert. However, approximately two weeks before the concert, during a meet-and-greet event conducted as part of the concert's promotional campaign, an international fan breached security protocols and made unsolicited physical contact with Im Luna. Although the individual was eventually restrained and removed, the incident left Luna visibly shaken and resulted in severe psychological distress in the days that followed.[55]

42. This incident was not due to any action or inaction by Aurora, but rather during an event under Nova's responsibility as the concert organizer. Proper crowd-control and security measures could have prevented the security breach that led to Luna's condition.[56]

43. Consequently, the holographic deployment did not arise from Aurora's unwillingness or inability to perform. Instead, it was a reasonable contingency measure adopted in response to Nova's own failure to properly manage crowd safety. Having contributed to the very circumstances that necessitated the holographic solution, Nova cannot now rely upon those circumstances to allege that Aurora breached the Agreement.[57]

B. THE AGREEMENT PERMITTED AURORA TO USE DIGITAL AND PRODUCTION TECHNOLOGIES IN THE CONCERT.

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54 Exhibit 2, cls. 2.2, 4.1.1.

55 Moot Problem, ¶36.

56 Exhibit 2, cls. 2.2, 4.1.1; Moot Problem, ¶36.

57 UPICC, Art. 1.7.

44. Nova may argues that the definition of "Act," which names five individual members, suggests a requirement for physical presence. However, Aurora contends this interpretation is unfounded and contrary to Clause 3.1.1. The definition aims to distinguish ECLIPSE from other acts and does not explicitly prohibit the use of digital replication technologies for any member. Interpreting it as necessitating physical presence would invalidate Clause 3.1.1's mention of "digital technologies", which contradicts UNIDROIT Principles Art 4.5.

45. Pursuant to Articles 4.1 and 4.3 of the UPICC, the Agreement must be interpreted according to the parties' common intention, having regard to all relevant circumstances, including preliminary negotiations, prior statements, commercial purpose, and subsequent conduct.[58]

46. Additionally, the express terms of the Agreement govern the parties' obligations. Clause 3.1.1 required Aurora to "procure the performance of ECLIPSE at the Concert in accordance with generally accepted industry standards and reasonable audience expectations for a live music concert of a similar scale and nature."[59] Importantly, the same clause expressly permitted Aurora to "employ stage, sound, lighting, visual, digital or other production technologies in connection with the Concert."[60] The word "digital" in Clause 3.1.1 is unqualified and unambiguous. It expressly encompasses digital replication and holographic technology, which are, by their nature, digital production tools.[61] This approach is consistent with *Investors Compensation Scheme Ltd*, where the House of Lords held that contractual terms must be interpreted objectively according to the meaning that a reasonable person, possessing all the relevant background knowledge available to the parties at the time of contracting, would

58 UPICC, Arts. 4.1, 4.3.

59 UPICC, Arts. 4.1, 5.1.1; Exhibit 2, cl. 3.1.1.

60 Exhibit 2, cl. 3.1.1.

61 Exhibit 2, cl. 3.1.1.

have understood them to bear.[62] Further, a contractual language is capable of more than one interpretation, the interpretation most consistent with commercial common sense should be preferred.[63] Moreover, the courts must give effect to the language chosen by the parties and cannot rewrite a contract simply because one party later considers the bargain commercially undesirable.[64] Similarly, *Wood v Capita Insurance Services Ltd* confirms that contractual interpretation requires a balanced assessment of both the contractual wording and the commercial purpose underlying the agreement.[65]

47. In the present case, a commercially sensible interpretation of Clause 3.1.1 recognizes that the parties contemplated the use of evolving performance technologies rather than imposing an unstated requirement that every member be physically present on stage at all times.

48. As such, the Agreement itself supports Aurora's position that technologically assisted performance methods were contractually permissible.[66]

C. AURORA'S PERFORMANCE MET THE REQUIRED STANDARD

49. The RESPONDENT'S performance satisfied the contractual standard required under the Agreement. As demonstrated below, **(1)** Aurora's holographic technology was an established and industry-recognized performance method; **(2)** Aurora successfully delivered the concert contemplated by the parties.

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62 Investors Compensation Scheme Ltd. v. West Bromwich Building Society [1998] 1 W.L.R. 896 (H.L.).

63 Rainy Sky SA v. Kookmin Bank, [2011] UKSC 50, [21], [2012] 1 All E.R. 34.

64 Arnold v. Britton [2015] UKSC 36, [2015] A.C. 1619.

65 Wood v. Capita Insurance Services Ltd. [2017] UKSC 24, [2017] A.C. 1173.

66 Exhibit 2, cl. 3.1.1; UPICC, Arts. 4.1, 4.3.

1. Aurora's Holographic Technology Is Established, Recognized and Industry-Accepted

50. Aurora's holographic system is a proprietary technology, not experimental, developed through years of AI-assisted movement, vocal modulation, and facial expression capture. It generates renderings capable of replicating an idol's performance with near-perfect accuracy, including subtler elements such as emotional expression and stage dynamics.[67]

51. Aurora's holographic technology had previously been deployed publicly, in its tribute concert for retired first-generation R-Pop artists.[68] That event was "met with widespread acclaim" and regarded as "a symbol of an industry adapting responsibly to technological change".

52. RESPONDENT's use of AI and holographic technology is viewed as innovative and responsible, contributing to its established industry reputation and relevance in assessing whether this deployment aligns with accepted production modalities.[69]

2. Aurora Substantially Performed the Agreement and Achieved Its Commercial Purpose

53. Termination is justified only where the alleged non-performance is fundamental, namely where it substantially deprives the aggrieved party of what it was entitled to expect under the Agreement.[70] Aurora's conduct plainly did not amount to a fundamental non-performance because Aurora substantially performed its contractual obligations and fully achieved the commercial purpose of the Agreement.[71] Moreover, Non-performance is failure to perform an obligation under the contract, where performance meets or exceeds the

67 Moot Problem, ¶¶12-15.

68 Moot Problem, ¶¶16-17.

69 Moot Problem, ¶17.

70 UPICC, Art. 7.3.1(2)(a).

71 UPICC, Arts. 7.1.1, 7.3.1; Moot Problem, ¶¶46-53.

contractually required standard, no non-performance arises. The audience experience was not merely preserved, it was celebrated.[72]

54. In *Hoenig v Isaacs*, substantial performance exists where the performing party has delivered the essential benefit of the contract notwithstanding relatively minor defects or deviations.[73] The Concert proceeded as scheduled before a sold-out audience, sponsor obligations were fulfilled, and the performance achieved precisely the commercial objective contemplated by the parties.[74] Moreover, a minor deviation from the precise method of contractual performance does not amount to a breach where the essential purpose of the contract has nevertheless been achieved.[75]

55. The Agreement aimed to successfully stage ECLIPSE's first live concert in Renya within a tight timeline, which Aurora achieved. The concert occurred on schedule before a sold-out audience, met sponsor obligations, and was performed flawlessly as planned. The holographic integration was synchronized with the live performance, replicating Luna's voice and stage presence, while the crowd of 90,000 actively participated in ECLIPSE's signature fan chant.[76]

56. During the concert, no audience member expressed concerns about the performance or absence of any ECLIPSE member. There were no reports of disruptions or dissatisfaction. The holographic rendering accurately replicated Luna's choreography and vocal synchronization, ensuring a seamless experience for attendees, which met their expectations.[77]

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72 UPICC, Art. 7.1.1.

73 Hoenig v. Isaacs, [1952] 2 All E.R. 176, 181-82 (C.A.).

74 Hoenig v. Isaacs, [1952] 2 All E.R. 176, 181-82 (C.A.).

75 Jacob & Youngs, Inc. v. Kent, 230 N.Y. 239, 129 N.E. 889 (1921).

76 Moot Problem, ¶¶46-49.

77 Moot Problem, ¶¶46-49.

57. Further, public reception overwhelmingly confirmed the success of the performance. Following the concert, Nova itself publicly celebrated the event as a major success, while fans and commentators described the performance as one of the most memorable concerts organized by Nova in recent years. Public and industry reaction was overwhelmingly positive, with the concert being widely regarded as one of ECLIPSE's most successful performances. These facts conclusively demonstrate that Aurora delivered precisely the concert experience contemplated under the Agreement.[78]

58. Even assuming arguendo that the holographic deployment constituted some technical deviation from the originally anticipated mode of performance, such deviation did not defeat the Agreement's essential purpose. The concert occurred successfully, audience expectations were satisfied, and Nova received the substantial benefit of its bargain. Here, Aurora did not fail to perform. Rather, it delivered a performance that met and arguably exceeded the contractual standard contemplated by the parties. The audience experience was not merely preserved; it was celebrated. Accordingly, Aurora substantially performed the Agreement within the meaning of Articles 7.1.1 and 7.3.1 UPICC.[79]

D. NOVA CONSENTED TO AND AFFIRMED THE HOLOGRAPHIC DEPLOYMENT

59. Nova's representatives, including Director of Events Ms. Kim, chose to proceed with the holographic deployment after witnessing its impressive capabilities during a full rehearsal the day prior to the concert.[80]

60. Nova's agreement to proceed, even if conditional on confidentiality, constitutes an acceptance of the proposed performance modality. A party that agrees to a course of

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[78] Moot Problem, ¶¶50-53.

[79] UPICC, Arts. 7.1.1, 7.3.1; Moot Problem, ¶¶46-53.

[80] Moot Problem, ¶¶43-44.

performance cannot subsequently characterize that same performance as a fundamental breach.[81]

E. THE DEPLOYMENT DOES NOT AMOUNT TO FUNDAMENTAL NON-PERFORMANCE

61. A non-performance is fundamental only where it substantially deprives the aggrieved party of what it was entitled to expect under the contract. Nova received exactly what it bargained for: a full ECLIPSE concert at the National Stadium, delivered to a standard praised by audience, media and Nova itself.[82] This principle is reflected in *Hongkong Fir Shipping Co. Ltd.*, where the Court held that termination is justified only when the breach deprives the innocent party of substantially the whole benefit that it was intended to obtain under the contract.[83] The focus is therefore not on whether a deviation occurred, but on whether the contractual purpose was fundamentally defeated. Nova cannot satisfy this threshold. Where performance achieves its commercial purpose, the threshold is not met merely because the modality of delivery differed from one possible interpretation of the contract.[84] The same principle was reaffirmed in *The Hansa Nord*, where the Court rejected termination despite a contractual departure because the buyer had nevertheless received substantially what it had bargained for.[85] Similarly, Aurora's use of holographic technology did not deprive Nova of the contractual benefit it expected. The Concert proceeded successfully, the audience remained unaware of Luna's absence, and Nova publicly celebrated the performance after its conclusion. Nova cannot rely upon authorities such as *Bolton v Mahadeva*, where substantial defects

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81 UPICC, Art. 1.8.

82 UPICC, Art. 7.3.1(2)(a); Moot Problem, ¶¶50-53.

83 Hongkong Fir Shipping Co. Ltd. v. Kawasaki Kisen Kaisha Ltd., [1962] 2 Q.B. 26, 69–70 (C.A.).

84 UPICC, Art. 7.3.1.

85 Cehave N.V. v. Bremer Handelsgesellschaft M.B.H. (The Hansa Nord) [1976] Q.B. 44 (C.A.).

rendered the contractual performance fundamentally different from that which had been promised.[86] Unlike *Bolton*, Aurora's performance was neither defective nor commercially useless. On the contrary, the holographic deployment preserved the Concert, maintained its quality, and enabled Aurora to fulfil the very purpose of the Agreement.

62. Any residual argument that the audience was deprived of Luna's physical presence is untenable, the hologram replicated her performance with precision indistinguishable to the live audience. The audience received the ECLIPSE experience in full.[87]

F. THE USE OF TECHNOLOGY WAS A NECESSARY AND GOOD-FAITH RESPONSE.

63. Articles 1.7 and 1.8 of the UPICC require parties to act in accordance with good faith and fair dealing and prohibit parties from acting inconsistently with an understanding they have created for the other party.[88] Similarly, in *Société*, the UK Supreme Court recognized that a party's clear conduct signalling acceptance of a contractual arrangement may preclude a subsequent inconsistent position.[89] This mirrors the ruling in *Yam Seng Pte Ltd v. International Trade Corp Ltd*, where it was established that commercial parties must act honestly and align with their contractual expectations.[90] Likewise, *Astor*, confirms that good faith requires parties to cooperate in achieving the contractual purpose and to exercise their contractual rights honestly and reasonably.[91]

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86 Bolton v. Mahadeva [1972] 2 All E.R. 1322 (C.A.).

87 Moot Problem, ¶¶ 44, 46-49.

88 UPICC, Arts. 1.7-1.8.

89 Société Générale, London Branch v. Geys [2012] UKSC 63, [2013] 1 A.C. 523.

90 Yam Seng Pte. Ltd. v. Int'l Trade Corp. Ltd., [2013] EWHC (QB) 111, [135], [137], [142].

91 Astor Management A.G. v. Atalaya Mining PLC [2017] EWHC (Ch) 425.

64. Im Luna’s sudden withdrawal due to severe anxiety after the security breach was beyond Aurora’s control. Rather than cancelling the sold-out Concert, Aurora used its proprietary holographic technology to ensure the performance proceeded as scheduled, minimizing financial and reputational harm, protecting Nova’s commercial interests, and preserving the ECLIPSE concert experience for attendees.[92] Aurora’s conduct therefore exemplifies the good-faith performance of contractual obligations contemplated by Article 1.7 UPICC.[93]

65. Following the Concert, Nova highlighted its success on social media, commending the group's energy and audience reaction. This endorsement contradicts Nova’s later claim that Aurora fundamentally breached the Agreement, as it was made with full awareness of the holographic deployment.[94]

66. Moreover, a party who expressly or impliedly confirms a contract after becoming aware of grounds for avoidance is precluded from subsequently relying upon those grounds.[95] By permitting the Concert to proceed, accepting its commercial benefits, and publicly praising the performance after its completion, Nova affirmed the very performance it now seeks to challenge. Having induced Aurora to rely upon its acceptance of the holographic deployment, Nova cannot subsequently adopt an inconsistent position by characterizing that same performance as a breach of the Agreement.[96]

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92 Moot Problem, ¶¶36-44.

93 UPICC, Art. 1.7; Moot Problem, ¶¶36-44.

94 Moot Problem, ¶50; UPICC, Art. 1.8.

95 UPICC, Art. 3.2.4.

96 UPICC, Arts. 1.8, 3.2.4; Moot Problem, ¶50.

67. RESPONDENT acted in good faith, while Nova's actions exhibit affirmation and inconsistency. Thus, Nova cannot claim that Aurora's holographic rendering represented a fundamental non-performance of the Agreement. Aurora's counterclaim ought to be granted.

IV. AURORA'S COUNTERCLAIM OUGHT TO BE GRANTED

A. AURORA FULLY OR SUBSTANTIALLY PERFORMED ITS OBLIGATIONS UNDER THE AGREEMENT.

68. RESPONDENT respectfully submits that its counterclaim should be granted since **(1)** Aurora procured ECLIPSE's performance for the Concert; **(2)** the Concert proceeded on the agreed date and was completed successfully without disruption; and **(3)** the performance complied with the approved production arrangements and satisfied reasonable audience expectations.

1. Aurora Procured ECLIPSE's Performance for the Concert.

69. RESPONDENT fulfilled its primary contractual obligation by procuring ECLIPSE's performance in accordance with Clause 3.1.1 of the Agreement.[97] This conclusion is reinforced by *Jacob & Youngs, Inc.*, recognized that a minor deviation from the precise method of contractual performance does not amount to a breach where the performing party has nevertheless delivered the essential contractual benefit.[98]

70. In accordance with the agreed production arrangements, Aurora ensured that ECLIPSE performed before approximately 90,000 attendees at the National Stadium on the scheduled concert date.[99] The holographic integration accurately replicated Luna's live vocals,

97 Exhibit 2, cl. 3.1.1.

98 Jacob & Youngs, Inc. v. Kent, 230 N.Y. 239, 129 N.E. 889 (1921).

99 Moot Problem, ¶¶44-49.

choreography, movements, facial expressions, stage presence and audience interactions in real time, allowing the performance to proceed seamlessly alongside the remaining members of ECLIPSE.[100]

2. *The Performance Met the Approved Production Plan and Reasonable Audience Expectations.*

71. RESPONDENT's performance likewise satisfied the qualitative standard expressly required under the Agreement. In *Hongkong Fir Shipping Co. Ltd.*, the Court held that only a breach depriving the innocent party of substantially the whole benefit of the contract constitutes a fundamental non-performance.[101]

72. In the present case, Luna's holographic performance remained synchronized with the live choreography, vocals, stage movements and audience interactions throughout the Concert.[102] Following the Concert, public reception overwhelmingly confirmed the success of the performance.[103]

73. Accordingly, Nova received the essential contractual benefit for which it had bargained and cannot now deny Aurora the reciprocal contractual rights arising from that performance.[104]

B. NOVA'S TERMINATION OF THE AGREEMENT WAS INVALID.

74. RESPONDENT respectfully submits that Nova's purported termination of the Agreement was legally ineffective and incapable of relieving Nova of its contractual obligations since **(1)** Aurora did not commit a fundamental non-performance; **(2)** Nova consented to the holographic

100 Moot Problem, ¶¶44-49.

101 Hongkong Fir Shipping Co. Ltd. v. Kawasaki Kisen Kaisha Ltd. [1962] 2 Q.B. 26 (C.A.).

102 Moot Problem, ¶¶45-48.

103 Moot Problem, ¶¶49-50.

104 UPICC, Arts. 7.1.1, 7.3.1; Hongkong Fir Shipping Co. Ltd. v. Kawasaki Kisen Kaisha Ltd. [1962] 2 Q.B. 26 (C.A.); Cehave N.V. v. Bremer Handelsgesellschaft M.B.H. (The Hansa Nord) [1976] Q.B. 44 (C.A.).

replacement before the Concert; **(3)** Nova affirmed and accepted the benefits of Aurora's performance; and **(4)** Nova was no longer entitled to terminate the Agreement after substantial performance had already occurred.

1. *Aurora did not commit fundamental non-performance.*

75. Termination only where the alleged non-performance is fundamental, namely where it substantially deprives the aggrieved party of what it was entitled to expect under the contract.[105] in *Cehave N.V.*, the Court refused to permit termination where the buyer nevertheless received substantially what it had contracted to obtain despite a contractual deviation.[106]

76. In the present case, the Concert proceeded on the agreed date before approximately 90,000 attendees, sponsor obligations were fulfilled, and the holographic integration allowed Luna's performance to remain fully synchronized with the live production.[107]

2. *Nova had consented to proceed with the holographic replacement before the concert.*

77. A party may not act inconsistently with an understanding upon which the other party reasonably relied.[108] As the English High Court recognized in *MWB Business Exchange Centres Ltd.*, parties are bound by mutually accepted variations and subsequent agreements concerning contractual performance.[109]

78. Even assuming that Aurora's proposed contingency departed from Nova's original expectations, Nova expressly agreed to proceed with the holographic replacement before the Concert commenced.[110]

105 UPICC, Art. 7.3.1(2).

106 Cehave N.V. v. Bremer Handelsgesellschaft M.B.H. (The Hansa Nord) [1976] Q.B. 44 (C.A.).

107 Moot Problem, ¶¶44-49.

108 UPICC, Art. 1.8.

109 Rock Advertising Ltd v MWB Business Exchange Centres Ltd [2018] UKSC 24, [2019] AC 119.

110 Moot Problem, ¶¶39-43.

79. The facts demonstrate that Aurora fully disclosed Luna's condition to Nova and invited Nova's representatives to observe the holographic rehearsal.[111] Aurora relied upon that approval by implementing the agreed production arrangements and successfully delivering the Concert.[112] Having induced Aurora to proceed on that basis, Nova cannot subsequently reverse its position and characterize the very performance it authorized as a fundamental breach.[113]

3. Nova's termination was inconsistent with its acceptance of the concert's benefits.

80. Articles 1.7 and 1.8 of the UPICC require parties to act consistently with good faith and prohibit conduct that contradicts an understanding created by their own words or behaviour.[114] Moreover, a party who confirms a contract after becoming aware of grounds for avoidance may no longer rely upon those grounds.[115] The same principle has been recognized in *Société Générale* , confirmed that a party's unequivocal conduct accepting contractual performance may preclude a subsequent inconsistent position.[116]

81. CLAIMANT's conduct following the Concert is wholly inconsistent with its later attempt to terminate the Agreement.[117] Rather, Nova publicly celebrated the Concert as a major success, praised the audience response, retained the revenues generated from ticket sales and sponsorships, and continued enjoying the commercial benefits arising from the performance.[118]

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111 Moot Problem, ¶¶39-41.

112 Moot Problem, ¶¶44-48.

113 UPICC, Art. 1.8 (UNIDROIT 2016); Rock Advertising Ltd v MWB Business Exchange Centres Ltd [2018] UKSC 24, [2019] AC 119.

114 UPICC, Arts. 1.7, 1.8.

115 UPICC, Art. 3.2.4.

116 Société Générale, London Branch v. Geys [2012] UKSC 63, [2013] 1 A.C. 523.

117 UPICC, Arts. 1.7, 1.8.

118 Moot Problem, ¶¶49-52.

4. Nova could not terminate after performance had been substantially completed.

82. Even where grounds for termination exist, the right to terminate cannot be exercised after the contract has already been substantially performed and the essential contractual purpose has been achieved.[119] This provision requires a party seeking termination to exercise that right within a reasonable time after becoming aware of the alleged ground for termination.[120]

83. Here, Nova became aware of Luna's inability to perform and Aurora's proposed holographic deployment before the Concert commenced.[121] Rather than objecting or refusing performance, Nova expressly agreed that the Concert should proceed.[122] Only after Aurora had completed its obligations did Nova attempt to terminate the Agreement.[123]

84. Therefore, Nova lost any right it may have claimed to terminate once Aurora had substantially completed performance and Nova had accepted the resulting contractual benefits.[124]

C. NOVA'S DAMAGES AND SET-OFF ARGUMENTS SHOULD BE REJECTED.

85. Damages are recoverable only where the CLAIMANT proves actual loss and its amount with reasonable certainty.[125] Accordingly, Nova bears the burden of proving both the existence

119 UPICC, Arts. 7.3.1, 7.3.2.

120 UPICC, Art. 7.3.2.

121 Moot Problem, ¶¶39-43.

122 Moot Problem, ¶¶41-43.

123 Moot Problem, ¶¶50-52.

124 *Hoenig v. Isaacs* [1952] 2 All E.R. 176 (C.A.); *Jacob & Youngs, Inc. v. Kent*, 230 N.Y. 239, 129 N.E. 889 (1921); UPICC, Art. 7.3.2.

125 UPICC, Arts. 7.4.1-7.4.3; Stefan Vogenauer & Jan Kleinheisterkamp eds., Commentary on the UNIDROIT Principles of International Commercial Contracts Art. 7.4.2, ¶¶1-6 (Oxford University Press 2009).

and quantum of its loss.[126] It fails to do so for two reasons; **(1)** Nova has not established any direct financial loss and **(2)** its alleged reputational harm and refund exposure are purely speculative.

1. Nova has not proven direct loss caused by Aurora.

86. The purpose of damages is to restore the innocent party to the position it would have occupied had the contract been properly performed,[127] while taking into account any benefits received.[128] As held in *British Westinghouse,* benefits arising from the transaction must be deducted when assessing loss.[129]

87. Here, Nova retained the full commercial benefit of the Concert, including sold-out ticket sales, sponsorship revenue and broadcast income, despite its obligation under Clause 4.1.5 to hold those revenues on trust for proper accounting and payment to Aurora.[130] Aurora subsequently issued its USD 3.6 million invoice covering ECLIPSE's promotional activities and performance, which Nova has not challenged with any evidence.[131] A party cannot retain the entire benefit of a performance while simultaneously claiming that the same performance caused it loss.[132] Accordingly, Nova has failed to prove any direct financial loss.

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126 Stefan Vogenauer & Jan Kleinheisterkamp eds., Commentary on the UNIDROIT Principles of International Commercial Contracts Art. 7.4.2, ¶¶1-6 (Oxford University Press 2009).

127 Robinson v. Harman (1848) 1 Exch 850, 855, 154 Eng. Rep. 363 (Exch.) (U.K.).

128 British Westinghouse Electric & Manufacturing Co. v. Underground Electric Railways Co. of London Ltd., [1912] A.C. 673 (H.L.) (U.K.).

129 UPICC, Art. 7.4.2.

130 Moot Problem, ¶¶49-51; Exhibit 2, cl. 4.1.5.

131 Moot Problem, ¶51.

132 Attorney General v. Blake, [2001] 1 A.C. 268 (H.L.) (U.K.); British Westinghouse Electric & Manufacturing Co. v. Underground Electric Railways Co. of London Ltd., [1912] A.C. 673 (H.L.) (U.K.).

2. *Nova's alleged reputational harm and refund exposure are entirely speculative*

88. Consequential losses are recoverable only if they were foreseeable and established with reasonable certainty.[133] Reputational damage likewise requires proof of actual commercial loss and cannot be presumed.[134] While losses that are merely possible, rather than probable, are not recoverable.[135] Accordingly, the Tribunal must assess damages by reference to the actual outcomes that occurred, not a party's speculative fears at the relevant time.[136]

89. As mentioned, no refunds were issued, no sponsors withdrew, and no customer or commercial partner commenced legal proceedings.[137] Immediately after the Concert, Nova publicly praised its success, while industry commentators described it as one of Nova's most successful events in recent years.[138] Although online speculation later emerged following a fleeting visual irregularity lasting less than a second, the alleged glitch was not perceptible to the live audience and generated only inconclusive online discussion.[139] Even then, the only evidence relied upon by Nova is a fan's inquiry asking whether a refund would be available if the rumours proved true, after which Nova merely monitored the situation without taking further action.[140] Nova therefore cannot recover damages based on reputational risks that never materialized into actual commercial loss.

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133 UPICC, Art. 7.4.3; Hadley v. Baxendale (1854) 9 Ex. 341, 354, 156 Eng. Rep. 145 (U.K.).

134 Malik v. Bank of Credit & Commerce Int'l SA [1998] AC 20, 51-52 (H.L.) (U.K.).

135 Victoria Laundry (Windsor) Ltd v. Newman Indus. Ltd [1949] 2 KB 528, 539 (C.A.) (U.K.).

136 Golden Strait Corp v. Nippon Yusen Kubishika Kaisha (The Golden Victory) [2007] UKHL 12, [2007] 2 AC 353, ¶¶ 33-36 (U.K.).

137 Moot Problem, ¶¶53-61

138 Moot Problem, ¶¶50, 53.

139 Moot Problem, ¶¶54-56.

140 Moot Problem, ¶¶58-61.

D. AURORA IS ENTITLED TO PAYMENT AND ROYALTIES

90. Since RESPONDENT has performed its obligation under the agreement;[141] Aurora is entitled **(1)** to the outstanding USD 3.6 million invoice and **(2)** to interest and costs arising from Nova's wrongful non-payment.

1. Aurora is entitled to the outstanding USD 3.6 million invoice.

91. Where a party obliged to pay money fails to do so, the other party may require payment.[142] Moreover, this right arises once the debtor is already "obliged" to perform the monetary obligation.[143] The provision reflects the principle of *pacta sunt servanda* under Article 1.3, requiring parties to honor their contractual commitments.[144] In addition, even in common law jurisdictions, which traditionally restrict specific performance as a remedy, an aggrieved party may nevertheless require performance of an obligation to pay an agreed sum of money.[145]

92. In *Hoenig v Isaacs*, where the Court held that a party who has substantially performed is entitled to recover the contract price subject only to deductions for minor defects.[146] Likewise, in *Jacob & Youngs, Inc. v Kent*, the Court recognized that trivial deviations from

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141 Exhibit 2.

142 UPICC, Art, 7.2.1.

143 Stefan Vogenauer, Commentary on the UNIDROIT Principles of International Commercial Contracts, 781 (2d ed. 2015).

144 H Beale et al, Jus Commune Casebooks on the Common Law' of Europe: Cases, Materials and Text on Contract Law (2002) 717. For the hesitations of the drafters to include such a provision 'stating the obvious', see: (1986) PC — Misc 9, pp 3-4.

145 GH Treitel, Remedies for Breach of Contract: A Compatative Account (1988) 62; E McKendrick, Contract Law (7th edn, 2007) 437-438 and 451—455; M Heidemann, Methodology of Uniform Contract Law: The UNIDROIT Principles in International Legal Doctrine and Practice (2007) 93; JO Honnold, Uniform Law for International Sales under the 1980 United Nations Convention (3rd edn, 1999) 197 (also referring to US law).

146 *Hoenig v. Isaacs*, [1952] 2 All E.R. 176, 181 (C.A.).

contractual performance do not justify withholding the agreed consideration where the essential contractual purpose has been achieved.[147]

93. Here, RESPONDENT successfully delivered the Concert before a sold-out audience, fulfilled the Agreement's commercial objective, and enabled Nova to obtain the full benefit of its bargain.[148] Accordingly, CLAIMANT has no legal basis for withholding payment of the outstanding USD 3.6 million.

2. *Aurora is entitled to interest and costs arising from Nova's wrongful non-payment.*

94. Where a party fails to pay a sum of money when it falls due, the aggrieved party is entitled to interest on that sum from the time payment became due until the date of payment, regardless of whether the non-payment was excused.[149]

95. This provision reflects an internationally recognized principle that late payment of a monetary obligation gives rise to a right to interest.[150] Its widespread acceptance in practice, including as a supplement to CISG, confirms that a creditor is entitled to compensation when deprived of the use of money.[151]

147 *Jacob & Youngs, Inc. v. Kent*, 230 N.E. 2d 231, 232 (1921).

148 Moot Problem, ¶¶45-50; Exhibit 2.

149 UPICC, Art 7.4.9(1).

150 Arbitral Award 19 May 2004, International Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation case no 11/2002, Unilex; Arbitral Award July 2001, ICC case no 11051,Unilex; Arbitral Award October 1998 (Geneva), ICC case no 9333, Unilex.

151 Arbitral Award 19 May 2004, International Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation case no 11/2002, Unilex; Arbitral Award December 1996 (Zurich), ICC case no 8769, Unilex; Arbitral Award 1995 (Basle), ICC case no 8128, Unilex; Arbitral Award 15 June 1994 (Vienna), Internationales Schiedsgericht der Bundeskammer der gewerblichen Wirtschaft case no SCH - 4318, Unilex; Arbitral Award 15 June 1994 (Vienna), Internationales Schiedsgericht der Bundeskammer der gewerblichen Wirtschaft case no SCH-4366, Unilex; Arbitral Award, undated, ICC International Court of Arbitration, Unilex.

96. In the present case, Nova failed to pay the outstanding USD 3.6 million when payment became due under the Agreement.[152] Therefore, Aurora is entitled to interest from the date of default until full payment, regardless of Nova's alleged justification for withholding payment.

152 Moot Problem, ¶¶62-65.

PRAYER FOR RELIEF

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

I. The Tribunal lacks jurisdiction to hear and determine the present dispute in the absence of a valid arbitration agreement between the Parties;

II. Alternatively, should the Tribunal assume jurisdiction, order the CLAIMANT to provide security for costs in the amount of USD 2 million, or such amount as the Tribunal deems appropriate;

III. Find that the RESPONDENT'S deployment of a holographic replacement did not constitute a breach, alternatively a fundamental non-performance, of the Agreement;

IV. Grant the RESPONDENT'S counterclaim and order the CLAIMANT to pay the outstanding sum of USD 3.6 million, together with interest from 7 February 2026 until the date of full payment; Award the RESPONDENT its costs of these arbitral proceedings and such further relief as the Tribunal deems just and appropriate.