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21ST LAWASIA

INTERNATIONAL MOOT 2026

MEMORANDUM FOR RESPONDENT

ON BEHALF OF:

AURORA ENTERTAINMENT CO., LTD
37 Everoak Lane
Sunderson City, 13896, Renya
(RESPONDENT)

AGAINST:

NOVA LIVE ASIA PTE LTD
Hall 12, Great Renyan Avenue,
Sunderson Valley, 13900, Renya
(CLAIMANT)

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Statement of Jurisdiction

RESPONDENT submits the following facts and arguments before the Arbitral Panel constituted at the Asian International Arbitration Centre pursuant to Parties' agreement to a full hearing following the Reyna High Court's grant of a stay of proceedings pending arbitration.

Questions Presented

Parties will be presenting arguments on the following issues:

(i) Whether the *forum non conveniens* lies in the court proceeding or arbitration;

(ii) Whether an order for security for costs ought to be granted;

(iii) Whether Aurora's deployment of a holographic replacement constituted a breach of the Agreement; and

(iv) Whether Aurora's counterclaim ought to be granted.

<u>STATEMENT OF FACTS</u>

1. CLAIMANT is a leading concert production company. RESPONDENT is a leading R-Pop entertainment company which developed a proprietary artificial intelligence system capable of generating near-perfect holographs of its idols' performances for training (collectively, the "**Parties**"). The technology was used in a one-off concert to replicate the performance of a retired R-Pop group, earning RESPONDENT commercial success and recognition as a trend-setter that shaped audience expectations and industry norms.
2. RESPONDENT elected to organise a concert (the "**Concert**") with CLAIMANT for its substantial portfolio of large-scale R-Pop events, strong financial backing and prior successful collaborations with RESPONDENT. The Concert would star RESPONDENT's highly popular and commercially valuable group, ECLIPSE. Parties discussed the proposed concert in a pre-agreement meeting on 2 Jan 2026, including performance expectations, financial scale, and commercial and reputational factors. Given their compressed timeline, Parties held a follow-up meeting and acknowledged that immediate preparations were necessary. On the understanding that their contract would reflect only essential terms, with remaining details revisited after the concert, Parties executed a written agreement on 7 Jan 2026 (the "**Agreement**").
3. Before the concert, a fan made unsolicited physical contact with Luna, an ECLIPSE member, who developed anxiety associated with public events. Despite RESPONDENT's efforts through therapy and security arrangements, Luna refused to perform three days before the concert.
4. When informed, CLAIMANT initially expressed frustration and insisted that Luna perform, but later agreed to RESPONDENT's proposal to deploy a holographic replacement of Luna on the express condition that it would be confidential.

5. A day before the concert, CLAIMANT observed Luna's hologram and was astonished by its reconstructive abilities. During the concert on 7 Feb 2026, the holographic integration was synchronised with the performance, seamlessly replicating Luna's on-stage persona. The performance appeared cohesive to audiences, with no concerns raised about the performance or member absences. After the concert, CLAIMANT publicly described the concert as successful, praising the performance on social media.
6. On 10 Feb 2026, RESPONDENT issued CLAIMANT an invoice for USD3.6 million for promotional activities and for the concert (the "**Invoice**"). This included USD 750,000 for ECLIPSE's attendance, USD90,000 for rental of outfits, styling and accessories for promotional activities, USD2.5 million for the Concert and USD 260,000 for the rental of outfits, styling and accessories for the Concert (the "**Promotional Fee**", "**Rental Fees**", "**Performance Fees**" and "**Concert Fee**" respectively). A note accompanied the invoice, requesting CLAIMANT to provide RESPONDENT a full accounting of the gross concert revenue and royalties.
7. Several days later, a social media user noted a "minor glitch" involving Luna in a concert video, prompting speculation that neither Party addressed directly.
8. At a R-Pop PAPA concert, TF Entertainment, which had previously worked with CLAIMANT, informed RESPONDENT that CLAIMANT was facing temporary liquidity issues and had delayed payment for more than three months after their event.
9. RESPONDENT subsequently issued another letter seeking payment and computation of royalties, to which CLAIMANT responded that it would not pay pending legal assessment.
10. On 26 Feb 2026, CLAIMANT issued a notice of termination of the Agreement and commenced arbitration proceedings against RESPONDENT, alleging breach of contract and seeking damages of USD2.2 million. (the "**Claim**")

11. RESPONDENT disputed both CLAIMANT's termination and their right to unilaterally commence arbitration. RESPONDENT filed a counterclaim in the arbitration proceedings (the "**Counterclaim**"), seeking payment of its invoice, which CLAIMANT disputed.

12. RESPONDENT also applied to the arbitral tribunal for a USD2 million security for costs ("**SFC**") order and commenced court proceedings against CLAIMANT to recover the invoices and royalties. CLAIMANT sought a stay of the proceedings pending arbitration which RESPONDENT opposed.

13. On 26 Feb 2026, the Reyna High Court granted CLAIMANT's application for a stay of court proceedings pending the outcome of the arbitration.

14. The matter is now set to be heard by the Arbitral Tribunal.

Summary of Pleadings

I. THE *FORUM NON CONVENIENS* LIES IN ARBITRATION

First, there is no valid agreement between Parties to arbitrate the present dispute as (1) the omission of an arbitration clause in the Agreement was deliberate; (2) Parties' prior practice and course of dealing does not constitute consent to arbitrate; and (3) Parties' pre-agreement conduct does not evidence any common intention arbitrate this dispute. Second, RESPONDENT also has not submitted to the Tribunal's jurisdiction as it has consistently denied it. Third, the doctrine of *forum non conveniens* points decisively to court proceedings as the more appropriate forum for this dispute to be resolved. Parties do not suffer any prejudice or substantial injustice by resolving this dispute in court.

II. AN ORDER FOR SECURITY FOR COSTS SHOULD BE GRANTED

RESPONDENT's application for SFC is bona fide as (1) there is a serious risk RESPONDENT will not recover its legal costs with sufficient and credible evidence relating to CLAIMANT's inability or unwillingness to meet a potential costs award; (2) the substantial overlap between the Claim and Counterclaim does not preclude security for costs; (3) USD2 million is proportionate to the disputed claims. There is a reasonable possibility of RESPONDENT succeeding on the merits of the claim. Accordingly, the balance of convenience weights in RESPONDENT's favour, and a SFC order would be just and fair on a holistic assessment of the circumstances.

III. RESPONDENT'S DEPLOYMENT OF A HOLOGRAPHIC REPLACEMENT DID NOT CONSTITUTE A BREACH OF THE AGREEMENT

First, the holographic replacement of Luna was permitted under the Agreement as (1) Parties only intended for the performance to be in accordance with Cl. 3.1.1 because a) there is no express clause for a live, human performance; b) the holographic replacement was in accordance with reasonable audience expectations; and c) The holographic replacement was in accordance with generally accepted industry standards. In the alternative, CLAIMANT affirmed the use of Luna's holographic replacement via its subsequent conduct and consent. Second, even if the replacement constituted non-performance, it can be excused through the doctrine of Force Majeure as (1) Luna's inability to perform was an emergency and was unavoidable; and (2) RESPONDENT had given reasonable notice of the impediment.

IV. THE COUNTERCLAIM FOR THE FULL PAYMENT AND RESOLUTION OF THE INVOICE SHOULD BE GRANTED

First, the Agreement has not been terminated and contractually entitles RESPONDENT to payment of all fees in its Invoice and Royalties: (1) RESPONDENT has a direct contractual debt claim to the Performance Fee; (2) An omitted term for payment of the Concert Fee by CLAIMANT should be supplied; (3) Parties made an oral collateral agreement entitling RESPONDENT to the Promotional Fee and Rental Fee; and (4) RESPONDENT's entitlement to Royalties is an omitted term that is enforceable. Second, even if the Tribunal finds that the Agreement has been terminated, RESPONDENT is still entitled to restitution of the Invoice and payment of Royalties.

PLEADINGS

I. THE *FORUM NON CONVENIENS* LIES IN ARBITRATION RATHER THAN COURT LITIGATION.

A. There is no valid agreement between Parties to arbitrate the present dispute

1. The Tribunal should decline jurisdiction as there is no valid agreement between Parties to arbitrate the present dispute. The core of an arbitration agreement ("**AA**") is the common intention to resolve disputes by arbitration as opposed to other means.[1] This intention and consent to be "bound to arbitrate" must be "clear and unequivocal".[2] Parties' conduct cannot be said to constitute such consent.

1. The omission of an arbitration clause in the Agreement was deliberate

2. The context of Parties' negotiations[3] and their post-agreement conduct indicate that the omission of an arbitration clause was deliberate, and an agreement to arbitrate was never reached. The Agreement was only meant to capture "salient commercial terms" that Parties had agreed to,[4] "with the expectation that any remaining details" could be "revisited after the concert had taken place, if required."[5] A term for dispute resolution was not "essential", and CLAIMANT cannot rely on drafting circumstances and a compressed timeline to establish Parties' intention to arbitrate. Moreover, Parties never reached any consensus to arbitrate after the conclusion of the Agreement, similar to the computation of royalties.[6]

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[1] Gary B. Born, *International Commercial Arbitration* (3rd ed, Kluwer Law International, 2021) ("**Born**") at 5.04[D][1][B]

[2] Sundra Rajoo, *Law, Practice and Procedure of Arbitration* (2nd ed, LexisNexis, 2016) ("**Rajoo**") at p 87; *Dyna-Jet Pte Ltd v Wilson Taylor Asia Pacific* [2017] 3 SLR 267 ("**Dyna-Jet**") at [37]

[3] *COT v COU and others and other appeals* [2023] SGCA 31 at [48]

[4] Facts at [32]

[5] *Ibid*.

[6] Exhibit 2, Cl. 5.1.2

Further, unlike the computation of royalties, arbitration appears nowhere in the contract and was not expressly reserved for later discussion by Parties. There is thus no basis to suggest Parties' reached an agreement or even contemplated being bound to arbitrate.

3. Further, the fact that Parties discussed confidentiality in their pre-agreement meeting and expressly reduced that confidentiality expectation into Cl. 7 of the Agreement demonstrates that they were entirely capable of translating a shared intention into contractual text. As commercially savvy parties who had six prior collaboration agreements containing arbitration clauses, their failure to include one here can only be explained as a deliberate departure.

2. Parties' prior practice and course of dealing does not constitute consent to arbitrate

4. CLAIMANT may contend Parties' past dealings imply consent to arbitrate.[7] However, Parties' prior practice does not demonstrate a consistent and repeated intention to arbitrate all disputes. Although six prior collaboration agreements contained arbitration clauses, some required prior negotiation as a pre-condition,[8] suggesting that Parties carefully tailor dispute resolution mechanisms for each collaboration. The absence of an arbitration clause in the Agreement thus reflects a deliberate choice. Parties cannot be deemed to have consented to arbitration merely because they included arbitration clauses in previous agreements.

3. Parties' pre-agreement conduct does not evince any common intention to arbitrate this dispute

5. Parties' references to confidentiality and prior dispute resolution agreements in their pre-agreement meeting cannot constitute consent to arbitrate the present dispute. CLAIMANT may argue that there was an agreement to arbitrate when RESPONDENT affirmed

[7] Born at 5.04[D][6][e]
[8] Additional Clarification 9

CLAIMANT's reference to Parties' previous practice of mediation and arbitration. However, mere reference to arbitration is insufficient to constitute an agreement to arbitrate,[9] especially since it is not clear whether RESPONDENT *specifically* affirmed the importance of confidentiality or Parties' prior practice of mediation and arbitration.[10] Further, even assuming that this pre-agreement exchange formed an agreement to arbitrate, it is an "agreement *simpliciter*", "which is incapable of creating a binding legal obligation to arbitrate".[11]

B. RESPONDENT has not submitted to the Tribunal's jurisdiction having consistently denied it

6. RESPONDENT did not validly consent to arbitration as it consistently denied the Tribunal's jurisdiction. The general rule is that participation in arbitration without timely protest can constitute valid consent to arbitrate.[12] However, RESPONDENT, wishing to preserve its right to object to Tribunal's jurisdiction, made clear its objection immediately after CLAIMANT unilaterally commenced arbitration.[13]

7. Further, RESPONDENT has consistently acted in good faith and did not represent any acceptance of the Tribunal's jurisdiction. It filed a counterclaim in the arbitration proceedings expressly maintaining that it was "without prejudice" to its position notwithstanding its jurisdictional objections.[14] Further, as elaborated in the subsequent pleading, RESPONDENT's SFC application merely engages the Tribunal's *interim* power to ensure procedural equality by protecting RESPONDENT's ability to recover its costs.

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[9] *Dyna-Jet* at [37]
[10] Exhibit 1, page 4
[11] *Dyna-Jet* at [40]
[12] Born at 5.04[D][6][g]; AIAC Rule 53.1
[13] Facts at [66]
[14] Facts at [67]

RESPONDENT's counterclaim and SFC application is not inconsistent with its jurisdictional objections, and cannot constitute submission to the Tribunal's jurisdiction.

C. The doctrine of *forum non conveniens* points decisively to court proceedings

8. Even though the doctrine of *forum non conveniens* ("**FNC**") is conventionally used by a court in exercising its discretion to stay court proceedings, its broad inquiry of determining whether the alternative forum is more appropriate so "the case may be tried more suitably in the interests of the parties and the ends of justice" is presently applicable.[15]

9. Application of the FNC doctrine to the present case, analogised to the *Spiliada* test, weighs in favour of arbitration. Applying the first stage of the *Spiliada* test, the factors of confidentiality and the governing law of the contract, *inter alia*, decisively point towards the Reyna High Court as the more appropriate forum for the instant case to be resolved.[16] Moreover, under the second stage, Parties do not suffer any prejudice or substantial injustice by arbitrating the present dispute, and there are no reasons of which justice requires that the Tribunal not refuse jurisdiction.[17]

1. The Tribunal should decline jurisdiction as there has been no consent to arbitrate

10. Per Rule 26.1 AIAC, the Tribunal is empowered to rule on its own jurisdiction, *including any objections with respect to the existence* of an AA. No valid and binding agreement to arbitrate was formed and the Tribunal should exercise its competence to decline jurisdiction.

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[15] *Rappo, Tania v Accent Delight International Ltd and another and another appeal* [2017] 2 SLR 265 ("***Rappo***") at [72], citing *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 ("***Spiliada***")
[16] *Rappo* at [68]
[17] *Ibid*.

2. Parties' prioritisation of confidentiality is not a determinative factor in favour of arbitration

11. RESPONDENT accepts that Parties' contemplated confidentiality during their pre-agreement meeting. However, their prioritisation of confidentiality does *not* decisively militate in favour of arbitration.

12. Two distinct elements to confidentiality are relevant presently. The first deals with the protection of Parties' non-public commercial, technical, and operational information ("**informational confidentiality**"). The second centres around keeping the existence of a dispute outside the public view ("**procedural confidentiality**").

13. First, procedural confidentiality is an immaterial factor as RESPONDENT had already commenced court proceedings against CLAIMANT, undermining procedural confidentiality. The existence of a dispute between Parties is publicly disclosed through the Reyna High Court's granting a stay of court proceedings. Accordingly, arbitration at present cannot preserve procedural confidentiality.

14. Second, informational confidentiality is insufficient as a factor as it can still be protected by Reyna Courts even without the use of arbitration. Reyna's open-court principle does not entail unrestricted access to all sensitive information such as trade secrets and internal affairs that are submitted to it. For example, common law courts can restrict disclosure of highly sensitive information to certain parties (*e.g.* lawyers and experts) and not the public at large. This allows courts to protect the interests of the disclosing party in the "preservation of their confidential commercial and technical information".[18] CLAIMANT has not identified any particular information which must *necessarily* be public and which the Reynan court would be incapable of protecting. Further, despite being drafted pursuant to Parties' pre-agreement understanding to preserve informational confidentiality by

[18] *OnePlus Technology (Shenzhen) Co Ltd v Mitsubishi Electric Corp* [2020] EWCA Civ 1562

preventing disclosure of non-public information such as trade secrets, Cl.7 clarifies that the Agreement could operate alongside judicial processes by permitting disclosure as required "by law, regulatory authorities, or pursuant to a court order". Parties' prioritisation of informational confidentiality is thus insufficient to position arbitration as the more appropriate forum.

3. Reyna Courts are the natural and appropriate forum

15. Reyna Courts are the natural and appropriate forum as they are the default forum.Parties would have litigated the dispute in the national courts if CLAIMANT did not *allege* the existence of an AA that RESPONDENT did not consent to.

16. Further, Parties and the incident are substantially connected to Reyna. Parties are companies incorporated in Reyna and under the laws of Reyna,[19] and the concert, promotional activities, holographic deployment all occurred in Reyna. The video speculating that the perceived irregularity during the performance was due to use of holographic technology was posted on Rootube, a major online video-sharing platform and social media network widely used in Reyna.[20] Accordingly, most of the relevant witnesses and evidence is likely located within Reyna, and the connection between Reyna and Parties position the Courts as the more convenient and appropriate forum.

4. The governing law of the Agreement is neutral and can be applied by the courts

17. The PICC principles have been qualified as general principles of law applicable before national courts[21] and thus cannot be said to substantially favour arbitration. Not only do the preamble of the PICC principles state that "they may be used to interpret or supplement

[19] Exhibit 2
[20] Facts at [55],[56]
[21] Eckart Brödermann, *UNIDROIT Principles of International Commercial Contracts. An Article-by-Article Commentary* (2nd ed, Kluwer Arbitration, 2023), Annex to Preamble at [30]

domestic law", courts have recognised that they are "non-binding tools made available to the international community for adoption in contracts and used by judges and legislators".[22]

5. The subject matter of the dispute is a conventional contractual debt claim that does not require specialist forums

18. Further, the central dispute is whether RESPONDENT's deployment of a holographic replacement constituted a fundamental deviation from the agreed performance, disentitling RESPONDENT from any payment. This turns on issues of contractual interpretation, affirmation and restitution which a generalist judge routinely engages with, and is more than well-equipped to resolve by applying PICC and general principles of law.

6. Arbitrating the present dispute attracts an enforcement risk because of Reyna's non-signatory status to NYC

19. CLAIMANT is a company incorporated in Reyna, which is not a party to NYC.[23] Enforcement of arbitral awards, which is a vital objective of international arbitration, is materially less certain at present as a result. This is because NYC requires "national courts to recognise and enforce foreign arbitral awards"[24], and Reyna's non-signatory status introduces an issue of recognising foreign awards which domestic litigation avoids altogether through the enforcement of local Reyna judgments. Further, CLAIMANT has not identified any assets in other countries which are signatories to NYC, increasing the risk of non-enforceability, pointing towards the Reyna Courts as the more direct and appropriate forum.

7. Neither party will suffer prejudice or substantial injustice by litigating the present dispute in the courts

20. There is no injustice that requires the Tribunal to assume jurisdiction despite litigation being more appropriate.[25] The dispute can be tried in the Reyna High Court in a

[22] *Kabab-Ji SAL v Kout Food Group* [2021] UKSC 48 at [42]
[23] Additional Clarification 1
[24] Born at 1.04[A][1][c]
[25] *Rappo* at [107]

"procedurally and substantively fair" manner,[26] with the High Court already granting CLAIMANT's application for a stay of court proceedings to determine for the Tribunal to determine its jurisdiction. Parties' substantive cases involve issues regarding performance, breach, and contractual interpretation which the High Court is well-equipped to adjudicate and grant the proper remedies.

[26] *Rappo* at [110]

II. AN ORDER FOR SECURITY FOR COSTS SHOULD BE GRANTED

21. Pursuant to Rules 11.3(c) and 11.4 AIAC, the Tribunal should grant RESPONDENT's justified SFC application as it is *bona fide.* If the application is not granted, the harm to RESPONDENT that is not adequately reparable by an award of damages would likely result and outweigh the harm to CLAIMANT that would likely result should the application be granted (the "**balance of convenience**" test).[27] Further, there is a reasonable possibility of RESPONDENT succeeding on the merits of the claim. Ultimately, granting SFC would enhance procedural fairness.

A. RESPONDENT's application for security for costs is *bona fide*

1. RESPONDENT has established a serious risk that it will not recover its legal costs with sufficient and credible evidence relating to CLAIMANT's inability or unwillingness to meet a potential costs award

22. There is sufficient and credible evidence evincing CLAIMANT's inability or unwillingness to satisfy a potential costs award.

23. While CLAIMANT may contend that SFC is typically only awarded in exceptional circumstances and requires a "solid evidentiary basis"[28], *proving* CLAIMANT's inability or unwillingness to comply with an adverse costs order only demands the lower *prima facie* standard. To begin with, there is no internationally recognised legal test for SFC applications.[29] Instead, commentators have advocated for a total circumstances, multifactorial approach with regard to the particular circumstances of the case.[30]

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27 Ilias Bantekas et al, *UNCITRAL Law on International Commercial Arbitration* (Cambridge University Press, 2020) at p 355

28 Ajar Rab, *Interim Measures in International Commercial Arbitration: A Comparative Review of the Indian Experience* (Kluwer Arbitration, 2022) ("**Rab**") at p 292

29 Gu Weixia, *Security for Costs in International Commercial Arbitration*, Journal of International Arbitration Volume 22(3) [2005] pp 167–206 ("**Gu**") at p 186

30 Cameron Ford, *Security for Costs in International Arbitration* (1st ed, Routledge, 2024) ("**Ford**") at Ch 5

24. In this regard, RESPONDENT's difficulty of making an allegation of financial difficulty without having access to CLAIMANT's confidential material is a recognised issue[31] and justifies a lower *prima facie* standard of proof.[32] Further, while the "legal burden of proof is on the respondent to establish an entitlement to security", "once that burden is discharged *prima facie*", the evidential burden shifts to CLAIMANT. CLAIMANT would have to show why it can and will comply with a potential costs order.[33] Courts have also adopted a "low" and "undemanding" standard, preferring a "rational basis" for the belief that CLAIMANT is unable or unwilling to pay.[34]

25. The totality of the evidence firmly establishes a sufficient risk of CLAIMANT's inability or unwillingness to meet a potential costs award, and RESPONDENT should be entitled to SFC. The Tribunal, not being bound by the strict rules of evidence in court proceedings, can both *admit* and place *substantial weight* on hearsay evidence.[35] The Tribunal can "accept lesser or secondary evidence" to establish a factual contention when the party establishing it "does not have the ability to provide the best or primary evidence".[36] CLAIMANT may contend that the thrust of RESPONDENT's evidence should not be given any weight, since they are unverifiable and only repeat allegations of delayed or missing payments. However, the rumours surrounding CLAIMANT's precarious financial position, allegations of delayed payments by multiple agencies across multiple jurisdictions, together with a senior executive from TF Entertainment informing RESPONDENT to similar effect, form a "sufficient ensemble" of indirect evidence that the

[31] Jeffrey Waincymer, *Procedure and Evidence in International Arbitration* (Kluwer Arbitration, 2012) ("**Waincymer**") at p 650
[32] Nathan O'Malley, Rules of Evidence in International Arbitration (2nd ed, Routledge, 2021) ("**O'Malley**") at 7.30
[33] Ford at 6.7
[34] *Resilium Pty Ltd v Nest Insurance Consult Pty Ltd* [2021] NSWSC 974 at [67]
[35] Rule 28.1(k) AIAC
[36] O'Malley at 7.13

Tribunal can give "dispositive weight" to.[37] Their weight is enhanced especially since CLAIMANT raised its "very delicate state" and risk of "its downfall" if cancellation occurred after going public with ticket sales,[38] almost constituting an admission of its precarious financial condition.

26. The different sources corroborate CLAIMANT's track record of delayed or missing payments, establishing "legitimate concerns"[39] regarding CLAIMANT's financial position. This shifts the evidential burden to CLAIMANT, which CLAIMANT relies on a bare assertion of its solvency to rebut.[40] Compared with RESPONDENT who has little choice but to rely on commentary and rumour in making an allegation of financial difficulty[41], CLAIMANT is best able to provide evidence and key documents as to its financial position.[42] However, CLAIMANT has provided no such evidence and did not discharge its evidential burden. The Tribunal can thus conclude CLAIMANT will be unable to meet a potential costs order.[43]

2. The substantial overlap between the Claim and Counterclaim does not preclude security for costs

27. RESPONDENT's SFC application should still be granted even if the quantum secured covers the sum of the Counterclaim.[44] While the Claim and Counterclaim are based on similar facts and issues, a substantial overlap does not preclude RESPONDENT's SFC application,[45] and SFC should *still* be ordered to give effect to its aim of ensuring procedural equality.

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[37] O'Malley at 7.13
[38] Exhibit 1, Page 2
[39] *Explosive Learning Solutions Limited* [2023] EWHC 1263 (Comm) ("***Explosive*"**) at [17]
[40] Facts at [70]
[41] Waincymer at p 650
[42] Chartered Institute of Arbitrators, *Applications for Security For Costs* ("**CIARB**") at p 8; Explosive at [18]
[43] *Explosive* at [18]
[44] Additional Clarification 7
[45] *Explosive* at [23]; *Cova Group Holdings Ltd v Advanced Submarine Networks Pte Ltd and another* [2023] SGHC 178 ("***Cova***") at [48],[54]

28. SFC is awarded to protect a Respondent, who cannot avoid being sued, against the cost of the proceedings[46] *without conferring any unjust advantages*. CLAIMANT may contend that ordering security for an overlapping counterclaim would be unfair as CLAIMANT would have to defend against the same issues arising from the same facts in the Counterclaim, if it was unable to pay the security.[47]

29. However, this has to be weighed against the facts of the case and the procedural disadvantages RESPONDENT faces. If it does not choose to defend the proceedings, RESPONDENT risks being faced with a default award. It also risks forgoing its contractual entitlement to the performance it rendered under the contract, given that the High Court has stayed court proceedings pending arbitration.[48] However, even if RESPONDENT participates in the proceedings, it incurs substantial costs which may be unrecoverable if there is a serious risk of CLAIMANT's inability or unwillingness to pay.[49]

30. CLAIMANT may contend that the Counterclaim would have been brought *in any event*, and SFC should not cover costs necessary to prosecute a counterclaim necessary for RESPONDENT to recover payment.[50] However, RESPONDENT submits that its counterclaim is a *defensive* one which would likely not have been filed if CLAIMANT had not first commenced proceedings against RESPONDENT.[51] Despite four of the six prior collaboration agreements between Parties requiring prior negotiation as a pre-condition to commencing arbitration,[52] CLAIMANT unilaterally commenced arbitration without responding to RESPONDENT's assertion of complete performance.[53] Further,

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[46] *Cova* at [51]
[47] *Cova* at [50]
[48] Facts at [76]
[49] Alan Redfern and Sam O'Leary, *Why it is time for international arbitration to embrace security for costs*, in William W. Park (ed), Arbitration International, Volume 32(3) (2016) ("**Redfern**") at pp 398-399
[50] *Cova* at [50]
[51] *Cova* at [58]
[52] Additional Clarification 9
[53] Facts at [64]

RESPONDENT had to file its counterclaim together with its jurisdictional objections to preserve its rights should the tribunal assume jurisdiction.[54] Moreover, RESPONDENT is only seeking to recover payment contractually owed by CLAIMANT *without any additional damages*.[55] Granting SFC would equalise RESPONDENT's procedural disadvantages, giving effect to SFC's underlying policies.

3. The application of security of USD2 million is proportionate to the claims in dispute

31. The quantum requested by RESPONDENT is reasonable and proportionate. RESPONDENT only needs to offer a "broad-brush" estimate of what it could reasonably expect to incur during the arbitration proceedings.[56] Presently, the cost exposure is necessarily significant. The probable legal, expert, and institutional costs of defending a technically complex international arbitration concerning jurisdictional submissions, specialised commercial and technical matters regarding artificial intelligence and holographic technologies justifies the quantum requested.

32. CLAIMANT may contend that SFC is nevertheless unnecessary since cost-shifting is not guaranteed and the Tribunal can apportion the costs between Parties.[57] However, the general rule and settled practice is that "costs follow the event".[58] CLAIMANT should expect to bear RESPONDENT's costs since there are no "exceptional circumstances" such as unreasonable conduct or lack of good faith.[59]

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[54] AIAC Rule 33.1
[55] Facts at [67]
[56] Ford at 6.19
[57] AIAC Rule 47.8
[58] Rajoo at p 692
[59] Rajoo at p 695

B. There is a reasonable possibility of RESPONDENT succeeding on the merits of the claim

33. Pursuant to Rule 11.4(b) AIAC, there is a reasonable possibility of RESPONDENT succeeding on the merits of the claim. This standard of reasonable possibility is a low one, requiring only a *prima facie* basis of a valid claim on the merits and a *mere* "likelihood" of success".[60]

34. Presently, there is an arguable case that RESPONDENT did not breach the Agreement by deploying a holographic replacement. It aligned with industry standards and reasonable audience expectations and CLAIMANT had affirmed the deployment. Notwithstanding breach, RESPONDENT is entitled to restitution of the services performed under the Agreement. Accordingly, there is a *prima facie* case on the merits sufficiently strong to warrant protection, favouring SFC.

C. Accordingly, the balance of convenience weighs in RESPONDENT's favour, and on a holistic assessment of the circumstances, ordering security for costs would be just and fair

35. The balance of convenience weighs in RESPONDENT's favour as the harm of denying RESPONDENT's SFC application outweighs the harm of granting it. The heart of any application for SFC is the risk of *irreparable harm*, in this case RESPONDENT's "substantial expense" in defending the claim "only to find that any costs order made in its favour goes unfulfilled".[61] The allegations of delayed or missing payments established a serious risk of CLAIMANT's inability or unwillingness to meet a potential costs order, which is what SFC is designed to address.[62]

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[60] Ford at 8.35
[61] Redfern at p 410
[62] Ford at 9.9

36. Moreover, the risk of non-enforceability of the costs award favours granting SFC.[63] Since CLAIMANT is a company incorporated in Reyna, which is not a party to the New York Convention[64], enforcement is materially less certain. CLAIMANT has provided no evidence establishing its solvency, nor identified assets readily available for payment and enforcement.

37. Conversely, there is no serious harm likely to result to CLAIMANT if SFC was granted. CLAIMANT cannot maintain that SFC would stifle its genuinely meritorious claim while asserting that it was a financially solvent entity.[65] CLAIMANT may contend that SFC would impair its ability to advance its claim in the event of (for example) unexpected temporary liquidity issues. However, such pressure is a normatively necessary deterrent, a procedural safeguard integrated under the AIAC rules for RESPONDENT, *who cannot avoid being sued*, to ensure recovery of costs from CLAIMANT who has evinced an inability or unwillingness to pay.

38. CLAIMANT may contend that RESPONDENT assumed the risk of CLAIMANT's weak financial position and non-payment of a potential costs order when it contracted with CLAIMANT, which militates against ordering SFC and demands a higher evidentiary threshold for financial distress.[66] However, this assumes RESPONDENT knew of, or had an opportunity of investigating CLAIMANT's weak financial position before entering the contract.[67] Yet, RESPONDENT chose CLAIMANT precisely because of CLAIMANT's strong financial backing.[68] CLAIMANT cannot rely on its contractual warranty of being

[63] Redfern at p 411
[64] Additional Clarification 1
[65] *Cova* at [40]
[66] Ford at 7.9
[67] Ford at 7.21
[68] Facts at [27]

"financially capable of performing its payment obligations"[69] but claim RESPONDENT accepted CLAIMANT's inability or unwillingness to pay as an assumed commercial risk.

39. Importantly, considering all the circumstances of the case, granting SFC would be just and fair.[70] In addition to the balance of convenience weighing in RESPONDENT's favour, RESPONDENT's SFC application is *bona fide*, made without delay and grounded on legitimate concerns surrounding CLAIMANT's financial standing. Conversely, CLAIMANT's conduct lacks *bona fides* as CLAIMANT unilaterally commenced arbitration without negotiating. Despite retaining the substantial concert revenue, it claimed damages of USD2.2 million despite *only* one fan email requesting confirmation to entitlement to a refund and mere suggestions that the use of holographic technology might be plausible.[71] In sum, RESPONDENT's SFC application should be granted to enhance procedural fairness between Parties.

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

A. The holographic replacement of Luna was permitted under the Agreement

1. Parties only intended for the performance to be in accordance with Cl. 3.1.1

40. The holographic replacement of Luna was permitted under Cl. 3.1.1 of the Agreement. Non-performance, under Article 7.1.1 PICC, is defined as a failure of a party to perform any of its obligations, and includes all forms of defective performance as well as a complete failure to perform. Here, there was neither, as the holographic replacement was within Parties' common intention as determined by the proper construction of Cl. 3.1.1 of the

[69] Exhibit 2, Cl. 6.2
[70] Redfern at p 410
[71] Facts at [56],[58]

Agreement. The relevant circumstances, including the preliminary negotiations between Parties, should be considered.[72]

a) There is no express clause for a live, human performance

41. The wording of the Agreement permits RESPONDENT's use of the holographic replacement. The Tribunal should "look primarily" at the words of the Agreement.[73] Here, there was neither an express clause in the Agreement denying the use of holographs, nor an express clause for a live, human performance. In fact, under Cl. 3.1.1 of the Agreement, RESPONDENT is expressly allowed to use "stage, sound, lighting, visual, digital or other production technologies" for the Concert.

42. While the Agreement does define ECLIPSE as comprising of 5 members, including Luna,[74] the Agreement has to be construed in light of the preliminary negotiations and the nature and purpose of the Agreement.[75] The Agreement was meant to "reflect the essential terms", given the short timeframe and the "shared understanding" from the zoom call.[76] Correspondingly, what Parties chose not to include, *i.e.* that it had to be a human performance, was not essential. Instead, the obligation that the Concert was in accordance with "industry standards" and "audience expectations" were the essential requirements that Parties deliberately chose to include and reflect the "shared understanding" of the preliminary negotiations.[77] Accordingly, the holographic replacement satisfied these requirements, and therefore cannot constitute non-performance.

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[72] Article 4.3 PICC
[73] *Hansalaya Properties And Anr. vs Dalmia Cement (Bharat) Ltd* at [28]; Article 4.3 PICC
[74] Exhibit 2, Cl. 1.1
[75] Article 4.3 PICC
[76] Facts at [32]
[77] Exhibit 2, Cl. 3.1.1

b) The holographic replacement was in accordance with reasonable audience expectations

43. The holographic replacement was in accordance with reasonable audience expectations, which should be determined by the common intention of Parties under Article 4.1 PICC. During the preliminary negotiations, CLAIMANT stated that the audience expects the "EClIPSE experience" and that they do not "analyse the mechanics".[78] Rather, the focus is on the "energy, precision and chemistry", and that it "feels right" to the audience.[79] Cl. 3.1.1 should therefore be interpreted as an obligation to achieve a desired result, *i.e.* satisfy reasonable audience expectations, rather than prescribing a means to procure the Concert. In that regard, "audience expectations", as understood by both Parties, means that the Concert has to feel like an ECLIPSE performance to the audience.

44. Accordingly, RESPONDENT was able to achieve this result with the holographic replacement. From a live audience's perspective, the performance was well-received, with no reports of any dissatisfaction with the Concert.[80] CLAIMANT even publicly described the Concert as a success, with an emphasis on the audience response.[81] Clearly, the audience had felt that the live Concert was the "ECLIPSE experience", with the necessary energy and chemistry, even if a holographic replacement had been used.

45. The subsequent speculation of a holographic replacement is ultimately immaterial. The "audience expectations" is understood as the *live* audience reaction, rather than the public viewing recordings of the Concert. The Agreement is for a "live performance",[82] and the standard of the "audience expectation" is set at that of a "live music concert".[83] Further, in

[78] Exhibit 1, Page 3
[79] *Ibid*.
[80] Facts at [49]
[81] Facts at [50]
[82] Exhibit 2, Cl. 1.1
[83] Exhibit 2, Cl. 3.1.1

discussing the audience expectations in the preliminary negotiations, CLAIMANT stated that the audience "come[s] expecting the ECLIPSE experience",[84] suggesting a live audience. Since the Concert satisfied live audience expectations, RESPONDENT has discharged its obligation.

c) The holographic replacement was in accordance with generally accepted industry standards

46. Additionally, the holographic replacement was in accordance with generally accepted industry standards as understood by Parties at the time of signing the Agreement. At the time of contracting, the R-Pop industry had changed drastically due to technological changes.[85] RESPONDENT has become an industry leader, influencing both "audience expectations and industry norms" regarding live performances.[86] Their practices, including the use of holographic performers for a full concert "were not a deviation", but the "symbol" of the industry adapting to technological change.[87] As such, RESPONDENT's prior use of holographic technology in concerts set a precedent in the industry, and their practices were subsequently studied and followed by many other companies.[88] In this context, the use of a holographic replacement was widely known in the industry, and generally accepted, with commentators and stakeholders praising its use.[89]

[84] Exhibit 1, Page 3
[85] Facts at [17]
[86] Facts at [19]
[87] Facts at [17]
[88] Facts at [19]
[89] Facts at [17]

2. In the alternative, CLAIMANT affirmed the use of Luna's holographic replacement via its subsequent conduct and consent

a) CLAIMANT cannot act inconsistently with its consent of the deployment as RESPONDENT had expended resources for the performance

47. Even if the holographic replacement was initially not permitted under the Agreement, it was subsequently modified into the Agreement via CLAIMANT's consent and conduct. Under Article 3.1.2 PICC, mere agreement is sufficient to modify the agreement. Since there is no agreed method of modification in the Agreement, CLAIMANT's agreement to proceed with the holographic replacement constitutes modification of the Agreement.

48. Further, per Article 1.8 PICC, CLAIMANT cannot act inconsistently in its acceptance of the holographic replacement. CLAIMANT has caused RESPONDENT to have the understanding that the holographic replacement can be used for the Concert. An understanding can result from a variety of ways, such as a representation or conduct so long as it relates to the contractual relationship of parties.[90] In this case, CLAIMANT had caused such an understanding through their agreement to the modification,[91] and its conduct of retaining the gross revenue and Royalties of the Concert.

49. Additionally, RESPONDENT has reasonably acted in reliance of this understanding to its detriment.[92] The reliance was reasonable in the circumstances as CLAIMANT had accepted the modification, and went ahead with the Concert after observing the holographic during the rehearsals.[93] In consequence of the reasonable reliance, RESPONDENT held the Concert to its detriment, expending resources in deploying the holograph. Accordingly, CLAIMANT's subsequent refusal to pay for the Invoice and its claim against

[90] Article 1.8 PICC
[91] Facts at [44]
[92] Article 1.8 PICC
[93] Facts at [45]

RESPONDENT is inconsistent with its acceptance of the holographic replacement which RESPONDENT had relied on.

b) The holographic replacement was in accordance with the modification of the Agreement

50. The modification was made with the express condition that the use of the holographic replacement would be strictly confidential. The condition of confidentiality should be interpreted in the light of the whole Agreement such that RESPONDENT is only obligated to not disclose such information to third parties without consent. Under Cl. 7 of the Agreement, confidentiality is prescribed as non-disclosure of information to third parties, be it directly or indirectly. Since the modification is part of the Agreement, the condition of confidentiality should be consistent with the obligation of confidentiality already provided for in the Agreement. Further, this interpretation would be consistent with PICC's definition of the duty of confidentiality as a duty of non-disclosure for information classified as confidential.[94] Accordingly, RESPONDENT did not breach its duty of confidentiality. While there was public speculation regarding the use of the holographic replacement, RESPONDENT never disclosed its use to the public.

51. Even if the duty of confidentiality included RESPONDENT's representation that the holographic replacement would be indistinguishable, RESPONDENT did not breach the duty. RESPONDENT only represented that the holographic replacement would be indistinguishable to the audience "under live performance conditions". When CLAIMANT subsequently accepted the holographic replacement, it was with this understanding in mind. Correspondingly, the speculation would be immaterial in determining breach since it was prompted by videos of the Concert, rather than the live Concert itself.[95] The actual live

[94] Article 2.1.16 PICC
[95] Facts at [54]

Concert was lauded as a success, without any complaints from the audience.[96] Moreover, the speculation itself is unverifiable, with some even criticising such speculation.[97] Thus, the public does not know for certain that the holographic replacement was used, and in any event, RESPONDENT did not breach its duty of confidentiality under the modified Agreement.

B. Even if the replacement constituted non-performance, it can be excused through the doctrine of Force Majeure

1. Luna's inability to perform was an emergency and was unavoidable

52. Even if the holographic replacement constituted non-performance, it can be excused through the force majeure clause under the Agreement. The non-performance was due to Luna's refusal to perform, which was an impediment outside RESPONDENT's control, unforeseeable at the time of contract and unavoidable in its effects.[98]

53. Luna's refusal to perform was an "emergency" as it went beyond "ordinary conduct" and was an "extraordinary" life event.[99] Prior to the fan meet, Luna had no history of psychological distress. Her subsequent anxiety and complete refusal to perform was therefore extraordinary in nature and unforeseeable. While possible impediments were raised in the preliminary negotiations, these related to "travel issues, timing delays" and "technical hiccups".[100] At the time of contracting, neither party could foresee such a situation happening as this was neither raised in the preliminary negotiations nor provided for in the Agreement.

[96] Facts at [50]
[97] Facts at [56]
[98] Article 7.1.7 PICC
[99] Case No. 09AP-55092/2015-GK, 09AP-57756/2015-GK
[100] Exhibit 1, Page 3

54. Further, the impediment was "unavoidable", in that it was an external factor which did not depend on subjective factors.[101] Her sudden refusal to perform was outside RESPONDENT's control, as RESPONDENT had already provided support to Luna through therapy sessions, enhanced security measures, and minimised her exposure to stressful situations.[102] Moreover, despite repeated messages and alternative arrangements, Luna adamantly refused to perform.[103] The effects of the impediment were therefore also unavoidable.

2. RESPONDENT had given reasonable notice of the impediment

55. Since the impediment satisfies the conditions of force majeure, the non-performance was excused when RESPONDENT provided reasonable notice on 5 February 2026.[104] The notice was given within a reasonable time after RESPONDENT knew or ought to have known of Luna's inability to perform.[105]

56. RESPONDENT only knew of Luna's refusal to perform 3 days before the Concert, and *immediately* gave notice to CLAIMANT.[106] While RESPONDENT had known of Luna's intermittent struggles with rehearsals and group activities, she was also showing gradual improvements.[107] During this period, there was no indication from Luna herself as to whether she could perform or not. Given that RESPONDENT was still organising rehearsals with Luna, RESPONDENT reasonably expected that Luna could perform and could not have known that she would refuse prior to her actual refusal. As such, RESPONDENT had given timely notice of the impediment and the non-performance should be excused.

101 Case No. Recurso Inominado nº 0037976-66.2019.8.1
102 Facts at [38] and [39]
103 Facts at [41]
104 Facts at [42]
105 Article 7.1.7(3) PICC
106 Facts at [42]
107 Facts at [38]

IV. THE COUNTERCLAIM FOR THE FULL PAYMENT AND RESOLUTION OF THE INVOICE SHOULD BE GRANTED

A. The Agreement has not been terminated and contractually entitles RESPONDENT to payment of all fees in its Invoice and Royalties

57. The relevant fees under this header include: 1) Performance Fee (USD2,500,000); 2) Concert Fee (USD260,000); 3) Promotional Fee (USD750,000); 4) Rental Fee (USD90,000); and 5) Royalties.

1. RESPONDENT has a direct contractual debt claim to the Performance Fee

58. CLAIMANT is expressly obligated to pay the Performance Fee fixed at an undisputed quantum of USD2,500,000 under Cl. 5.1.1. of the Agreement. Pursuant to Article 6.1.1(a) PICC, CLAIMANT's payment obligation crystallised on completion of the concert. As such, given that (a) RESPONDENT's performance of the concert and promotional appearances required a period of time; and (b) RESPONDENT has faithfully rendered such performance pursuant to Article 6.1.4 (2) PICC, CLAIMANT was accordingly obliged to pay the Performance Fee upon conclusion of the concert.

2. An omitted term for payment of the Concert Fee by CLAIMANT should be supplied

a) There is a "gap" regarding "reimbursable expenses" that has to be addressed

59. Pursuant to Article 4.8 PICC, the Tribunal should supply an omitted term to address the obligation to pay for the Concert Fee as the term is important for the determination of Parties' contractual rights and duties. There is currently a "gap" in the Agreement, in that the question of payment of the Concert Fees has not been regulated by Parties despite being contemplated by the Agreement.[108] Under Cl. 1.1. of the Agreement, 'Performance Fee'

[108] PICC Commentary, Article 4.8

expressly *excludes* “Royalties, costs incurred for promotional activities and reimbursable expenses.”. However, there is no express clause regulating “reimbursable expenses”, resulting in a “gap” that should be addressed by supplying an omitted term.[109]

b) A term of payment should be supplied to address this “gap”

60. Accordingly, a term of payment would be appropriate to address the “gap” of "reimbursable expenses”, as the payment of the Concert Fee by CLAIMANT was the intention of Parties. The phrase itself, “reimbursable”, indicates a common intention in the Agreement that such expenses would be repayable from CLAIMANT to RESPONDENT. Further, the separate category of “reimbursable expenses” was specifically distinguished from the Performance Fee, affirmatively recognising a category of separately reimbursable costs. It would thus be commercially unworkable for the contract drafters to have intended to identify this category only to leave it unrecoverable in the Agreement.

61. While CLAIMANT may submit that the Concert Fee falls under the definition of Performance Fee as a “preparation required to meet the standard reasonably expected of a headline act of similar stature”, the definition has to be construed in light of RESPONDENT’s obligation under Cl. 3.1.1 of the Agreement.[110] The Performance Fee is “for the Act’s engagement and delivery of the Concert”; similarly, Cl. 3.1.1 is for RESPONDENT to “procure the performance of ECLIPSE at the Concert”. Accordingly, the definition of the Performance Fee should be read in tandem with Cl. 3.1.1 as the Performance Fee is intended as payment for the obligation under Cl. 3.1.1 of the Agreement. Thus, "preparation", which is included in the Performance Fee, should be defined as RESPONDENT’s use of “stage, sound, lighting, visual, digital or other production technologies in connection with the Concert”. Correspondingly, there is no fee

[109] Article 4.8 PICC
[110] Article 4.4 PICC

for the use of any such technologies in the Invoice, even though a holographic replacement was used. However, the items in the Concert Fee are not included in RESPONDENT's obligations under Cl. 3.1.1 of the Agreement, and should therefore form part of the "reimbursable expenses".

3. Parties made an oral collateral agreement entitling RESPONDENT to the Promotional Fee and Rental Fee

62. Given that there is no requirement for a contract to be made in a particular form under Article 1.2 PICC, Parties' express oral agreement on promotional charges evinces an enforceable collateral agreement to pay for them. In their pre-agreement meeting, Parties concluded the collateral agreement by conduct sufficient to show agreement per Article 2.1.1 PICC.

63. First, CLAIMANT proposed a 50–50 split on promotional costs,[111] directly addressing Parties' payment proportion for both Promotional and Rental Fees. Second, RESPONDENT clarified that "ECLIPSE doing promotional activities will not be free" and "their services can be settled at the end".[112] To which, CLAIMANT agreed in "Ah, ok ok... I get it…Ultimately, it is to be settled once we discuss royalties", indicating acceptance to an agreement that ECLIPSE's promotional appearances are chargeable and to be discussed in the future.

64. Parties also intended for the Agreement to only reflect essential terms, with "remaining details or refinements…revisited after the concert had taken place".[113] It was thus never Parties' intention for the written Agreement to displace the orally agreed terms on the Promotional Fee and Rental Fee.

[111] Exhibit 1, Page 4
[112] *Ibid*.
[113] Facts at [32]

65. Even though CLAIMANT said “let's cross that bridge when we get to it”, CLAIMANT cannot now rely on Article 2.1.13 PICC to insist that the Fees must be written as a way to deny the conclusion of the collateral agreement. Pursuant to Article 1.8 PICC, CLAIMANT also cannot now deny what its own representatives assented to in face-to-face dialogue, thereby inflicting detriment on RESPONDENT who had subsequently relied on the matters discussed.

66. CLAIMANT may argue that RESPONDENT’s own internal minutes, as evidence of the alleged oral agreement, cannot be relied on as they were neither circulated to nor agreed upon by CLAIMANT.[114] However, RESPONDENT recorded the minutes accurately in “verbatim”. For the avoidance of doubt, the legal agreement was formed at the meeting on 2 January 2026. The minutes are thus a record of Parties’ agreement, not the agreement in of itself. Therefore, non-circulation of the minutes to CLAIMANT simply points to evidentiary non-acceptance, and does not affect what has actually been said and agreed at the meeting.

4. Even if no oral collateral agreement existed, CLAIMANT’s payment of the Promotional Fee and Rental Fee remains an enforceable omitted term that the Parties specifically contemplated

a) The term for payment of Promotional and Rental Fees should be supplied as it is important for a determination of the Parties’ rights and duties

67. Similar to the regulation of “reimbursable expenses”, there is a “gap” in the Agreement regarding the regulation of the Promotional Fee and Rental Fee. Under Cl. 1.1, “Performance Fee” expressly *excludes* “costs incurred for promotional activities”. However, there is no express clause to regulate it.

[114] Clarification 8

68. Further, the contractual framework presupposes promotional activity will occur. Cl. 3.1.2 of the Agreement requires RESPONDENT to "cooperate with [CLAIMANT] in reasonable promotional activities" and Cl. 4.1.4 requires CLAIMANT to promote the Concert. It would be commercially absurd for the Agreement to impose a positive cooperation obligation on RESPONDENT yet leave RESPONDENT to bear the full cost of promotional appearances by a top-tier R-Pop act.

69. As submitted at [61] *supra*, the preliminary negotiations also evince a common intention for CLAIMANT to pay for the Promotional and Rental Fees as CLAIMANT had accepted these Fees. Accordingly, a term for payment should be supplied to address the "gap" regarding the Promotional and Rental Fees.

b) The payment of the Promotional and Rental Fees are reasonable

70. As Parties did not determine a fixed price for the Promotional and Rental Fees, a price that is reasonable or generally charged at the time of the conclusion of the Agreement should be substituted per Article 5.1.7(1) PICC.

71. Given RESPONDENT's standing as a leading player within the R-Pop industry,[115] its Invoice would capture industry rates, reflecting a reasonable quantum for the Promotional and Rental Fees. Moreover, considering that ECLIPSE is one of the most commercially valuable acts whose popularity skyrocketed following chart-topping releases and sold-out international appearances,[116] significantly higher fees may be reasonably expected.

5. RESPONDENT's entitlement to Royalties is an express term for an enforceable trust

72. Cl. 1.1 read with Cl. 5.1.2 of the Agreement defines Royalties as the sum equivalent to a percentage of the Gross Concert Revenue (the "**Percentage**"), to be agreed between Parties.

[115] Facts at [12]; Clarification 2
[116] Facts at [25]

Additionally, Cl. 4.1.5 of the Agreement mandates CLAIMANT to hold the Gross Concert Revenue on trust for accounting and payment of sums to RESPONDENT. This reinforces the binding effect of CLAIMANT's obligation to pay Royalties as the fiduciary pending proper accounting of the trust fund. Further, CLAIMANT's non-agreement on the Percentage cannot defeat the trust mechanism itself.

73. The arrangement of "to be agreed" is, in itself, an enforceable agreement. Per Article 2.1.14 PICC, the fact that Parties intentionally leave a term to be agreed upon in further negotiations does not prevent a contract from coming into existence. Read with Article 5.1.7 PICC, a reasonable percentage and quantum of Royalties can be easily determined.

B. Even if the Tribunal finds that the Agreement has been terminated, RESPONDENT's counterclaim should still be granted

1. CLAIMANT's contractual obligation to pay the Invoice survives termination

74. As established at [57] *supra*, CLAIMANT's obligation crystallised at the Concert's completion on 7 February 2026. CLAIMANT's purported termination on 26 February 2026 cannot operate retrospectively to defeat its obligations that have already accrued at the time of termination per Article 7.3.5(3) PICC.[117] Therefore, all of CLAIMANT's contractual obligations to pay the Performance, Concert, Promotional and Rental Fees to RESPONDENT survive termination of the Agreement.

2. Even if the contractual obligations do not survive termination, an allowance of money in lieu of restitution should be granted to RESPONDENT for the Invoice

75. Pursuant to Article 7.3.6(1), RESPONDENT may claim restitution of whatever it has supplied under the Agreement, provided that it can concurrently make restitution of

[117] Stefan Vogenauer (ed.), *Commentary on the UNIDROIT Principles of International Commercial Contracts (PICC)* (2nd ed, Oxford University Press, 2015), Article 7.3.5 at [2], p 955

whatever it has received under it. Given that RESPONDENT has received nothing from CLAIMANT, the concurrent counter-restitution requirement is satisfied. RESPONDENT can thus claim for all performance it rendered, including promotional appearances under Cl. 3.1.2 of the Agreement, even though their compensation mechanism is not expressly provided for.

76. As services such as performance of the concert and delivery of promotional appearances cannot be "un-rendered", restitution in kind is structurally impossible. Therefore, CLAIMANT should make an allowance in money that amounts to the value of the performance received under Article 7.3.6(2) PICC.[118] Given RESPONDENT's position as a leading entertainment company,[119] its Invoice would capture R-Pop industry rates, at which the quantum of the monetary allowance should be valuated.

3. RESPONDENT is entitled to payment of Royalties as the trust survives termination

77. Even if the Agreement is terminated, CLAIMANT must hold the Gross Concert Revenue on trust for RESPONDENT, for the calculation of Royalties. According to Article 7.3.5(3) PICC, termination of the Agreement does not affect any other term of the contract which is to operate even after termination. While termination of the Agreement ended Parties' contractual obligations, it does not extinguish accrued rights, including the existing express trust.[120] As the trust concerns money already received before termination, RESPONDENT is still obliged to account for and distribute funds according to the Agreement.

[118] PICC Commentary, Article 7.3.6
[119] Facts at [12]; Clarification 2
[120] *CGU Insurance Ltd v One.Tel Ltd (in liq)* [2010] HCA 26

Prayer for Relief

78. For the above reasons, RESPONDENT respectfully requests the Tribunal to declare that:

   a. The *forum non conveniens* lies in arbitration;

   b. An order for security for costs ought to be granted;

   c. Aurora's deployment of a holographic replacement did not constitute a breach of the Agreement; and

   d. Aurora's counterclaim ought to be granted.