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21st LAWASIA INTERNATIONAL MOOT COMPETITION 2026

BEFORE THE ARBITRAL TRIBUNAL

AT THE ASIAN INTERNATIONAL ARBITRATION CENTRE

MEMORIAL FOR RESPONDENT

IN THE MATTER OF AN ARBITRATION

BETWEEN

NOVA LIVE ASIA PTE LTD

(Claimant)

AND

AURORA ENTERTAINMENT CO LTD

(Respondent)

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STATEMENT OF JURISDICTION

Although pursuant to the Reyna High Court's order staying the parallel court proceedings commenced by the Respondent in accordance with the principle of *kompetenz-kompetenz*, the Respondent respectfully submits that this Arbitral Tribunal is NOT properly seised of jurisdiction to determine the present dispute between the parties, Nova Live Asia Pte Ltd ("Claimant") and Aurora Entertainment Co. Ltd ("Respondent").

QUESTION PRESENTED

I. Whether the *forum non conveniens* lies in the court proceedings or arbitration?

II. Whether an order for security for costs in favour of the Respondent ought to be granted?

III. Whether the Respondent's deployment of a holographic replacement constituted a breach of the Agreement dated 7 January 2026?

IV. Whether the Respondent's counterclaim ought to be granted?

STATEMENT OF FACTS

The Claimant AND the Respondent are the "**Parties**" to this arbitration. **ECLIPSE** is an internationally recognised co-ed R-Pop Group with five members, including Im Luna (**"Luna"**), managed by the Respondent.

The Claimant, Nova Live Asia Pte Ltd (**"Nova"**), is a leading concert organiser with an extensive portfolio of large-scale R-Pop events. Owing to its strong financial backing and successful prior collaborations with the Respondent, the Claimant was selected by the Respondent to organise ECLIPSE's flagship live concert in the capital city of Reyna on 7 February 2026, targeting both domestic and international audiences.

The Respondent, Aurora Entertainment Co. Ltd. ("**Aurora"**), is a leading R-Pop entertainment company headquartered in East Asia, renowned for its advanced use of artificial intelligence (**"AI"**) in idol development and live performance enhancement. Following discussions, the Respondent agreed to procure a live performance by ECLIPSE (**"the Concert"**) in accordance with the terms of the Concert Promotion and Performance Agreement dated 7 January 2026 (**"the AGREEMENT"**).

Chronology of Events

2 January 2026 The Parties held their first coordination meeting to discuss the proposed ECLIPSE concert. Minutes of this meeting are set out in **Exhibit 1** of the Moot Problem.

3 January 2026 The Parties confirmed that the ECLIPSE concert would be held on 7 February 2026. Given the compressed timeline, both Parties acknowledged that preparations would need to commence immediately.

5 January 2026 A follow-up Zoom meeting between the Parties was conducted to finalise operational arrangements and contractual matters.

7 January 2026 The Parties executed the AGREEMENT, which is set out in **Exhibit 2** of the Moot Problem.

24 January 2026 Pursuant to the Agreement, ECLIPSE attended a meet-and-greet promotional event wherein an individual breached security protocols and made unsolicited physical contact with Luna. Although Luna completed the event, she subsequently experienced ongoing psychological distress and heightened anxiety associated with public appearances.

Late January 2026 to Early February 2026 The Respondent arranged daily therapy sessions for Luna, implemented enhanced security measures and sought to minimise her exposure to stressful situations whilst maintaining continuity in preparations for the concert.

4 February 2026 Luna became uncontactable and failed to attend a scheduled rehearsal. The Respondent undertook urgent efforts to locate her and was later informed that Luna had expressed a firm refusal to attend the Concert due to overwhelming anxiety and an inability to appear on stage. The Respondent attempted to persuade Luna to perform by offering additional security assurances and alternative arrangements, but these efforts were unsuccessful.

5 February 2026 The Respondent informed the Claimant of Luna's inability to perform and proposed proceeding with the Concert by deploying a holographic replacement of Luna. Although the Claimant initially objected, it ultimately agreed to proceed on the express condition that the use of the hologram remains strictly confidential, reiterating that the Concert must proceed as scheduled.

6 February 2026 A full rehearsal deploying Luna's holographic rendering was observed by the Claimant's representatives. The representatives were astonished by the reconstructive abilities of the digitally reanimated virtual model.

7 February 2026 The Concert proceeded as scheduled with the deployment of Luna's holographic rendering during the live performance. The audience perceived the performance as cohesive and uninterrupted with the Claimant publicly describing the event as a success and praised both ECLIPSE's performance and audience response.

10 February 2026 The Respondent issued an invoice totaling USD 3.6 million, comprising the contractual Performance Fee together with promotional attendance fees and related concert expenses (**"the Invoice"**). The Respondent also requested the Claimant to provide a written accounting of gross concert revenues and royalty calculations by 13 February 2026.

13 February 2026 Public speculation concerning the use of holographic technology during the Concert first emerged following online discussions regarding a minor visual irregularity in circulated footage of the Concert.

18 February 2026 Madam Ye Bin, the Respondent's Head of Operations and Marketing, was informed by a TF Entertainment executive of the Claimant's liquidity issues and delayed payments to other agencies.

25 February 2026 The Respondent issued a formal demand requiring the Claimant to settle the outstanding invoice and provide royalty computations. The Claimant responded that its legal team was reviewing the matter.

26 February 2026 The Claimant terminated the AGREEMENT, commenced arbitration proceedings against the Claimant for alleged breach of contract and claimed damages of USD 2.2 million. The Respondent disputed the allegations, maintained that it had fully performed its obligations under the AGREEMENT and filed a counterclaim seeking full payment and resolution of its Invoice.

SUMMARY OF PLEADINGS

ISSUE 1: THE *FORUM NON CONVENIENS* LIES IN THE COURT PROCEEDINGS

Arbitration is founded upon parties' consent, and such consent must be clearly established. The alleged arbitration agreement fails at this threshold, as the AGREEMENT contains no arbitration clause nor is there any other evidence of the Parties' alleged agreement to arbitrate. In the alternative, no arbitration agreement can be incorporated through prior dealings, given that the Parties' past agreed dispute resolution practices were inconsistent. On four occasions prior negotiation before commencing arbitration was required, not so on two occasions. Further, the Respondent's application for security for costs was merely a protective measure and cannot constitute a submission to this Tribunal's jurisdiction.

ISSUE 2: THE ORDER FOR SECURITY FOR COSTS OUGHT TO BE GRANTED

There are exceptional circumstances warranting an order for security for costs. The Claimant's financial instability, repeated delays in satisfying existing financial obligations, and continued withholding of sums due demonstrate a real risk that any adverse costs award would remain unsatisfied. The Respondent does not seek to impede the Claimant's access to arbitration, but merely to preserve the procedural fairness between the parties. Further, the quantum sought is neither excessive nor punitive but reasonably confined to the anticipated costs of these proceedings.

ISSUE 3: THE RESPONDENT’S DEPLOYMENT OF A HOLOGRAPHIC REPLACEMENT DID NOT CONSTITUTE A BREACH OF THE AGREEMENT

The Respondent's deployment of Luna's holographic replacement did not breach the AGREEMENT. First, the parties validly varied the AGREEMENT when the Claimant agreed to proceed subject to confidentiality and is estopped from alleging breach after permitting rehearsals and publicly endorsing the success of the Concert, both of which involved deployment of holographic replacement. Secondly, the requisite standard of performance was satisfied, as the parties intended to deliver the ECLIPSE concert experience rather than require a strictly live performance. Finally, any alleged non-performance is excused by force majeure, as Luna's psychological inability to perform remained beyond the Respondent's reasonable control despite its reasonable endeavors to secure her participation.

ISSUE 4: THE RESPONDENT’S COUNTERCLAIM OUGHT TO BE GRANTED

The Respondent is entitled to payment under its Invoice dated 10 February 2026. The conditions for payment of the Performance Fee were satisfied, as the Concert was performed in accordance with the AGREEMENT as validly varied, and the Claimant cannot deny payment for a performance it approved and publicly celebrated. Further, the Respondent is entitled to reimbursement of promotional costs and related expenses, as the Claimant itself failed to cooperate in the royalty discussions. In any event, allowing the Claimant to retain the commercial benefits generated by the Concert whilst refusing payment would unjustly enrich it at the Respondent's expense.

PLEADINGS

I. THE *FORUM NON CONVENIENS* LIES IN THE COURT PROCEEDING.

1. The Respondent respectfully submits that present dispute properly falls within the jurisdiction of the Reyna High Court on three grounds; **(A)** First, there was no express agreement to arbitrate; **(B)** Second and in the alternative, no arbitration agreement was incorporated from the Parties' prior dealings; and **(C)** Third, the Respondent's limited participation in these arbitration proceedings did not amount to a submission to the Tribunal's Jurisdiction.

2. It is not disputed that there is no express arbitration clause within the AGREEMENT. It follows that there is no express choice of law governing the formation of the arbitration agreement.

3. In determining the applicable law, Professor Gary Born notes that *'in the absence of a choice of law provision, the validity of the arbitral agreement must be decided according to the law of the seat of the arbitral tribunal'*.[1]

4. Similarly, in **Thai-Lao Lignite Co Ltd & Anor v Government of The Lao People's Democratic Republic**[2], the Malaysian Federal Court held that where there is no express choice of law governing an arbitration agreement, the law of the seat will be applicable.

[1] Gary B. Born, International Commercial Arbitration (3rd ed, Kluwer Law International, 2021)
[2] Thai-Lao Lignite Co Ltd & Anor v Government of The Lao People's Democratic Republic [2017] 9 CLJ 273

5. In the present case, there is no express reference as to the agreed seat of arbitration. However, the Claimant itself has instituted these arbitration proceedings pursuant to the **AIAC Arbitration Rules 2026 ("AIAC Rules")** Accordingly, where the parties have not agreed upon a seat, **Rule 29.2** of the **AIAC Rules** provides that the seat of arbitration shall be Kuala Lumpur, Malaysia.

6. Therefore, the validity and formation of any alleged arbitration agreement fall to be determined under the **Malaysian Arbitration Act 2005** (**"Arbitration Act"**) being the law of the seat of arbitration.

A. THERE WAS NO EXPRESS AGREEMENT TO ARBITRATE

7. It is trite that the jurisdiction of an arbitral tribunal is founded upon the consent of the parties. In **Setia Awan Management Sdn. Bhd. v SPNB Aspirasi Sdn. Bhd.**[3], the Malaysian Court of Appeal held that "*arbitration must be founded upon <u>an agreement between the parties</u>; no court can compel parties to arbitrate in the <u>absence of a valid arbitration agreement</u>.*"

8. In line with this principle, **Section 9(3)** of **Arbitration Act** requires an arbitration agreement to be in writing. In the present case, no such written agreement exists. The Agreement contains no arbitration clause, and there is no other written instrument recording the parties' agreement to refer disputes to arbitration.

[3] Setia Awan Management Sdn. Bhd. v SPNB Aspirasi Sdn. Bhd. [2025] 4 MLRA.

9. Although **Section 9(4)** of the **Arbitration Act** recognises that an arbitration agreement may be concluded orally or through conduct, such agreement must nevertheless be recorded in written form. The Claimant is likewise unable to satisfy this requirement.

10. The Claimant's reliance on the discussion between the parties recorded in the Minutes of the Pre-Coordination Meeting is misplaced.[4] Ms. Choi, Managing Director of the Claimant, referred to the Parties' previous practice of referring their disputes to arbitration or mediation in order to avoid publicity, to which Mr. Jack, Assistant Director of Operations and Marketing of the Respondent, stated '*Right, right, right… Thank you for understanding. We agree. Once something goes online, it spreads quickly. Sometimes people speculate without knowing the full picture. <u>So let's be careful and keep things confidential</u>.'*

11. Taken in its proper context, this exchange does not demonstrate any agreement to arbitrate. On the contrary, it merely reflects a mutual concern of preserving confidentiality within a highly public-facing industry. Here, confidentiality cannot be equated with a consent to arbitrate.

12. Accordingly, the Respondent respectfully submits that no express arbitration agreement, whether in writing or otherwise, was formed at any material time.

[4] Exhibit 1, page 4

B. NO ARBITRATION AGREEMENT WAS INCORPORATED THROUGH PRIOR DEALINGS

13. In the alternative, even if this Tribunal finds that an arbitration agreement may be incorporated through prior dealings, the necessary threshold of a settled and consistent practice has not been satisfied.

14. The principle is well established in **McCutcheon v David MacBrayne Ltd**[5]**,** where Lord Devlin held *"The fact that a man has made a contract in the same form 99 times will not of itself affect the 100th contract, in which the form is not used"*

15. Accordingly, repeated contractual arrangements alone cannot establish incorporation where the parties' conduct demonstrates inconsistency.

16. While the Respondent acknowledges that arbitration clauses appeared in the prior collaboration agreements, four contained a prior negotiation requirement as a pre-condition to commencing arbitration whilst two did not.[6] This inconsistency demonstrates that the Parties did not adopt a uniform or settled practice of referring their disputes to arbitration that is capable of incorporation into the AGREEMENT.

17. In any event, should this Tribunal nevertheless find that arbitration was incorporated through prior dealings, the Respondent submits that the prior negotiation requirement must

[5] McCutcheon v David MacBrayne Ltd [1964] 1 WLR 125
[6] Additional Corrections and Clarifications, page 2, Additional Clarification 9

likewise be incorporated as part of the parties' established practice. The facts set out in the Moot Problem do not show any such prior negotiation between the Parties. Instead, the Claimant unilaterally commenced these arbitration proceedings.

18. **Article 4.1** of the **UNIDROIT Principles of International Commercial Contracts** (**"UNIDROIT Principles"**) provides for contractual terms to be interpreted in accordance with parties' common intention.

19. At the time of forming the AGREEMENT, the parties had intentionally left certain contractual terms open, including referral of disputes to arbitration, with the expectation that further discussions would take place where necessary.[7] This demonstrates the Parties' common intention that disputes would not immediately proceed to arbitration.

20. Accordingly, the Claimant cannot selectively rely on prior dealings to incorporate arbitration while disregarding the accompanying procedural requirement of prior negotiation. Therefore, the present commencement of arbitration proceedings was premature and procedurally improper.

21. Once that conclusion is reached, the issue of *forum non conveniens* no longer arises. Without a valid arbitration agreement, with respect this Tribunal lacks jurisdiction, and the dispute properly falls within the jurisdiction of the Reyna High Court. The Respondent

[7] Moot Problem, page 8, paragraph 32

therefore respectfully invites this Tribunal to apply the doctrine of *kompetenz-kompetenz* to decline jurisdiction in this matter.

C. THE RESPONDENT'S LIMITED PARTICIPATION IN THE PROCEEDINGS DID NOT AMOUNT TO A SUBMISSION TO THE TRIBUNAL'S JURISDICTION

22. The Respondent further submits that its limited participation in these proceedings, including its application for security for costs, did not amount to a submission to the Tribunal's jurisdiction or a waiver of its jurisdictional objection.

23. In **Roussel-Uclaf v G D Searle & Co**[8], the English High Court recognised that procedural steps taken in court proceedings to safeguard a party's position are not necessarily inconsistent with maintaining a jurisdictional challenge.

24. The same principle applies here. The Respondent's application for security for costs was merely a protective measure taken to preserve its position while contesting proceedings initiated by the Claimant. As will be fully submitted under Issue 2, the application arose from a genuine concern regarding the non-recovery of an adverse costs award from the Claimant. Accordingly, the Respondent's conduct cannot amount to submission to this Tribunal's jurisdiction or a waiver of its jurisdictional objection.

[8] Roussel-Uclaf v G D Searle & Co [1978] 1 Lloyd's Rep 225

25. In light of the foregoing, the Respondent respectfully submits that no valid arbitration agreement was formed, whether expressly or through incorporation from prior dealings. Accordingly, the proper forum for determination of this dispute is the Reyna High Court.

II. THE ORDER FOR SECURITY FOR COSTS OUGHT TO BE GRANTED.

26. The Respondent respectfully submits that the present application for security for costs ought to be granted for three reasons: **(A)** First, the Respondent has demonstrated a prima facie defence on the merits; **(B)** Second, exceptional circumstances justifying such an order exist, as the Claimant has demonstrated both an inability and an unwillingness to satisfy a potential adverse costs order; and **(C)** Third, the interim relief sought is both necessary and proportionate.

27. This Tribunal has the power to grant security for costs pursuant to **Rule 11.3(c)** of the **AIAC Rules**, which empowers the Arbitral Tribunal to order interim measures intended to *"provide a means of preserving assets out of which a subsequent award may be satisfied."*

28. The provision is a verbatim reproduction of **Article 26(2)(c)** of the **UNCITRAL Arbitration Rules.** Although neither provision expressly refers to security for costs, it has been recognised, in practice, that such orders may fall within the Tribunal's broad interim powers. In **Abdallah Andraous v Kingdom of the Netherlands**[9], the tribunal affirmed that the UNCITRAL framework confers a sufficiently broad discretion to order security for costs where appropriate.

[9] Abdallah Andraous v. Kingdom of the Netherlands, ICSID Case No. UNCT/23/3, Procedural Order No.3 (28 November 2024)

29. In determining whether security for costs should be ordered, tribunals generally consider three principal factors including (i) the prospects of success of the parties' claims and defences; (ii) the Claimant 's ability to satisfy an adverse costs award and the availability of assets for enforcement; and (iii) whether, in all the circumstances, it is fair to require one party to provide security for the other party's costs.[10] The Respondent will address each element in turn.

A. THE RESPONDENT HAS DEMONSTRATED A PRIMA FACIE DEFENSE ON THE MERITS

30. At this stage, the Tribunal is not required to prejudge the merits of the dispute. As recognised in **García Armas v Venezuela**[11], the tribunal's task is limited to determining whether there is a reasonable possibility that a favourable award may ultimately be rendered in favour of the Respondent.

31. The Respondent plainly meets that threshold. As will be submitted further under Issue 3, the Respondent fully performed its contractual obligations under the AGREEMENT. Crucially, the Claimant had expressly assented to the very use of the holographic substitution of Luna in the concert.

[10] Article 1 of International Arbitration Practice Guidelines on Jurisdictional Challenges. United Kingdom: Chartered Institute of Arbitrators

[11] García Armas v Bolivarian Republic of Venezuela, ICSID Case No. ARB/16/1, Procedural Order No. 9 (20 June 2018).

32. Having accepted such performance, the Claimant cannot now allege a breach arising from that same performance. Such conduct amounts to inconsistent behaviour contrary to **Article 1.8** of the **UNIDROIT Principles**. This Article provides: *"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."*

33. Accordingly, the Respondent has demonstrated an arguable defence against the Claimant's claims.

A. EXCEPTIONAL CIRCUMSTANCES EXIST AS THE CLAIMANT HAS DEMONSTRATED AN INABILITY AND AN UNWILLINGNESS TO PAY

34. The Respondent respectfully submits that exceptional circumstances exist to warrant allowing the present application for security for costs.

35. In **RSM v Saint Lucia**[12], security for costs was granted where the Claimant's prior conduct and history demonstrated an inability or unwillingness to pay an adverse costs award.

36. Similarly, the Claimant's conduct, both in these proceedings and in its prior commercial dealings within the industry, demonstrates both an inability and a continued unwillingness to discharge its existing financial obligations. Therefore, this gives rise to a real risk that a future adverse costs order will remain unsatisfied.

[12] RSM v Saint Lucia*,* ICSID Case No. ARB/12/10, Procedural Order No.1 (13 August 2014).

37. The facts set out in the Moot Problem clearly demonstrate a consistent pattern of delayed and unmet financial obligations by the Claimant. First, a Senior Executive of TF Entertainment stated that payment from the Claimant had remained outstanding for more than three months.[13] Further, an online *Blueddit* thread indicated that the Claimant had delayed payments to multiple agencies across jurisdictions in recent months.[14]

38. Any attempt by the Claimant to characterise this evidence as mere speculation is misplaced. Under **Rule 36.6** of the **AIAC Rules**, this Tribunal has the discretion to determine the admissibility and weight of evidence presented. Therefore, the Respondent submits that taken collectively, this evidence supports an inference that the Claimant has experienced or is experiencing persistent difficulties in satisfying its financial obligations.

39. In any event, the strongest evidence arises from the Claimant's own admission. In the Minutes of the Pre-Coordination Meeting, Ms. Choi, Managing Director of the Claimant, acknowledged that "*Nova might just, you know, be laying down the groundwork for its downfall. We are... in a very delicate state at the moment."*[15]

40. When interpreted objectively and in the foregoing context, these statements indicate long-term financial distress rather than temporary cash flow difficulties. Accordingly, the Claimant *"delicate"* financial standing presents a real risk of it being unable to satisfy a future adverse costs order.

[13] Moot Problem, at page 14, paragraph 62
[14] Moot Problem, at page 15, paragraph 68
[15] Exhibit 1, page 2

41. Further, the Claimant's conduct has also demonstrated an unwillingness to discharge financial obligations already due.

42. The Respondent fully performed its obligations under the AGREEMENT and is now entitled to the payment of the agreed performance fee and royalties.[16] A formal Invoice was issued to the Claimant on 10 February 2026.[17] Nevertheless, despite subsequent follow-ups, including a telephone communication with Ms Kim[18] and formal correspondence on 25 February 2026[19], the Claimant has failed to make payment.

43. Accordingly, the Claimant's continued withholding of payment due to the Respondent supports a reasonable inference that it may similarly fail to satisfy a future adverse costs order.

B. THE PRESENT ORDER SOUGHT IS NECESSARY & PROPORTIONATE

44. The Respondent further submits that the order for security for costs sought is both necessary and proportionate.

45. Security for costs is necessary to preserve procedural fairness between the parties. The Respondent is incurring substantial costs in defending these proceedings and without such protection would incur further substantial costs in seeking to enforce an adverse costs

[16] Exhibit 2, Clause 5
[17] Moot problem, at page 11, paragraph 51
[18] Moot problem, at page 13, paragraph 60
[19] Moot problem, at page 14, paragraph 63

order, all the while facing a genuine risk that such costs may never be recovered. As in **Mesa Power v Canada**[20], where despite obtaining a costs award, the successful party continued to incur significant expense in attempting to enforce that award.

46. Further, the quantum sought is proportionate. The Respondent does not seek security equivalent to the substantive relief claimed, but only an amount reasonably connected to the anticipated costs of this arbitration proceedings, including, inter alia, legal fees, arbitrators' fees, and administrative fees.

47. Therefore, the order sought goes no further than necessary to safeguard the Respondent against the real risk of non-recovery of a cost order.

48. Accordingly, the Respondent respectfully submits that this is an exceptional case warranting for security for costs in light of the Claimant's financial instability and its demonstrated unwillingness to discharge existing financial obligations.

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

49. The Claimant asserts that Clause 3.1.1 of the AGREEMENT read together with Clause 1.1 required the live, human performance comprising of all five (5) members of ECLIPSE and that the deployment of a holographic replacement of Luna amounted to a breach of the AGREEMENT.[21]

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[20] Mesa Power v Canada, PCA Case No. 2012-17, Procedural Order No.16 (24 March 2016)
[21] Moot problem, at page 14, paragraph 65

50. The Respondent respectfully submits that there was no breach of the AGREEMENT for three (3) reasons**:** **(A)** the parties validly varied the AGREEMENT to permit the deployment of Luna's holographic replacement; **(B)** the performance remained in accordance with the standard of the AGREEMENT; and **(C)** in any event, any non-performance of the live, human performance is excused under the doctrine of *force majeure.*

A. THE PARTIES VALIDLY VARIED THE AGREEMENT TO PERMIT THE DEPLOYMENT OF LUNA'S HOLOGRAPHIC REPLACEMENT

51. **Article 3.1.2** of the **UNIDROIT Principles** expressly provides that a contract may be modified by the mere agreement of the parties without any further requirement. Accordingly, a modification requires no further formality, no additional consideration and no written amendment.

52. Following Luna's inability to perform, the Respondent expressly proposed proceeding with the concert by deploying a holographic replacement of Luna.[22] Although the Claimant initially objected, it ultimately agreed to proceed on the express condition that the deployment remain strictly confidential.[23] Accordingly, there was a valid variation to the Agreement.

[22] Moot problem, at page 10, paragraph 43
[23] Moot problem, at page 10, paragraph 44

53. Further, the Claimant 's subsequent conduct was entirely consistent with the Parties' varied AGREEMENT. First, the Claimant observed the rehearsal involving Luna's holographic replacement and was astonished by the reconstructive abilities of the digitally reanimated virtual model of Luna without raising any further objection.[24] Secondly, immediately following the concert, the Claimant publicly described the event as a success and praised both ECLIPSE's performance and audience response.[25]

54. Taken together, the Claimant's express agreement and subsequent conduct demonstrate that Clause 3.1.1 of the AGREEMENT read together with Clause 1.1 was validly varied from requiring a live, human performance comprising all five (5) members of ECLIPSE to permitting a live performance, meaning a performance that is not pre-recorded, comprising four (4) members of ECLIPSE and a holographic replacement of Luna.

55. Further, pursuant to **Article 1.8** of the **UNIDROIT Principles**, a party cannot act inconsistently with an understanding which it has caused the other party to have and upon which that party has reasonably acted in reliance. Having agreed to the deployment of Luna's holographic replacement, and publicly endorsed the concert's success, the Claimant cannot now approbate and reprobate by alleging that the very arrangement it accepted constituted a breach of the AGREEMENT.

56. Accordingly, the parties validly varied the AGREEMENT to permit the deployment of Luna's holographic replacement. Accordingly, the Claimant is estopped under **Article 1.8**

[24] Moot problem, at page 10, paragraph 45
[25] Moot problem, at page 11, paragraph 50

of the **UNIDROIT Principles** from asserting that the deployment constituted a breach of the AGREEMENT.

B. THE PERFORMANCE REMAINED IN ACCORDANCE WITH THE STANDARD OF THE AGREEMENT

57. Clause 3.1.1 of the AGREEMENT expressly provides that the Concert shall be performed *"in accordance with generally accepted industry standards and reasonable audience expectations for a live music concert of a similar scale and nature."*

58. The meaning of *"generally accepted industry standards"* and *"reasonable audience expectations"* must be interpreted according to the parties' common intention at the time of the conclusion of the AGREEMENT pursuant to **Article 4.1** and **Article 4.3** of the **UNIDROIT Principles**. In ascertaining that common intention, regard should be had to the parties' pre-contractual discussions and the surrounding circumstances which formed the basis of the final AGREEMENT.

59. First, the Respondent's deployment of the holographic replacement was entirely consistent with the parties' intended meaning of *"generally accepted industry standards"*. In the minutes of the Pre-Coordination Meeting, the Claimant expressly acknowledged that *"digital elements (are) used in a lot of shows recently"*, demonstrating a shared recognition that technologically enhanced performances have become a commonplace in modern

concerts.[26] Further, Clause 3.1.1 of the AGREEMENT expressly contemplates that the Respondent may employ *"stage, sound, lighting, visual, digital or other production technologies in connection with the Concert"*, recognising the use of digital technologies in the delivery of live performances.

60. Second, the Respondent's deployment of the holographic replacement was also entirely consistent with the parties' intended meaning of *"reasonable audience expectations."* During the said coordination meeting, Claimant expressly stated that audiences attend ECLIPSE concerts for the *"energy, precision and chemistry"* of the group and that audiences *"don't analyse the mechanics"*, emphasising that *"it's the vibes, that is most important."*[27] The Respondent expressly agreed that it could deliver this *"ECLIPSE concert experience"*. These exchanges demonstrate a common intention that audience expectations include the experience delivered to them rather than merely the precise mechanics by which such experience is achieved.

61. Further, the Respondent's performance fully delivered the intended ECLIPSE concert experience. The Audiences reacted enthusiastically,[28] and perceived the performance as cohesive and uninterrupted.[29] Public reaction remained overwhelmingly positive, with many describing the Concert as one of ECLIPSE's most memorable performances and one of the Claimant's most successful events in recent years.[30]

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[26] Exhibit 1, page 3
[27] Exhibit 1, page 3
[28] Moot problem, at page 11, paragraph 48
[29] Moot problem, at page 11, paragraph 49
[30] Moot problem, at page 12, paragraph 53

62. Accordingly, the performance of ECLIPSE at the Concert, despite the Respondent's deployment of the holographic replacement remained consistent with both *"generally accepted industry standards"* and *"reasonable audience expectations"*. The Respondent therefore performed its obligations under Clause 3.1.1 of the AGREEMENT in accordance with the contractual standard agreed between the parties and consequently committed no breach of the AGREEMENT.

C. IN ANY EVENT, ANY NON-PERFORMANCE OF THE LIVE, HUMAN PERFORMANCE IS EXCUSED UNDER THE DOCTRINE OF FORCE MAJEURE.

63. Clause 8 of the AGREEMENT provides that *"neither Party shall be liable for any failure to perform due to events beyond their reasonable control…rendering performance impossible."*[31] Accordingly, the applicable test is whether the event giving rise to the non-performance remained beyond Respondent's reasonable control. The AGREEMENT imposes no further requirements and does not define or limit the scope of such events.

64. In **MUR Shipping BV v RTI Ltd**, the UK Supreme Court explained that, in determining whether an impediment remained beyond a party's reasonable control, the relevant question is whether the resulting failure to perform could have been avoided by reasonable endeavours.[32]

[31] Exhibit 2
[32] MUR Shipping BV v RTI Ltd [2024] UKSC 18

65. At this juncture it is apposite to remind ourselves that Luna's inability to perform at the Concert was consequent to the aforementioned security breach at the meet-and-greet event. Following that the Respondent immediately arranged daily therapy sessions for Luna,[33] implemented enhanced security measures, minimised her exposure to stressful situations and excused her attendance at several promotional events.[34] When Luna became uncontactable three days before the Concert,[35] the Respondent repeatedly attempted to persuade her to perform by offering additional security assurances and alternative arrangements.[36] However, these efforts were ultimately *"stonewalled"* and Luna maintained her firm refusal to perform due to her overwhelming anxiety and inability to appear on stage.

66. Consistent with **MUR Shipping BV v RTI Ltd**, Luna's failure to perform at the Concert was caused by Luna's continuing psychological distress rather than any inadequate response by the Respondent. Having exhausted all reasonable endeavours, the impediment remained beyond the Respondent's reasonable control.

67. Further, the Respondent immediately notified the Claimant of the impediment of Luna's continuing psychological distress and arranged an urgent video conference to discuss available alternatives.[37]

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[33] Moot problem, at page 9, paragraph 38
[34] Moot problem, at page 9, paragraph 39
[35] Moot problem, at page 9, paragraph 40
[36] Moot problem, at page 9, paragraph 41
[37] Moot problem, at page 9, paragraph 42

68. Accordingly, the Respondent is entitled to invoke the force majeure clause set out in Clause 8 of the AGREEMENT. As the continuing inability to secure Luna's participation remained beyond Respondent’s reasonable control notwithstanding its reasonable endeavours, any resulting non-performance of the live, human performance is excused under the AGREEMENT. Therefore, the Respondent committed no breach of the AGREEMENT.

IV. THE RESPONDENT’S COUNTERCLAIM OUGHT TO BE GRANTED

69. The Respondent’s counterclaim seeks full payment and resolution of its Invoice dated 10 February 2026.[38] The Invoice comprises two components: (A) the Performance Fee; and (B) promotional costs and related expenses incurred in connection with the Concert.

70. The Respondent advances three (3) submissions in support of full payment and resolution of the Invoice : (A) The Respondent is entitled to the Performance Fee; (B) The Respondent is entitled to reimbursement of promotional costs and related expenses; and (C) in any event, Respondent’s counterclaim ought to be granted to prevent Claimant’s unjust enrichment.

[38] Moot problem, at page 15, paragraph 67

A. THE RESPONDENT IS ENTITLED TO THE PERFORMANCE FEE

71. Clause 5.1 of the AGREEMENT provides that, *"subject to further confirmation and performance of the Concert"* the Respondent shall be entitled to the *"Performance Fee of USD 2,500,000.00"*.

72. The Respondent has satisfied this condition. The Concert was confirmed and performed on the agreed date and at the agreed venue. Further, as submitted under Issue III, the AGREEMENT was validly varied pursuant to **Article 3.1.2** of the **UNIDROIT Principles** when the Claimant accepted the Respondent's proposal to proceed with the Concert using a holographic replacement of Luna. Further, the performance remained in accordance with *"generally accepted industry standards and reasonable audience expectations"* under Clause 3.1.1 of the AGREEMENT.

73. Accordingly, the Concert was performed in accordance with the AGREEMENT as varied. Having assented to and benefited from that performance, the Claimant cannot now deny payment of the Performance Fee for the very performance it approved of and publicly celebrated. Such conduct is contrary to **Article 1.8** of the **UNIDROIT Principles**.

B. THE RESPONDENT IS ENTITLED TO PROMOTIONAL COSTS AND RELEVANT EXPENSES

74. During pre-contractual discussions between the Parties, both the Claimant and the Respondent agreed that promotional costs and related expenses would be settled during or after discussions concerning royalties.[39]

75. The Claimant now relies on the absence of completed royalty discussions as a basis to withhold reimbursement of approximately USD 1 million in promotional costs and related expenses incurred by Respondent.

76. Such reliance is impermissible. **Article 5.3.3** of the **UNIDROIT Principles** provides that a party may not rely on the non-fulfilment of a condition where that party itself caused or contributed to its non-fulfilment. Here, the Claimant failed to cooperate in initiating or progressing royalty discussions and intentionally delayed negotiations. This is clearly evidenced by:

(i) the Claimant's failure to respond to the Respondent's request for a full written accounting of the gross concert revenue and the calculation of the royalties by 13th February 2026, at the latest[40] and;

[39] Exhibit 1, page 4
[40] Moot problem, at page 11, paragraph 52

(ii) by the Claimant's response to the Respondent's follow-up letter dated 25 February 2026 seeking once again computation of royalties[41] that its legal team was reviewing the matter.[42] Therefore, Claimant cannot rely on a condition whose fulfilment it itself prevented as a basis for refusal to make payment to the Respondent.

77. Accordingly, the Respondent respectfully submits that it is entitled to reimbursement of the promotional costs and related expenses incurred in connection with the ECLIPSE Concert.

C. IN ANY EVENT, THE RESPONDENT'S COUNTERCLAIM OUGHT TO BE GRANTED TO PREVENT THE CLAIMANT'S UNJUST ENRICHMENT

78. Clause 9 of the AGREEMENT expressly provides that matters not governed by the **UNIDROIT Principles** shall be determined in accordance with generally accepted principles of international commercial law. The prevention of unjust enrichment forms part of such general principles.

79. In **Sea-Land Services, Inc. v Iran,** the Iran-United States Claims Tribunal recognised that the doctrine of unjust enrichment serves to *"re-establish a balance between two individuals, one of whom has enriched himself, with no cause, at the other's expense."*[43]

[41] Moot problem, at page 14, paragraph 63
[42] Moot problem, at page 14, paragraph 64
[43] Sea-Land Services Inc v Iran (Award No 135-33-1, Iran-US Claims Tribunal, 20 June 1984) 6 Iran-US CTR 149

80. Applying these principles, the Claimant continues to retain all ticket revenues, sponsorship proceeds,[44] and the substantial commercial and reputational benefits generated by the Concert.[45] Indeed, the Concert was publicly regarded as one of the most successful events organised by the Claimant and was praised by audiences and commentators alike.

81. Further, having knowingly accepted and benefited from the performance, the Claimant cannot now rely on the very arrangement it previously approved as a basis to avoid its payment obligations whilst gaining reputational benefits at the Respondent's expense. Such conduct amounts to inconsistent behaviour contrary to **Article 1.8** of the **UNIDROIT Principles**.

82. In these circumstances, principles of restitution operate to prevent the unjust retention of benefits conferred without compensation. Accordingly, Respondent respectfully requests that this Tribunal allow Respondent's counterclaim and order payment of the Performance Fee together with reimbursement of promotional costs and related expenses so as to prevent the Claimant's unjust enrichment.

[44] Moot problem, at page 15, paragraph 69
[45] Moot problem, at page 12, paragraph 53

PRAYERS FOR RELIEF

In light of the submissions above, counsel for the Respondent respectfully prays the Tribunal to make the following award:

I. The *forum non conveniens* lies in the Reyna High court proceedings.

II. The order for security for costs in favour of the Respondent be granted.

III. The Respondent's deployment of a holographic replacement did not constitute a breach of the AGREEMENT.

IV. The Respondent's counterclaim be granted.