TEAM SK2611, MEMORIAL FOR RESPONDENT

LAWASIA INTERNATIONAL ARBITRATION MOOT

13TH - 16TH SEPTEMBER 2026

ASIAN INTERNATIONAL ARBITRATION CENTRE

In Proceeding Between

NOVA LIVE ASIA Pte Ltd.

(Claimant)

V.

AURORA ENTERTAINMENT Co.Ltd.

(Respondent)

2026

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TABLE OF AUTHORITIES

I. CASES

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1.	Rainy Sky SA v Kookmin Bank	*Rainy Sky SA v Kookmin Bank* [2011] UKSC 50
2.	Collen v Wright	*Collen v Wright* (1857) 8 E&B 647
3.	Freeman & Lockyer v Buckhurst Park	*Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480
4.	B & S Contracts and Design Ltd v Victor Green Publications Ltd	*B & S Contracts and Design Ltd v Victor Green Publications Ltd* [1984] ICR 419
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8.	Bolton v Mahadeva	*Bolton v Mahadeva [1972] 1 WLR 1009*

II. BOOKS, ARTICLES AND REPORTS

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9.	ILC, 'Draft Articles on Responsibility of States'	United Nations International Law Commission, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries' in Yearbook of the International Law Commission 2001, vol II, pt 2
10.	ILC, 'Commentaries to the Draft Articles on Jurisdictional Immunities'	United Nations International Law Commission, 'Commentaries to the Draft Articles on Jurisdictional Immunities of States and Their Property' in Yearbook of the International Law Commission 1991, vol II, pt 2
11.	Wex, 'Sovereign Immunity'.	Wex, 'Sovereign Immunity' (Legal Information Institute, Cornell Law School)
12.	Webb, 'The United Nations Convention on Jurisdictional Immunities'	Webb P, 'The United Nations Convention on Jurisdictional Immunities of States and Their Property' (United Nations Audiovisual Library of International Law, 2019)
13.	Fox and Webb, 'Law of State Immunity'	Hazel Fox and Philippa Webb, 'The Law of State Immunity' (3rd edn, OUP 2013)
14.	UNCSI	United Nations Convention on Jurisdictional Immunities of States and Their Property, UN Doc A/RES/59/38
15.	UNIDROIT Principles	UNIDROIT, 'Principles of International Commercial Contracts' (2016)

LIST OF ABBREVIATIONS

No.	Cited as	Full Citation
1.	Problem	LAWASIA 2026 Moot Problem
2.	Exhibit	LAWASIA 2026 Moot Problem's Exhibits
3.	AIAC Rules	Arbitration Rules of Asian International Arbitration Centre 2023
4.	Nova/Claimant	Nova Live Asia
5.	Aurora/Respondent	Aurora Entertainment
6.	USD	United States Dollars
7.	CPPA	xxx
8.	SPV	Specific Purpose Vehicle
9.	IIC	Independent Investigative Committee
10.	JPMT	Joint Project Management Team
11.	SOE	State-Owned Enterprise
12.	ARSIWA	Responsibility of States for Internationally Wrongful Acts 2001
15	UNCSI	United Nations Convention on the Jurisdictional Immunities of States and Their Property 2004
16	ICSID	International Centre for the Settlement of Investment Disputes
17	ICSID Convention	Convention on the Settlement of Investment Disputes between States and Nationals of Other States 2006
18	UNIDROIT	International Institute for the Unification of Private Law
19	UNIDROIT Principles	UNIDROIT Principles of International Commercial Contracts 2016

INTRODUCTION

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1. This This Statement of Claim ("**Statement of Claim**") is submitted on behalf of Nova Entertainment Sdn. Bhd. ("**Nova**" or the "**Claimant**") pursuant to the Arbitration Rules of the Asian International Arbitration Centre 2023 (the "**AIAC Rules**") against Aurora Entertainment Ltd. ("**Aurora**" or the "**Respondent**") (collectively, the "**Parties**").
2. This dispute arises out of the Agreement dated 7 January 2026 (the "**CPPA**"), under which Aurora agreed to procure the live performance of its internationally renowned virtual idol group, Luna & Eclipse (the "**Act**"), at the Luna & Eclipse: Celestial Tour named Reyna, organised by Nova in Reyna. Under the Agreement, Aurora undertook to procure the performance of the Act, while Nova assumed responsibility for organising and promoting the Concert and for making payment of the agreed Performance Fee together with royalties derived from the Gross Concert Revenue. The Agreement is governed by the UNIDROIT Principles of International Commercial Contracts (2016) and, where necessary, by generally accepted principles of international commercial law.
3. Following the successful staging of the Concert, disputes arose between the Parties concerning Aurora's subsequent refusal to perform its post-concert contractual obligations and its repudiation of the Parties' agreed dispute resolution mechanism. Despite the Parties' long-established commercial practice of resolving disputes through arbitration and their mutual understanding that disputes arising from their commercial relationship would be resolved privately to preserve confidentiality, Aurora denied the existence of a binding arbitration agreement and commenced parallel court proceedings before the Reyna High Court. Simultaneously, Aurora submitted a substantive Counterclaim before this Tribunal while purporting to reserve its jurisdictional objections.
4. The present arbitration therefore concerns two preliminary matters of fundamental importance. First, whether the Parties are bound to resolve their dispute through arbitration pursuant to their established contractual practice, common intention, and the applicable principles of international commercial law. Secondly, whether Aurora's application for security for costs should be dismissed in light of its failure to establish any

exceptional circumstances warranting such extraordinary interim relief. For the reasons set out in this Statement of Claim, the Tribunal possesses jurisdiction over the present dispute, and Aurora's application for security for costs should be dismissed in its entirety.

THE PARTIES

<u>The Respondent</u>

5. The Respondent is a company incorporated under the laws of Veridia, with its registered office at 88 Aurora Avenue, Lysoria, Veridia. Aurora is an international entertainment company responsible for the management and worldwide promotion of the virtual idol group Luna & Eclipse, and entered into the Agreement for the purpose of procuring the Act's performance at the Concert organised by Nova.
6. For the purpose of this arbitration and related matters, Aurora is represented by **Doloksaribu, Shalihah, Anne & Partners**, to whom all communications and correspondence should be addressed:

   DOLOKSARIBU, SHALIHAH, ANNE & PARTNERS
   IDX Tower, Level 12 Unit 1224G, Jenderal Sudirman Street, South Jakarta 12190, Indonesia
   Attn:
   Boas Daniel R. (boas.daniel@ui.ac.id)
   Nayyara Shalihah (nayyara.shalihah@ui.ac.id)
   Gloria Rebecca Anne (gloria.rebecca@ui.ac.id)
7. For the purpose of this arbitration and related matters, Aurora is represented by **Doloksaribu, Shalihah, Anne & Partners.**

<u>The Respondent</u>

8. The Claimant is a company incorporated under the laws of Reyna, with its registered office at 12 Nova Square, Central Business District, Reyna. Nova is a leading entertainment promoter specialising in the organisation and production of international concerts and live performances throughout the Asia-Pacific region. It acted as the concert organiser for the Luna & Eclipse: Celestial Tour Reyna, which forms the subject matter of the present dispute.

9. To the best of the Respondent's knowledge, the Respondent has not yet notified the Tribunal of its appointed legal representatives. Pending such notification, all correspondence relating to this arbitration may be directed to Aurora through its authorised representatives as identified in the Parties' contractual communications and the Moot Problem.

STATEMENT OF FACTS

1. On In early January 2026, the Parties commenced negotiations for the Reyna leg of the *Luna & Eclipse: Celestial Tour*. Given the limited time available before the scheduled Concert, the Parties deliberately agreed to execute a concise agreement addressing only the essential commercial terms, while recognising that certain matters could be revisited after the successful completion of the Concert. During the negotiations, both Parties acknowledged the importance of confidentiality in resolving any future disagreements, particularly in light of the commercially sensitive nature of Aurora's proprietary holographic technology and the considerable reputational interests surrounding the Act.

   On 7 January 2026, Aurora and Nova executed the Agreement governing the organisation of the Concert. Pursuant to the Agreement, Aurora undertook to procure the appearance and performance of *Luna & Eclipse*, while Nova assumed responsibility for organising, promoting, and commercially exploiting the Concert. In return, Aurora was entitled to receive a fixed Performance Fee together with royalties derived from the Gross Concert Revenue. The Agreement further required Nova to hold all Gross Concert Revenue on trust pending the proper accounting and distribution of sums payable to Aurora. The Parties expressly agreed that the Agreement would be governed by the UNIDROIT Principles of International Commercial Contracts (2016).
2. The Concert was an overwhelming commercial success. Tickets sold out within two weeks, sponsorship commitments exceeded expectations, and the performance attracted widespread public acclaim. Following the Concert, Aurora duly issued its invoice in accordance with the Agreement, seeking payment of the contractual Performance Fee together with the royalties to which it was entitled. Despite repeatedly requesting payment and the completion of the post-concert accounting process, Nova failed to satisfy Aurora's invoice and continued to retain the entirety of the Gross Concert Revenue generated by the Concert.
3. During the PAPA Awards after-party held on 28 February 2026, Aurora's Chief Executive Officer, Madam Ye Bin, was informed by an executive of TF Entertainment that Nova's Chief Financial Officer had allegedly misappropriated company funds. Although Madam

Ye Bin initially regarded the allegation as speculative and inappropriate, Aurora subsequently became aware of further reports suggesting that Nova had encountered financial difficulties in meeting its payment obligations to other entertainment companies. These concerns were reinforced by anonymous discussions published on the online platform "Blueddit", alleging that Nova had repeatedly delayed contractual payments owed to several entertainment agencies. Taken together with Nova's continuing refusal to remit the contractual payments owed to Aurora despite retaining the Concert revenues, those developments gave rise to legitimate concerns regarding Nova's financial ability to satisfy any future adverse costs order.

4. Rather than resolving the Parties' outstanding commercial issues through further negotiations, Nova commenced the present arbitration before the Asian International Arbitration Centre. Aurora objected to the Tribunal's jurisdiction on the basis that the Parties had never concluded a valid and binding arbitration agreement. Unlike the Parties' previous agreements, the Agreement dated 7 January 2026 contains no arbitration clause whatsoever. Aurora maintained that the omission was deliberate and reflected the Parties' intention to continue negotiations concerning dispute resolution following the Concert rather than to become immediately bound to arbitration.
5. Without prejudice to its jurisdictional objection, Aurora filed a Counterclaim seeking payment of the outstanding contractual sums owed by Nova under the Agreement, including the unpaid Performance Fee and royalties. Aurora expressly reserved its position that the Tribunal lacked jurisdiction and maintained that the filing of a Counterclaim was necessary solely to preserve its substantive contractual rights in the event that the Tribunal ultimately assumed jurisdiction over the dispute. Aurora simultaneously commenced proceedings before the Reyna High Court in order to preserve its legal remedies should its jurisdictional objection be upheld.
6. In light of Nova's continuing refusal to make payment, the growing uncertainty surrounding Nova's financial position, and Nova's continued retention of all revenues generated by the Concert, Aurora applied for an order requiring Nova to provide USD 2 million as security for costs. Aurora contends that such relief is necessary to safeguard its ability to recover the substantial legal costs likely to be incurred in defending the present

proceedings should it ultimately prevail. Nova opposes that application and maintains that it remains financially capable of satisfying any future costs award.

7. The Reyna High Court subsequently stayed the court proceedings pending determination of the arbitral proceedings. The Tribunal has directed the Parties to address, as preliminary matters, whether it possesses jurisdiction over the present dispute and whether Aurora's application for security for costs should be granted. These preliminary issues now fall to be determined before any consideration of the Parties' substantive contractual claims.

ARGUMENTS

JURISDICTION

A. THE TRIBUNAL HAS NO JURISDICTION OVER THE PRESENT DISPUTE

1. In thIn this Statement of Defense, Respondent submits that the Tribunal lacks jurisdiction over the present dispute. To support this position, Respondent invites the Tribunal to recognize the following: (i) no valid and binding arbitration agreement exists between the Parties, whether by express clause or by course of dealing; (ii) the alleged "practice" Claimant relies upon does not, and cannot, substitute for the express agreement the Parties themselves contemplated executing; and (iii) Respondent's counterclaim, filed expressly without prejudice to its jurisdictional objection, does not constitute submission to this Tribunal's authority.

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i. No Binding Arbitration Agreement Exists Between the Parties

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2. It is common ground that the Agreement dated 7 January 2026 contains **no arbitration clause whatsoever**. Clause 9 of the Agreement identifies only the substantive governing law the UNIDROIT Principles of International Commercial Contracts (2016) , and is silent as to the forum for dispute resolution. Article II(1) of the New York Convention and Article 7 of the UNCITRAL Model Law require that an arbitration agreement identify, with sufficient clarity, the parties' intention to submit disputes to arbitration. No such intention is recorded anywhere in the operative text of the Agreement itself.

10. Claimant seeks to overcome this fatal omission by pointing to the Parties' historical practice under *other*, separate agreements, which expressly incorporated AIAC arbitration clauses, and to informal remarks made during the 2 January 2026 coordination meeting. Respondent submits that neither source can supply what the Parties' own operative instrument omits.

11. First, as to the prior agreements: it is trite that each commercial contract stands as a distinct juridical act. The mere fact that separate, earlier agreements between the same commercial parties happened to contain arbitration clauses does not, without more, import such a clause into a subsequent agreement that conspicuously omits one. If anything, the *contrast* is instructive: where the Parties intended arbitration to govern their relationship, they said so expressly, as they had done before. Their failure to do so here , notwithstanding ample opportunity and notwithstanding their own established practice of including such clauses , is far more consistent with a deliberate omission than an inadvertent gap. Applying Article 4.1(2) of the UNIDROIT Principles, where common intention cannot otherwise be established, the Tribunal must have regard to the meaning a reasonable person of the same kind as the parties would give to the Agreement's own text , and the plain text of this Agreement contains no reference to arbitration at all.
12. Second, as to the coordination meeting minutes of 2 January 2026: statements such as "we mediate and arbitrate when there are any issues to avoid publicity" are, at their highest, informal, aspirational remarks made in the course of preliminary negotiations, not a considered and binding commitment to a specific dispute resolution mechanism. Article 2.1.2 of the UNIDROIT Principles requires that a contract , and by extension, any term said to form part of it , reflect the parties' intention to be bound on sufficiently definite terms. General references to "mediating and arbitrating" issues, made in a discursive commercial conversation about confidentiality and reputation management, cannot be elevated to a legally binding arbitration agreement satisfying the formal requirements of Article 7 of the Model Law. This is particularly so where the Parties went on, mere days later, to execute a detailed written Agreement the natural and obvious place to record any such commitment and chose not to include one.
13. Respondent's position is reinforced by the well-established distinction between the *scope* of an arbitration clause and its *existence*. Claimant's reliance on **Fiona Trust & Holding Corp v Privalov** [2007] UKHL 40 is misplaced for precisely this reason: that decision concerned the proper construction of a clause that already existed and was undisputedly binding: the question was merely how widely it should be read. It says nothing about whether an arbitration agreement can be conjured into existence, in the first place, from silence in the operative contract and stray conversational remarks. Respondent respectfully submits that no

tribunal applying the Model Law's writing requirement, even under its liberalised 2006 formulation, could treat informal meeting minutes as satisfying Article 7's requirement that the *content* of an arbitration agreement be recorded because there is no agreed content to record. The minutes reflect, at most, a general and unspecific preference, not the essential elements of an arbitration agreement (seat, rules, scope).

14. Respondent further submits that Article 4.8 of the UNIDROIT Principles cannot be used, as Claimant contends, to supply arbitration as an "omitted term." Article 4.8 permits a tribunal to supply a term necessary to give business efficacy to a contract that is otherwise incomplete on a matter the parties plainly intended to address. It has never been applied, and should not now be applied, to manufacture an entire dispute resolution mechanism
15. including forum, seat, and institutional rules out of whole cloth, particularly where doing so would deprive Respondent of its fundamental right to have disputes heard before the courts of competent jurisdiction absent its clear and voluntary consent to arbitrate. Consent to arbitrate is not a gap to be filled by inference; it is a jurisdictional threshold that must be affirmatively established..

ii. The Absence of an Arbitration Agreement Means the Dispute Properly Belongs Before the Reyna High Court

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16. Where, as here, no valid arbitration agreement exists, Article II(3) of the New York Convention and Article 8(1) of the UNCITRAL Model Law have no application to compel referral to arbitration those provisions operate only where a valid arbitration agreement is shown to exist in the first place. The default position under generally accepted principles of international commercial law is that disputes are resolved before the courts of competent jurisdiction, here, the Reyna High Court, which is the forum Respondent has properly invoked.
17. Respondent notes that the Reyna High Court's grant of a stay of Respondent's proceedings pending this Tribunal's determination of its own jurisdiction is entirely consistent with, and does not undermine, Respondent's position. Such a stay reflects nothing more than the ordinary application of the *kompetenz-kompetenz* principle under Article 16(1) of the Model

Law, allowing this Tribunal the first opportunity to rule on its own jurisdiction , it is not, and cannot be treated as, a substantive finding by the Reyna High Court that a valid arbitration agreement exists. Respondent respectfully submits that this Tribunal, applying that same principle, should now rule that no such agreement exists, and that Claimant's proceedings before it are accordingly without jurisdictional foundation.

ii. The Absence of an Arbitration Agreement Means the Dispute Properly Belongs Before the Reyna High Court

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52. Claimant contends that Respondent's counterclaim, and its related application for security for costs, constitute an affirmative invocation of this Tribunal's jurisdiction inconsistent with its jurisdictional objection. Respondent submits that this contention misunderstands both the purpose and the accepted practice surrounding protective, alternatively-pleaded counterclaims in international arbitration.
53. It is well established in international arbitral practice that a respondent may plead a counterclaim expressly "without prejudice to" a jurisdictional objection, precisely in order to protect its substantive position in the event the Tribunal ultimately determines that it does possess jurisdiction, without thereby being taken to have waived or abandoned that objection. This is not an inconsistency; it is a rational and universally recognised litigation strategy that allows a party to avoid the risk of being time-barred, or of losing the opportunity to advance a substantive claim, while a threshold jurisdictional question remains undetermined. Respondent's counterclaim was, from its first filing, explicitly and unambiguously reserved in this manner.
54. The doctrine of separability under Article 16(1) of the Model Law cuts against Claimant's position, not in favour of it. Separability confirms that the question of the arbitration agreement's existence is analytically distinct from, and logically prior to, any question of the merits or of counterclaims advanced within the same proceeding. A respondent's protective pleading of a counterclaim, made expressly subject to reservation, does not collapse that analytical distinction; it preserves it. To hold otherwise would place respondents in an impossible position: forced either to abandon a legitimate jurisdictional objection or to

forfeit substantive rights that might otherwise become time-barred or prejudiced by delay, a result no properly constituted tribunal should sanction.

55. Nor does Respondent's parallel application for security for costs alter this analysis. That application was made, as the record shows, in response to Claimant's own continued retention of the entirety of the Gross Concert Revenue generated by the Concert, and was expressly advanced on the same protective, without-prejudice basis as the counterclaim itself. A party does not submit to a tribunal's jurisdiction merely by seeking to protect its position within proceedings that the *opposing party* has chosen to commence; the relevant question is whether Respondent's conduct, viewed as a whole, evidences an unequivocal and voluntary acceptance of the Tribunal's authority over the substance of the dispute. It does not. Respondent has, from the outset, consistently and repeatedly maintained its objection to jurisdiction, both in its Notice of Arbitration response and in its parallel commencement of proceedings before the Reyna High Court, the very court Respondent maintains is the properly competent forum.

56. Respondent's commencement of court proceedings on the same day it filed its counterclaim, far from evidencing "forum-shopping" as Claimant alleges, is the clearest possible confirmation of the consistency of Respondent's position: Respondent has, throughout, maintained that the Reyna High Court is the correct forum for this dispute, and has acted accordingly by bringing its substantive claim there, while simultaneously taking the necessary protective steps within the arbitration Claimant unilaterally commenced.

ARGUMENTS

MERIT

C. AURORA DID NOT BREACH THE CPPA BY DEPLOYING THE HOLOGRAPHIC RENDERING OF IM LUNA

58. Respondent respectfully submits that its deployment of the holographic rendering of Im Luna (“Luna”) did not constitute a breach of the CPPA dated 7 January 2026 due to several reasons. (**C**) First (**i**), on its proper construction under Articles 4.1 to 4.5 of the PICC, the CPPA permitted the use of holographic and other production technologies and did not require the continuous physical presence of every member of ECLIPSE. Second (**ii**), Respondent performed in conformity with the contractual standard, generally accepted industry standards and reasonable audience expectations, which were demonstrably met. Third (**iii**), in any event, Claimant consented to the deployment and is precluded from now alleging breach by operation of Articles 1.3, 1.7, 1.8, and 7.1.2 PICC. Finally (**iv**), even if any deviation is found, it did not amount to a fundamental non-performance under Article 7.3.1(2) PICC.

i. On its proper construction, the CPPA permitted holographic technology and did not require the physical presence of all five members

59. Under Article 4.1(1) PICC, a contract shall be interpreted according to the common intention of the parties. Where that intention is given effect through express words, those words govern, and under Article 4.5 PICC all terms are to be given effect rather than deprived of it.
60. Clause 3.1.1 of the CPPA expressly provides that, in discharging its obligation to procure ECLIPSE's performance, "Aurora may employ stage, sound, lighting, visual, digital or other production technologies in connection with the Concert." A real-time holographic rendering is, on any ordinary reading, a "visual" and a "digital" production technology. The words "or

other production technologies" are, by Clause 1.3, to be read as "including" and therefore "without limitation." The parties thus expressly armed Aurora with the very category of technology it deployed.

61. The operative obligation in Clause 3.1.1 is to "procure the performance of ECLIPSE at the Concert in accordance with generally accepted industry standards and reasonable audience expectations." This is an obligation defined by an objective, audience-facing *standard of quality*, not an obligation that each named individual be corporeally present at every moment of the performance. Consistently, the Moot Problem records that the CPPA imposed on Respondent "an obligation to deliver a performance meeting the maximum satisfactory standards reasonably expected of a headline ECLIPSE concert",[1] again, a standard of delivery, not a headcount.

62. Claimant's assertion that the CPPA "contemplated a live, human performance by all members of ECLIPSE"[2] rests solely on the definition of "Act" in Clause 1.1, which identifies ECLIPSE as comprising five named members. That reliance is misplaced. A definition identifies the subject of an obligation; it does not itself impose the manner of performance, which is located in Clause 3. To read into the definition a self-standing requirement that all five members physically appear would (a) contradict the express permission in Clause 3.1.1 to employ digital and visual production technologies, and (b) offend Article 4.4 PICC, which requires terms to be interpreted in the light of the whole contract, and Article 4.5 PICC, which forbids an interpretation that deprives Clause 3.1.1 of effect.

63. This construction is reinforced by the nature of the technology actually deployed. The holographic rendering was not a substitute performer or a different individual: it was generated from "a dictionary of Luna's movements, expressions and cadences, along with facial and body features," drawn from "extensive footage over the years" of Luna's own performances.[3] What the audience received was therefore Luna's own authentic on-stage persona, delivered alongside the four other members performing live. The performance rendered was, in substance, a performance of ECLIPSE.

[1] MP para 33
[2] MP para 65
[3] MP para 43

64. In interpreting the CPPA, Article 4.3(a) PICC requires regard to be had to the parties' preliminary negotiations. The Minutes of the Pre-Agreement Coordination Meeting of 2 January 2026 [Exhibit 1] establish a shared understanding directly on point:

- Respondent expressly disclosed its reliance on AI and digital methods , "We use AI-assisted analysis and digital modelling to ensure consistency" (Ye Bin) , to which Claimant replied "That's becoming very common now" (Choi) and "We've seen digital elements used in a lot of shows recently" (Kim);
- the parties agreed that "The goal is always the same, to deliver what the audience expects" (Jack);
- Claimant's own Director of Sponsorship stated that audiences "come expecting the ECLIPSE experience They don't analyse the mechanics. They just know if it feels right. It's the vibes, that is most important" (Park); and
- Claimant repeatedly identified its priority as ensuring "that the show proceeds as scheduled and the audience experience isn't compromised" (Kim), treating cancellation as "the worst-case scenario" (Choi).

65. These contemporaneous statements made by Claimant's own representatives shows evidence of a common intention that (**a**) digital technologies were squarely within the parties' contemplation, and (**b**) the benefit for which Claimant bargained was the delivery of the *ECLIPSE audience experience*, not the physical presence of each member as an end in itself. Respondent's deployment of the hologram fulfilled precisely that intention.

66. Should the Tribunal find any ambiguity as to whether member-substitution by digital means was permitted, two further principles resolve it in Respondent's favour. First, under Article 4.6 PICC, ambiguous terms are construed against the party that supplied them; the draft Agreement was circulated by Claimant [Exhibit 1, Kim: "We'll circulate a draft agreement"], and ambiguity therefore tells against the Claimant. Second, under Article 4.8 PICC, any omitted term is to be supplied by reference to the parties' intention, the nature and purpose of the contract, good faith, and reasonableness. Given the deliberately compressed timeline[4] and the parties' shared insistence that the show proceed, the reasonable implied term is one permitting digital means to *ensure delivery* in a contingency, not one mandating cancellation of a sold-out national-stadium concert.

[4] MP paras 30-32

ii. Respondent performed in conformity with the contractual standard

67. The standard fixed by Clause 3.1.1 and echoed at Moot Problem paragraph 33 is objective and audience-facing: "generally accepted industry standards and reasonable audience expectations." Under Article 7.1.1 PICC, non-performance means a failure to perform, including defective performance; there is no non-performance where the conforming standard is met. Here it was met, and exceeded.
68. The evidence is uniform. The holographic integration "seamlessly replicat[ed] Luna's voice, choreography and stage presence"; the group's signature audience interaction was "perfectly recreated" and "taken up enthusiastically by the crowd"; from the audience's perspective "the performance appeared cohesive and uninterrupted," "no audience member raised any concern," and there were "no reports of disruption, dissatisfaction or irregularity". Claimant itself "publicly described the event as a success" and praised it on its official channels,[5] and public reaction was "overwhelmingly positive," the concert being described as one of ECLIPSE's "most memorable performances" and one of Claimant's "most successful events" in recent years.
69. The only imperfection identified is the alleged "minor glitch," which lasted "less than a second" and was "not perceptible in real time to the live audience," becoming apparent only on frame-by-frame analysis several days later. A deviation imperceptible to a live audience of some 90,000 spectators cannot, by definition, fall below "reasonable audience expectations." Such an imperceptible and fleeting irregularity is *de minimis* and does not render the performance non-conforming under Article 7.1.1 PICC.
70. Whether Clause 3.1.1 is characterised as a duty to achieve a specific result or, at highest, a duty of best efforts (Articles 5.1.4–5.1.5 PICC), the obligation was discharged: the specified result, a headline-standard ECLIPSE performance meeting audience expectations, was delivered.

[5] MP Para 50

71. Finally, Respondent’s conduct also gave effect to its distinct obligation under Clause 3.1.3 to "manage the logistics, safety and welfare of the Act at the Concert." Luna had suffered an assault and consequent psychological distress, developing "heightened anxiety associated with public appearances and crowd-facing events", and had firmly refused to perform.[6] To have compelled a traumatised member onto the stage would itself have breached the welfare obligation. Consistently with the duty of good faith and fair dealing under Article 1.7 PICC, the holographic rendering was the means by which Aurora reconciled its competing obligations, safeguarding Luna's welfare while still delivering the performance Nova had contracted for.

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iii. In any event, Claimant consented to the deployment and is precluded from alleging breach

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72. Under Article 1.3 PICC a contract may be modified by the mere agreement of the parties, and the Agreement contains no clause requiring modifications to be in writing. When faced with Luna’s refusal, Claimant "ultimately agreed to proceed on the express condition that the use of the hologram remain strictly confidential" [MP para 44]. Respondent complied with that condition. The parties thereby agreed the mode by which the performance would be delivered; the Claimant cannot now characterise the agreed mode as a breach.
73. The duty of good faith under Article 1.7 PICC is mandatory and may not be excluded. Claimant agreed to the deployment, observed the full dress rehearsal and was "astonished by the reconstructive abilities" of the rendering [MP para 45], and publicly celebrated the concert as a success [MP para 50]. It raised "concerns" over performance only later , after online speculation surfaced [MP paras 54–55] and, tellingly, after Respondent pressed for payment against the backdrop of rumours as to Claimant’s own liquidity [MP paras 62–64]. To accept and enjoy the full benefit of the performance and then invoke the very feature it had agreed to as a ground for withholding payment is contrary to good faith and fair dealing.

[6] [MP paras 40–41]

74. Article 1.8 PICC provides that a party cannot act inconsistently with an understanding it has caused the other party to have and upon which that other party has reasonably acted in reliance to its detriment. Claimant caused Respondent to understand that the holographic solution was acceptable [MP para 44]; Respondent reasonably relied on that understanding by proceeding with the concert and committing the associated resources [MP paras 35, 51]; and Claimant's subsequent about-face, refusing payment [MP para 64], would visit precisely the detriment against which Article 1.8 protects. Claimant is accordingly precluded from asserting breach.
75. Under Article 7.1.2 PICC, a party may not rely on the non-performance of the other to the extent that such non-performance was caused by its own act. Claimant, through Ms Kim, "repeatedly urg[ed] Respondent to 'manage the situation and get her to do it'" [MP para 42] and insisted that "the concert must proceed as scheduled" [MP para 44]. To the extent the deployment of the hologram is characterised as a non-performance at all, it was a course Claimant itself demanded and consented to.

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iv. In any event, any deviation was not a fundamental non-performance

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76. Claimant terminated the Agreement and contends that the deployment "constituted a fundamental deviation … thereby disentitling Respondent from any payment" [MP para 65]. That contention can only succeed if the conduct amounts to a fundamental non-performance within Article 7.3.1(2) PICC. It does not, on any of the enumerated criteria.
77. The Claimant was not "substantially deprive[d] … of what it was entitled to expect." It received a sold-out, seamless and critically acclaimed concert [MP paras 49–50, 53], and it continues to retain the entirety of the concert revenue, including ticket sales and sponsorship proceeds [MP para 69]. It obtained the whole of the benefit of its bargain.
78. Strict, all-live performance by each member was not "of the essence." Clause 3.1.1 expressly authorised production technologies and set an audience-facing standard, and the parties' negotiations confirmed that the essence of the bargain was the audience experience [Exhibit 1].

79. The conduct was neither intentional nor reckless in the relevant sense. Respondent acted in good faith to preserve a flagship concert in a genuine emergency, with Claimant's agreement, while discharging its welfare duty to Luna [MP paras 40–44].

80. Nothing gave Claimant reason to doubt future performance, and termination would cause Respondent disproportionate loss, having fully performed and incurred the associated costs [MP para 51].

81. It follows that no fundamental non-performance arises. Claimant's purported termination was therefore itself unjustified, and Aurora's entitlement to payment is unaffected, a matter developed under Issue D below.

D. AURORA'S COUNTERCLAIM FOR PAYMENT OUGHT TO BE GRANTED

88. Respondent submits that its counterclaim ought to be granted. First (**i**), the counterclaim is properly before the Tribunal, and its filing without prejudice did not waive Respondent's objection to jurisdiction. Second (**ii**), Respondent is entitled to payment of the Performance Fee and reimbursable expenses, its own obligations under the Agreement having been fully performed. Third (**iii**), Claimant cannot resist the counterclaim on the footing of an alleged breach, nor withhold payment under Article 7.1.3 PICC. Finally (iv), Respondent is entitled to an accounting and payment of Royalties, together with interest under Article 7.4.9 PICC.

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i. The counterclaim is properly before the Tribunal and does not waive Respondent's jurisdictional objection

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89. Claimant contends that Respondent's participation in the arbitration, including the filing of a counterclaim, constitutes an acknowledgement of the Tribunal's jurisdiction [MP para 70]. That contention is unsustainable.

90. Respondent filed its counterclaim expressly "without prejudice to its position" on jurisdiction [MP para 67], and "solely to preserve its rights should the arbitral tribunal ultimately assume jurisdiction" [MP para 73]. Respondent has "consistently objected to arbitration" throughout [MP para 73].

91. It is well established that a jurisdictional objection, once raised in a timely manner, is not waived merely because the objecting party goes on to plead its defence, or to advance a protective counterclaim, in the alternative. A party is not put to an election between contesting jurisdiction and protecting its substantive position; it may do both, provided the objection is clearly reserved. The respondent's reservation was explicit. Its counterclaim cannot, consistently with the good faith required by Article 1.7 PICC, be turned into the very submission it expressly declined to make.

92. It follows that Respondent's primary position, that the dispute belongs before the national court (Issue A), is undisturbed. Should the Tribunal decline jurisdiction, the counterclaim falls away to be pursued in court; should the Tribunal assume jurisdiction, the counterclaim is properly before it and ought to be determined on its merits, to which Aurora now turns.

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ii. Respondent is entitled to payment of the Performance Fee and reimbursable expenses

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93. Under Clause 5.1.1 of the Agreement, Respondent is entitled to a Performance Fee of USD 2,500,000. For the reasons developed under Issue C, Respondent discharged its obligation under Clause 3.1.1 in full: the Concert was performed to the agreed standard and to Claimant's own public acclaim [MP paras 47–50, 53]. Upon performance of the Concert, Claimant's corresponding obligation to pay accrued. Where a party obliged to pay money fails to do so, Article 7.2.1 PICC entitles the other party to require payment.

94. The Performance Fee is not the limit of Respondent's entitlement. The definition of "Performance Fee" in Clause 1.1 is expressly stated to be "exclusive of Royalties, costs incurred for promotional activities and reimbursable expenses," confirming that promotional costs and reimbursable expenses are separately payable by Claimant. Respondent's invoice of 10 February 2026 accordingly itemises ECLIPSE's promotional attendance (USD 750,000) and the rental of outfits, styling and accessories referable to both the promotional activities (USD 90,000) and the Concert (USD 260,000), bringing the total sum due to USD 3,600,000 [MP para 51].

95. That the promotional appearances were chargeable, and not gratuitous, was the parties' common understanding from the outset. The Minutes of 2 January 2026 record Respondent's

Mr Jack stating that ECLIPSE "doing promotional activities will not be free," to be "settled at the end … once you settle the costs incurred and we discuss payment of royalties," which Claimant's Ms Park accepted: "Let's cross that bridge when we get to it. Ultimately, it is to be settled once we discuss royalties" [Exhibit 1]. Claimant further warranted, under Clause 6.2, that it was financially capable of performing its payment obligations. Respondent is therefore entitled to the invoiced sum of USD 3,600,000.

iii. Claimant cannot resist the counterclaim on the basis of an alleged breach or by withholding performance

96. Claimant's objection to the counterclaim is that Respondent, "having fundamentally breached the Agreement, could not rely on the same contract to claim payment" [MP para 70]. That objection presupposes a breach. For the reasons given under Issue C, there was none; the premise of Claimant's objection therefore falls away.
97. To the extent Claimant relies on a right to withhold its own performance, the *exceptio non adimpleti contractus* codified in Article 7.1.3 PICC, the right does not arise on these facts. Article 7.1.3 permits a party to withhold performance only where the other party has failed to perform. Respondent performed in full [MP paras 47–50]; Claimant's payment obligation is unconditional and has accrued.
98. Even if any non-conformity were established (which is denied), the right to withhold under Article 7.1.3 PICC must be exercised proportionately and in good faith. To withhold the entire sum of USD 3,600,000, together with all Royalties, in response to a single sub-second irregularity that was imperceptible to the live audience of some 90,000 spectators [MP para 54], would be grossly disproportionate and contrary to Article 1.7 PICC.
99. This is reinforced by Claimant's own retention of the fruits of the Concert. Claimant continues to hold the entirety of the Gross Concert Revenue, including all ticket and sponsorship proceeds [MP para 69], revenue which, under Clause 4.1.5, it holds "on trust for the purpose of proper accounting and payment of sums due to Respondent." For Claimant to retain the full commercial benefit of the Concert while denying the performer any payment

is irreconcilable with Clause 4.1.5 and with the good faith and fair dealing mandated by Article 1.7 PICC.

iv. Respondent is entitled to an accounting and payment of Royalties, and to interest

100. Under Clause 1.1 read with Clause 5.1.2, Respondent is entitled to Royalties, defined as a percentage of the Gross Concert Revenue "to be computed and discussed between Parties." That the precise percentage was left to be agreed does not defeat the entitlement. Where a contract leaves a term to be determined and the parties fail to determine it, Article 5.1.7 PICC provides that a reasonable term is to be supplied. The Tribunal is accordingly empowered to fix a reasonable Royalty on the Gross Concert Revenue, and the obligation does not fail for want of an agreed figure.

101. Respondent requested a full written accounting of the Gross Concert Revenue by 13 February 2026 [MP para 52], and reiterated the demand by formal letter of 25 February 2026 [MP para 63]; Claimant has refused. Clause 5.2 obliges Claimant to maintain accurate and complete books and records of the Gross Concert Revenue, and Clause 5.3 confers on Respondent the right to inspect and audit them. The duty of co-operation under Article 5.1.3 PICC obliges Claimant to render the accounting necessary to enable the Royalty to be computed. The Respondent therefore seeks an order that Claimant render a full written accounting of the Gross Concert Revenue and pay the Royalty so determined.

102. Under Article 7.4.9(1) PICC, where a party does not pay a sum of money when due, the aggrieved party is entitled to interest from the time payment was due, whether or not the non-payment is excused. The Respondent is entitled to interest on the outstanding sum of USD 3,600,000 from the date the invoice fell due, and on the Royalty once quantified, at the rate prescribed by Article 7.4.9(2) PICC.

PRAYER FOR RELIEF

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

1. Declare that this Tribunal lacks jurisdiction over the present dispute, as no valid and binding arbitration agreement was ever concluded between the Parties;
2. Dismiss the Claimant's claims in their entirety for want of jurisdiction; and
3. Order that the Parties' dispute be resolved before the competent courts of Reyna.

Alternatively, in the event that this Tribunal opines that it does have the requisite jurisdiction over the present dispute, the Respondent urges this Tribunal to recognize that:

1. Dismiss the Claimant's jurisdictional submissions and determine that Aurora has not waived, submitted to, or is otherwise precluded from maintaining its objection to the Tribunal's jurisdiction.
2. Dismiss each and every claim advanced by the Claimant in its Statement of Claim;
3. Declare that Nova wrongfully failed to perform its contractual payment obligations, including its obligation to pay Aurora the agreed Performance Fee and the royalties due under the Agreement;
4. Declare that Nova's refusal to complete the post-Concert accounting process and to remit the contractual payments due to Aurora constitutes a breach of the Agreement;
5. Allow Aurora's Counterclaim in its entirety; and
6. Order the Claimant to provide security for costs in the amount of USD 2,000,000, or in such other amount as this Tribunal considers appropriate.

Respectfully submitted on August 18th

By:

Team SK2611

On Behalf the Respondent

Aurora Entertainment Co.Lte.