SK2610-C

21st LAWASIA INTERNATIONAL MOOT COMPETITION 2026

BEFORE THE ARBITRAL TRIBUNAL

AT THE ASIAN INTERNATIONAL ARBITRATION CENTRE

MEMORIAL FOR CLAIMANT

IN THE MATTER OF AN ARBITRATION

BETWEEN

NOVA LIVE ASIA PTE LTD

(Claimant)

AND

AURORA ENTERTAINMENT CO LTD

(Respondent)

TABLE OF CONTENTS

INDEX OF AUTHORITIES

TREATIES AND CONVENTIONS

1.	UNIDROIT Principles of International Commercial Contracts (2016) (“UNIDROIT Principles”)	14, 17, 28, 37
2.	UNCITRAL Arbitration Rules, as revised in 2010 (“UNCITRAL Rules”)	21

STATUTES AND RULES

1.	Asian International Arbitration Centre Rules 2026 (“AIAC Rules 2026”)	14, 20, 23, 25
2.	Evidence Act 1950 of Malaysia	23

JUDICIAL DECISIONS AND ARBITRAL AWARDS

1.	Abdallah Andraous v. Kingdom of the Netherlands, ICSID Case No. UNCT/23/3, Procedural Order No.3 (28 November 2024) .	21, 23
2.	DSND Subsea Ltd v Petroleum Geo Services ASA [2000] BLR 530	31, 32
3.	Eskosol SpA *in liquidazione* v. Italian Republic ICSID Case No. ARB/15/50., Procedural Order No 3 (12 April 2017)	24
4.	Enka Insaat Ve Sanayi A.S. v OOO Insurance Company Chubb [2020] UKSC 38	13
5.	Fiona Trust & Holding Corp v Privalov [2007] UKHL 40	15

6.	García Armas v Bolivarian Republic of Venezuela ICSID Case No. ARB/16/1, Procedural Order No. 9 (20 June 2018).	22
7.	Lisnave Estaleiros Navais SA v Chemikalien Seetransport GmbH [2013] EWHC 338 (Comm) 112	14
8.	Orlandini-Agreda v. Bolivia, PCA Case No. 2018-39, Procedural Order No. 15 (12 November 2021)	25
9.	Rulec Plc v Bolivia, PCA Case No.2011-17, Procedural Order No.14 (11 March 2023)	21
10.	Shenzhen CTS International Logistics Co Ltd v Dajiang International Investment Co Ltd [2017] HKEC 858	19
11.	Spiliada Maritime Corp v Cansulex Ltd [1987] AC 460	17

JOURNAL ARTICLES AND COMMENTARIES

1.	Gary B. Born, International Commercial Arbitration (3rd ed, Kluwer Law International, 2021)	22
2.	International Arbitration Practice Guidelines. (2016). International Arbitration Practice Guidelines on Jurisdictional Challenges (Official Comment 4 to Article 1). United Kingdom: Chartered Institute of Arbitrators	18

STATEMENT OF JURISDICTION

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*, this Arbitral Tribunal is properly seised of jurisdiction to determine the present dispute between the parties, Nova Live Asia Pte Ltd ("Claimant") and Aurora Entertainment Co. Ltd ("Respondent") in accordance with the AIAC Arbitration Rules 2026.

QUESTIONS 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, including promotional arrangements, royalties and concert logistics. 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.

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 signed the **AGREEMENT** which is set out in **Exhibit 2** of the Moot Problem.

24 January 2026 ECLIPSE attended a meet-and-greet promotional event pursuant to the AGREEMENT.

4 February 2026 Luna became uncontactable, failed to attend the scheduled rehearsal, and expressly informed the Respondent that she would not attend the Concert.

5 February 2026 The Respondent informed the Claimant of Luna's refusal to perform. An emergency meeting was convened, following which the Respondent decided to deploy a holographic projection of Luna during the Concert.

7 February 2026 The Concert proceeded as scheduled, with Luna being replaced by a holographic projection during the live performance.

10 February 2026 The Respondent issued an invoice totalling USD 3.6 million, comprising the contractual Performance Fee together with promotional attendance fees and related concert expenses (**“the Invoice”**).

13 February 2026 Public speculation concerning the holographic performance first emerged, followed soon after by an inquiry by a fan regarding possible refunds.

18 February 2026 Madam Ye Bin, Head of Operations and Marketings from the Respondent was informed by a third party, TF Entertainment Executive, of the Claimant’s alleged liquidity issues.

25 February 2026 The Respondent issued a formal demand requiring the Claimant to settle the Invoice and royalties. The Claimant responded that the matter had been referred to its legal advisers for review.

26 February 2026 The Claimant terminated the AGREEEMENT, commenced arbitration proceedings against the Respondent for breach of contract, claiming USD 2.2 million in damages and the Respondent filed the parallel proceedings at the Reyna High Court claiming for the Invoice and royalties.

SUMMARY OF PLEADINGS

ISSUE 1: THE *FORUM NON CONVENIENS* LIES IN THE ARBITRATION

The Claimant respectfully submits that arbitration ***is*** the proper forum for the determination of the present dispute.

(i) The Parties' established past practice, reflected in all six of their prior collaborations, demonstrates a consistent intention to resolve disputes through arbitration. The absence of an express arbitration clause in the present agreement does not displace this practice, particularly where no contrary intention was expressed by either Party.

(ii) Arbitration best preserves the parties' shared intention to maintain confidentiality, an interest incompatible with proceedings before the Reyna High Court, which operates on an open court basis.

(iii) In the alternative, by seeking security for costs extending beyond its jurisdictional challenge and without expressly reserving its right, the Respondent has acted inconsistently with, and therby waived, its jurisdictional objection.

ISSUE 2: THE ORDER FOR SECURITY FOR COSTS OUGHT NOT TO BE GRANTED

The Respondent's application for security for costs ought to be dismissed.

(i) The Respondent fails to satisfy the stringent threshold required for such an exceptional remedy. The Respondent's application is founded upon speculation and unverified allegations, rather than cogent evidence demonstrating the Claimant's inability to comply with a future adverse costs award.

(ii) The Respondent’s demand for USD 2 million in security is manifestly disproportionate when measured against the anticipated costs of these proceedings. Accordingly, the present application for security for costs risks imposing an undue burden on the Claimant while the alleged risk of non-compliance with an adverse costs order remains entirely unsubstantiated.

ISSUE 3: THE RESPONDENT’S DEPLOYMENT OF A HOLOGRAPHIC REPLACEMENT OF LUNA CONSTITUTED A BREACH OF THE AGREEMENT

The Respondent clearly breached the AGREEMENT by deploying a holographic replacement of Luna during the Concert.

(i) The AGREEMENT expressly required the live performance of ***all*** five members of ECLIPSE. It did not authorise or even contemplate performance through holographic replacement of any group member. Luna was, indisputably, physically absent at the Concert. Accordingly, the deployment of the holographic replacement constituted a breach of the AGREEMENT

(ii) Further or alternatively, the Respondent breached the AGREEMENT by failing to procure the performance of the Concert in accordance with generally accepted industry standards and reasonable audience expectations as required in the AGREEMENT.

ISSUE 4: THE RESPONDENT’S COUNTERCLAIM OUGHT NOT TO BE GRANTED

The Respondent's counterclaim, ***as pleaded***, seeking USD 3.6 million pursuant to the Invoice ought to be dismissed.

(i) The Respondent is not entitled to recover the entirety of the contractual Performance Fee, as the Concert and its preparatory obligations were not fully performed in accordance with the

AGREEMENT. Accordingly, the Performance Fees set out in the Invoice must be subject to deductions.

(ii) The Respondent's claims for promotional attendance fees and related costs are premature. The Parties expressly agreed that these matters would be determined through subsequent negotiations. No concluded agreement was reached. Accordingly, the Respondent is not entitled to the amounts **as stated in the Invoice.**

PLEADINGS

I. THE *FORUM NON CONVENIENS* LIES IN THE ARBITRATION.

1. The Claimant respectfully submits that arbitration is the proper forum for the determination of the present dispute, rather than Reyna High Court. This submission is advanced on three grounds: **(A)** First, the Parties are bound by their established practice of referring disputes to arbitration; **(B)** Second, arbitration is the more appropriate forum as it gives effect to the Parties' shared intention to preserve confidentiality; and **(C)** in the alternative, the Respondent's conduct amounts to a waiver of its right to object to this Tribunal's jurisdiction. Indeed, the conduct amounts to submission to this Tribunal's jurisdiction.

2. As a preliminary matter, the Claimant acknowledges that the AGREEMENT[1] does not contain an express arbitration clause. Accordingly, there is no express choice of law specifically governing the arbitration agreement.

3. In determining the applicable law, the Claimant relies on the approach adopted by the UK Supreme Court in **Enka v Chubb**[2], where in the absence of an express choice of law, the law governing the main contract will apply. The Court further emphasized that the law of the seat will only apply where the parties have not made a choice of governing law for the main contract.

[1] Exhibit 2
[2] Enka Insaat Ve Sanayi A.S. v OOO Insurance Company Chubb [2020] UKSC 38

4. Accordingly, the formation and validity of the arbitration agreement will be determined under the UNIDROIT Principles of International Commercial Contracts (2016) **("UNIDROIT Principles")**. This follows from Clause 9 of the AGREEMENT[3]**,** which expressly provides that it shall be governed by and construed in accordance with the UNIDROIT Principles. However, the procedural law is governed by the AIAC Arbitration Rules 2026 **("AIAC Rules")**, as agreed by the parties.[4]

A. THE PARTIES ARE BOUND BY THEIR ESTABLISHED PRACTICE

5. The Claimant respectfully submits that a binding arbitration agreement was implied into the present agreement through the Parties' established practice, pursuant to **Article 1.9** of the **UNIDROIT Principles**.

6. It was recognized by the English High Court in **Lisnave Estaleiros Navais SA v Chemikalien Seetransport GmbH**[5] that an arbitration agreement may be implied where parties have consistently adopted a particular course of dealings in their previous and similar transactions.

7. In the present case, the threshold of consistency is plainly satisfied. Across all six prior collaborations between the parties, each agreement expressly contained an arbitration

[3] Exhibit 2.
[4] Corrections & Clarifications to the Moot Problem at page 3, Clarification 14.
[5] Lisnave Estaleiros Navais SA v Chemikalien Seetransport GmbH [2013] EWHC 338 (Comm) 112

clause as the agreed dispute resolution mechanism.[6] This consistent course of dealing demonstrates that arbitration was the parties' established method for resolving disputes.

8. The Claimant acknowledges that four of the six prior agreements contained prior negotiation as a prerequisite to commencing arbitration.[7] However, clearly this prior negotiation requirement was not sufficiently consistent to form part of the Parties' established practice, as it appeared in only four of the six agreements. By contrast, the one constant feature across all six agreements was the Parties' agreement to refer disputes to arbitration.

9. The Claimant further relies on the 'one-stop-shop' presumption established by the House of Lords in **Fiona Trust & Holding Corp v Privalov[8],** where it was recognized that '*parties, as rational businessmen, are likely to have intended any dispute arising out of their relationship to be decided by the same tribunal'.* This presumption may only be displaced by clear evidence of a contrary intention.

10. At all material times, there was no indication of any intention to depart from this established practice. In the Minutes of the Pre-Coordination Meeting[9], the Parties expressly acknowledged their previous practice of resolving disputes through arbitration or mediation, which Mr. Jack, the Respondent's Assistant Director, unequivocally affirmed.

[6] Additional Corrections & Clarifications to the Moot Problem at page 2, Additional Clarification 9
[7] Ibid.
[8] Fiona Trust & Holding Corp v Privalov [2007] UKHL 40
[9] Exhibit 1, page 4

Therefore, this demonstrates that the parties remained aware of, and continued to rely upon, if necessary, their established practice of referring disputes to arbitration.

11. The Claimant further submits that the absence of an express arbitration clause in the present AGREEMENT should not be interpreted as an intention to depart from that practice. The omission was clearly attributable to and merely due to the commercially compressed timeline under which the AGREEMENT was concluded.[10] The Parties' shared understanding remained that their previous agreements had consistently mandated reference to arbitration.[11]

12. Accordingly, the absence of an express arbitration agreement does not, in itself, negate this Tribunal's jurisdiction. An arbitration agreement was validly implied through the Parties' established practice, and it binds the Parties in the present dispute.

B. ARBITRATION GIVES EFFECT TO THE PARTIES SHARED INTENTION TO PRESERVE CONFIDENTALITY

13. The Claimant respectfully submits that arbitration remains the more appropriate forum under the doctrine of *forum non conveniens,* as it gives effect to the Parties' shared intention to preserve confidentiality.

[10] Moot Problem at page 8, paragraph 32
[11] Moot Problem at page 8, paragraph 34

14. The United Kingdom House of Lords in **Spiliada Maritime Corp v Cansulex Ltd**[12] established the authoritative two-stage test for determining the appropriate forum. First, the party challenging the jurisdiction must demonstrate that another available forum is *'clearly or distinctly more appropriate'* for the determination of the dispute. If, but only if, this threshold is satisfied, the burden shifts to the opposing party to establish circumstances demonstrating that justice requires the dispute to be heard in the other available forum.

15. It is submitted that the Respondent fails at the first stage. The Respondent is unable to demonstrate that, in the light of the existence of the arbitration agreement, the Reyna High Court is a forum that is clearly or distinctly more appropriate than arbitration. On the contrary, arbitration is the forum that most closely reflects the Parties' common intention.

16. **Article 4.3** of the **UNIDROIT Principles** provides that the parties' common intention may be ascertained from their preliminary negotiation. In the present case, the Parties' intention to preserve confidentiality is clearly reflected in the Minutes of the Pre-Coordination Meeting.[13] During the discussion, Madam Ye Bin, on behalf of the Respondent, expressly acknowledged that *"all matters relating to ECLIPSE and Aurora must be dealt with confidentiality."* This was affirmed by Madam Choi, the Claimant's managing director, when she referred to the parties' previous practice of resolving disputes through arbitration or mediation to avoid publicity in order to protect their trade secrets and the privacy of their artists.

[12] Spiliada Maritime Corp v Cansulex Ltd [1987] AC 460
[13] Exhibit 1, page 4

17. This exchange clearly demonstrates that confidentiality was a central concern consistently maintained throughout the Parties' commercial relationship. Similarly, the Parties' previous practice of referring disputes to arbitration was motivated by the same objective, which was to avoid publicity and safeguard the confidential commercial interests of both companies.

18. Accordingly, proceedings before the Reyna High Court would be inconsistent with this established practice and shared intention, as the Court operates under the open court principle.[14] Arbitration, by its very nature, gives effect to the preservation of the very intention the Parties.

C. THE RESPONDENT'S CONDUCT AMOUNTS TO A WAIVER OF ITS RIGHT TO OBJECT TO THE TRIBUNAL'S JURISDICTION

19. In the alternative, the Claimant respectfully submits that the Respondent has, by its conduct in the present proceedings, acknowledged and invoked this Tribunal's authority, thereby waiving its right to maintain its jurisdictional objection.

20. It is trite that a party may waive its right to object to the Tribunal's jurisdiction where its subsequent conduct is inconsistent with its earlier challenge.[15]

[14] Corrections & Clarifications to the Moot Problem at page 1, Clarification 2.
[15] International Arbitration Practice Guidelines. (2016). International Arbitration Practice Guidelines on Jurisdictional Challenges (Official Comment 4 to Article 1). United Kingdom: Chartered Institute of Arbitrators

21. In the present case, the Respondent has actively participated in the arbitration proceedings in two material aspects; first, by filing a counterclaim seeking USD 3.6 million; and second, by applying for security for costs in the sum of USD 2 million.

22. The Claimant acknowledges that the Respondent's counterclaim was expressly filed *"without prejudice"* to its jurisdictional objection.[16] However, no such reservation was made in respect of the application for security for costs.[17]

23. In **Shenzhen CTS International Logistics Co Ltd v Dajiang International Investment Co Ltd**[18]**,** the Hong Kong High Court held that a party's application for security for costs constituted an invocation of the court's jurisdiction on the basis that the party had not expressly reserved its jurisdictional objection in relation to that application. Further, the Court held that the defendant's conduct constituted *"more than a defensive action"*, as the scope and amount of the security sought extended beyond matters confined to the jurisdictional challenge itself.

24. The same reasoning applies here. The Respondent's application for security for costs was not expressly confined to its jurisdictional objection.[19] Accordingly, this necessarily means that the Respondent is seeking security for costs for the arbitration proceedings as a whole, including matters relating to the substantive merits of the dispute.

[16] Moot Problem at page 15, paragraph 67
[17] Moot Problem at page 15, paragraph 69
[18] Shenzhen CTS International Logistics Co Ltd v Dajiang International Investment Co Ltd [2017] HKEC 858
[19] Additional Corrections & Clarifications to the Moot Problem at page 2, Additional Clarification 7

25. In these circumstances, the Respondent cannot approbate and reprobate by denying this Tribunal's jurisdiction, while simultaneously invoking its authority to obtain procedural relief. Having elected to engage with and seek relief from this Tribunal, it is submitted that the Respondent has now waived its right to maintain its jurisdictional objection. Indeed, the Claimant submits that the Respondent has now submitted to the jurisdiction of this Tribunal.

26. Accordingly, the Claimant respectfully submits that the inescapable conclusion is that the Parties are bound to arbitrate by virtue of their established practice, and that arbitration remains the more appropriate forum, not only to safeguard confidentiality, but also the Respondent ought not to be allowed to renege from its submission to the jurisdiction of this Tribunal.

II. THE ORDER FOR SECURITY FOR COSTS OUGHT NOT TO BE GRANTED.

27. The Claimant respectfully submits that the Respondent's application for security for costs ought to be dismissed as it is unable to satisfy the high threshold required for such an order.

28. The Claimant acknowledges that this Tribunal has the power to order security for costs. Under **Rule 11.3(c)** of the **AIAC Rules**, the Arbitral Tribunal may order an interim measure intended to *"provide a means of preserving assets out of which a subsequent award may be satisfied."*

29. This 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**[20], the tribunal affirmed that the UNCITRAL framework confers a sufficiently broad discretion to order security for costs where appropriate.

30. However, it is submitted that the Tribunal's power must be exercised sparingly. As affirmed in **Rurelec PLC v Bolivia**[21], security for costs remains *"a very rare and exceptional measure"*.

31. Accordingly, the Respondent bears a heavy burden to justify the grant of such an exceptional measure.

A. THE RESPONDENT IS UNABLE TO SATISFY THE HIGH THRESHOLD REQUIRED FOR SUCH AN ORDER

32. The Claimant respectfully submits that the Respondent is unable to satisfy the high threshold required for security for costs.

[20] Abdallah Andraous v. Kingdom of the Netherlands, ICSID Case No. UNCT/23/3, Procedural Order No.3 (28 November 2024) .
[21] Rulec Plc v Bolivia, PCA Case No.2011-17, Procedural Order No.14 (11 March 2023)

33. In **García Armas v Bolivarian Republic of Venezuela**[22], the tribunal established four cumulative requirements, which the applicant must prove, to justify an order for security for costs: (i) first, a prima facie case; (ii) second, a risk of harm not adequately reparable by a costs award in the ordinary course; (iii) third, the balance of harm favours the applicant; and (iv) fourth, urgency.

34. As these requirements are cumulative, failure to establish any one element means that the application necessarily fails. The Claimant will address each element in turn.

i. Prima Facie Case

35. The Claimant submits that a prima facie case on the merits is not determinative in an application for security for costs. It is merely a pre-requisite.

36. As Professor Gary Born observes, it is *"doubtful that the likelihood of a party's success on the merits plays a significant role in determining whether it is appropriate to order security for costs."*[23]

37. Accordingly, even if the Respondent were able to establish a prima facie case, that alone cannot justify the grant of security for costs.

[22] García Armas v Bolivarian Republic of Venezuela*,* ICSID Case No. ARB/16/1, Procedural Order No. 9 (20 June 2018).
[23] Gary B. Born, International Commercial Arbitration (3rd ed, Kluwer Law International, 2021)

ii. Risk of Harm Not Adequately Reparable by a Cost Award

38. The Respondent's application fails at this most fundamental element. It has not established any real risk that the Claimant would be unable to satisfy an adverse costs award.

39. The burden lies squarely on the Respondent to produce cogent and credible evidence of the Claimant's inability to pay an adverse costs award.[24] This burden has simply not been discharged.

40. In **Abdallah Andraous v. Kingdom of the Netherlands[25],** the tribunal rejected the application for security for costs on the basis that the applicant failed to adduce credible evidence demonstrating that a cost award would not be satisfied.

41. The same reasoning applies to the present case. First, the Respondent relies on alleged instances of delayed payments circulated on an online thread, *Blueddit.*[26] These allegations remain nothing more than mere speculation and unverified rumours.[27] Accordingly, these allegations are hearsay and therefore carry no probative value.[28]

42. Second, any reliance by the Respondent on statements regarding the Claimant's financial position made by the TF Entertainment Executive is misplaced.[29] Such allegations were

[24] Rule 36.1 of the AIAC Rules.
[25] Abdallah Andraous, n 20.
[26] Moot Problem at page 15, paragraph 68
[27] Additional Corrections & Clarifications to the Moot Problem at page 3, Additional Clarification 12
[28] Section 60 of the Evidence Act 1950
[29] Moot Problem at page 14, paragraph 62

summarily dismissed by the Respondent's own Managing Director, Madam Choi, as being inappropriate and speculative. Therefore, the Respondent cannot now rely on the very allegations it previously rejected as a basis for this application.

43. Accordingly, there is simply no evidential foundation to show that the Claimant would be unable to satisfy a future costs award. The alleged risk of harm is therefore not established.

iii. Balance of Harm

44. The Claimant further submits that the balance of harm weighs decisively against the grant of security for costs.

45. In this regard, the key consideration of this Tribunal is the element of proportionality. As articulated in **Eskosol SpA in liquidazione v. Italian Republic**[30]**,** ***"****Proportionality is a critical part of any provisional measures analysis, and a party seeking provisional measures must demonstrate that <u>its need for the measures are not outweighed by the hardships to which the other party would be subjected if the measures are granted</u>."* [Emphasis provided.]

46. In the present case, the Respondent is seeking security in the sum of USD 2 million, approximately 90.9% of the Claimant 's total claim of USD 2.2 million. This amount is plainly excessive and disproportionate.

[30] Eskosol SpA in liquidazione v. Italian Republic, ICSID Case No. ARB/15/50., Procedural Order No 3 (12 April 2017)

47. Under **Schedule 1** of the **AIAC Rules**, the total arbitrators and administrative fees are expected to fall well below USD 200,000. Even accounting for additional costs including, inter alia, witness fees, counsel fees and cost of filing, there is no reasonable basis for the amount to reach USD 2 million.

48. The Respondent therefore seeks an amount that risks imposing a disproportionate and unjustified financial burden on the Claimant, thereby placing a barrier on its ability to pursue its claim. Accordingly, the test of where the balance of harm lies clearly in favour of the Claimant.

iv. Urgency

49. The Claimant further submits that the Respondent has not established any urgency justifying the order for security for costs.

50. Urgency is closely connected to the existence of a real risk of non-payment. It requires evidence of an imminent and substantial risk that a future costs award would go unsatisfied. In **Orlandini v. Bolivia**[31], the Tribunal declined to grant security for costs, where there was insufficient evidence of financial instability or imminent non-payment.

51. The same reasoning applies here. The Respondent has not provided any credible evidence that the Claimant is in financial distress or that it is imminent that the Claimant would be

[31] Orlandini-Agreda v. Bolivia, PCA Case No. 2018-39, Procedural Order No. 15 (12 November 2021)

unable to satisfy its financial obligations. Absent such evidence, urgency simply does not arise.

52. Accordingly, the Respondent has not overcome the stringent threshold required for this exceptional remedy. Therefore, the Claimant respectfully submits that the Respondent's application should be dismissed in its entirety.

III. THE RESPONDENT'S DEPLOYMENT OF A HOLOGRAPHIC REPLACEMENT CONSTITUTED A BREACH TO THE AGREEMENT.

53. The Claimant respectfully submits that the holographic replacement of Luna constituted a breach of the AGREEMENT. This submission is advanced on three grounds: **(A)** There was no live performance by ECLIPSE of the "Act" as defined in the AGREEMENT. **(B)** The Respondent failed to comply with generally accepted industry standards and reasonable audience expectations **(C)** The Claimant's agreement to the use of the holographic replacement was made under economic duress.

54. Indisputably, Luna's absence at the Concert is the ***only*** reason for the use of holographic replacement during the Concert. Luna experienced psychological distress from a meet and greet event 2 weeks before the concert and developed heightened anxiety associated with public appearances and crowd facing events.[32] Subsequently, a mere 3 days before the

[32] Moot Problem at page 9, paragraph 37.

Concert, Luna expressed a firm refusal to attend the Concert due to her overwhelming anxiety and inability to appear on stage. [33]

55. Therefore, having no other viable alternative, the Claimant had ultimately agreed to proceed with the concert following the Respondent's proposal of deploying a holographic replacement of Luna. [34] (Further submissions on this matter will be made below.)

A. THERE WAS NO LIVE PERFORMANCE OF THE "ACT" BY ECLIPSE AT THE CONCERT

56. Under Clause 1.1 of the AGREEMENT ***"Concert"*** means the *'live performance of the Act to be held on 7th February 2026, including rehearsals, soundchecks, and related appearances'*. Further, the ***"Act"*** means the *'co-ed R-Pop group known as ECLIPSE comprising 5 members'* including Luna. Additionally, the Respondent agreed to procure the performance of ECLIPSE at the Concert.[35]

57. These provisions of the AGREEMENT are clear – nothing less than the live appearance of all the members of ECLIPSE at the Concert could qualify as the performance of the "Act". Anything less would amount to a breach of the AGREEMENT.

58. Furthermore, **Article 4.1** of the **UNIDROIT Principles** provides that in interpreting a contract, preference is to be given to the common intention of the parties. Alternatively, it

[33] Moot Problem at page 9, paragraph 41.
[34] Moot Problem at page 10, paragraph 44.
[35] Clause 3.1.1 of the AGREEMENT.

may be interpreted according to the meaning reasonable persons would attach to it provided that such understanding was common to the parties at the time of contract.[36]

59. The facts show that the Respondent had consistently organized rehearsals and group activities of ECLIPSE that included live audience engagement involving all 5 members.[37] None of the rehearsals were done with a hologram. Clearly the common intention of the Parties is that they never regarded or contemplated hologram replacements as a substitute. In any event, a reasonable person in the position of the Parties would understand "live performance" as the actual appearance of the group ECLIPSE, not one with a holographic replacement of Luna.

60. It is clear that all 5 members of ECLIPSE must be present at the Concert. ECLIPSE could only be considered complete when all five members performed together live. Without Luna's physical presence, the concert was incomplete and not the live performance of the "Act" agreed under the AGREEMENT.

61. As Clause 3.1.1 of the AGREEMENT provides that the Respondent had an obligation to procure the performance of ECLIPSE at the Concert,[38] the Claimant submits that with reference to the definitions and interpretation of the AGREEMENT, there was no live performance from all 5 members.

[36] UNIDROIT. (2016). UNIDROIT principles of international commercial contracts 2016 (Official Comment 1 to Article 4.1).
[37] Moot Problem at page 9, paragraph 38.
[38] Exhibit 2, page 4.

B. THE RESPONDENT FAILED TO COMPLY WITH GENERALLY ACCEPTED INDUSTRY STANDARDS AND REASONABLE AUDIENCE EXPECTATIONS.

62. Clause 3.1.1 of the AGREEMENT further asserts that the performance of ECLIPSE shall be in accordance with (i) generally accepted industry standards and (ii) reasonable audience expectations. [39]

63. In the R-Pop industry, artificial intelligence and holographic technologies are only used in idol training and performance preparation.[40] With reference to that, a recent R-Pop industry report indicates the adoption of AI technologies is limited to idol training but has not been deployed to enhance concert performances.[41]

64. Several industry critics even cautioned that emerging technologies should be integrated responsibly without displacing the central role of human performers.[42] However, by deploying a holographic replacement, the Respondent had displaced Luna's central role of typically initiating the concert with their distinctive and customary audience interaction *"Hello Sunderson city, are we ready to partaayyyy…"*[43]

65. Therefore, the Respondent's use of holographic replacement was against generally accepted industry standards.

[39] Exhibit 2, page 4.
[40] Moot Problem at page 4, paragraph 11.
[41] Additional Clarifications to the Moot Problem at page 1, Additional Clarification 5.
[42] Moot Problem at page 5, paragraph 15.
[43] Moot Problem at page 11, paragraph 48.

66. Further, reasonable audience expectations were also not met. The Claimant submits that "reasonable audience expectation" would naturally include the expectation that the performers at the Concert would be human beings. Therefore, not surprisingly, when the use of Luna's holographic replacement became known, criticisms started to arise from numerous fan responses online. Nothing could be clearer evidence of what included "reasonable audience expectation". Why else would one of the comments ask for a refund if the use of hologram was true?[44] Why else would the Claimant receive an email from a fan requiring confirmation and the entitlement to a refund if the claim regarding holographic substitution was accurate. [45]

67. Once the audience found out the speculations were true, they were disappointed. These evidence of complaints show that the audience always expected a live and real performance by ECLIPSE. They paid expecting to see all 5 physical members of ECLIPSE in person, not 4 members and a holographic replacement of Luna. However, the Respondent did not deliver that expectation to the audience.

C. THE CLAIMANT'S AGREEMENT TO THE USE OF HOLOGRAPHIC REPLACEMENT IS VITIATED

68. The Claimant's ultimate agreement to use the holographic replacement was not the product of free consent. Far from it, it was in response to the Respondent's unjustified inability to, in the words of Ms. Kim, the Claimant's Director of Events, *"manage the situation and get*

---

[44] Moot Problem at page 12, paragraph 56.
[45] Moot Problem at page 13, paragraph 58.

her [Luna] *to do it"*.[46] This failure of the Respondent to *"get her to do it"* left the Claimant facing a serious and imminent threat, triggered by the Respondent's failure, of the Concert having to be cancelled. This left the Claimant with no reasonable alternative but to agree to the so-called variation.

69. With regard to the validity of the variation, the Claimant relies on the doctrine of economic duress propounded in English case law.

70. In **DSND Subsea Ltd v Petroleum Geo Services ASA**[47]**,** the English High Court set out the test to establish defence of economic duress. Three limbs must be satisfied. First, the other party subjected the innocent party to illegitimate pressure. Second, the innocent party submitted to this pressure because they realised there was no other practical choice available. Third, the pressure was a significant cause of the innocent party's agreement.[48]

71. First, there was illegitimate pressure from the Respondent. Illegitimate pressure according to Lord Diplock in **The Universe Sentinel**[49] is "*pressure exercised upon a party, which the law does not regard as legitimate."*

72. The High Court in **DSND Subsea Ltd v Petroleum Geo Services ASA**[50] also set out factors relevant to determining illegitimate pressure, such as whether there was a breach of

[46] Moot Problem, at page 10, paragraph 42
[47] DSND Subsea Ltd v Petroleum Geo Services ASA [2000] BLR 530
[48] Ibid.
[49] Universe Tankships Inc of Monrovia v International Transport Workers' Federation (The Universe Sentinel) [1983] 1 AC 366
[50] DSND Subsea Ltd v Petroleum Geo Services ASA [2000] BLR 530

contract, whether the victim protested at that time, whether the other party acted in good or bad faith, whether there were any realistic alternatives, and whether the victim affirmed the agreement.

a. As submitted earlier, the Respondent did breach the AGREEMENT.

b. The Claimant protested at that time when Respondent proposed the variation to the AGREEMENT to deploy a holographic replacement. There were immediate objections from the Claimant stating *"seriously, how ridiculous can this be?" what about the authenticity of the concert, audience expectations and our freaking reputation if this thing goes out?"* [51]

c. The Respondent had acted in bad faith as it only informed the Claimant of Luna's refusal to attend the Concert on 5 February 2026, a mere 2 days before the Concert.[52]

d. Additionally, in the R-Pop industry, a single cancelled concert, or a visible performance lapse or public controversy could trigger cascading financial losses and reputational damage across multiple markets.[53] This left the Claimant with no other viable alternatives as cancellation was not a realistic commercial option.

73. Since there was illegitimate pressure, the first limb to establish economic duress is satisfied.

[51] Moot Problem at Page 10, Paragraph 44.
[52] Additional Clarifications to the Moot Problem at Page 1, Additional Clarification 3.
[53] Moot Problem at Page 4, Paragraph 7.

74. Second, the Claimant submitted to this pressure because there was no other practical choice available, thereby satisfying the second limb to establish economic duress. The third limb is also satisfied for the same reasons - this overwhelming pressure was a significant cause of the Claimant agreeing to the variation.

75. Once economic duress is established, this renders the variation voidable, and the Respondent may not rely on it.

IV. THE RESPONDENT'S COUNTERCLAIM OUGHT NOT TO BE GRANTED.

76. The Claimant respectfully submits that Respondent's counterclaim, **as pleaded**, ought not to be granted. This submission is advanced on two grounds: **(A)** The Respondent is Not Entitled to Recover the Entirety of the Performance Fee and **(B)** the Respondent's Claim for Promotional Expenses and Related Costs is Premature.

77. The Respondent's counterclaim seeks full payment and resolution of the Invoice dated 10 February 2026, amounting to USD 3.6 million. For ease of reference the Invoice is reproduced below:[54]

	Description	**Amount (USD)**
A.	**Promotional Activities**	
1.	ECLIPSE's attendance	750,000.00
2.	Rental of outfits, styling and accessories	90,000.00
B.	**Concert**	

[54] Moot Problem, at page 11, paragraph 51

3.	ECLIPSE's Performance Fee	2,500,000.00
4.	Rental of outfits, styling and accessories	260,000.00
Total		**3,600,000.00**

A. THE RESPONDENT IS NOT ENTITLED TO RECOVER THE ENTIRETY OF THE PERFORMANCE FEE

78. Clause 1.1 of the Agreement provides that the *"Performance Fee"* is the fixed fee payable for the Act's engagement and performance of the Concert in accordance with the Agreement, including all rehearsals directly related to the concert and any preparation required to meet the standard reasonably expected of a headline act of a similar stature but excludes Royalties, costs incurred for promotional activities and reimbursable expenses.[55]

79. Importantly, Clause 5.1 of Agreement expressly stipulates that entitlement to the Performance Fee of USD 2.5 million is *"subject to further confirmation and performance of the Concert.*"[56] However, the Respondent failed to perform the contractual obligations in the manner contemplated by the Agreement.

80. As submitted under Issue 3, Luna did not physically perform at the Concert but was instead substituted by a holographic projection. Consequently, the agreed five-member Act was never performed live before the audience as contractually required. The contractual performance was therefore incomplete and defective.

---

[55] Exhibit 2, page 3.
[56] Exhibit 2, page 5.

81. Furthermore, the contractual obligations extended beyond the live concert itself as the Agreement expressly contemplates that the Performance Fee encompasses rehearsals and preparatory obligations undertaken before the Concert.[57]

82. With reference to that clause, Luna failed to attend a scheduled rehearsal three days before the Concert.[58] Accordingly, the Respondent failed to fully perform not only the Concert itself but also the preparatory obligations forming part of the contractual bargain.

83. In these circumstances, the Respondent cannot be entitled to recover the entirety of the contractual Performance Fee. At the very least, any recovery must be reduced to reflect the defective and incomplete performance rendered under the Agreement.

B. THE RESPONDENT'S CLAIM FOR PROMOTIONAL EXPENSES AND RELATED COSTS IS PREMATURE.

84. The Claimant further submits that the Respondent's claim for promotional expenses and related concert costs is premature and therefore not recoverable.

85. The promotional costs include attendance fees for ECLIPSE's promotional appearances. However, Luna was excused from several promotional activities and did not personally attend those appearances.[59] Accordingly, the Respondent cannot recover the entirety of the attendance fees as though all five members had fully performed the promotional

[57] Exhibit 2, page 3.
[58] Moot Problem at page 9, paragraph 40.
[59] Moot Problem at page 9, paragraph 39.

obligations. Any recovery must be reduced to reflect the promotional services that were not rendered.

86. Furthermore, the quantum of the promotional expenses were never agreed as fixed contractual entitlements under the AGREEMENT. Instead, both Parties had deliberately postponed any agreement regarding those matters for future discussion and settlement.

87. During the negotiations, Mr Park, on behalf of the Claimant, proposed that promotional costs be shared equally between the Parties and reimbursed after the Concert. Meanwhile, Mr Jack from the Respondent expressly stated that promotional appearances *"will not be free"* and that the costs *"can be settled at the end"*. Both parties subsequently agreed that those matters were to be settled after.[60]

88. These exchanges demonstrate that the Parties deliberately left unresolved several essential matters relating to promotional expenses, including the precise sums payable; the allocation of responsibility for such expenses and the mechanism by which reimbursement would be calculated.

89. **Article 2.1.13** of the **UNIDROIT Principles** provides that where the Parties intend that specific matters remain subject to further agreement, no binding contractual obligation arises in relation to those matters until such agreement is subsequently reached. Parties

[60] Exhibit 1, page 4.

may deliberately postpone agreement on matters they regard as sufficiently important, with the consequence that no binding obligation exists until those matters are finally settled.[61]

90. In the present case, the Parties expressly agreed that promotional expenses and related costs would only be determined after further discussions. However, no subsequent agreement was ever reached.

91. Accordingly, the Respondent's claim for promotional attendance fees and related concert expenses remains uncertain, incomplete, and premature. Those sums as stipulated in the Invoice are therefore not contractually recoverable.

[61] UNIDROIT. (2016). UNIDROIT principles of international commercial contracts 2016 (Official Comment to Article 2.1.13).

PRAYERS FOR RELIEF

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

I. The *forum non conveniens* lies in the arbitration.

II. The order for security for costs in favour of the Respondent is not granted.

III. The Respondent's deployment of a holographic replacement constituted a breach of the AGREEMENT.

IV. The Respondent's counterclaim is dismissed.

V. Costs of these arbitration proceedings be awarded to the Claimant.