SUMMARY OF SUBMISSIONS:

I. BLUE INC. ('BLUE') did not breach its contractual obligations in relation to the joint production of *Designer Zero: New Challenge* ('*DZNC*').

II. In the alternative and without prejudice to (**I**), if BLUE breached its obligations in relation to the joint production of *DZNC*, BLUE is not liable to pay any damages to RED CORP. ('RED').

III. RED breached its contractual obligation to BLUE regarding the delivery of clothes.

IV. RED is liable to pay USD 21.13 million in damages to BLUE due to the above breach.

V. The Arbitral Tribunal does not have jurisdiction in relation to the CARD CASE.

VI. In the alternative and without prejudice to (**V**), if the Tribunal is deemed to have jurisdiction in relation to the CARD CASE, all RED's claims should be rejected on the merits.

CASE 1: NEW CHALLENGE CASE

I. BLUE did not breach its contractual obligations to RED in relation to the joint production of *DZNC.*

A. RED had ultimate responsibility for creative decisions under the 2019 Co-Production Agreement ('*2019 CPA*').

1. The *2019 CPA* sets out RED and BLUE'S key obligations concerning the co-production of *DZNC*. Clause 3(b) provides that both parties have "mutual creative control" of the further development, pre-production, and production of *DZNC*. However, it grants RED ultimate control of the creative process.
2. The term "mutual creative control" in cl 3(b) must be interpreted in the context of the entire agreement [art 4.4 *UNIDROIT Principles of International Commercial Contracts* ('*UNIDROIT*')]. Clause 3(b) further provides that "Red shall have authority to make the final decision with respect to such creative matter[s]" [Exhibit 7]. The use of the imperative "shall" confirms that RED must make the final decision, such that BLUE has only a right to offer suggestions that RED may elect to accept or decline at its discretion.
3. Accordingly, the *2019 CPA* allocates the risk and responsibility for creative decision-making to RED, and therefore cl 3(b) cannot be interpreted as placing responsibility for such decisions or their consequences on BLUE.
4. RED adopted BLUE'S suggestion to change the cigarette held by Santa to candy [Exhibit 17], exercising its contractual right and power ultimately to direct creative decisions.

B. In the alternative, if BLUE is found to have breached the *2019 CPA*, BLUE is not liable for non-performance, as the breach is wholly attributable to RED'S action.

5. Alternatively, and without prejudice to submission (**A**), BLUE is not liable as the purported breach is attributable to RED'S failure to take responsibility for the distribution and presentation of *DZNC* in Negoland. Clause 5(a) of the *2019 CPA* required RED to control all decisions over the distribution of *DZNC* in Negoland, and cl 5(b) required RED to distribute and market *DZNC* in the same way it currently distributes and markets movies in Negoland [Exhibit 7].
6. RED "may not rely on the non-performance of [BLUE] to the extent that such non-performance was caused by [RED'S] act or omission or by another event for which [RED] bears the risk" [art 7.1.2 *UNIDROIT*].

C. Further or alternatively, BLUE made best efforts to achieve a successful outcome for the changes made to *DZNC*.

7. Alternatively, and without prejudice to submissions (**A**) and (**B**), to the extent that BLUE is subject to obligations with respect to its input towards creative decision-making, this obligation can only be to make such efforts as would be made by a reasonable person in the same circumstances [art 5.1.4(2) *UNIDROIT*].
8. BLUE made every effort to ensure the suitability and quality of its input, taking all steps that a reasonable person in BLUE's position would have made, and it is unreasonable to suggest that BLUE solely contributed towards *DZNC* receiving negative reviews in Negoland because Santa's cigarette was changed to a candy.
9. SWAN, who was in charge of internal creative decision-making on BLUE'S *DZNC* production team, emailed the Arbitrian movie review organization ('*Organization*') on 2 August 2019 to confirm whether making changes to Santa's depiction would affect *DZNC*'s classification [Exhibit 16 ¶3]. The *Organization* did not respond, and had changed its internal review policy [Exhibit 16 ¶3]. As was subsequently established, the only other way to find out about the change of the *Organization*'s internal policy would have been to consult a specialist law firm, of which BLUE was not aware in 2019 [Facts ¶24]. It is moreover unreasonable to expect BLUE to consult a specialist law firm about an internal regulatory policy that it had no cause to believe had changed [Exhibit 16 ¶3].
10. BLUE also took further steps to encourage RED to assist with enquiring with the *Organization* regarding its policy. However, RED ignored BLUE's request on 6 August 2019, when BLUE asked whether Minna Friends or RED would be "willing to renegotiate with [the *Organization*] together with [BLUE]" [Exhibit 10]. Instead, RED themselves suggested that it would either have to cancel the distribution of *DZNC* in Arbitria or change Santa's cigarette to a candy [Exhibit 10].

11. BLUE therefore made such efforts as would be made by a reasonable person of the same kind in the same circumstances and cannot be regarded as in breach of any obligations with respect to supplying suggestions for RED's final determination.

II. In the alternative and without prejudice to (I), if BLUE breached its obligations in relation to the joint production of *DZNC*, BLUE is not liable to pay any damages to RED.

12. RED is seeking damages for both: (**A**) loss of box office profits amounting to USD 19 million, and (**B**) loss of clothing profits totaling USD 250,000. Even if BLUE breached its obligations, BLUE is not liable to pay any such damages to RED.

A. RED is not entitled to recoup its loss of box office profits given its own omission in failing to check with the *Organization*.

13. Where harm is due in part to an omission by the aggrieved party for which that party bears the risk, the quantum of damages shall be reduced to the extent that these factors contributed to the harm [art 7.4.7 *UNIDROIT*]. RED'S failure to check with the *Organization* can be considered a relevant omission for which it bore the risk for three reasons:
    a. RED maintained final authority in respect of any decision relating to a creative matter under cl 3(b) of the *2019 CPA* [Exhibit 7]. Therefore, RED had ultimate responsibility and bore the risks for decisions relating to *DZNC*'s storyline.
    b. As RED is based in Negoland, it is the company most familiar with local conditions including the artistic preferences of Negoland residents [Facts ¶3]. Therefore, RED, not BLUE, was better placed to assess how changes to a character would be received by audiences in Negoland.
    c. In light of the several communications in which RED expressed to BLUE its desire to contact the *Organization*, RED was aware of the possibility of undertaking such an inquiry itself [Exhibit 10]. Representatives from BLUE asked if RED was willing to consult with the *Organization* together in August 2019, to which RED did not offer a response [Exhibit 10].
14. BLUE never explicitly informed RED that it had contacted the *Organization* in any of its communications with RED [Exhibit 10]. RED's election not to make its own enquiries of the *Organization* must therefore be considered RED's own independent omission, to which the loss of box office profits is wholly attributable.

B. Further or alternatively, RED is not entitled to recoup its loss of clothing profits as this does not constitute reasonably foreseeable harm.

15. A "non-performing party is liable only for harm which it foresaw or could reasonably have foreseen at the time of the conclusion of the contract as being likely to result from its non-

performance" [art 7.4.4 *UNIDROIT*]. The loss of clothing profits was not reasonably foreseeable to BLUE for two reasons:

a. There was no information available to BLUE at the time of contracting to suggest that the audience in Negoland would negatively react to the presence of candy in place of a cigarette. In fact, RED had assured BLUE that Minna Friends would be able to craft a creative story for the creative change [Exhibit 10].

b. Moreover, the clothing in question centers around the entire *Designer Zero* franchise (which has existed since 2014) rather than the *DZNC* sequel in isolation [Exhibit 11; Facts ¶10]. It is not reasonably foreseeable that a minor character alteration in a sequel would detrimentally affect the sales merchandise reflective of the entire franchise, rather than directly to the specific movie affected.

CASE 2: BLUE LAND CASE

III. RED breached its contractual obligation to BLUE regarding the delivery of clothes.

16. RED is liable to BLUE for breaching its contractual obligations under cll 4 and 8 of the *Manufacturing and Supply Agreement* ('*MSA*') to ensure that all products are manufactured and supplied in compliance with "all applicable laws and regulations" and "all governmental and environmental regulations", as well as "following generally accepted industry practice" [Exhibit 12, cll 4 and 8].

17. RED outsourced production to BLACK INC. ('BLACK'), a company later revealed to have used child labor and forced labor, including in the production of the merchandise for Blue Land [Facts ¶26]. RED'S supply of the clothes to BLUE is therefore in direct contravention of both Arbitrian laws prohibiting a company from selling any products manufactured by using child labor or forced labor, as well as international legal provisions prohibiting child and forced labor, to which Arbitria and Negoland are States Parties [Exhibit 18; *Forced Labour Convention*, 1930 (No. 29); *Abolition of Forced Labour Convention*, 1957 (No. 105)]. While it is not known whether NegoAbu, where BLACK is headquartered, is a State Party to these international legal provisions, the use of forced and child labor clearly does not constitute "generally accepted industry practice" [Exhibit 12, cl 4].

A. RED failed to satisfy specific results demanded by the Agreement.

18. RED'S duty to comply with laws and regulations [Exhibit 12, cll 4 and 8] requires RED to achieve a specific result [art 5.1.4(1) *UNIDROIT*], namely that the supply and manufacture of the products do in fact fully comply with all applicable laws and regulations and follow generally accepted industry practice, not just to deploy best efforts towards that result. RED cannot contract or delegate out of this responsibility.

19. The supply of goods produced using child labor and forced labor therefore constitutes non-performance [art 7.1.1 *UNIDROIT*], notwithstanding that the delivered products' non-compliance with "all applicable laws" results from RED's outsourcing of the goods' production to a third party, BLACK [Exhibit 12, cl 4].

B. In the alternative, RED failed its duty to use its best efforts towards ensuring the products' compliance with applicable laws.

20. In the alternative, if the duty imposed on RED by cll 4 and 8 of the *MSA* was not to ensure a specific result, but rather a duty of best efforts [art 5.1.4(2) *UNIDROIT*], RED would still be liable for its non-performance as it failed to exercise the due diligence expected of the reasonable person "of the same kind" in RED's position prior to contracting with BLACK [art 5.1.4 Official Commentary *UNIDROIT*]. A reasonable company subject to a contractual obligation to ensure compliance with applicable laws and regulations would have done more to ensure such compliance when outsourcing production of the goods it was contracted to supply. Merely enquiring with BLACK'S President and workers as to whether human rights violations were occurring during a single visit is manifestly insufficient. It is reasonably foreseeable that a business engaged in human rights violations would also threaten its workers to ensure their silence. The reasonable company in RED'S position would therefore make further enquiries.

21. When BLUE and RED later visited BLACK to verify the facts following the media reports about BLACK'S human rights violations, it took one week of investigation to confirm that human rights issues existed, despite their joint best efforts to finish investigations as soon as possible [Facts ¶28]. The degree of effort demonstrably necessary to assess reliably BLACK's human rights situation shows that RED's brief single attempt at investigation cannot be considered sufficient to satisfy a duty to use best efforts to ensure the products' compliance with relevant laws and regulations. RED is therefore liable for non-performance of its obligations.

IV. RED is liable to pay USD 21.13 million in damages to BLUE due to the above breach.

22. If RED is found liable for non-performance of the obligation, it is obliged to compensate BLUE [art 7.4.1 *UNIDROIT*]. BLUE is entitled to "full compensation for harm sustained as a result of non-performance," and this includes "both any loss which it suffered and any gain of which it was deprived" [art 7.4.2(1) *UNIDROIT*]. BLUE was deprived of a gain of USD 15 million due to the park closure between 23 December 2021 and 4 January 2022 ('*Blue Land Loss*') and sustained a loss of USD 800,000 loss from customer returns of merchandise ('*Merchandise Loss*') [Facts ¶30]. BLUE was also deprived of a gain of USD 5.33 million due to a drop in views of *Designer Zero: Friendship* ('*DZF*') in December 2021 and January 2022 (*'DZF Loss'*) [Exhibit 18 ¶5]. This totals USD 21.13 million.

A. Harm suffered by BLUE is a direct consequence of RED'S non-performance.

23. RED is liable to compensate BLUE for harm that is "a direct consequence of non-performance" [art 7.4.4 Official Commentary, *UNIDROIT*].

24. The *Blue Land Loss* resulted from the bomb threats and protests that began "from the day following the news report" about BLACK violating workers' human rights [Facts ¶27], itself attributable to RED's breach of cll 4 and 8 of the *MSA*. BLUE immediately responded by closing Blue Land for the safety of its customers, a response described by crisis management experts in Arbitria as "appropriate" [Facts ¶30]. There is a clear and direct causal link between RED'S non-performance and the *Blue Land Loss*.

25. The *Merchandise Loss*, resultant from the exposure of BLACK'S human rights abuses, is also directly causally attributable to RED'S breach. BLUE's policy of accepting returns of the clothes (announced at a press conference [Facts ¶29]) cannot be deemed to break the relevant causal chain between RED's breach and BLUE'S loss because it was merely a reference to customers' pre-existing rights under Arbitrian law, which requires that companies that sell products using forced labor accept customer returns [Exhibit 18].

26. In relation to the *DZF Loss*, it is "certain that the number of views would have been 4 million views per month if there had been no issue concerning Black Inc" [Exhibit 11]. The "issue concerning Black Inc" is the basis of RED'S non-performance of its obligation, which is therefore clearly causative of the *DZF Loss*.

B. The harm suffered by BLUE was reasonably foreseeable by RED.

27. RED is liable to BLUE for compensation for harm "which it foresaw or could reasonably have foreseen at the time of the conclusion of the contract as being likely to result from its non-performance" [art 7.4.4 *UNIDROIT*]. Foreseeability is defined as "what a normally diligent person could have foreseen as the consequences of non-performance" [art 7.4.3 Official Commentary, *UNIDROIT*].

28. Since 2020, "there have been three cases in Arbitria where well-known companies have been heavily criticized in society and subjected to boycotts or forced to close their shops because they were doing business with foreign suppliers with working conditions that violated workers' basic rights" [Facts ¶27]. The *MSA* was executed on 15 January 2022 [Exhibit 12], so a "normally diligent person" doing business in Arbitria could have foreseen that Arbitrian consumers would have a strong negative response to human rights violations and that this would result in protests or other disruptions to Blue Land and lost profits.

29. Similarly, particularly given the strong negative responses of Arbitrian citizens to previous workers' rights violations, any "normally diligent" company would foresee that many of those who purchased the garments would avail themselves of their legal right to a refund under Arbitrian law [Exhibit 18 ¶7].

30. It was also reasonably foreseeable to a "normally diligent" company in RED'S position doing business in Arbitria that views of *DZF* would significantly drop, in line with Arbitrians' past boycotts of businesses which produce goods with forced or child labor [Facts ¶27].

CASE III: CARD CASE

V. The Arbitral Tribunal does not have jurisdiction in relation to the CARD CASE.

A. Pre-arbitration clauses preclude the ability for arbitral tribunals to hear cases.

31. Where a pre-arbitration clause is validly incorporated into an agreement, neither party is obliged to participate in arbitration until the condition precedent to the commencement of arbitration is fulfilled, and the arbitral tribunal does not have jurisdiction before the condition precedent is satisfied [*Int'l Research Corp. plc v. Lufthansa Sys. Asia Pac. Pte Ltd* [2012] SGHC 226 ¶101].
32. In the alternative, and without prejudice to the submission that the unsatisfied conditions precedent to arbitration preclude the Tribunal's jurisdiction, their effect is to render RED'S claims inadmissible [*C v D* [2021] HKCFI 1474].

B. The conditions precedent within the agreements between BLUE and RED preclude the Arbitral Tribunal's jurisdiction.

33. The disputes between the parties as to the distribution of *DZNC* through Blue Net and the sales of cards at Blue Land depicting scenes from *Designer Zero* ('*the Cards*') arise under three distinct contractual agreements: (**i**) the *2019 CPA* [Exhibit 7], (**ii**) the *2019 Agreement* [Exhibit 8], and (**iii**) the *2016 Co-Production Agreement* ('*2016 CPA*') [Exhibit 4].
34. The distribution of *DZNC* is governed by cl 5 of the *2019 CPA* [Exhibit 7]. The sale of *the Cards* is governed by cll 3(d)(ii) and 10 of the *2016 CPA* for those depicting *DZF*, and by cll 3(d)(ii) and 10 of the *2019 CPA* for those depicting *DZNC* [Exhibit 4; Exhibit 7].
35. Clause 21(f) in each of the relevant agreements governs the way disputes between the Parties shall be resolved, outlining specific processes as conditions precedent to arbitration, which have not been satisfied on the facts.

(i) The Parties intended mandatory conditions precedent to arbitration.

36. Clause 21(f) in each of the agreements should be construed as imposing mandatory conditions precedent to arbitration which require the completion of the outlined processes before arbitration may be contemplated [art 5.3.1 *UNIDROIT*; *Emirate Trading Agency LLC v Prime Mineral Exports Ltd* [2014] EWHC ¶54]. These relate to both the procedural and the temporal conditions described in the clauses.

37. The imperative language of cl 21(f) demonstrates that the Parties intended it to be mandatory [*Interim Award in ICC Case No. 10256*]. This intent may be further inferred from the "friendly manner" and "good faith" requirements, evincing a shared intention that the Parties should maintain a collaborative relationship rather than resort to arbitration.

38. This is a full and direct statement of the intent of the Parties and is sufficiently specific [*Exmek Pharm. SAC v. Alkem Labs. Ltd* [2015] EWHC 3158]. The Tribunal should interpret the clause so as to effectuate the parties' stated intention rather than deprive it of its intended effect [art 4.5 *UNIDROIT*]. This intention must be given effect and the clause must be interpreted as mandatory [art 4.1 *UNIDROIT*].

39. RED may submit that it is sufficient for them to merely state a willingness to negotiate in order to enliven the arbitration clause. However, it would frustrate this shared intention to interpret cl 21(f) in any way that would permit one Party to unilaterally circumvent the clause and force arbitration by affirming their willingness to negotiate without making bona fide attempts to do so [*Emirates Trading Agency LLC v. Prime Mineral Exports Ltd* [2014] EWHC ¶54]. Incompatibility between the Parties' positions in the event of a dispute is presupposed by the presence of the arbitral clause, and cannot itself therefore be invoked as a justification to move to arbitrate before the requirements of the arbitration clause – in the first instance, bona fide attempts to negotiate – have been satisfied.

(ii) The conditions precedent to arbitration have not been met.

40. While a duty to negotiate in a friendly manner does not generally entail an obligation successfully to resolve the dispute at the negotiation stage [*Hillas & Co. Ltd v. Arcos Ltd* [1932] All ER 494, 505-7], it does oblige parties to make "honest and genuine" efforts toward reaching a common position [*United Group Rail Servs. Ltd. v. Rail Corp. New South Wales* [2009] NSWCA 177 ¶23]. The condition precedent to arbitration in cl 21(f) should accordingly be interpreted as first requiring the Parties to negotiate with the genuine intention of finding a solution to the dispute.

41. RED has not engaged in "good faith" negotiations in a "friendly manner" as required by cl 21(f). RED has simply stated that it will not agree to anything but the immediate cessation of *DZNC's* distribution on Blue Net and sale of *the Cards*. Insofar as it has entered negotiations at all, it has done so without a genuine intention of resolving the dispute by agreement. RED has thus negotiated "in bad faith" [art 2.1.15(3) *UNIDROIT*], and may not rely on actions in bad faith to show fulfillment of the condition precedent to arbitration [art 5.3.3(2) *UNIDROIT*], which therefore has not been met.

42. Whilst three months have passed since the negotiation period was accepted via email on 8 June 2022, RED sought to engage a mediator on 30 June 2022. This was less than three months after the negotiations began, and therefore does not meet the requirement of three months of negotiation. Nonetheless, the mediation itself, a further condition precedent,

has not occurred. Even though time has since passed and it has now been five and a half months since the initial negotiation, cl 21(f) requires an overall period of the shorter of either six months after a dispute arises or a period of three months after referral to mediation before arbitration may occur. This has not been satisfied.

(iii) The clauses are sufficiently specific and referable to processes that enliven their validity as bars to jurisdiction.

43. An obligation to seek to resolve disputes by friendly discussion has an identifiable standard, necessitating "fair, honest and genuine discussions" aimed at resolving a dispute [*Emirates Trading Agency LLC v. Prime Mineral Exports Ltd* [2014] EWHC ¶54]. The fact that assessing compliance with such a duty demands enquiry into a party's subjective intention does not render the standard inarticulable or compliance with it incapable of assessment [*United Group Rail Servs. Ltd v. Rail Corp. New South Wales* [2009] NSWCA 177, ¶65].

44. Clause 21(f) of the *2019 CPA*, in its description of process and time constraints, includes a "clear set of guidelines against which to measure a party's best efforts" and as such exhibits the necessary specificity [*Mocca Lounge Inc. v. Misak* 94 A.D.2d 761, 763 (N.Y. App. Div. 1983)]. Clause 21(f) requires negotiation be undertaken "for three months". Similarly time-based limitations on recourse to arbitration have been held sufficiently certain for the validity of negotiation clauses [*Fluor Enters. Inc. v. Solutia Inc.*, 147 F.Supp.2d 648, 653 (S.D. Tex. 2001)].

45. To the extent that an agreement to mediate implicitly involves several specific required steps, such as the agreement and appointment of the mediator for the process, the clause is sufficiently specific [*HIM Portland, LLC v. DeVito Builders, Inc.,* 317 F.3d 41, 42 (1st Cir. 2003); *Genops Group LLC v. Pub. House Invs. LLC*, 67 F.Supp.3D 338, 344 (D.D.C. 2014); *Penton Bus. Media Holdings, LLC v. Informa Plc*, 2018 WL 3343495, 2].

VI. In the alterative and without prejudice to (V), if the Tribunal is deemed to have jurisdiction in relation to the CARD CASE, all RED'S claims should be rejected on the merits.

A. BLUE has a right to distribute *DZNC* on Blue Net.

46. The distribution of *DZNC* on Blue Net is contemplated by cl 5(a) of the *2019 CPA*, whereby BLUE is given "control over all decisions relating to the … distribution of the Picture." This should be construed as encompassing distribution after the initial cinematic release of the Picture, particularly in light of cl 5(b) which refers to distribution "in a matter similar to that in which Blue … currently distributes" its films, which includes distribution on Blue Net. The significance of BLUE'S current distribution practices in the interpretation

of cl 5(a) is further reinforced by the *2019 Agreement* wherein RED authorizes BLUE to distribute *DZF* on Blue Net in cll 1 and 2 [Exhibit 8].

47. RED further manifested an understanding that BLUE was authorized to distribute *DZNC* through Blue Net in its *2019 Agreement with Minna Friends*, under cl 5 of which "the Author agrees that the film *will* be distributed through Blue Net" [Exhibit 9, emphasis added]. The declarative language – *DZNC will*, rather than *may* be distributed on Blue Net – demonstrates that RED intended the film to be distributed on Blue Net when the *2019 Agreement with Minna Friends* was concluded on 30 March 2019.

B. BLUE has a right to produce cards depicting *Designer Zero* as part of its Blue Land attraction.

48. In cl 1 of the *2019 Agreement*, RED grants BLUE the right to create an "attraction based on the Work in Blue Land". A reasonable businessperson would understand the creation of an attraction to entail associated provision of merchandise for sale at the attraction in accordance with common practice at major theme parks. Therefore, while RED has authority regarding merchandising more broadly, RED has by implication agreed for BLUE to distribute merchandise in connection with the agreed attraction at Blue Land.

C. RED is not entitled to any revenue generated through the sale of *the Cards* at Blue Land nor through the distribution of *DZNC* on Blue Net.

49. RED may submit that the *2016 CPA* and *2019 CPA* provide for a division of receipts from the exploitation of the picture. However, revenue generated at Blue Land is properly characterized not as receipts from the picture itself, but from BLUE's independently-operated theme park, at which RED has permitted BLUE to incorporate a *Designer Zero* attraction [Exhibit 7, cl 3]. As contemplated in the 9 January 2019 meeting between the parties, RED is not involved in this operation, but rather grants a license to BLUE in return for specific consideration [Exhibit 6]. Nothing in any agreement contemplates that RED shall receive revenue from the receipts of the theme park.

50. Similarly, the distribution of *DZNC* on Blue Net does not in itself generate receipts to which the agreements between BLUE and RED relate. Revenue is generated through "annual membership fees" paid for access to Blue Net. No revenue is discretely attributable to the distribution of *DZNC*. This is to be contrasted with the distribution contemplated in cl 8 of the *2019 CPA* under which the work is to be distributed distinctly.

D. The Arbitral Tribunal should not grant an interim injunction.

51. To warrant the grant of an interim injunction, RED must demonstrate that it is likely to suffer harm from the failure to grant an injunction, that such harm is not reparable by an

award of damages, and that such harm outweighs the harm to BLUE should the injunction be granted [art 26(3)(a) *UNCITRAL Rules*].

52. RED has not suffered and will not suffer any demonstrable harm from BLUE'S sale of *the Cards* or its distribution of *DZNC* on Blue Net. At most, and only if contrary to (**C**), RED is held entitled to revenue from the sale of *the Cards* and/or distribution of *DZNC* on Blue Net, RED's loss would be continued exclusion from a share of receipts. Such pure economic loss would be reparable by the award of damages at the conclusion of an arbitral process and does not warrant the granting of an interim injunction.

53. Further, any harm suffered by RED would be outweighed by the reputational and resultant financial damage that BLUE would suffer as a result of the immediate forced cessation of BLUE'S sale of *the Cards* and the removal of *DZNC* from Blue Net.

54. As demonstrated by the forgoing submissions, RED furthermore cannot demonstrate a reasonable prospect of success in its arbitration [art 26(3)(b) *UNCITRAL Rules*]. Consequently, RED'S application for an interim injunction must be denied.

E. In the alternative, if RED'S claims are accepted, only 33% of the profit from *DZNC* being streamed on Blue Net, and only 50% of the Net Receipts from *the Cards* sold at Blue Land is payable to RED.

(i) If RED'S claims are accepted, only 33% of the profit from *DZNC* being streamed on Blue Net is payable to RED.

55. In the alternative, and without prejudice to submissions (**A**) to (**D**), if RED'S claims are accepted and BLUE is held liable to pay part of the revenue from *DZNC*'s distribution on Blue Net, only 33% of the resulting profit is payable to RED.

56. This amount aligns with the amount paid to RED for *DZF*'s distribution on Blue Net, which is "one-third of the amount paid to Blue for each viewing, every three months, as consideration for this agreement" [Exhibit 8, cl 2(3)]. In interpreting this clause, as Blue Net is streaming the *Designer Zero* films as part of its subscription fee service, rather than as a pay-per-view service, "the amount paid to Blue for each viewing" should be construed as referring to the profit BLUE makes on each viewing, which was estimated by BLUE to be USD 2 for *DZF* and is likely similar for *DZNC* [Exhibit 6, Attachment ¶3].

57. The 1:2 ratio for distribution of profits reflects that BLUE is using its own established platform with a high membership base for the marketing and distribution for both films. While BLUE offered RED the possibility of an equal distribution of the profit during the meeting of 9 January 2019, this offer was contingent on both films being agreed to be distributed through Blue Net at the time [Exhibit 6, Attachment ¶3].

(ii) If RED'S claims are accepted, only 50% of the profits from *the Cards* sold at Blue Land is payable to RED.

58. In the alternative, and without prejudice to submissions (**A**) to (**D**), if RED'S claims are accepted and BLUE is held liable to pay part of the revenue from *the Cards* sold at Blue Land to RED, this amount should only be 50% of the profits.

59. This proportion reflects the method of calculation for division of receipts for the exercise of "merchandising rights" as outlined in the *2016 CPA* and the *2019 CPA* [Exhibit 4, cll 3(d)(ii) and (8); Exhibit 7, cll 3(d)(ii) and 8]. "Net Receipts" are to be divided equally between RED and BLUE and are defined as 100% "of all revenues, money or other consideration from the exploitation of … all Ancillary Rights … minus the costs of production, box office and distribution" [Exhibit 4, cl 8; Exhibit 7, cl 8].

60. While cl 8 of both the *2016 CPA* and the *2019 CPA* states that "[t]he details of calculation of Net Receipts shall be agreed by the parties separately", this has not occurred. Therefore, interpreting the definition of "Net Receipts", the correct method of calculating the sum payable to RED is to subtract from the revenue generated by the sale of *the Cards* the costs of their production and sale in Blue Land, and divide the result by two, leaving each Party with 50% of the profits.

REQUEST

Counsel for BLUE respectfully request of the Tribunal that:

I. On the merits of the NEW CHALLENGE CASE, an arbitral award denying the claims of RED be rendered;
II. An arbitral award be granted in the BLUE LAND CASE to the effect that RED is liable and must compensate BLUE for the damages incurred due to BLUE's failure to perform its obligation in the amount of USD 21.13 million; and
III. The Tribunal declines jurisdiction with respect to the CARD CASE and rejects RED's petition for arbitration; or
IV. Alternatively, in the event the Tribunal is deemed to have jurisdiction, on the merits of the CARD CASE, an arbitral award denying the claims of RED be rendered.

CERTIFICATE OF VERIFICATION

We hereby confirm that only the persons whose names are listed below have written this memorandum.

Respectfully signed and submitted by Counsel on the ninth day of November 2022.

[redacted]