CASE 1: NEW CHALLENGE CASE

Summary of Facts
Red Corp. (**"Red"**) accepted Blue Inc. (**"Blue**") request to change the cigarette of "Santa" to a candy under the impression that Blue has checked with the movie review organisation on their position. Blue prior communications with Red implied that if not for the change, the movie will be qualified as "for adults".
Summary of Arguments
Summary of argument: Blue has accepted a duty of best efforts to prevent a drop in box office revenue, which is equivalent to accepting a duty to negotiate in good faith. Blue has breached these duties by failing to act in a reasonable manner in verifying the movie review organisation's stance on the cigarette. As such, Blue is liable to pay all expectation interests, which is the 19.25M claimed by Red.

ISSUE 1: DID BLUE ACCEPT A DUTY OF BEST EFFORTS, WHICH IS EQUIVALENT TO A DUTY TO NEGOTIATE IN GOOD FAITH?

Blue had accepted a duty of best efforts, which is equivalent to a duty to negotiate in good faith.

1. While the contract (Exhibit 8) does not provide for an express duty of best efforts, this obligation can be implied into the contract as an omitted term. Following Article 4.8(2)(a) of the UNIDROIT Principles of International Commercial Contracts 2016 (**"PICC"**), an omitted term can be implied based on the intentions of the party inferred from conduct prior and subsequent to concluding the contract (Comment 3 of Article 4.8, PICC).

2. Additionally, a duty to use best efforts is equivalent to a duty to negotiate in good faith. Comment 3 of Article 5.1.4, PICC states that in international commercial practice, "[w]hen the parties to a long-term contract have agreed on such a duty to use best efforts, that duty may amount, for all practical purposes, to a duty to negotiate in good faith". This duty subsists throughout the life of the contract (Comment 1 of Article 1.7, PICC). The present case is indeed a long-term contract as both parties are expected to work together to resolve any issues that arise during the movie making process (Comment 3, Article 5.1.4, PICC).

3. On the facts, Blue had represented their acceptance of a duty of best efforts to ensure the box office revenue will increase, in their emails to Red dated August 8 and August 12, 2019 when proposing changing the cigarette to the candy (Exhibit 10, Page 37).

4. As such, the implied duty of best efforts on Blue to increase the box office revenue imposed a positive duty to negotiate in good faith under Article 2.1.15, PICC.

ISSUE 2: DID BLUE BREACH ITS DUTY OF BEST EFFORTS BY FAILING TO UNDERTAKE REASONABLE MEASURES TO VERIFY THE POSITION OF THE

MOVIE REVIEW ORGANISATION?

Blue has breached its duty of best efforts by failing to undertake reasonable measures to verify the position of the movie review organisation.

5. Comment 2 of Article 5.1.4, PICC states that whether one has discharged their duty of best efforts is assessed "based on a comparison with the efforts a reasonable person of the same kind would have made in similar circumstances". The phrase "of the same kind" refers to, inter alia, similar experience (Illustration 2 of Comment 2 of Article 5.1.4, PICC).

6. On the facts, Blue had breached its duty of best efforts. Despite knowing that Red Corp. viewed the change should be made only if "absolutely necessary" as they were concerned that it would affect the world-building of the movie and in turn the box office revenue, Blue only made the effort to check with the movie review organisation once in August 2019. This was despite an internal change in policy since July 2019 that a film can be given a "no restriction" classification even if a cigarette is present as long as there is a health warning in the closing credits. Swan from Blue even conceded that if she had "directly checked in August 2019, [she] might have been able to know such change of policy". (Exhibit 16, Page 50) Swan and Blue made no efforts to follow up after sending the first email between August 2019 all the way to the release of "New Challenge" in October 2021, more than 2 years in between. This was a breach of the duty of best efforts to prevent a reduction in box office revenue. Blue failed to act reasonably to protect the world-building, and in turn, the box office revenue. A reasonable person of similar experience in similar circumstances would have attempted to reach out to the movie review organisation in multiple ways, either by following up through an email, calling the organisation, or even using industry contacts to figure out the policy. Considering Blue had 2 years in the interim to figure out the policy, sending only one email falls far short of the reasonable standard of best efforts.

7. Blue hence breached its duty of best efforts to prevent a reduction in box office revenue.

ISSUE 3: IS BLUE LIABLE FOR ALL HEADS OF DAMAGES CLAIMED BY RED?

In light of Blue's breach of duty of best efforts, Blue is liable for all heads of damages claimed by Red.

8. As highlighted earlier, a duty of best efforts is equivalent to a duty to negotiate in good faith. As such, Blue's breach of duty of best efforts amounts to a breach of duty to negotiate in good faith.

9. Following Comment 3 of Article 2.1.15, PICC, where parties have agreed to negotiate in good faith (cf. merely the general duty not to negotiate in bad faith), all appropriate remedies for non-performance will be available, including expectation interests. Since Blue has breached their duty to negotiate in good faith, they are liable for all expectation interests.

10. On the facts, the expectation interest refers to the loss of profits as a result of the breach of duty by Blue This amounts to 19.25M USD, including 0.25M USD of lost profits from the sale of "Designer Zero" costumes in Negoland from October 2021 to January 2022 and 19M USD of lost profits from box office revenue in Designer Zero - New Challenge (**"DZNC"**) (Exhibits 14 and 15, Pages 47-49).

ISSUE 4: CAN RED'S CLAIM OF 19.25M USD BE REDUCED BY REASONS OF FORESEEABILITY, MITIGATION, AND PARTIAL FAULT?

Red can claim the full 19.25M USD as the damages claimed should not be reduced by reasons of foreseeability, mitigation, and partial fault.

11. Blue cannot rely on the principles of remoteness of harm (Article 7.4.4, PICC), mitigation of harm (Article 7.4.8, PICC), and contributory fault (Article 7.4.7, PICC).

12. Firstly, the harm caused by Blue's is not too remote as the harm caused was reasonably foreseeable. Blue knew that Red greatly valued world-building, evidenced from its prior communications with Blue (Exhibit 3, Pages 14-15 and Exhibit 6, Pages 25-26). Blue had acknowledged Red's concern that the change may result in a decrease in box office revenue when it undertook the duty of best efforts by promising that the box office revenue will increase (Exhibit 10, Pages 37-39). Hence, Blue would have known that the change would lead to drops in box office revenue and sales of the "Designer Zero" costumes.

13. Secondly, Red could not have acted in any reasonable way to mitigate their damage. Once DZNC was released, Red could not have stopped the movie release or mitigate the loss of sales in "Designer Zero" costumes without incurring disproportionate losses. Any mitigation of damage would have required disproportionate efforts and spending and hence would have been unreasonable. Blue hence cannot rely on Article 7.4.8, PICC to reduce their damages due.

14. Finally, Blue cannot rely on Article 7.4.7, PICC as Red had not been at fault. Red had fully relied on Blue's statements in deciding to change the cigarette to a candy and Red was left with no choice but to make the change. This is shown where Blue gave Red "no other way" despite Red's reply that the change would only be made if it was "absolutely necessary" (Exhibit 10, Page 37).

CONCLUSION: BLUE IS LIABLE FOR ALL 19.25M USD OF EXPECTATION INTERESTS CLAIMED BY RED, AND NO REDUCTION OF DAMAGES SHOULD BE HELD.

CASE 2: BLUE LAND CASE

Summary of Facts
Red and Blue entered a Manufacturing and Supply Agreement in Exhibit 12 (the **"Contract"**) where Red agreed to supply clothes to Blue. Red outsourced the manufacturing of clothes to Black Inc. **("Black")** on Blue's recommendation, after an examination of their plants and an interview of their personnel. Black was later discovered to have violated human rights by use of child labour, leading to public outcry. This caused Blue a 15 million USD loss for the closure of Blue Land from 23 December 2021 to 4 January 2022, a 800,000 USD loss from the refund of clothes and a 5,330,000 USD

loss from the fall in views of "Designer Zero - Friendship" (**"DZF"**) through Blue Net. This amounted to 21,130,000 USD, which Blue seeks to claim.

Summary of Arguments

Red is able to avoid the contract as it has been vitiated on the grounds of mistake. Even if Red is unable to avoid the contract, any damages imposed on Red ought to be substantially or entirely reduced as they are not foreseeable, could have been mitigated, and/or were in part caused by Blue.

ISSUE 1: DID RED BREACH THEIR CONTRACTUAL OBLIGATIONS GIVEN THE CONTRACT COULD BE AVOIDED ON THE GROUNDS OF MISTAKE?

Red did not breach their contractual obligations to Blue as the contract can be avoided on the grounds of mistake.

15. It is submitted that Red can rely on the doctrine of mistake to avoid the contract, if:
    1. At the time of concluding the contract, Red was under a mistake of fact as to the work conditions of Black; (Article 3.2.1, PICC)
    2. This mistake was so important that had Red known about the mistake, they reasonably would have contracted on materially different terms by not approaching Black or would not have concluded the contract at all; (Article 3.2.2(1), PICC)
    3. Blue had: (Article 3.2.2(1)(a), PICC)
        a. Made the same mistake; and/or
        b. Caused the mistake;
    4. Red was not grossly negligent in committing the mistake; (Article 3.2.2(2)(a), PICC) and
    5. Red did not assume the risk of the mistake (Article 3.2.2(2)(b), PICC).

A. Red was under a mistake of fact.

16. Firstly, the requirement of a mistake has been established. A mistake is an erroneous assumption relating to facts or to law existing when the contract was concluded (Article 3.2.1, PICC). At the time of concluding the contract in January 2021, Red had been mistaken as they had erroneously assumed that Black was not in violation of human rights when in fact they were.

B. The mistake was so important that the contract would have concluded on materially different terms or not been concluded at all had it been known.

17. For a mistake to be serious enough to be caught under the doctrine of mistake, a reasonable person in Red's position who knew of Black's workers' rights violations would not have concluded the contract. Clause 4 of the Contract requires that Red must ensure that the clothes will be manufactured and supplied in compliance with all governmental and environmental regulations. Had Red known of Black's child labour, they would have known that Clause 4 would have been breached. Therefore, to avoid a breach, a reasonable person with knowledge of the true nature of Black's operations would not have concluded the Contract or would have concluded the Contract on materially different terms.

Red's mistake as to Black's true nature of operations led them to conclude the contract. Hence, the mistake was indeed serious enough.

C. Blue made the same mistake as Red.

18. Blue made the same mistake as they were similarly unaware of Black's violation of human rights, fulfilling the requirement in Article 3.2.2(1)(a), PICC. Exhibit 13 documents the communications between Red and Blue in sourcing a company to manufacture the clothes, where Blue was under the impression that Black was a trustworthy company to be relied on for the manufacturing of clothes, given that the president of Black was once a department manager at their company, and they previously engaged Black for business. Blue would not have strongly recommended Black if they were aware of Black's violation of human rights. Therefore, Blue was also under a false impression of Black, thereby making the same mistake as Red.

D. Blue caused the mistake to be made by Red.

19. Blue caused the mistake as the party who first recommended Black by sharing their positive experience with them (Exhibit 13, Page 45). Red's reliance on these statements has contributed to their false impression of Black, and hence their mistake.

E. Red was not grossly negligent.

20. A "grave departure" from a reasonable standard of care amounts to gross negligence (*Gr Engineering Services Ltd v Investmet Ltd* [2019] WASC 439). Red has taken reasonable care to ensure that the manufacturing processes at Black were not in violation of any governmental regulations as per the Contract by conducting thorough examination of the plant and its products and communicating with the president and workers, who all represented that there were no problems with workers' rights. Red could not have been said to be negligent at all, and it follows that they were not grossly negligent.

F. Red did not bear the risk of mistake.

21. Holding that Red bore the risk of Black's compliance with labour rights regulations simply because of the warranty is contrary to the fundamental principles of fairness and intentions of the parties.

22. On fairness, it is unfair to uphold the warranty against Red as the warranty was agreed when Red intended to approach White Corp. ("**White**") to produce the costumes. Red was instead faced with rejection from White, strong endorsement from Blue for a supplier they never worked with before, no other suppliers who can fulfil the order, and did their due diligence by inspecting the premises of Black and interviewing it's staff.

23. On the intentions of the party, the warranty was made only in Red's original intention to contract with White. However, it cannot be said Red intended to bear the risk of Black's compliance with labour rights regulations as they had relied on Blue's recommendations. This is evinced from Red's reliance on Blue by stating "if you say Black Inc. is trustworthy, we really wish to outsource manufacturing to Black Inc." (Exhibit 13, Page 45).

24. It follows that Red has the grounds for avoiding the Contract. Article 3.2.14, PICC states that the effect of avoidance is to consider the Contract to have never existed.

ISSUE 2: GIVEN THAT THE CONTRACT CAN BE AVOIDED, IS RED LIABLE TO PAY FOR ALL HEADS OF DAMAGES PLEADED BY BLUE?

A. Red is not liable to pay for all heads of damages pleaded by Blue because the Contract has been avoided.

25. It is trite law that if the contract is avoided, the effect is that the contract had not existed (Article 3.2.14, PICC). It has been shown above that the Contract can be avoided on grounds of mistake. This means that Red would be released from its liabilities under the Contract and not liable to pay any damages to Blue.

26. For completeness, Article 3.2.16, PICC does not apply in the present case. The requirement that a party who knew or ought to have known about the grounds for avoidance of the Contract will be liable for damages to put their counterparty in a position had the contract not been concluded is not made out. Red did not know of Black's illegal worker conditions. Furthermore, Red cannot be said to have ought to have known as they have taken all reasonable steps to ensure Black's workers' conditions.

B. Even if the Contract is not avoided, Red is still not liable to pay for all heads of damages because these damages were either not reasonably foreseeable, could have been mitigated, and/or were caused in part by Blue.

I. Red is not liable for the return of costumes and the closure of Blue Land because the harm caused was not reasonably foreseeable.

27. Whether a harm was reasonably foreseeable is assessed on what a "diligent person could reasonably have foreseen as the consequences of nonperformance in the ordinary course of things and the particular circumstances of the contract" (Comment of Article 7.4.4, PICC).

28. The decrease in views of DZF was not a reasonably foreseeable outcome. When Red had concluded the contract, Red did not know the extent to which how people in Arbitria reacted towards human rights violations, or if the incident would be reported at all such that it may result in public outcry. Blue informed Red about neither the importance of human rights to Arbitria, nor the precedent cases. Red's perception of human rights was limited insofar as the public awareness in Negoland of human rights violations was not strong (Paragraph 30, Page 7).

29. Particularly for the return of costumes, Red was unaware, and was not informed by Blue, at the time of concluding the contract, that Arbitria had laws which permitted customers to return products made under human rights violations. As seen in their email dated August 25, 2022, Red was certainly unaware of Arbitria's laws as Negoland's laws did not require returning products tainted by human rights violations (Exhibit 18, Page 53). The costume returns were hence not reasonably foreseeable.

30. The closure of Blue Land was also not a reasonably foreseeable consequence of Red's non-performance. While there is precedence of companies being criticised, boycotted, and closing their shops for similar reasons (Paragraph 27, Page 7), the present case features more extreme

consequences such as protests by demonstrators at Blue Land and bomb threats sent to Blue. Despite Arbitria's strong awareness in human rights violations, a diligent person could not have reasonably foreseen that its citizens would break the law and threaten the safety of the visitors of Blue Land by protesting and sending bomb threats.

II. The amount of damages payable to Blue for the closure of Blue Land ought to be substantially reduced as they failed to undertake reasonable steps to mitigate the harm caused.

31. A non-performing party is not liable for the harm suffered by the aggrieved party to the extent the aggrieved party could have undertaken reasonable steps to mitigate the harm caused (Article 7.4.8, PICC).

32. On the facts, Blue did not undertake any mitigatory measures to reduce the harm caused. Instead, Blue had elected to take the extreme measure of closing down the entire Blue Land for an extended period of time. Blue could have taken measures to reduce their damage, such as reopening Blue Land with additional security, not distributing "Designer Zero" brand costumes temporarily, and closing the "Designer Zero" attraction.

33. In light of the above, Blue failed to undertake reasonable steps to mitigate their harm, hence, any damages payable ought to be greatly reduced.

III. Any damages payable by Red ought to be substantially, if not completely, reduced as Blue had caused Red's non-performance.

34. Article 7.1.2, PICC sets out the general principle that a party may not rely on the non-performance of the other party to the extent that such non-performance was caused by the first party's act or omission. Article 7.4.7, PICC applies Article 7.1.2, PICC to the context of damages, and states that where the harm is due to the aggrieved party, the amount of damages shall be reduced to the extent that these factors have contributed to the harm.

35. Blue is barred from relying on Red's non-performance (if any) as they have caused Red's non-performance by introducing and strongly recommending Black. Had Blue not introduced and recommended Black, Red would not have outsourced manufacturing to Black, and the human rights violations would have been avoided. According to the email dated 19 January 2021 (Exhibit 13, Page 45), Red explicitly relied on Blue's recommendations that Black was trustworthy in arriving at the decision to outsource manufacturing to Black.

36. Additionally, Blue's degree of fault in recommending Black in blind faith far outweighs any fault on Red, who has done everything reasonably necessary to ascertain Black's compliance with labour regulations. Hence, Red's non-performance is excused substantially, if not altogether (Comment 3 of Article 7.4.7, PICC). Blue should not be awarded any damages against Red. Nevertheless, even if Blue were to be awarded damages, the amount should be greatly reduced.

CONCLUSION: RED IS NOT LIABLE FOR ANY OF THE DAMAGES PLEADED BY BLUE BECAUSE THE DAMAGES WERE NOT REASONABLY FORESEEABLE, AND EVEN IF THEY WERE THE DAMAGES SHOULD BE GREATLY REDUCED AS THEY COULD HAVE BEEN MITIGATED, AND/OR WERE PARTLY CAUSED BY BLUE.

CASE 3: CARD CASE

Summary of Facts
On June 1, 2022, Blue started to distribute DZNC through Blue Net and sold cards at Blue Land on which famous scenes of DZF and DZNC are printed. Red claims that Blue had no right to distribute DZNC through Blue Net and to sell the cards in Blue Land, without Red's consent. Blue disputed this claim and justified their actions by saying that they got consent from Minna Friends. After several failed negotiation attempts, and Blue's refusal to proceed with mediation, Red filed a petition for arbitration. Blue claimed that Red was not allowed to do so as 6 months have yet to elapse, as previously agreed in the dispute resolution clause (Clause 21(f) of Exhibit 7, Page 31 (**"Clause 21(f)"**).
Summary of Arguments
The Arbitral Tribunal has jurisdiction to hear the Card Case as Clause 21(f) is not enforceable and/or because negotiation and mediation efforts have been futile. Furthermore, since Blue does not have the right to distribute cards in Blue Land and DZNC on Blue Net, damages of 50% of the revenue from each infraction should be awarded against Blue.

ISSUE 1: DOES THE ARBITRAL TRIBUNAL HAVE JURISDICTION IN RELATION TO THE CARD CASE?

The Arbitral Tribunal has the jurisdiction to hear the Card Case as Clause 21(f) is unenforceable and/or the negotiation and mediation efforts have been futile.

A. Clause 21(f) is unenforceable as it is neither certain nor mandatory.

37. Clause 21(f) is unenforceable as it has insufficient terms to render it certain and mandatory.

38. The general view is that agreements to negotiate and mediate are unenforceable because they are inherently aspirational (Gary Born, *International Commercial Arbitration* (Kluwer Law International), 3rd ed, 2021 (**"Born"**) at 975). They are "primarily expression[s] of intention" and "should not be applied to oblige the parties to engage in fruitless negotiations or to delay an orderly resolution of the dispute." (*Interim Award in ICC Case No. 10256*; Born at 981)

39. Such clauses may be deemed enforceable only if they are both sufficiently certain and mandatory. Due regard is paid to whether there are sufficient guidelines to the negotiation and mediation process in the clause, such as duration, number of sessions, participants, and specified rules, as well as the nature of the terms (Born at 977-978; 985-986).

40. The terms in Clause 21(f) are insufficiently detailed to be certain or mandatory. While Clause 21(f) does state the duration of negotiation and mediation, it leaves out critical details such as the number of negotiation and mediation sessions, who will participate in the sessions, and under what mediation rules. On balance, the clause is neither certain nor mandatory.

41. In any case, Born at 986 recommends focussing on the "inherently imperfect and aspirational" nature of obligations to negotiate and mediate, and prioritising parties' "access to legal process and remedies". Hence, "doubts regarding the mandatory character of contractual negotiation provisions should generally be resolved in favour of their aspirational, non-binding nature". This suggests a very high threshold to enforce Clause 21(f), which has not been met.

42. Since Clause 21(f) is neither sufficiently certain nor mandatory, it is unenforceable. This Honourable Tribunal hence has jurisdiction to hear the Card Case.

B. Even if Clause 21(f) is enforceable, the parties have been discharged from their obligations to negotiate and mediate as their attempts to negotiate have proven futile.

43. The parties should not be restricted from entering arbitration as negotiations have stalled without the prospect of success and Blue refuses to enter mediation.

44. Parties do not need to fulfil their obligations when it is shown that such efforts to negotiate and/or mediate are, and will continue to be, futile. This occurs when neither party is altering their positions meaningfully, and no agreement would be reached (Born at 995). Furthermore, a party will be prevented from insisting on negotiation and mediation just to delay arbitral proceedings (Born at 996).

45. Throughout the course of negotiation, Blue repeatedly disclaimed responsibility and attributed the parties' disagreements to "difference in viewpoints". Red also refused to proceed with negotiations unless Blue temporarily suspended card sales and Internet distributions of DZNC. Seeing as parties are unwilling to alter their position to reach a negotiated agreement, Red suggested moving into mediation, to which Blue refused. Parties cannot reach a negotiated agreement, yet cannot consent to mediation (Exhibit 19, Pages 55-56). The Honourable Tribunal should disallow Blue from continuing to stall the process and delay moving to arbitration.

46. The Honourable Tribunal deciding that it has jurisdiction to hear the Card Case promotes commercial efficiency and prevents further losses to Red. Furthermore, "a party suffers no injury from being denied participation in negotiations that will produce no progress towards resolution of the parties' dispute", especially when "the same party may be in part responsible for the futility of the negotiations" (Born at 996). This is precisely the case here, where Blue is in part responsible for stalling the negotiations.

47. As such, the Honourable Tribunal should decide that it has jurisdiction to hear the case.

ISSUE 2: SHOULD THE HONOURABLE TRIBUNAL ISSUE A DECLARATION THAT BLUE HAS NO RIGHTS TO DISTRIBUTE DZNC ON BLUE NET, AN ORDER FOR BLUE TO PAY RED 50% OF THEIR REVENUE FROM DISTRIBUTING DZNC ON BLUE NET, AND AN INJUNCTION TO STOP DISTRIBUTING DZNC ON BLUE NET?

A. Blue has no rights to distribute DZNC on Blue Net.

48. Blue did not have the rights to distribute DZNC on Blue Net as Minna Friends' consent to distributing DZNC does not amount to a valid contract between Blue and Red.

49. Firstly, at no time did Red accept the offer to enter into a conditional distribution agreement with Blue for DZNC. Referring to Comment 1 of Article 2.1.6, PICC, a mere expression of interest in an offer is insufficient. Furthermore, acceptance of an offer cannot be qualified with conditions. On the facts, Red had never represented an unequivocal acceptance of Blue's proposal to distribute DZNC through Blue Net. Red agreed with the idea of distributing DZNC on Blue Net, but qualified it by saying Minna Friend's views had needed to be sought first (Exhibit 6, Page 26). This was not a valid acceptance.

50. Secondly, the offer to distribute DZNC is no longer valid. Red mentioned that Minna Friends did not want to commit to distributing DZNC until knowing the quality of the completed work, and it was too early to promise to agree to distribute DZNC. Blue counter-proposed distributing only DZF with a lower payout to Red. This was accepted by Red, and crystalised in the contract in Clause 2 of Exhibit 8, Page 32. By contracting to distribute only DZF on Blue Net for less consideration, the offer to distribute DZNC was hence no longer valid.

51. Finally, Blue had represented that if Minna Friends approved the distribution of DZNC on Blue Net, "specific procedures will be followed toward conclusion of an agreement" (Exhibit 6, Page 26). This means that Minna Friends' approval itself does not conclude the agreement, and parties will need to undertake "specific procedures" to conclude the agreement. Since nothing was done after Minna Friends' approval, the contract was never concluded.

B. Blue is liable to pay damages of 50% of the revenue from distribution of DZNC on Blue Net to Red.

52. Blue should compensate Red for violating Red's proprietary rights over DZNC by distributing DZNC on Blue Net. Blue should pay Red 50% of the revenue. While there is no contract regarding the distribution of DZNC, it was previously agreed that if both DZF and DZNC were distributed on Blue Net, Blue and Red would split the revenue 50-50 (Exhibit 6, Page 26). Ordering Blue to pay 50% of the revenue will uphold the intention of both parties.

53. For completeness, Blue cannot rely on Clause 2 of Exhibit 8, Page 32, as the revenue ratio of 1:2 was made in the context of only DZF being distributed, whereas currently both films are being distributed.

C. An injunction restricting Blue from distributing DZNC on Blue Net should be issued as the requirements from the UNCITRAL Arbitration Rules (2021) have been satisfied.

54. The requirements to issue interim measures such as an injunction are distilled from Articles 26(2) and (3) of the UNCITRAL Arbitration Rules (2021). Red submits that:
    1. An injunction is an interim measure which will cause Blue to cease in an action which is likely to cause current or imminent harm (Article 26(2)(b)(i));
    2. Harm not adequately reparable by an award of damages is likely to result if the injunction is not ordered and such harm substantially outweighs the harm of not allowing Blue to sell cards at Blue Land in the interim (Article 26(3)(a));
    3. There is a reasonable possibility of Red succeeding on the merits of its claim (Article 26(3)(b)).

55. Firstly, Blue continuing to distribute DZNC on Blue Net causes harm to Red's proprietary rights over DZNC, as well as imminent reputational harm. People in Negoland can access DZNC on Blue Net online and further criticise Red due to the loss of world-building (Paragraph 12, Page 4, and Exhibit 15, Pages 48-49).

56. Secondly, proprietary and reputational losses are not adequately repairable by damages as they are unquantifiable. The risk of Red's long-term loss of proprietary rights and reputation far outweighs the harm of not allowing Blue to distribute DZNC in the interim, which is merely a short-term pecuniary loss.

57. Finally, the merits of Red's claim has been detailed above, and there is indeed a reasonable possibility of Red succeeding on the merits of its claim.

58. As all three criteria have been satisfied, this Honourable Tribunal should issue an injunction to restrict Blue from distributing DZNC on Blue Net.

ISSUE 3: SHOULD THE HONOURABLE TRIBUNAL ISSUE A DECLARATION THAT BLUE HAS NO RIGHTS TO SELL THE CARDS AT BLUE LAND, AN ORDER FOR BLUE TO PAY RED 50% OF THEIR REVENUE FROM SELLING THE CARDS, AND AN INJUNCTION TO STOP SELLING THE CARDS AT BLUE LAND?

A. Blue has no rights to sell cards at Blue Land.

59. Blue has no rights to sell cards at Blue Land as they did so on their own accord, when they ought to have sought to reach an agreement with Red beforehand.

60. Referring to Clause 10(b) of both Exhibits 4 and 7, Pages 20 and 30 (**"Clause 10(b)"**), both Blue and Red have mutual control over the development, production, and exploitation of any Derivative Works. When a proposal is made by either party on Derivative Works, both parties will seek to reach an agreement on its terms within a reasonable time. It is clear that the cards Blue is selling in Blue Land, featuring famous scenes of the two "Designer Zero" movies, is indeed a "Derivative Work" as defined in Clause 10(a).

61. While Blue admittedly has the final say over the production, development, and exploitation of such Derivative Works, this is only when there is a disagreement between Red and Blue on the matter. In the present case, Blue has clearly failed to carry out their contractual obligations by producing and selling the cards without consulting Red prior to production and sales. Blue's right to unilaterally decide on developing and selling the cards does not arise, as there was no prior disagreement.

62. In fact, Blue had a positive duty to consult Red "regarding the design and operation of the attraction on [a] continuing basis" (Clause 8(2) of Exhibit 8, Page 33 (**"Clause 8(2)"**)).

63. For completeness, Blue cannot solely rely on Minna Friends' approval to develop and sell the cards. The proprietary rights stemming from the "Designer Zero" movie franchise is owned by Red and Blue in an undivided 50-50 split (Clause 9 of both Exhibit 4, Page 19 and Exhibit 7, Page 29 (**"Clause 9"**)). Minna Friends' approval is hence insufficient. Furthermore, Red's intention to grant a licence to Blue to "Designer Zero" in Blue Land instead of being involved in the **construction** of the

attraction (Exhibit 6, Page 26) has been superseded by the contractual provisions in Clause 10(b) and Clause 8(2) above.

B. Blue is liable to pay 50% of the revenue gained from the sale of cards in Blue Land.

64. Since Blue has violated Red's proprietary and control rights by producing and distributing the cards, Blue is liable for damages.

65. As to the proportion of revenue made payable to Red, Blue should pay Red 50% of the revenue gained from the card sales. While Clause 10(b) is silent as to the distribution of the profits, Article 4.4, PICC allows Clause 10(b) to be interpreted "in the light of the whole contract or statement in which they appear". This implies that other terms of the contract can be referred to. In clauses 6, 8, and 9 of Exhibits 4 and 7, the parties have agreed on a general 50-50 split in financing, division of receipts, and proprietary rights. There are no other terms in the contract indicating a numerical split. Therefore, this Honourable Tribunal should similarly infer and impose a 50-50 split in revenue between Red and Blue.

C. An injunction restricting Blue from selling the cards at Blue Land should be issued as the requirements under the UNCITRAL Arbitration Rules (2021) have been fulfilled.

66. The requirements for awarding an injunction have been set out in Paragraph 54 above.

67. Firstly, granting an injunction will cause Blue to cease selling cards in Blue Land. Selling cards in Blue Land without consulting Red causes harm to their proprietary and control rights to the Derivative Work under Exhibits 4 and 7.

68. Secondly, this harm is not adequately reparable if an injunction is not awarded because the loss of proprietary and control rights are unquantifiable and not adequately repairable by pecuniary damages. Furthermore, as "Designer Zero" is synonymous with Red, any backlash stemming from selling the cards, notably with the ongoing controversy surrounding DZNC's world-building, will result in a reputational loss for Red, which is also unquantifiable. The potential long-term harm on Red's proprietary rights, control, and reputation far outweighs the short-term pecuniary harm of not allowing Blue to sell cards in the interim.

69. Finally, the merits of Red's claim has been detailed above, and there is indeed a reasonable possibility of Red succeeding on the merits of its claim.

70. As all three criteria have been satisfied, this Honourable Tribunal should issue an injunction to restrict Blue from selling the cards in Blue Land.

CONCLUSION: RED SHOULD BE ALLOWED TO BRING THE CARD CASE TO ARBITRATION, AND SHOULD BE PAID 50% OF THE REVENUE FROM THE DISTRIBUTION OF DZNC THROUGH BLUE NET, AND THE REVENUE FROM THE SALES OF CARDS AT BLUE LAND.