Preliminary Memorandum by Blue Corp

- Paragraph in the problem is referred as "¶".
- UNIDROIT *Principles of International Commercial Contracts 2016* is referred as "U".
- Blue Corp. is referred as "BLUE"
- Red Corp. is referred as "RED"
- Yellow Corp. is referred as "YELLOW"

β Case

Executive Summary

In March 1, 2011, BLUE purchased 10 sets of the α-4 and β-4 series from RED and in January 25, 2013 the RED and BLUE signed a Memorandum of Understanding to provide the test versions of the α and β series 1 year before their market release, in exchange for feedback and data from Blue Village. Both parties have continued to cooperate with each other until August 2016. However, RED refused to provide β-7 though it definitely continued to use the data and feedback collected at Blue Village for its development.

Meanwhile, BLUE had purchased a set of underwater cameras and sensors from YELLOW in July 2017 at US$3 million. When YELLOW was short on funds, they borrowed US$3 million from RED, offering its right to BLUE as a collateral. YELLOW went bankrupt and failed to perform the maintenance from late November. The products became unusable by December and BLUE incurred losses of US$3 million.

BLUE's Submission

BLUE requests an arbitral award that RED shall provide BLUE with β-7.

BLUE's claim

A. RED shall bear the obligation to provide BLUE with β-7 based on Memorandum of Understanding (Exhibit 6) (hereinafter "MOU")Article 4.
B. BLUE may request the performance of the obligation.
C. RED's anticipated rebuttal that the performance of the obligation is unreasonably burdensome.

A. RED shall bear the obligation to provide BLUE with β-7 based on the MOU Article 4.

1. MOU Article 4 stipulates that "*when RED upgrades a and/or β series using the feedback and data collected at the Blue Village, RED will provide the updated as the test version to BLUE*". As for the case of β-7, RED shall provide BLUE with the test version of β-7 since RED used the feedback and data collected at the Blue Village for the upgrade of β-6 to β-7.
2. On December 2012, BLUE approached RED to discuss entering an agreement where RED can get access to feedback and data from Blue Village, getting data that was of high quality and quantity. In exchange, RED agreed to provide BLUE with a test version of the new upgrade, 1 year before releasing it to other customers (¶25). Consequently, RED collected the feedback and data at the Blue Village and after finishing research they provided the upgraded version (α-5, β-5 and α-6, β-6) as a test version to BLUE (¶26-¶27). In the dealings between the two companies there was no mention of "how" the data should be used, "where" it should be used, or "what" it should be used for. In

conclusion, the primary purpose of the contract was for a useful exchange between the two parties.

3. Given these preliminary negotiation of the party, subsequent conduct of the party and the nature and purpose of MOU (U.4.1 and U.4.3. (a), (c) and (d)), we can see that MOU should be interpreted as a contract where BLUE provides feedback and RED provides a test version after using the feedback and data from Blue Village regardless of how, where, what the feedback and data was used for.
4. For the development of β-7, RED had used the feedback and data that gathered from Blue Village after providing α-6 and β-6 to Blue (¶33). Thus, in accordance with MOU Article 4, RED shall provide a test version of β-7 to BLUE.
5. If RED claims that the feedback and data did not make any major contribution to the improvement of β-7, and so having to provide β-7 is unfair for RED. In response to such a claim, we would like to argue that RED has the sole discretion whether or not to use or how to use the data, as it intends, since Article 4 does not specify "how" the data was used or the "what for" the data was used. In the case of the β-7, irrespective of RED's argument, the feedback and data from Blue Village was used, and so RED shall provide a test version of β-7 to BLUE. If such interpretation is unfair for RED, they may easily avoid the obligation to BLUE by not using the data from Blue Village for updates. Hence, such an argument from RED lacks legal ground.

B. <u>BLUE may demand the performance of the obligation.</u>

6. BLUE requested that RED shall supply the test version of β-7 and RED refused to do so and has not yet provided BLUE with β-7. As the agreements do not stipulate when to provide β-7, the timing should be within reasonable time after the conclusion of the contract (U6.1.1(c)). Since β-7 was already in use by the RED's Volleyball and Basketball teams (¶33), we can conclude that the development of β-7 was completed and it is reasonable to assume that the obligation is expected.

C. <u>RED's anticipated rebuttal that the performance of the obligation is unreasonably burdensome.</u>

7. RED may argue that BLUE maynot claim the performance of provision of β-7 because the performance is unreasonably burdensome as the Negoland Sports Agency (hereinafter "Sports Agency")asked RED to refrain from exporting β-7 and disobeying the instruction would cause deterioration of its relationship with Sports Agency (U7.2.2(b)).
8. However, the concern of the deterioration of relationship with Sports Agency is just a remark from Hawk, who is the head of sensor department of RED. The remark itself is not a fact but a possibility. Hence it cannot be said that the performance is unreasonably burdensome for RED solely based on this remark.
9. Moreover, "Commentary on the *UNIDROIT principles of International Commercial Contracts*" [1] (hereinafter "Commentary of UNIDROIT") states that "*If the goods or services are of a unique*

[1] Stefan Vogenauer 『Commentary on the UNIDROIT principles of international commercial contracts (PICC)』（Oxford University Press, 2nd edition, 2015）

and/or irreplaceable character, the non-performing party cannot easily rely upon the exception under Art 7.2.2(b)" (pg. 894 ¶29).

10. U7.2.2(b) should not be easily applied to this case because β-7 series has an irreplaceable character. β-7 is the newest version of β series which is, according to Ruby, world-class technology (¶21, 33). β-7 has AI driven analyses, it can transmit the real-time results to PC or mobile devices, it can achieve all this without physical sensors and it can also help coaches identify weaknesses and flaws of the players and the opponents. Using β-7, RED's Volleyball and Basketball teams achieved excellent results in the 2017 Negoland national league season (¶33). The Sports Agency is willing to go to the extent of restricting the export of β-7 (¶34). If athletes could easily find out the replacement of β-7, Sports Agency should not have restricted RED from exporting β-7. From the above, it is clear that β-7 is a product that is of unique value and has an irreplaceable character.
11. Further, considering that RED is one of the biggest companies in Negoland and has developed many kinds of world-class sports-related products, RED is very important for the Sports Agency to boost Negoland's sports industry. Given the facts mentioned previously and considering the α and β series developed by RED requires frequent maintenance (¶22) and have multiple updates, it is extremely difficult for the Sports Agency to cut relationship with RED.
12. Considering these factors, U7.2.2(b) should not easily be applied for this case because β-7 series has an irreplaceable character. In addition, RED made a business decision to value their connection with Sports Agency over their obligation to BLUE, hence it was not unreasonably burdensome for RED.

BLUE's Submission

BLUE requests that RED should compensate for BLUE's damage of US$5 million in case RED refuses to perform the Obligation.

BLUE'S claim

D. RED shall compensate for BLUE's damage of US$5 million.
E. RED's anticipated refutation that RED may set off the compensation of US$5 million by BLUE's obligation to pay US$3 million to RED.
F. BLUE's response against RED's refutation that RED may not use the arbitration to set off its right.
G. BLUE's response against RED's refutation that BLUE may also set off the payment of US$3 million by YELLOW's obligation to pay US$3 million
H. BLUE's response against RED's refutation that BLUE may terminate the Exhibit 7

D. RED shall compensate for BLUE's damage of US$5 million.

13. In case RED does not perform the obligation to provide β-7, RED shall compensate for BLUE's damage of US$5 million based on Maintenance Agreement (hereinafter "Exhibit 5") Article 7.
14. Though the performance arises from MOU Article 4, Exhibit 5 Article 7 can be applied for this case as MOU was made as "*addition to the existing Maintenance Agreement*" (MOU preamble).

15. In this case, RED did not perform the obligation to provide β-7 based on Article 4 of MOU. Therefore, RED shall pay US$5 million under this agreement (Exhibit 5 Article 7).

E. RED's anticipated claim for Set-off by BLUE's obligation of US$3 million

16. RED may claim that RED may set off the compensation of US$ 5 million damages by BLUE's obligation to pay US$ 3 million to RED(U8.1(1)).

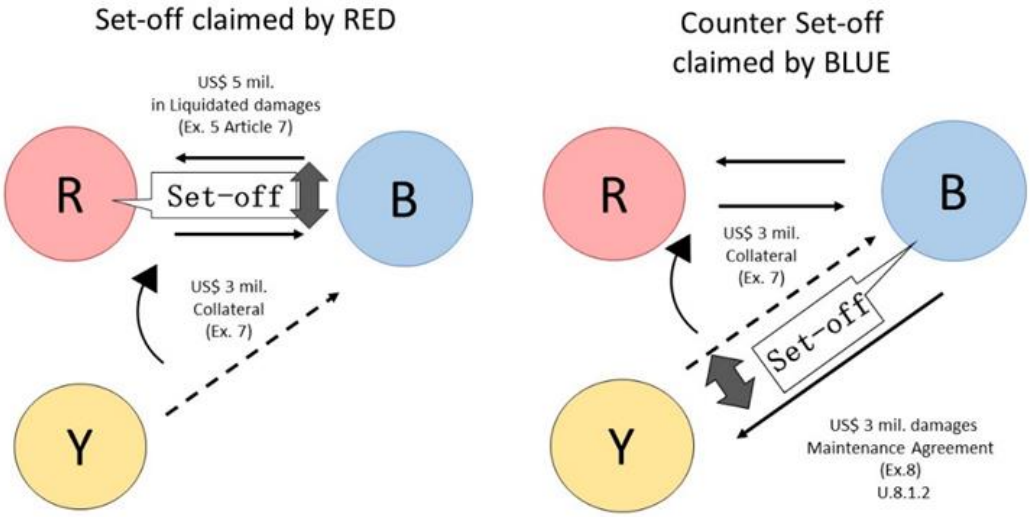

Image 1: Simplified explanation of the Set-off by respective corporations

F. BLUE's response against RED's refutation that RED may not use the arbitration to set off its right.

17. However, since there is no arbitration clauses in the Sales Agreement between YELLOW and BLUE (hereinafter referred to as "Exhibit 7"), RED may not use arbitration to set-off against BLUE.
18. Exhibit 5 Article 12 b stipulates that "*Any dispute arising out of or under this contract shall be settled by arbitration*". The account receivable in question here originates from Exhibit 7, which is totally independent from Exhibit 5 and it is not the scope of "any dispute" stipulated in Exhibit 5.
19. On the other hand, Exhibit 7 Article 12 states that "*The parties submit to the non-exclusive jurisdiction of the Nego-Town District Court of Negoland in respect to all controversies arising from or in relation to the Agreement*". From these, both parties have a clear intention not to finally settle the controversies as to the existence nor exercise of this account receivable by arbitration. Therefore, the arbitral tribunal does not assume the jurisdiction over RED's claim of set off, considering both parties' mutual intention.
20. In this regard, RED may argue that RED may claim the equitable set off, which is widely adopted in Common Law. However, RED's claim is not valid because the governing law here is UNIDROIT 2016, not Common Law.
21. RED may also argue that RED's claim of setoff shall be allowed based on the principle of good faith and fair dealing (U1.7). However, RED knew that BLUE needed the regular maintenance by YELLOW in order to use YELLOW's products which are the target of the account receivable for a long time and that YELLOW's working capital plummeted.

In other words, RED knew the possibility of non-performance of YELLOW's regular maintenance though BLUE would pay the account in order to use its products. Nonetheless, RED falsely explained to BLUE that the business condition of YELLOW is not getting bad. This explanation is clear intention of making BLUE taking the risk so that RED could avoid the default risk of YELLOW. Considering these factors, it is against the principle of good faith and fair dealing to allow RED's claim of set off.

G. BLUE's response against RED's refutation that BLUE may also set off the payment of US$3 million by YELLOW's obligation to pay US$3 million

22. U9.1.13 stipulates that "The obligor may exercise against the assignee any right of set-off available to the obligor against the assignor up to the time notice of assignment was received". However, U8.1(2) stipulates that if the obligations of both parties arise from the same contract, the right of set-off may be exercised even if the existence or amount of the counterparty's obligation has not been ascertained.
23. Considering the above two together, if the obligations of both parties arise from the same contract, even if the existence or amount of the counterparty's obligation has not been determined by the time of the notice of assignment, the obligor may exercise the right to set-off against the assignee by the time of notice.
24. In this case, YELLOW had the right to claim the payment of US$ 3 million based on Exhibit 7. BLUE had the right to claim damages of US$3 million against YELLOW due to the non-performance of the Maintenance Agreement (hereinafter "Exhibit 8"). BLUE's damages may be claimed (see 25). And it can be said that Exhibit 7 and Exhibit 8 are substantially same contracts (see 26-). Therefore, BLUE may exercise the right of set-off against RED.
25. Based on Article 2 of Exhibit 8, YELLOW shall bear the obligation to perform the maintenance service of YELLOW's products. However, YELLOW did not perform the maintenance that was scheduled in late November and BLUE incurred the damages of US$ 3million due to its non-performance. Hence, BLUE has the right to claim damages from YELLOW based on U7.4.1 to U7.4.4.
26. Commentary of UNIDROIT states that "obligations arising from a complex contract should be considered as arising from the same contract." (P.1052 ¶46) and "A complex contract exists when two or more contracts concluded separately are linked by the intention of the parties in such a way that they should be considered to be unified both economically and in law" (P.1052 ¶44).
27. In this case, Orange from YELLOW stated to BLUE that maintenance is absolutely necessary and only YELLOW's technical team can perform maintenance. Moreover, he said "please consider a maintenance contract as attached to the product purchase" (¶29). It means that these two agreements are economically inseparable because BLUE is able to gain the expected benefit only if it agreed upon both agreements. Further, two agreements are considered to be unified in law because preamble of Exhibit 8 clearly states that "Further to the Sales Agreement".
28. Therefore, it can be said that Exhibit 7 and Exhibit 8 are complex contract and regarded as "arising from the same contract". Hence, BLUE may also set off its payment of US$3

million by Yellow's obligation to pay US$3 million.

H. <u>BLUE's response that RED's claim for set-off is not valid based on the termination.</u>

29. Since BLUE may terminate Exhibit 7, RED's right to claim US$ 3 million from BLUE, which originally comes from YELLOW's right no longer exists.
30. YELLOW did not perform the obligation of maintenance and it amounts to a fundamental non-performance (see 31 below). BLUE may terminate the Exhibit 8 (U7.3.1) and as a result, BLUE may terminate the Exhibit 7, which should be regarded as same as Exhibit 8 (see 32 below).
31. Non-performance of Exhibit 8 amounts to a fundamental non-performance. While discussing the purchase of products from, in the conversation between Sapphire and Orange, Orange said that "maintenance is absolutely necessary" and "only the technical team from YELLOW" can perform the maintenance (¶ 29). With this in mind, Blue entered the maintenance contract to receive maintenance by YELLOW for use of their products. Failure of performance of the maintenance is an act of substantially depriving Blue of what is expected, which amounts to a fundamental non-performance (U.7.3.1(2)(a))
32. As mentioned previously in 27, the purposes of Exhibit 7 and Exhibit 8 are intimately connected with each other and mere satisfaction of either contract cannot achieve its entire purpose for BLUE. In such cases, it is against both parties' intention to separate these two contracts. Therefore, BLUE also claim the termination of Exhibit 7 based on the fundamental non-performance of YELLOW's obligation.

<u>Event Case</u>

<u>Executive Summary</u>

RED and BLUE agreed to organize the Nego-Abu Cup, a series of sports events between Negoland and Arbitria. Each company was to perform its obligations and cooperate to make the event successful. However, it was RED's interferences that caused BLUE to not be able to perform its obligations. RED cancelled Bolt's appearance, leading to BLUE's non-performance. RED failed to arrange a suitable venue for tennis, causing BLUE to excuse Williams's refusal to appear. As for Hosszu, her appearance was cancelled due to the force majeure event of volcanic eruptions. Lastly, RED insists that they do not need to split internet streaming profits, despite using the shared videography by RED and BLUE for its internet streaming.

<u>Blue's Submission</u>

<u>BLUE requests an arbitral award that BLUE does not have to pay US$2.1 million to RED</u>

<u>Blue's claim</u>

I. <u>RED may claim US$2.1 million in compensation from BLUE.</u>
J. <u>RED cannot claim damages for Bolt's non-appearance, due to RED's own interference.</u>
K. <u>RED cannot claim damages for Williams's non-appearance, due to RED's own interference.</u>

L. BLUE shall not bear the responsibility for the damages RED suffered as it was caused by the force majeure event.
M. Damages awarded to RED shall be reduced by RED's additional profits from Internet streaming
N. RED shall bear the obligation to share profits from Internet streaming

I. RED may claim US$2.1 million in compensation from BLUE.

33. It is expected that RED will claim compensation of US$2.1 million from BLUE, based on Exhibit 9 Agreement (hereinafter "AGREEMENT") Article 3(9).
34. RED may claim that BLUE shall bear the obligation to ensure the participation of Carl Bolt and Margaret Williams, based on AGREEMENT Article 3(2).
35. RED will likely claim that BLUE had the obligation to ensure the participation of Sarah Hosszu, based on the modification of the AGREEMENT, based on Exhibit 10.
36. However, Bolt, Williams, and Hosszu did not appear in the Nego-Abu Cup.
37. Due to BLUE's failure to provide participation of the three athletes, RED believes it has incurred damages of lost profits of ticket sales and broadcasting rights, amounting to US$2.1 million.

J. RED cannot claim damages for Bolt's non-appearance, due to RED's own interference.

38. RED may claim that BLUE failed to perform its responsibility to have Bolt participate in the Nego-Abu Cup, and Bolt's participation in Nego-Abu Cup became impossible due to Bolt's 4-year doping violation suspension. However, RED cannot claim damages for BLUE's non-performance, as it was RED's interference of cancelling Bolt's appearance that led to the damages, not the 4-year suspension. Refer to timeline below for sequence of events.

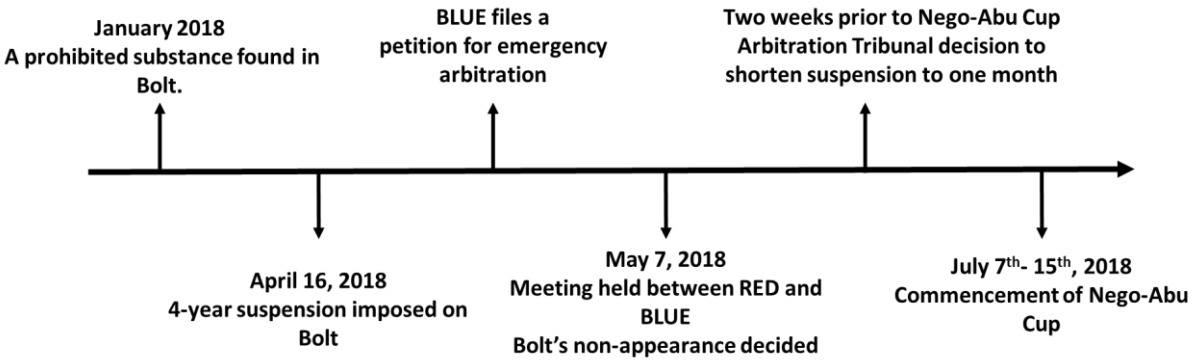

Image 2: Timeline of Bolt's issue

39. Bolt's appearance in the Nego-Abu Cup was not impossible[2]. As written in the conversation between RED and BLUE on May 7th, 2018, BLUE filed a petition requesting arbitration of the Sports Arbitration Tribunal of Arbitria to seek an annulment or reduction of the suspension (¶40). It was highly likely that Bolt's suspension would be greatly shortened because there was no "gross error or negligence"; therefore, Bolt's appearance in the Nego-Abu Cup was not impossible.

[2] The definition of "impossibility" comes from U 7.2.2, Comment 3(a).

40. In this situation, Bolt did not commit any "gross error or negligence." If there is no "gross error or negligence," Arbitria's Anti-Doping Organization would shorten the suspension to a maximum of 2 years (¶40). Bolt's trainer administered supplements to Bolt without realizing the existence of a prohibited supplement (¶40). Thus, it is highly likely that Bolt did not realize he committed a doping violation.
41. In addition, BLUE was aware that Bolt's suspension could be greatly shortened. Knowing of the lack of "gross error or negligence," Diamond from BLUE states "I expect that Bolt's suspension will be reduced to one month or so at the longest" (¶40). BLUE is a company that specializes in professional athlete management (¶16, ¶17) and is likely familiar with sports arbitration cases, making Diamond's statement valid and credible.
42. Red may argue that the decision by the Arbitration Tribunal was made only two weeks before the Nego-Abu Cup (¶40), and thus there would not be enough time to search for new athletes. However, since this is an emergency arbitration, it is highly likely that the Tribunal would do its best to make a decision as soon as possible. Diamond from BLUE, states "it won't take longer than two weeks for the Sports Arbitration Tribunal of Arbitria to decide on the case" (¶40). Again, as BLUE manages athletes, it is likely familiar with sports arbitration cases. Although the decision by the Arbitration Tribunal was made only two weeks before the Nego-Abu Cup, this is due to special circumstances of foreign laboratory testing to examine the evidence of the supplements, which was unforeseeable at the time of the meeting. As such, there is no difference in the fact that it was highly possible for the arbitral decision to be made before the event.
43. RED may claim that because Bolt's trainer only tested a few supplements (¶40), there was "gross error or negligence." However, the prohibited substance was found in only one supplement. As such, Bolt's trainer had paid reasonable extent of care regarding prohibited substances. Hence, there was no "gross error or negligence."

K. RED cannot claim damages for Williams's non-appearance, due to RED's own interference.

44. BLUE is not liable for the damages caused by Williams's non-appearance by U 7.1.2, as BLUE's non-performance resulted from RED's interference of failing to perform its responsibility of arranging a suitable venue.
45. "Interference" in this situation is interpreted as the interference of U 5.1.3, the duty for parties to cooperate with each other when cooperation may be reasonably expected.
46. RED's act of not changing the venue to the more suitable venue of Negoland Tennis Coliseum caused BLUE's non-performance. RED was obligated to the planning, organization, promotion, ticket sales of the games held at venues in Negoland (AGREEMENT Article 3(1)), and parties were responsible to arrange the venue suitable for the games (AGREEMENT Article 3(3)). Since tennis games were held in Negoland, RED was responsible for finding the suitable venue for tennis.
47. In this situation, RED arranged the Nego-Town Tennis Center, which was not a suitable venue. The obligation to change the venue to Negoland Tennis Coliseum is within the range of reasonable cooperation. For a sports event, a suitable venue includes the good health of the players. Thus, a suitable venue must have anti-heat measures, as playing tennis for long hours in extreme heat poses a health risk. The outdoor Nego-Town Tennis Center

that RED arranged did not have anti-heat measures (¶42). The temperature during the tennis events was expected to continuously be 35 degrees, with a 50% chance that the temperature would go over 40 degrees (¶42). When considering the good health of players, it is necessary for RED to change the venue to the Negoland Tennis Coliseum, which had sufficient air-conditioning (¶42).

48. It was reasonably expected that not changing the venue to the Negoland Tennis Coliseum would lead to significant damages. Large ticket sale refunds and cancelling of broadcasting rights would be expected after the non-appearance of a favorite player such as Williams. In reality, once Williams's appearance was cancelled, the expected profits of USD550,000 diminished to a deficit of USD700,000. This is clear in hindsight, but this deficit is USD550,000 less than the profits from changing the venue to the Negoland Tennis Coliseum (refer to table below).

(in thousands)	Ticket Revenue	Revenue from Broadcasting Rights	Operating Costs	Profits*[1]
Nego-Town Tennis Center (outdoor)	75	100	120	55
Williams's non-appearance	50	0	120	**-70**
Negoland Tennis Coliseum (indoor)	50	100	160＋5*[2]	**-15**

*[1]Profits = (Ticket Revenue + Revenue from Broadcasting Rights) - Operating Costs

*[2]Cancellation fee for Negoland Tennis Center

Table 1: Calculation of profits difference for Williams' issue

49. RED's interference caused BLUE's non-performance. As a result of RED not arranging a suitable venue, BLUE excused Williams's refusal to appear in the event (¶43). In addition, two other players refused to appear (¶43), justifying Williams's refusal to appear as a valid concern for health risks. For BLUE, as an athlete management company, it is natural to excuse appearances when there are health risks. In addition, in the 2018 US Open, one of the most prestigious events in professional tennis, anti-heat measures became an issue after players suffered heat related health issues and some were even forced to retire, due to the extreme heat.[3]

L. <u>BLUE shall not bear the responsibility for the damages RED suffered as it was caused by the force majeure event.</u>

50. BLUE's non-performance was due to the volcanic eruptions which caused the airport to shut down for a week, and she could not board her flight (¶44). By AGREEMENT Article 4(1), BLUE's non-performance is excused.

[3] *news.com.au* (2018), Heatwave conditions at US Open becoming dangerous for players in New York. [Accessed 21 Nov 18], https://www.news.com.au/sport/tennis/heatwave-conditions-at-us-open-becoming-dangerous-for-players-in-new-york/news-story/0b77b6f5174c7f66eb7e5a2733051d67.

51. The volcanic eruptions fall under "natural disaster" (AGREEMENT Article 4(1)), which resulted in the closure of the airport. Both the natural disaster and its result are beyond the reasonable control of BLUE. Thus, BLUE shall not be liable for the damages RED suffered as a result of the non-performance. Both the Steering Committee and RED were notified of BLUE's non-performance (¶44).
52. RED may argue that Hosszu's non-appearance was preventable if Emerald had booked the original flight correctly, as the volcanic eruptions happened after this original flight (¶44). However, BLUE was not responsible for arranging the first-class flight; it was the Steering Committee's responsibility. "[Hosszu] requested first-class air travel… the steering committee accepted her request" (¶38) Hence, BLUE could not have reasonably prevented Hosszu's non-appearance. Even if BLUE had the obligation to arrange the first-class flight, BLUE did not have the obligation to arrange a specific flight. Such obligation was not required of BLUE from the contract.
53. RED may insist that BLUE bore the responsibility to prevent the damages and have Hosszu arrive as early as possible to avoid force majeure events. However, this interpretation ultimately results in the obligor to perform its duty in the earliest measure possible to avoid any unexpected events, which is an unnecessary burden on the obligor. Hence, RED's interpretation of Article 4(1) is unreasonable.
54. In addition, there is no dispute that Hosszu could have arrived in time for Nego-Abu Cup by boarding the replacement flight without the volcanic eruptions (¶44). Thus, it stands that BLUE's non-performance was caused by volcanic eruptions.

M. <u>Damages awarded to RED shall be reduced by RED's additional profits from Internet streaming</u>

55. From U7.4.2(1), RED shall not be enriched as a result of BLUE's non-performance. RED gained profits of US$1 million from
56. Internet streaming (¶48). If Bolt, Williams and Hosszu participated in Nego-Abu Cup, profits from Internet streaming would have been limited to only US$800,000 (¶48).
57. As submitted below, profits from Internet streaming shall be shared equally. After sharing profits with BLUE, RED earned US$500,000 over the initial amount of US$400,000, which amounts to a total of US$100,000 gain. This amount constitutes an enrichment of RED. Therefore, even if any damages are to be awarded to RED, the amount of US$100,000 shall be reduced from the total damages awarded.
58. Further, if the submission below cannot be accepted, RED would have gained US$200,000 from the non-appearance of BLUE's athletes. As such, the amount of US$200,00 shall be reduced from the total damages awarded.

<u>Blue's Submission:</u>
<u>Blue requests an arbitral award that Red shall pay US$500,000 to Blue</u>

<u>Blue's claim</u>

N. <u>RED shall bear the obligation to share profits from Internet streaming</u>

59. As stipulated in Article 3(8) of the AGREEMENT, "*Profits from event telecasting will be shared equally between Red and Blue.*" Profits from event telecasting includes profits from Internet

streaming because there exists a common intention (U4.1) for profits from Internet streaming to be shared equally. Hence, BLUE has the right to require payment of US$500,000 from RED based on U7.2.1.

60. From Article 3(7) of the AGREEMENT, 'RED's streaming programs', 'BLUE's own cable TV channels' and 'terrestrial TV networks' were listed as three methods of video distribution. However, instead of using any of the same terms in the following Article 3(8), the comprehensive term 'event telecasting' was used. As such, it is natural to assume that the term 'event telecasting' refers to all method of video distribution mentioned in the previous article.
61. There is a common intention to share equally the profits from services that are directly generated from videos whose responsibility is held by both parties. From the preliminary negotiations between both parties, ticket sales revenue in Negoland will go to RED, while ticket sales revenue in Arbitria will go to BLUE (¶37(9) and (10)). This implies that when the responsibility is held solely by one party, all profits generated from said responsibility is given to that party.
62. On the other hand, profits from sales of broadcasting rights were shared equally, as said profits originated from responsibilities and costs bore by both RED and BLUE. Each party was responsible for videography and the cost thereof for games held in their respective countries (¶37(5) and (6)). As each country hosted the same number of games (¶37(9)), the responsibility of videography for both parties are similar. Hence, both parties should be entitled to profits resulting from videos of Nego-Abu Cup, which was contributed to a similar extent by both parties.
63. In applying the common intention from both parties, the distribution of profits from Internet streaming must also be shared equally, as it originated from contribution of both parties. In addition, RED's streaming program was paid per-view, and the profits were a direct result of the Nego-Abu Cup videos. Therefore, the comprehensive term "event telecasting" includes Internet streaming, and RED must pay US$500,000 to BLUE.
64. With regards to the profits earned from Blue TV, if RED can submit a claim with sufficient evidence to prove that the profits were earned directly from the videos of Nego-Abu Cup, BLUE shall compensate half of the profits of Blue TV to the extent that Red has proven.
65. RED may further claim that BLUE is not entitled to receive US$500,000 because the profits were a result of its efforts to minimize BLUE's defaults. However, the interpretation of an existing contract shall not vary depending on any incidents that occurs after the conclusion of said contract. BLUE's right to receive profits from Internet streaming is not affected by the method of which RED gained such profits. Hence, RED must pay US$500,000 to BLUE.