MEMORANDUM FOR BLUE

On Behalf Of:	***Against:***
Blue Inc. (“**BLUE**”)	Red Corp. (“**RED**”)
Arbitria	Negoland

Sophia University

English Team

Common Abbreviations

PARTIES	RED and BLUE
TRIBUNAL	Arbitral tribunal
Exh	Exhibit
Art	Article
BLACK	Black Company
¶	Paragraph

Relevant Materials

UPICC	UNIDROIT Principles of International Commercial Contract 2016
UNCITRAL	UNCITRAL Arbitration Rules 2021
IBA Guidelines	IBA Guidelines on Conflicts of Interest in International Arbitration

MOON CASE

ISSUE 1 (MOON CASE)

Issue 1: *"Does Blue Inc. have the obligation to transfer half of Materials extracted and a complete copy of the data records obtained from Area β to Red Corp.? If Blue is obliged to hand over half of the substance, how should the arbitral tribunal divide and determine which half to hand over?"*

＜Materials＞

I. As the AGREEMENT ON DISTRIBUTION OF LUNAR DATA AND MATERIALS (Exh 6) ("**Exh 6 Distribution Agreement**") does not contain a clause regarding the transfer of the materials collected in Area β ("**Materials**"), the only legal basis with which RED could request the delivery of the Materials is through their ownership right. Since RED can no longer acquire ownership to half of the Materials due to the Space Resources Act of Negoland (Exh 11) ("**Negoland Act**"), the TRIBUNAL should not oblige BLUE to deliver the Materials.

II. Without prejudice to the previous submission, even if the TRIBUNAL determines that delivery of the Materials is not predicated on the transfer of ownership, BLUE cannot deliver the Materials since such act violates the legislative purpose of the Negoland Act.

＜Data＞

III. Since BLUE is legally obliged to withhold the complete copy of the data collected in Area β ("**Data**") from RED under the Order concerning handling of data pertaining to the Moon (Exh 13) ("**Arbitrian Order**"), the TRIBUNAL should not oblige BLUE to transfer the Data.

IV. Without prejudice to the previous submission, even if BLUE is not legally obliged to withhold the Data under the Arbitrian Order, as it is unreasonably burdensome for BLUE to be required to transfer the Data, RED cannot require the transfer pursuant Art 7.2.2 (b) of UPICC.

＜Division of the Materials＞

V. If BLUE has the obligation to transfer half of the Materials, the TRIBUNAL should equally divide the Materials based on its weight while considering the research value of the 10 kg rock.

＜Materials＞

I. <u>As Exh 6 Distribution Agreement does not contain a clause regarding the transfer of the Materials, the only legal basis with which RED could request the delivery of the Materials is through their ownership right. Since RED can no longer acquire ownership to half of the Materials due to the Negoland Act, the TRIBUNAL should not oblige BLUE to deliver the Materials.</u>

1 Arts 2.1 and 2.3 of Exh 6 Distribution Agreement should be interpreted as setting out the division of the Materials and the ownership of each of the PARTIES to their respective share. The reasons for this interpretation are as follows.

1.1 Art 2.1 of Exh 6 Distribution Agreement states “All materials collected from the lunar surface or subsurface and brought back to Earth shall be divided equally between Red Corp. and Blue Inc.”, and Art 2.3 states “Both parties shall have equal rights to access, use, distribute, sell, or otherwise benefit from these materials.”

1.2 At the time of signing on May 10th, 2020 the PARTIES agreed for each to have ownership over their respective share of the Materials. However, due to a lack of clear legal guidance on the ownership of space materials, there was a need for the PARTIES to specifically describe the rights afforded to them under ownership. Hence, the PARTIES agreed to include Art 2.1 for the division of the Materials, and Art 2.3 which specified ownership.

2 Subsequently, in February 2021, the Act on the Promotion of Business Activities for the Exploration and Development of Space Resources of Arbitria (Exh 8) (“**Arbitrian Act**”) came into force (¶13). BLUE acquired ownership of the Materials under this Act, the reasons for which are as follows.

2.1 Art 5 of the Arbitrian Act states “A person who conducts business activities related to the exploration and development of space resources shall acquire the ownership of space resources that have been mined, etc. in accordance with the business activity plan for the exploration and development of space resources that the government has approved in advance, by possessing said space resources with the intention to own.”

2.2 In this case, since BLUE’s business activity plan has been approved by the Government of Arbitria (¶14), the Arbitrian Act applies to BLUE. And since BLUE possessed the Materials with the intention to own them, BLUE acquired ownership.

2.3 It should be noted that since the Arbitrian Act is a space policy law enacted in order to encourage investment in space by Arbitria’s domestic companies (¶13), it only applies to operators of Arbitria. Hence, RED cannot acquire ownership of the Material under the Arbitrian Act.

3 Thus, it should be understood that BLUE had acquired ownership of the Materials in its entirety, and the ownership of half of the Materials were to transfer to RED, pursuant Art 2.1 and Art 2.3 of Exh 6 Distribution Agreement.

4 Although this was the expectation between the PARTIES, in this case, with the entry into force of the Negoland Act on May 1st, 2023 (¶17), RED is no longer able to acquire

ownership rights over the Materials. This made it impossible for BLUE to transfer ownership of half of the Materials. The reasons are as follows.

4.1 Art 5.1 of the Negoland Act states “The ownership in the space resources mined, etc. by a person who engages in business activities related to the exploration and development of space resources with permission of the state shall belong to the state.” Further, Art 5.2 states “Unless ownership has been transferred by the state, no person other than the state may own space resources.”

4.2 In this case, since RED obtained the necessary permits for the project from the Government of Negoland (¶14), the Negoland Act applies to RED. Hence, RED cannot have ownership over the half of the Materials.

4.3 In addition, the Negoland Act is applicable to RED, regardless of the place of delivery. This is because the purpose of the Negoland Act was to ensure that all space resources are collectively managed by the State (see ¶6 below). In light of this purpose, it should be interpreted that the Negoland Act applies to all citizens and entities of Negoland, regardless of the location it is operating. This is evidenced by the fact that Art 5.1 of the Negoland Act stipulates its scope of application to “Negoland citizens.”

5 Thus, since RED cannot acquire ownership of the Materials, there is no basis for RED to request delivery of the Materials. As such, the TRIBUNAL should not order BLUE to deliver half of the Materials.

II. <u>Without prejudice to the previous submission, even if the TRIBUNAL determines that delivery of the Materials is not predicated on the transfer of ownership, BLUE cannot deliver the Materials since such act violates the legislative purpose of the Negoland Act.</u>

6 Without prejudice to the previous submission, even if the TRIBUNAL determines that delivery of the Materials is not predicated on the transfer of ownership, BLUE cannot realize the state of affairs provided for by Art 2.3 of Exh 6 Distribution Agreement by virtue of the Negoland Act. This is because the legislative purpose of the Negoland Act was to avoid the use of space and space resources for the benefit of only a limited few (¶17) and to ensure that all space resources are collectively occupied, owned, and used by the State. This is evidenced by Art 1 of the Negoland Act, which states “The purpose of this Act is to appropriately manage the exploration and development of space resources by determining issues such as the ownership of space resources and other necessary matters.” In light of this legislative purpose, it should be interpreted that even if the ownership itself is not transferred, the exercise of rights that would fall within the purview of ownership is gained solely by the State of Negoland. Since allowing RED to exercise such rights stipulated in Art 2.3 of Exh 6 Distribution Agreement would have constituted abetting, or being complicit in, RED violating the aforementioned legislative purpose of the Negoland Act, BLUE cannot deliver half of the Materials.

＜Data＞

III. <u>Since BLUE is legally obliged to withhold the complete copy of the Data from RED under the Arbitrian Order, the TRIBUNAL should not oblige BLUE to transfer the Data.</u>

7 Art 1.3 of Exh 6 Distribution Agreement states that “Neither Party shall withhold any portion of the data from the other Party for any reason, other than as expressly provided

for under the terms of this Agreement or as required by applicable law." In other words, BLUE may withhold the Data where required by applicable law.

8 In this case, the Arbitrian Order requires BLUE to withhold the Data from RED.

8.1 Art 1 of the Arbitrian Order states "data pertaining to the condition of the Moon shall not be transferred to any person unless…the permission of the state has been obtained in advance. (The state may add necessary conditions on the permission)."

8.2 In other words, in the absence of permission from the Government of Arbitria, BLUE is required by this Order to withhold the Data.

8.3 In this case, the Government of Arbitria is undecided whether to permit BLUE to hand over the Data to RED (¶20). And since BLUE was required to submit a document that poses a significant risk to BLUE stating that "Blue guarantees to the Government of Arbitria that Red will never use the data in a manner that is contrary to the national security of Arbitria" (¶20) as a condition for permission, it should be considered that the Government of Arbitria does not expect BLUE to hand over the Data to RED, and that it effectively requires BLUE to withhold the Data by the Arbitrian Order.

9 Thus, BLUE is legally obliged to withhold the Data from RED under the Arbitrian Order, the TRIBUNAL should not oblige BLUE to transfer the Data.

IV. <u>Without prejudice to the previous submission, even if BLUE is not legally obliged to withhold the Data under the Arbitrian Order, as it is unreasonably burdensome for BLUE to be required to transfer the Data, RED cannot require the transfer pursuant Art 7.2.2 (b) of UPICC.</u>

10 Art 7.2.2 (b) of UPICC states "Where a party who owes an obligation other than one to pay money does not perform, the other party may require performance, unless performance or, where relevant, enforcement is unreasonably burdensome or expensive."

11 In this case, it would be unreasonably burdensome for BLUE to provide the documents required by the Government of Arbitria and to hand over the Data to RED. This is because, in a situation where the Government of Arbitria is concerned about the handover of the Data from a security perspective, if RED used the Data in a way that was contrary to Arbitria's national security, BLUE would be considered as having been complicit in a breach of Arbitria's national security. This would carry a fine of up to 1 million USD. Furthermore, it is unreasonably burdensome for BLUE to be expected to police RED's usage of the Data. In totality, these are unreasonably burdensome for BLUE.

12 Therefore, pursuant Art 7.2.2 (b) of UPICC, RED cannot require delivery of the Data from BLUE, as it would place unreasonably burdensome expectations on BLUE.

＜Division of the Materials＞

V. <u>If BLUE has the obligation to transfer half of the Materials, the TRIBUNAL should equally divide the Materials based on its weight while considering the research value of the 10 kg rock.</u>

13 Art 2.1 of Exh 6 Distribution Agreement states "All materials collected from the lunar surface or subsurface and brought back to Earth shall be divided equally between Red and Blue."

14 Regarding the method of division of the Materials, Art 2.2 of Exh 6 Distribution Agreement stipulates "Such division shall be made based on weight, volume, and/or value as determined by the Parties."

15 In this case, since the volume and value of the Materials are not clear, the TRIBUNAL should split the Materials by weight. Specifically, as the 10 kg rock is the only one that is clearly of high research value (¶19), it should be divided equally into 5 kg each so that the PARTIES can do research equally on that Material. The other Materials should be divided only on the basis of weight, as their research value is not clear.

16 Therefore, the TRIBUNAL should divide the Materials equally on the basis of weight while considering the research value of the 10 kg rock.

ISSUE 2 (MOON CASE)

Issue 2 *"If Blue is obligated to deliver to Red half of the materials collected in Area β and the data, can Red refuse to make payment until BLUE fulfills such obligation? If Blue does not have such obligation, how much should Red pay to Blue?"*

＜If BLUE is obliged to deliver to RED half of the Materials and the Data＞

I. RED cannot refuse to make payment until BLUE fulfills such obligation.

＜If BLUE does not have such obligation＞

II. The TRIBUNAL should order RED to pay a total of 160 million USD; 150 million USD pursuant Art 3.2 of the Cost Sharing for the Lunar Explorer Probe Project (Exh 7) ("**Exh 7 Cost Sharing Agreement**"), and 10 million USD from the agreement between the PARTIES subsequent to Exh 7 Cost Sharing Agreement.

III. Upon the sale of the Materials to BLACK and to the Government of Arbitria, and once the payment has been received in full, the amount claimed will be reduced to 110 million USD.

＜If BLUE is obliged to deliver to RED half of the Materials and the Data＞

I. RED cannot refuse to make payment until BLUE fulfills such obligation.

17 RED's counsel may make a submission based on Art 7.1.3 (1) of UPICC, which states "Where the parties are to perform simultaneously, either party may withhold performance until the other party tenders its performance." However, such a submission should be dismissed.

18 In this case, BLUE's delivery obligation and RED's payment obligation does not constitute a situation "where the parties are to perform simultaneously." The reasons are as follows.

18.1 Art 3.4 of Exh 7 Cost Sharing Agreement states "The invoiced Party shall make the payment within one month from the date of receiving the invoice." In other words, RED's payment had a specific performance period set.

18.2 Exh 7 Cost Sharing Agreement does not stipulate that RED's payment would be made only after the Materials was transferred, nor that the transfer and payment should be simultaneous. This is also obvious from the fact that, even if the mission failed and there was no material for BLUE to deliver to RED, RED would still be obliged to pay BLUE.

19 Therefore, since there is no basis for requiring that BLUE's transfer obligation and RED's payment obligation be performed simultaneously, RED cannot refuse to make payment until BLUE's performance.

＜If BLUE is not obliged to deliver to RED half of the Materials and the Data＞

II. <u>The TRIBUNAL should order RED to pay a total of 160 million USD; 150 million USD pursuant Art 3.2 of Exh 7 Cost Sharing Agreement, and 10 million USD from the agreement between the PARTIES subsequent to Exh 7 Cost Sharing Agreement.</u>

【Regarding 150 million USD】

20 RED is obliged to pay its outstanding balance pertaining to the lunar exploration project, totalling 150 million USD. This is because the total cost of the entire lunar exploration project was 400 million USD (¶21), and the PARTIES are to pay 200 million USD each, in accordance with Art 3.2 of Exh 7 Cost Sharing Agreement. Of this amount, RED has thus far paid 50 million USD, while BLUE has fronted the rest of RED's cost for the time being (¶21). Thus, RED owes an outstanding balance of 150 million USD to BLUE.

21 Art 3.4 of Exh 7 Cost Sharing Agreement stipulates "The invoiced Party shall make the payment within one month from the date of receiving the invoice." On June 1st, 2023, BLUE sent an invoice to RED requesting a total payment of 160 million USD under Art 3.4 of Exh 7 Cost Sharing Agreement (¶21). Thus, the payment date was July 1st, 2023.

22 Hence, since the date of RED's payment obligation has passed, the TRIBUNAL should order RED to pay BLUE 150 million USD.

【Regarding 10 million USD】

23 The PARTIES agreed for RED to bear an additional 10 million USD, so RED is obliged to make that payment in addition to the previously submitted 150 million USD.

24 At a meeting on May 7th, 2023, the project managers from the PARTIES came to an oral agreement that RED would bear an additional 10 million USD as compensation for the failure to explore Area α (Exh 12). Since the discussion clearly contained an offer and an acceptance, an oral agreement was validly concluded.

25 Alternatively, the same agreement can be understood as amending Exh 7 Cost Sharing Agreement, because the oral agreement and the subsequent PDF file fulfills the conditions stipulated for an amendment in Exh 7 Cost Sharing Agreement. The reasons are as follows.

25.1 Art 4.1 of Exh 7 Cost Sharing Agreement stipulates "The Agreement may be amended by written agreement by both Parties." In this case, a transcript of the discussion was sent to the PARTIES, which contained the oral agreement. The term "written agreement" should be interpreted to mean that it is sufficient if the oral agreement is shared in a written form and confirmed by the PARTIES. This is because the purpose of the clause is to ensure that the content of agreement is clear and confirmed by the PARTIES when amending the contract. Hence, sharing a transcript of the oral agreement between the PARTIES and allowing them to reconfirm the contract modification would fulfill the purpose of this clause.

25.2 In addition, Art 1.11 of UPICC states "'writing' means any mode of communication that preserves a record of the information contained therein and is capable of being reproduced in tangible form." PDF files fulfills this definition of "writing" as stipulated in this article. Since UPICC is the governing law for Exh 7 Cost Sharing Agreement, its wording must be construed in accordance with UPICC. Hence, a PDF file constitutes a "written agreement" as defined in Art 4.1 of Exh 7 Cost Sharing Agreement.

25.3 In this case, a PDF file of the transcript of the May 7th, 2023 meeting was sent to the PARTIES on the following day (Exh 12 Note). It is also clear that the PARTIES

have confirmed the PDF file, as neither Party raised objections to its content (Exh 12 Note).

26 Thus, since the agreement for RED to bear an additional 10 million USD fulfills Art 4.1 of Exh 7 Cost Sharing Agreement, the TRIBUNAL should order RED to pay BLUE 10 million USD.

III. Upon the sale of the Materials to BLACK and to the Government of Arbitria, and once the payment has been received in full, the amount claimed will be reduced to 110 million USD.

27 Of the total 100 million USD which BLUE has agreed to receive in return for selling the Materials to BLACK and the Government of Arbitria (¶24), upon completion of the sale, 50 million USD shall be deducted from the amount claimed against RED.

28 RED's counsel may argue that half of the profit to be earned by BLUE from the sale of the Data (50 million USD total) should also be deducted from BLUE's claim against RED. However, this should be dismissed.

28.1 Art 1.2 of Exh 6 Distribution Agreement does not provide that one party is entitled to half of the profit from the sale of the Data by the other party, but stipulates that each party has an equal right to utilize and benefit from the Data. This is because the utilization of the Data by one party does not affect in any way the other party's right to utilize the Data, given that data is by its nature reproducible. In addition, since BLUE will sell a copy of the Data while leaving the original in BLUE's possession, it is possible for RED to obtain a copy of the Data from BLUE in the future.

29 Hence, upon the sale of the Materials to BLACK and to the Government of Arbitria, and once the payment has been received in full, the amount claimed will be reduced to 110 million USD.

ISSUE 3 (MOON CASE)

Issue 3 *"Should Red's petition for interim measures be granted?"*

I. RED's petition for interim measures prohibiting BLUE from selling any of the Materials to either BLACK or the Government of Arbitria should not be granted, because it does not meet the requirements for an interim measure as set out in Art 26 (3) of UNCITRAL.

I. RED's petition for interim measures prohibiting BLUE from selling any of the Materials to either BLACK or the Government of Arbitria should not be granted, because it does not meet the requirements for an interim measure as set out in Art 26 (3) of UNCITRAL.

30 In order for the TRIBUNAL to order an interim measure, all three of the following requirements set out in Art 26 (3) of UNCITRAL must be met.

30.1 (i) Harm not adequately repairable by an award of damages is likely to result if the measure is not ordered (first sentence of Art 26 (3) (a) of UNCITRAL).

30.2 (ii) Such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted (second sentence of Art 26 (3) (a) of UNCITRAL).

30.3 (iii) There is a reasonable possibility that the requesting party will succeed on the merits of the claim (Art 26 (3) (b) of UNCITRAL).

31 Since requirements (i) to (iii) are not met, the TRIBUNAL should not order interim measures.

＜Materials＞

32 First, with respect to (i), there is no risk of irreparable harm to RED even if the measure is not taken. This is because, as stated above (see ¶4 to ¶4.3 above), the application of the Negoland Act makes it impossible for RED to acquire ownership of the Materials, and it is highly unlikely that the Government of Negoland would transfer ownership of space resources according to Negoland's most trusted science journal (¶22). Therefore, even if no interim measure was ordered, no harm is likely to result to RED, who cannot and will not be able to possess the Materials.

33 Second, with respect to (ii), the harm to BLUE if an interim measure is taken would be greater than the harm to RED if the measure is not taken. The reasons are as follows.

33.1 Three days after the agreement with BLACK was reached, BLUE received an extremely strong request from the Government of Arbitria to sell half of the Materials (¶24). At that time, the Government of Arbitria warned BLUE that it would be difficult for BLUE to obtain future support for space development from the government if BLUE refused this request (Exh 13-1). As the space industry is generally an industry in which government support is essential, it should be understood that if BLUE refuses the request, the loss of future government support will directly affect the survival of BLUE's space business and BLUE would be severely harmed.

33.2 Thus, there is no risk of harm to RED if no measure is taken, and the harm that could be caused to BLUE is greater.

34 Finally, with regard to (iii), as discussed in issue 1 and 2, RED's claims should not be accepted.

35 Therefore, the TRIBUNAL should not order interim measures regarding the Materials, as requirements (i), (ii) and (iii) are not met.

＜Data＞

36 First, with respect to (i), there is no risk of irreparable harm to RED even if the measure is not taken. This is because BLUE intends to sell a copy of the Data to the Government of Arbitria while leaving the original in BLUE's possession, and it is possible for RED to obtain a copy of the Data from BLUE in the future. Therefore, even if no interim measure was ordered, no irreparable harm would be caused to RED.

37 Second, with respect to (ii), BLUE would suffer tremendous harm if it refused the request from the Government of Arbitria as submitted above (see ¶33.1 above). Therefore, the harm to BLUE if an interim measure is taken would be greater than the harm to RED if the measure is not taken.

38 Finally, with regard to (iii), as discussed in issues 1 and 2, RED's submissions should not be accepted.

39 Therefore, the TRIBUNAL should not order interim measures regarding the Data as requirements (i), (ii) and (iii) are not met.

SATELLITE CASE

ISSUE 1 (SATELLITE CASE)

Issue 1 *"Does Red have the obligation to pay US$75 million to Blue?"*

I. RED is obliged to pay 75 million USD to BLUE based on Art 3.1 of SATELLITE LAUNCH AGREEMENT (Exh 14) ("**Exh 14 Launch Agreement**").

I. <u>RED is obliged to pay 75 million USD to BLUE based on Art 3.1 of Exh 14 Launch Agreement.</u>

40 Art 3.1 of Exh 14 Launch Agreement states "The Client (RED) agrees to pay the Contractor (BLUE) a total amount of US$150 million." As such, the obligation to pay a total of 150 million USD existed from the creation of the contract.

41 RED's counsel may argue that the inclusion of "due upon successful orbital insertion" in Art 3.1 of Exh 14 Launch Agreement excuses RED from paying the final 75 million USD. However, this should be dismissed.

42 When the contract was entered into, it was the intention of the PARTIES for the contract to conclude upon successful orbital insertion. Hence, "upon successful orbital insertion" is synonymous with "the conclusion of this contract". While the mission failed due to a force majeure event (see ¶45.2 to ¶45.3 below), the contract has concluded nonetheless. Thus, the TRIBUNAL should order RED to fulfill its obligation to pay the final 75 million USD.

43 While interpreting Exh 14 Launch Agreement as a whole, the statement "due upon successful orbital insertion" in Art 3.1 of Exh 14 Launch Agreement should not be interpreted as imposing a condition on RED's payment of the launch fee. The reasons are as follows.

43.1 Art 5.1 of Exh 14 Launch Agreement stipulates that "In case of launch failure attributed to Blue, a subsequent launch will be scheduled at no additional cost, or a refund of 50% of the total contract amount will be provided to Red." Here, it is reasonable to interpret that the PARTIES decided to include Art 5.1 for a refund of 75 million USD, 50% of the total contract amount of 150 million USD, as assuming that the total contract amount provided under Art 3.1 to be paid regardless of whether the launch is successful or not. This is because, if RED's obligation to pay the launch fee as provided for in Art 3.1 was conditional on a successful launch, there would be no need to provide for a refund provision based on a failed launch in Art 5.1. Thus, "due upon successful orbital insertion" stipulated in Art 3.1 of Exh 14 Launch Agreement should not be interpreted as a condition for RED's payment obligation.

44 Therefore, RED is obliged to pay 75 million USD to BLUE based on Exh 14 Launch Agreement.

ISSUE 2 (SATELLITE CASE)

Issue 2 *"Is Blue obliged to pay US$150 million to Red for the failure of launch under the Satellite Launch Agreement?"*

I. The TRIBUNAL should not award damages to RED arising from Attachment B of Exh 14 Launch Agreement ("**Attachment B**").
II. The TRIBUNAL should not award RED damages arising from the lost satellite.
III. The TRIBUNAL should not award a refund to RED arising from Art 5.1 of Exh 14 Launch Agreement.

I. The TRIBUNAL should not award damages to RED arising from Attachment B.

45 RED's counsel may claim damages based on Art 3 (b) (iii) of Attachment B. However, BLUE cannot be held liable, because the failure of the Launch Vehicle to deliver Red Star to the targeted orbit was caused by a force majeure event.

45.1 Art 4 of Attachment B states "Provider (BLUE) shall not be held responsible for…mission failures attributed to…(b) Acts of God...beyond the reasonable control of Blue".

45.2 In this case, the G4 geomagnetic storm caused the failure of the Launch Vehicle to deliver Red Star to the target orbit. This is clear from the fact stating "On 13 January, a geomagnetic storm occurred during the time of the launch. The rocket carrying the satellite failed to reach its planned orbit due to this effect and re-entered the atmosphere and vanished with the satellite" (¶29).

45.3 The G4 geomagnetic storm should be considered as "Acts of God...beyond the reasonable control of Blue" stipulated in Art 4 (b) of Attachment B. Based on the understanding of BLUE's person who was responsible for the launch, there is no available technology or countermeasure that can protect the launch vehicle systems from a geomagnetic storm of G4 magnitude (Exh 15). Furthermore, there was no forecast of a strong geomagnetic storm that would make launch impossible (Exh 15). Thus, the geomagnetic storm that occurred in this case should be considered as "Acts of God...beyond the control of BLUE" stipulated in Art 4 (b) of Attachment B.

46 Therefore, the TRIBUNAL should dismiss such a submission if given by RED's counsel.

II. The TRIBUNAL should not award damages to RED arising from the lost satellite.

47 RED's counsel may claim damages of 75 million USD arising from the loss of Red Star. However, this should be dismissed. This is because the PARTIES waived their rights to claim property damages, pursuant Art 4.3 of Exh 14 Launch Agreement.

48 Art 4.3 of Exh 14 Launch Agreement is a Cross-Waiver clause, which stipulates "Each party agrees to bear and assume its own risks of damages to its property…and waives all claims against the other party for such damages…except in cases of willful misconduct or gross negligence." The satellite is the property of RED, and RED has waived its right to claim damages arising from its loss.

49 Regarding the exception in Art 4.3, there was no willful misconduct or gross negligence by BLUE. As previously submitted (see ¶45.2 above), the failure was caused by the G4 geomagnetic storm, and not by any reason attributable to BLUE.

49.1 First, BLUE could not have foreseen that the failure would be caused by the G4 geomagnetic storm. This is because there was no forecast of a strong

geomagnetic storm that would make launch impossible (Exh 15). As such, this did not constitute willful misconduct or gross negligence.

49.2 Second, there is no fact that the sensor anomaly described in the problem (¶29) contributed to the failure. Furthermore, BLUE's employees took corrective actions regarding this point in line with established protocol (¶29). As such, this did not constitute willful misconduct or gross negligence.

49.3 Third, the failure was not caused by the drinking of BLUE's employees. The drinking happened on January 10th, 2023 (¶28), and the launch was rescheduled to January 13th, 2023 (¶29). This date is consistent with the launch window as agreed by the PARTIES in Art 2.1 of Exh 14 Launch Agreement. Furthermore, RED agreed to the change in launch date (¶28). As such, this did not constitute willful misconduct or gross negligence.

49.4 Thus, the loss of Red Star was caused by the G4 geomagnetic storm, and there was no willful misconduct or gross negligence by BLUE.

50 Therefore, the TRIBUNAL should dismiss such a submission if given by RED's counsel.

III. The TRIBUNAL should not award a refund to RED arising from Art 5.1 of Exh 14 Launch Agreement.

51 RED's counsel may demand a refund of 75 million USD based on Art 5.1 of Exh 14 Launch Agreement. However, this should be dismissed. Art 5.1 states that it is to be applied "in case of launch failure attributed to Blue", and the failure of January 13th was not attributable to BLUE but to the G4 geomagnetic storm (see ¶45.2 above).

52 Therefore, the TRIBUNAL should dismiss such a submission if given by RED's counsel.

ISSUE 3 (SATELLITE CASE)

Issue 3 *"Should Bob Orange be removed?"*

I.	Bob Orange should be removed based on UNCITRAL Art 12 and Art 13.

I. Bob Orange should be removed based on UNCITRAL Art 12 and Art 13.

53 In order to challenge an arbitrator, the following requirements set forth in UNCITRAL Art 12 (1), Art 12 (2), and Art 13 (1) must be met.

53.1 (i) Circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence (Art 12 (1) of UNCITRAL).

53.2 (ii) Arbitrator is challenged for reasons of which it becomes aware after the appointment has been made (Art 12 (2) of UNCITRAL).

53.3 (iii) A party sends notice of its challenge within 15 days after the circumstances became known to that party (Art 13 (1) of UNCITRAL Art 13).

54 Since this case fulfills all of the requirements, Bob Orange should be removed.

＜Requirement (i)＞

55 The existence of circumstances that give rise to justifiable doubts as to the arbitrator's impartiality or independence should be determined on the basis of IBA Guidelines, the general standards often used in international commercial arbitration. IBA Guidelines 2 (c) provides that "Doubts are justifiable if a reasonable third person, having knowledge of the relevant fact and circumstances, would reach the conclusion that there is likelihood that the arbitrator is influenced by factors other than the merits of the case as presented

by the parties in reaching his or her decision."

56 In this case, there are circumstances where a reasonable third party, aware of the relevant facts and circumstances, would come to the conclusion that Bob Orange, in reaching his conclusion, may be influenced by factors other than what the PARTIES submit. The reasons are as follows.

56.1 On September 25th, 2023, Bob Orange gave a lecture entitled "Force Majeure in Launch Services" at a conference on space law, in which he argued that even a G1-level geomagnetic storm should be considered as having the potential to lead to a serious accident, and that it would be difficult to accept a claim of force majeure if one knew that a geomagnetic storm was likely to occur (¶33). In other words, his statement is markedly similar to that of the Red Star accident and mirrored many of the same concrete facts.

56.2 Although he stated that he was speaking in general terms, his remarks were so similar to the content of this arbitration that all participants at the conference could easily make the assumption that the Red Star accident had given rise to this statement (¶34). Such statements made by Bob Orange in public may lead to his inability to objectively evaluate the claims and evidence submitted by the PARTIES in the arbitration, as he may have reservations on making a decision which would contradict his aforementioned public statement. In other words, there is a significant risk that Bob Orange will be influenced by factors other than what the PARTIES submit in respect to the case.

57 Hence, since there are circumstances where a reasonable third party would come to the conclusion that Bob Orange may be influenced by factors other than what the PARTIES submit in respect to the case in reaching his conclusion, the situation has produced circumstances where justifiable doubts exist as to his impartiality. Thus, this fulfills requirement (i).

＜Requirement (ii)＞

58 In this case, the reasons to remove Bob Orange became known after his appointment.

59 His speech at the conference was scheduled before his appointment, but only took place after his appointment (¶33), and this speech was the first time he made his opinion on force majeure and geomagnetic storms known in public (¶33), thus fulfilling requirement (ii).

＜Requirement (iii)＞

60 In this case, after hearing the comments by Bob Orange, BLUE's counsel promptly submitted a notice for his removal as an arbitrator in accordance with UNCITRAL (¶34), thus fulfilling requirement (iii).