

**ICC AUSTRALIA**  
**ASIA-PACIFIC**  
**COMMERCIAL MEDIATION COMPETITION**  
**COMPETITION RULES**

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## RULE 0.0 DEFINITIONS

The following terms have the corresponding meanings:

“BATNA” refers to the Best Alternative to a Negotiated Agreement, and refers to the best thing a Party can do, without the consent of the other Party, if the Parties fail to reach an agreement.

“Break” refers to a 3-minute period of time that can be requested once by each Competing Team in each Mediation Session and during which the overall time of the Mediation Session continues to run.

“Brief Biography” refers to a Team member’s written biography and includes his/her nationality, native language, and a picture. The Brief Biography can have a maximum of 60 words.

“Caucus” refers to a separate meeting between the Mediator and a Competing Team. During the caucus the overall time of the Mediation Session continues to run.

“Centre” refers to the ICC International Centre for ADR which is a separate entity from the ICC Court of Arbitration and its Secretariat and oversees the application of the Rules relating to mediation, experts, dispute boards and DOCDEX.

“Coach” refers to the one or two person(s) selected by a Team or the Team’s university to act as that Team’s coach(es). Coaches are permitted to accompany the Team to the Competition.

“Competing Team” refers to the two students from one Team competing in one specific Mediation Session in the roles of Counsel and Client.

“Competition” refers to the 2018 ICC Asia-Pacific Commercial Mediation Competition.

“Confidential Information” refers to the background factual information of the Problem for the exclusive use of a Party and the Judges but not the Mediator.

“Counsel” and “Client” refer to the roles taken respectively by two members of a Team during each Mediation Session; together they are referred to as a Competing Team or as a Party.

“Cross-Caucus” refers to a separate meeting between the Mediator and both Counsels *or* a separate meeting between the Mediator and both Clients of the Competing Teams.

“Competition Problems Working Group” refers to the group, selected by the Organizing Committee, in charge of drafting the Problems for the Competition.

“Eligible Student” refers to a person who meets the criteria defined in Rule 5.2.

“Final Rounds” refers to the Preliminary Final and the Final, in which the winner of each Mediation Session progresses to the following round.

“General Information” refers to the background factual information of the Problem for the use by each Party, the Judges, and the Mediator.

“ICC” refers to the International Chamber of Commerce headquartered in Paris.

“ICC Mediation Rules” refer to the Mediation Rules of the ICC in force since 1 January 2014. A copy of the ICC Mediation Rules can be found on <http://www.iccwbo.org/products-and-services/arbitration-and-adr/mediation/rules/>.

“Judge” refers to a Professional selected by the Organizing Committee who evaluates and scores the Teams’ performance during a Mediation Session in accordance with the Judging Criteria.

“Judging Criteria” refer to the criteria set out on the Score Sheet.

“Law Student” refers to an Eligible Student studying law.

“Mediation” refers to the timeframe of 85 minutes for the actual mediation between the two Competing Teams as described in Rule 2.1.

“Mediation Plan” refers to each Team’s written case analysis referred to in Rule 3.0.

“Mediation Plan Score Sheet” refers to the document in accordance with the sample set out in Annex I.D.

“Mediation Session” refers to the timeframe of 150 minutes (Preliminary Rounds) or 135 minutes (Final Rounds) as described in Rule 2.1

“Mediation Session Supervisor” refers to a person appointed by the Organizing Committee to keep time during a Mediation Session and make sure the Rules are followed.

“Mediator” refers to a professional mediator selected by the Organizing Committee to take on the role of mediator during a Mediation.

“Observer” refers to any individual attending a Mediation Session without having an active role in it.

“Organizing Committee” refers to a group of staff of ICC Australia which is in charge of organizing and managing the Competition.

“Penalty(ies)” refers to points deducted for any violation of the Rules pursuant to Rule 8.0.

“Preliminary Rounds” refer to the first phase of the Competition, in which teams are selected for the Final Rounds on the number of wins and the number of points according to Rule 2.15 .

“Problem” refers to an official international commercial dispute case distributed by the Organizing Committee, as supplemented or corrected by any Problem Clarifications, which Teams will attempt to resolve with the help of the Mediator during the Mediation.

“Problem Clarifications” refer to the official clarifications or corrections of the Competition Problems, as published pursuant to Rule 4.2.

“Problem-Solving Approach” refers to an approach to mediation in which participants ascertain each other’s interests, brainstorm options and seek to create a solution that better meets their interests and needs than their BATNA.

“Professional” refers to an appropriately qualified and experienced volunteer who is selected by the Organizing Committee to act as Mediator and/or Judge in the Competition.

“Prohibited Assistance” refers to advice, instructions, or other communication to a Team that is not in compliance with Rule 2.9.

“Requesting Party” and “Responding Party” refer to the Competing Team which argues on behalf of the Party requesting the mediation and the Party responding to the request for mediation at any given point in the Competition.

“Rules” refer to the Competition Rules.

“Score Sheet” refers to the document in accordance with the sample set out in Annex I.A and Annex I.B.

“Special Award Score Sheet” refers to the document in accordance with the sample set out in Annex I.C.

“Team” refers to a group of 2 to 4 Eligible Students representing one or two universities accepted by the Organizing Committee to participate in the Competition.

“Visitor” refers to any individual who does not have any active role in the Competition and has been exceptionally authorized by the Organizing Committee to attend the Competition and/or a Mediation Session.

“Volunteer” refers to an individual who has been accepted to attend the Competition to perform a specific role, as Professional, Mediation Session Supervisor or any other logistical duty deemed necessary by the Organizing Committee.

## **RULE 1.0 ORGANIZATION OF THE COMPETITION**

### ***Rule 1.1 Introduction***

The Competition is an educational event that seeks to encourage the effective use of mediation and the open exchange of ideas, experience and know-how between students and Professionals from different countries, cultures, generations and backgrounds.

ICC has over 90 years of experience in devising rules to govern and facilitate the conduct of international business. These rules include those designed to resolve the conflicts that inevitably arise in business relations. ICC offers a wide range of dispute resolution rules for business disputes, including the ICC Rules of Arbitration, the ICC Mediation Rules, the ICC Expert Rules, and the ICC Dispute Board Rules. Details about the dispute resolution services offered by ICC can be found at [www.iccadr.org](http://www.iccadr.org).

The ICC Mediation Rules govern all proceedings in which the parties wish to settle their dispute amicably. Pursuant to the ICC Mediation Rules, the parties are free to choose a settlement procedure other than mediation if they wish to do so. However, should they not agree on a different settlement procedure, mediation will be used. All Mediation Sessions during the Competition are conducted pursuant to the ICC Mediation Rules.

**The Competition assumes that the Parties did not agree on another settlement procedure under the ICC Mediation Rules and accordingly mediation is used.**

The focus of the Competition is to effectively combine the use of the Mediator and collaborative problem-solving skills to successfully present the Parties' interests and progress towards resolution. It is ICC's hope that the Competition will encourage the teaching and learning of an effective use of mediation. ICC wishes to empower tomorrow's business people and legal practitioners better to meet the dispute resolution needs of an increasingly cross-cultural and global market.

### ***Rule 1.2 Language***

The official and only language of the Competition is English.

### ***Rule 1.3 Format***

A Mediation Session will consist of the Mediator and two Competing Teams, with two Team members (Client and Counsel) on each side representing respectively the Requesting Party and the Responding

Party. Additionally, Judges will be present in order to evaluate the teams' performance. There will be two Judges during the Preliminary Rounds, two Judges during the Preliminary Finals, and five Judges during the Final.

Each university may nominate two to four Eligible Students to participate on a Team. Each Team can be accompanied by a maximum of two Coaches.

## **RULE 2.0    MEDIATION SESSION PROCEDURES**

### ***Rule 2.1    General Procedures***

In advance of the Competition, the Organizing Committee will randomly assign Teams for the Preliminary Rounds (as Requesting Party or Responding Party). Every attempt will be made so that no two Teams will compete against each other more than once during the Preliminary Rounds.

In every Mediation, each Team will be represented by two students, with one (who must be a Law Student) taking the role of Counsel and the other taking the role of Client. These two students form the Competing Team for that Mediation Session. The students in each Team are to determine amongst themselves who will take which role and they may switch roles from one Mediation Session to the next. The role of Counsel must however always be taken by a Law Student.

*Violation of this rule may result in a penalty according to Rule 8.0.*

#### **RULE 2.1.1 TIMING**

There are two timing systems as illustrated in the tables below:

#### **Preliminary Rounds**

<b><u>Total Time for Mediation Session</u></b>	<b>= 150 min (2 hrs and 30 min)</b>
Time to settle in the room	= 5 min (2 hrs 25 min remaining)
Time for Judges to read and score Mediation Plans	= 15 min (2 hrs 10 min remaining)
Mediation	= 85 min (45 min remaining)
Scoring	= 15 min (30 min remaining)
*Feedback	= 30 min (0 min remaining)

\*Feedback: Twenty minutes of feedback for the Judges and ten minutes for the Mediator.

#### **Final Rounds**

<b><u>Total Time for Mediation Session</u></b>	<b>= 135 min (2 hrs and 15 min)</b>
Time to settle in the room	= 5 min (2 hrs 10 min remaining)
Mediation	= 85 min (45 min remaining)
Scoring	= 15 min (30 min remaining)
*Feedback	= 30 min (0 min remaining)

\*Feedback: Twenty minutes of feedback for the Judges and ten minutes for the Mediator.

The overall time allowance of 85 minutes for the Mediation continues to run during any Caucus or Break.

### **RULE 2.1.2 BREAKS**

Each Competing Team may take one Break of no more than three minutes during the Mediation. If a Competing Team calls for a Break, both Competing Teams together with the Mediation Session Supervisor must leave the room during such Break. Coaches, other members of the Teams not participating orally in the Mediation Session, and all other persons must remain inside the room.

Silence is to be observed by people staying in the room, including the judges.

**Failure to observe this Rule may result in a Penalty, as stated in Rule 8.0.**

### **RULE 2.1.3 CAUCUSES**

Caucuses between the mediator and the parties and/or their advisors can be helpful in mediation.

During each Mediation Session the Mediator and the Competing Teams have the right to call for Caucuses in accordance with the following provisions:

- Each Caucus may last no longer than five minutes;
- During any Caucus the Mediation Session Supervisor and the Competing Team or (in the case of a Cross-Caucus) the members of the Competing Teams not part of the Caucus shall leave the room. The Judges, Coaches, other Team members, and all observers will remain in the room;
- Caucuses can take place between the Mediator and both members of a Competing Team (a Caucus);
- Caucuses can also take place between the Mediator and either the Counsel from both Competing Teams or the Clients from both Competing Teams (a Cross-Caucus);

- Each Competing Team has the right to call for one Caucus and for one Cross-Caucus during a Mediation;
- The Mediator may call for one Caucus with each of the Competing Teams during a Mediation;
- The Mediator may call for one Cross-Caucus with the Counsel from each Competing Team and one Cross-Caucus with the Clients from each Competing Team during a Mediation;
- Competing Team members who are not participating in a Caucus may talk to each other outside the room during a Caucus.

Summary table of the possible caucuses and breaks				
CAUCUSES				
	Team A	Team B	Duration	Who leaves the room
Caucus requested by Team	1	1	5 min	the Mediation Session Supervisor and the members of the other Competing Team
Caucus requested by Mediator	1	1	5 min	
CROSS CAUCUSES				
	Both Counsel	Both Clients		
Cross-Caucus requested by Team A	1		5 min	the Mediation Session Supervisor and the members of both Competing Teams not part of the Cross-Caucus
Cross-Caucus requested by Team B	1		5 min	
Cross-Caucus requested by Mediator	1	1	5 min	
BREAKS				
Break requested by a Team	1	1	3 min	both Competing Teams together with the Mediation Session Supervisor

#### **RULE 2.1.4 APPROPRIATE USE OF CAUCUSES**

Caucuses can be a useful tool in mediation under specific circumstances. Competing Teams should call for a Caucus when they consider they need input from the Mediator during a Caucus to progress the Mediation. However, students are strongly encouraged to spend the majority of the Mediation in joint session in order to be able to communicate directly with the other Party. A Competing Team's reasonable use and non-use of Caucuses will be evaluated. Often the decision not to call for a Caucus might be more sensible within the circumstances of the specific Mediation than to call for a Caucus.

A Caucus should not be used to seek clarification of the Competition Rules or any procedural matter. Examples of the appropriate use of a Caucus are when a Competing Team:

- Wishes to clarify an issue or issues within the Problem or otherwise seek advice or guidance from the Mediator;
- Wishes to share with the Mediator facts, concerns, interests, or information that are or might be relevant to the progress of the Mediation to determine how and when it might be best to present such facts or information to the other Competing Team;
- Wants to explore or make an offer/proposal and/or explore with the Mediator how best to present the offer/proposal within the Mediation.

#### ***Rule 2.2 Judging Criteria***

The Judging Criteria are applied to the performance of both the Counsel and Client in the Competing Team and are set out in the Score Sheet annexed to the Competition Rules. There is no requirement or reward for reaching a resolution or a settlement.

#### ***Rule 2.3 Mediators and Judges***

In each Mediation Session one Professional will serve as the Mediator and two Professionals will serve as the Judge during the Preliminary Rounds. The Judges will evaluate and score the performance of the Teams according to the Judging Criteria.

The Organizing Committee is responsible for selecting the Mediators and Judges and for allocating them to Mediation Sessions in each round of the Competition. Every attempt will be made for the Teams to face a different Mediator and different Judges in each round; however, due to limited availabilities this might not always be possible.

The Organizing Committee will make its best efforts to ensure that the Mediators and Judges are neutral, independent, and impartial towards the Teams they are judging.

### ***Rule 2.4 Timekeeping***

Responsibility for timekeeping rests with the Mediation Session Supervisor during the Mediation Sessions. The Mediation Session Supervisor's decision on timekeeping is final.

If no Mediation Session Supervisor is available for a Mediation Session, the Judges are in charge of timekeeping.

Failure to adhere to time limits may result in a Penalty, as stated in Rule 8.0.

### ***Rule 2.5 Governing Law***

The Problems may refer to real or fictional places. However, and unless a Problem explicitly indicates otherwise, for purposes of the Competition it is assumed that there is no governing law and that the jurisdiction applies general principles of uniform international commercial law.

### ***Rule 2.6 Handout***

Teams may present during each Mediation only **one** handout, limited to one A4 sheet of paper (one-sided), which can include any kind of content (pictures, diagrams, graphic representations, drawings, text or other). Copies of this handout shall be given to the Mediator and the Judges when first produced by a Competing Team. Competing Teams are permitted to write on this handout during the course of the Mediation. Competing Teams are prohibited from using for general presentation or presentation to the Mediator any other objects, handouts, exhibits or papers prepared in advance including video, computers, or other technology and displays.

Failure to observe this Rule may result in a Penalty, as stated in Rule 8.0.

### ***Rule 2.7 Admitted Material during the Mediation Session***

For the Mediation Session each Competing Team can bring and use its own prepared notes for its own use and can, if need be, make its own notes during the Mediation Session. All notes must be written on paper. Each Competing Team can also bring and use a calculator and a watch (or equivalent: stopwatch, timer, etc.) if it wishes to do so.

Use of any other electronic devices, such as mobile phones of any type or any other electronic devices, such as tablets, laptops, etc. and in particular any artefact capable of recording information is not permitted in the room where the Mediation Session takes place. Photographing during the Mediation Session is also forbidden. This applies to Teams, Coaches, Professionals, Observers and Visitors.

Only Judges and the Mediator having an active role in the session and the Organizing Committee (which may engage an official photographer) constitute an exception to this Rule, to the extent that is necessary for performing their duties for the Competition.

### ***Rule 2.8 Permissible Assistance to Teams***

The Coach(es) may advise and assist their Team in its planning and preparation for the Competition, including in advance of the Final Rounds.

### ***Rule 2.9 Prohibited Assistance***

No person associated with a Competing Team, including the Coach(es), may give advice, assistance or instructions to, or communicate or attempt to communicate with any of the participants, and in particular with the two students forming the Competing Team, in any way, during the Mediation. **Violation of this Rule, regardless of the substance thereof, and regardless of whether initiated by a participant or by any other person, may result in disqualification from the Competition of the whole Team with which the person is associated, as stated in Rule 8.0.** Harmless error will not be a defence to a complaint based on violation of this Rule.

### ***Rule 2.10 Observing***

(a) Any person who is not a Team member, Coach, Mediator or Judge will not be permitted to attend the Competition including Mediation Sessions, unless specifically invited by the Organizing Committee.

(b) The Organizing Committee has total discretion in deciding whether a Volunteer or a Visitor can be accepted to the Competition or in a specific Mediation Session, and in taking the necessary actions to ensure all participants act in a fair and unbiased way during the Competition. To this end, Volunteers and Visitors will be asked to sign a statement of independence from the Competing Teams ahead of the Competition.

(c) If space allows, during the Preliminary Rounds, Teams and Coaches may attend only the Mediation Sessions in which their Team is competing. Attending any other Mediation Session in the Preliminary Rounds is strictly forbidden. (d) Any person associated with a Competing Team, including the Coach(es) should choose seats, space allowing, from which they cannot be seen by the Competing Team associated to them. The Mediation Session Supervisor will make sure this rule is observed and will have the final word on whether the seats chosen are acceptable or not.

(e) During the Final Rounds, if space allows, the Teams and their Coaches which have not qualified for the Final Round in question may attend all Mediation Sessions in that Final Round unless otherwise prohibited by the Organizing Committee (which will organize access to the Mediation Sessions).

(f) Teams and Coaches which qualified for the Final Round in question may only attend the Mediation Session in which their Team is competing, to the exclusion of any other in that Final Round.

(g) The Organizing Committee ensures, as a minimum, that all the rooms in which the Mediation Sessions are scheduled have sufficient capacity to host the two Competing Teams, the Judges, the Mediator and the Mediation Session Supervisor.

h) The Organizing Committee will make every effort to ensure that the rooms can also host the other members of the two Teams competing as well as their Coaches, although this may not be possible at all times. If this is the case, the following order of priority is suggested, but the Teams may ultimately chose in their own discretion which Team member(s) and/or Coach(es) will attend the session, as long as parity between the two Teams competing is respected:

1. Coaches
2. Other student members of the Team who are not competing.

(i) In case of limited space in the room, the Coaches and other members of the Team competing in that session have the priority on any other person, for example, over any Observer or Visitor who may want to attend.

(j) Coaches, Team members, Volunteers and Visitors will not be allowed to leave the room whilst the Mediation Session is in progress.

(k) Audio or video recording is strictly forbidden during the Mediation Session by any one attending such session.

(l) Failure to comply with this Rule may result in a disqualification as defined under Rule 8.0.

### ***Rule 2.11 Judges' Scoring***

At the beginning of the Mediation Session in the Preliminary Rounds, the Judges will be granted fifteen minutes to read and score the Competing Teams' Mediation Plans by using the Mediation Plan Score Sheet.

Only the Judges, the Mediator, and the Mediation Session Supervisor are allowed to stay in the room while the Judges carry out such reading and scoring: **everyone else must leave.**

Following the Mediation, the Teams, Coaches, and Observers shall leave the room and the Judges will score the performance of each Competing Team in accordance with the instructions set out in Annex IV by completing the Mediation Score Sheet.

During the Preliminary Rounds, Judges shall also decide whether to nominate the Competing Teams for one or more Special Awards by completing the Special Award Score Sheet.

The Mediation Session Supervisor and the Mediator may remain in the room with the Judges while they are scoring.

Thereafter, the Teams, Coaches, and observers will be invited to re-enter the room.

### ***Rule 2.12 Judges' and Mediators' Feedback***

Each of the Judges will then provide feedback to each Competing Team, for no more than 10 minutes each in the preliminary Rounds and no more than 7 minutes each in the Final Rounds. Feedback will be based on each Competing Team's performance in the Mediation.

The Judge's feedback must be **consistent** with the **Judges' feedback guidelines** in Annex IV.C.

Judges must not reveal to any Team the results of their individual determinations and any Team's scores. During their feedback, Judges may refer to the Confidential Information relating to the problem that was discussed during the Mediation to the extent that such Confidential Information was disclosed by the Competing Teams.

If a Judge decides to recommend the application of a Penalty upon a Competing Team, he or she should inform the concerned Competing Team accordingly during the feedback. The Judge should explicitly indicate the Rule violated but shall not indicate the number of points subtracted.

After the Judges' feedback, the Mediator has 10 minutes to provide feedback to the Competing Teams.

For more detail on feedback procedures, please see Annex III.E and Annex IV.C.

### ***Rule 2.13 Communication between Participants***

The Competition is an educational event that seeks to encourage the open exchange of ideas, experience and know-how between students and Professionals from different cultures, generations and backgrounds.

Accordingly, exchange and dialogue between Judges and Mediators with Teams outside the Mediation is permitted and indeed encouraged (including regarding the Mediation Plans), subject always to the third paragraph of Rule 2.12, and to the principles of independence, impartiality and neutrality.

Professionals are invited to share their insights with students about a particular Mediation Session or their practice in general.

Nevertheless, Professionals are under a duty of confidentiality and must not reveal to any Team its or any other Teams' scores for a particular Mediation Session or the content of any Confidential Information, with the only exception of references to the Confidential Information during their feedback, in accordance with the third paragraph of Rule 2.12.

Teams are also under a duty of confidentiality and must not reveal the Confidential Information outside the Mediation.

During the Mediation, only the two Competing Teams, the Mediator, the Mediation Session Supervisor and a member of the Organizing Committee (if any) are allowed to speak, whereas anybody else present in the room must observe silence.

### ***Rule 2.14 Winning the Preliminary Rounds***

The Team with the greatest number of points will be the winner of that round in the Preliminary Rounds.

### ***Rule 2.15 Ranking of Teams***

Teams will be ranked and selected for the Final Rounds based on the following criteria, in decreasing order of importance:

- total number of Score Sheets designating a “Win”;
- total number of overall points;
- lowest total of the differentials between the number of points scored in each Mediation Session.

### ***Rule 2.16 Scores and Ranking Provided to the Teams***

After the end of the Competition, each Team shall receive its Score Sheets and the ranking of the top 8 Teams after the Preliminary Rounds will be published on the Competition website. Teams may also ask the Organizing Committee for their individual ranking by email.

## **RULE 3.0 MEDIATION PLAN GUIDELINES**

Each Team shall provide a Mediation Plan for each Mediation Session in which it competes during the Preliminary Rounds, according to the Instructions for Participants in Annex II.C.

The Mediation Plan must clearly indicate the name of the Team’s university as well as the names of each of the members of the Team. The Brief Biographies of each Team member must be attached to the Mediation Plan.

Mediation Plans should contain a case analysis evaluating the respective strategic strong points and weak points of the Requesting Party and the Responding Party, their respective needs and interests, their respective BATNAs, and their respective objectives and goals during the Mediation.

The Mediation Plan must be no more than 2 pages in 12-point, Arial font, 1.5 spacing and will not be accepted by the Organizing Committee if it does not comply with this.

For further guidance, please see “Instructions for Participants” (Annex II).

### ***Rule 3.1 Submission of Mediation Plans for Scoring***

The Mediation Plans for all Preliminary Rounds' Problems must be submitted to the Organizing Committee by email to [mediationcompetition@australianchamber.com.au](mailto:mediationcompetition@australianchamber.com.au) at the latest on **16 July 2018**. Mediation Plans for the Preliminary Rounds will not be accepted after this date.

Teams will not be permitted to modify their Mediation Plans after submission to the Organizing Committee.

### ***Rule 3.2 Submission of Mediation Plans for the Judges***

Each Competing Team must submit two copies of its Mediation Plan to the Mediation Session Supervisor at the beginning of each Mediation Session during the Preliminary Rounds. The Mediation Session Supervisor is in charge of submitting the Mediation Plans to the Judges.

The Team not submitting the Mediation Plan will fail to obtain any points for the Mediation plan, pursuant to the Score Sheet (Annex I.A).

During the Competition, the Organizing Committee does not provide printing or copying facilities.

### ***Rule 3.3 Scoring of the Mediation Plans***

The Mediation Plans will be scored by the Judges at the beginning of the Mediation Session during the Preliminary Rounds. The score received for a Mediation Plan will count towards that Team's overall score in the specific Mediation Session for a maximum of four points. The Mediation Plans will be scored on the basis of the Mediation Plan Score Sheet as provided in Annex I.D.

## **RULE 4.0 COMPETITION PROBLEMS**

### ***Rule 4.1 Problems***

Each Problem will consist of General Information for all Parties and Confidential Information for each of the Requesting Party and the Responding Party, respectively.

Judges shall receive copies of the General Information and the Confidential Information for each Party and shall read these prior to any Mediation Sessions. Mediators shall receive the copies of the General

Information and shall read this only. For logistical reasons, Mediators might also receive copies of the Confidential Information but they shall not read them.

Five Problems will be sent to all Teams before the start of the Competition. All Teams will receive General and Confidential Information for the Preliminary Rounds in advance. General Information for the Finals will also be sent in advance. However, Confidential Information and assignment of roles for each of the Final Rounds will be provided respectively at the end of the Preliminary Rounds and Preliminary Final.

Teams, Coaches, Professionals, members of the Organizing Committee and anyone else who knows the Confidential Information may not directly or indirectly disclose any Confidential Information to any other person, save that disclosure by Teams during a Mediation and comments on such disclosures by Judges during their feedback are permitted, in accordance with the third paragraph of Rule 2.12.

**Non-compliance with this Rule by a person associated with a Team may lead to disqualification of the Team concerned in accordance with Rule 8.0.**

#### ***Rule 4.2 Clarifications and Interpretation of the Problems***

Every effort will be made to ensure that Problems are clear. Clarifications can be sought by contacting [mediationcompetition@australianchamber.com.au](mailto:mediationcompetition@australianchamber.com.au).

Clarifications can be requested only for ambiguity or possible errors, not to request additional information, as the Problems are self-contained.

These questions shall relate only to the Problems: the Organizing Committee will have complete discretion in answering them.

#### ***Rule 4.3 Staying within the Record***

The Problems are self-contained and include all relevant facts. Teams may not misrepresent facts nor create new facts. However, the facts of the Problems are subject to reasonable interpretation and Teams may draw reasonable conclusions from them.

Teams are discouraged from carrying out research. If, however, they nevertheless decide to do so, any information presented should be limited to the strict minimum necessary to advance the Mediation and to find creative solutions to the Problem, whilst staying within the Problem's record.

Whether a Team's interpretation made and conclusions drawn are reasonable and whether information presented by a Team respects the previous paragraph of this Rule 4.3 is a matter entirely within the discretion of the Judges.

Failure to stay within the record may result in a Penalty in accordance with Rule 8.0.

## RULE 5.0 PARTICIPATION AND ELIGIBILITY

### *Rule 5.1 Participating universities*

- a) The Organizing Committee accepts applications only from universities.
- b) Any university in the Asia-Pacific region may apply.
- c) Each Team must consist of a minimum of two and a maximum of four students.
- d) Each university can choose in its total discretion which students to select to be part of the Team that is going to represent it, as long as the selected students are all eligible, according to Rule 5.2.
- e) Only a Law Student may take the role of Counsel. Accordingly, at least one member of each Team must be a Law Student.
- f) Two universities may apply together to bring one joint Team to the Competition.

### *Rule 5.2 Eligible Students*

- (a) The Competition is open to all full-time and part-time students (excluding post-graduate doctorate students) registered in a university during the academic period during which the Competition is held.
- (b) Team members do not have to be of the same nationality as that of their universities.
- (c) In order to enable as many Eligible Students as possible to participate in the Competition each year, **each student is entitled to participate in the Competition only once.**

#### Special provision regarding Law Students:

Persons who are entitled to practice law in any jurisdiction, by having passed a bar exam or otherwise, are NOT Eligible Students. However, students who have gained their qualification to practice law **automatically** with the completion of their **undergraduate** law studies (i.e. without a further bar exam or

similar) and who certify that they have not yet practised as a lawyer (i.e. provided legal advice to clients) are Eligible Students provided they are currently registered in a law school.

**Any Team that breaches this Rule 5.2 will be disqualified from the Competition. If only one member of the Team breaches Article 5.2(a) or 5.2(c), it is in the discretion of the Organizing Committee to disqualify the whole Team or only that member. If the Team is subsequently left with less than two students, the whole Team will be disqualified.**

### ***Rule 5.3 Attendance***

Each Team may be accompanied at the Competition by a maximum of two Coaches. Additional persons and students who are not members of a Team may NOT accompany a Team to the Competition.

It is in the discretion of the Organizing Committee to disqualify the whole Team, should Rule 5.2 not be followed.

## **RULE 6.0 TEAM APPLICATION AND REGISTRATION GUIDELINES**

### ***Rule 6.1 Application Process***

Each university wishing to participate must apply online on the Australian Chamber website ([2018 Asia-Pacific Commercial Mediation Competition | University Teams page](#)) within the application period which ends 30 April 2018.

The Organizing Committee will inform teams of their acceptance or non-acceptance, in accordance with the schedule published online.

Subsequently, each university that has been accepted must provide the Organizing Committee (within the time limit indicated) with the names, contact details, and Brief Biography of each Team member. A template will be made available by the Organizing Committee.

When applying, each university must declare that the Rules have been read and understood by each of its Team members. When submitting the details of the Team members, each Team must declare that all Team members are eligible under Rule 5.2 and, if need be, have a passport and visa valid for travel to the Competition.

### ***Rule 6.2 Selection Criteria***

The Organizing Committee will decide in its discretion which universities are accepted to participate in the Competition.

The Organizing Committee will select universities based on the following criteria in no particular order:

- preference will be given to universities who have an alternative dispute resolution curriculum (special focus on mediation is an advantage);
- performance in previous ICC Mediation Competitions (if applicable);
- representation of cultural and regional diversity amongst the selected universities.

In the event that the above selection criteria are insufficient to make a selection between two universities, the Organizing Committee will make a selection in its absolute discretion.

### ***Rule 6.3 Registration Fee***

Upon acceptance of the Team by the Organizing Committee, each university must pay the full registration fee within the time limit as indicated by the Organizing Committee. 50% of the registration fee will be refunded if notice of cancellation is received in writing before 14 May 2018. No refund will be made for cancellations received after this date.

Please note that ICC Australia reserves the right to cancel this event or to make minor alterations to the content and timing of the programme. In the unlikely event of cancellation, paying participants will be offered a full refund. ICC Australia will not, however, be held responsible for any related expense incurred by the participants.

**Non-payment of the Registration Fee within the time limit communicated by the Organizing Committee may lead to disqualification in accordance with Rule 8.0.**

### ***Rule 6.4 Team Contact***

Each Team must designate to the Organizing Committee a Team Contact. Notice to the Team Contact constitutes notice to all Team members.

## RULE 7.0 JUDGES AND MEDIATORS

### *Rule 7.1 Application and Selection*

Trained and experienced mediators or mediation trainers from all around the world are invited to apply to participate as volunteer mediators and judges in the Competition.

Such volunteers will serve as Mediators in the Mediation Sessions or as Judges, who evaluate and score the Participating Students' performance.

An online application system will be put in place by the Organizing Committee to receive applications. Details on the application process and the deadlines will be published on the Australian Chamber website ([2018 Asia-Pacific Commercial Mediation Competition| Professional Volunteers page](#)).

ICC Australia will select in its absolute discretion the Professionals to participate in the 2018 Competition.

The Organizing Committee will select Professionals based on the following criteria (in no particular order):

- mediation qualification
- mediation accreditation
- experience in commercial mediation
- other relevant dispute resolution experience and professional background
- availability
- English skills
- cross-cultural experience
- experience in conducting mediation and ADR trainings.

### *Rule 7.2 Statement of Independence*

Once selected, all Judges and Mediators shall provide to the Organizing Committee a Statement of Independence declaring his/her neutrality, impartiality, and independence to judge and/ or mediate any of

the Teams in the Competition and disclosing any relationships with any Team's university, a Team member, a Coach or a person affiliated with a Team.

The Organizing Committee can disqualify a Judge from judging or a Mediator from mediating a round if the Organizing Committee considers that she or he has a relationship with a Team member and/or any Team's university, a Coach or a person affiliated with a Team which affects his/her actual or apparent neutrality, impartiality and independence.

### ***Rule 7.3 Coaches***

Judges and Mediators may train Teams without a Coach in preparing for the Competition, if the following restrictions are respected:

Such training:

- can take place only before the Competition commences and not during the Competition;
- cannot in any way relate to current Competition Problems;
- automatically disqualifies a Professional from judging or mediating that Team in the Competition.

### ***Rule 7.4 Confidential Information***

Judges and Mediators must keep the contents of the Confidential Information strictly secret from Teams, apart from the disclosure allowed during the feedback in accordance with the third paragraph of Rule 2.12. Professionals should be aware that disclosure of Confidential Information to a Team may result in the disqualification of the whole Team pursuant to Rule 8.0.

## **RULE 8.0 PENALTIES AND DISQUALIFICATION**

If a violation of the Rules is considered to have been committed by a Team or one of its members, the Organizing Committee may in its own absolute discretion, upon its own initiative or a recommendation from one or more Judges, as the case may be, impose a Penalty or disqualify a member of a Team or a whole Team.

A maximum three point reduction may be imposed for any violation of any of Rules 2.1, 2.4, 2.6, 2.7 or 4.3.

Disqualification from the Competition may be imposed for any violation of any of Rules 2.7, 2.9, 2.10, 4.1, 5.3, or 7.4.

Disqualification will be imposed for any violation of Rule 5.2 or 6.3.

Breach of no other Rule will result in a Penalty or Disqualification.

## **RULE 9.0 AWARDS**

The Organizing Committee shall make arrangements for appropriate recognition of Teams that achieve 1<sup>st</sup> Place, 2<sup>nd</sup> Place, and Runner-up positions.

Other awards may be presented at the discretion of ICC Australia.

Furthermore, after the Competition, the Organizing Committee will issue a formal Certificate of Participation in the Competition (save in the case of disqualification) to all Team members.

## **RULE 10.0 ICC AUSTRALIA ORGANIZING COMMITTEE**

### ***Rule 10.1 Power to Take Additional Measures***

The Organizing Committee may take such other measures as are required for the orderly conduct of the Competition.

### ***Rule 10.2 Interpretation of Rules***

The Organizing Committee's interpretation as to the implementation of the Rules is final and conclusive.

## ANNEX I. Score Sheets

### A. Mediation Score Sheet – Preliminary Rounds

Your full name \_\_\_\_\_

Name of Competing Team \_\_\_\_\_

*Mark the appropriate round by checking the box with X*

#### Preliminary Rounds

Friday, 27 July     Morning     Midday     Afternoon

Saturday, 28 July     Morning     Midday     Afternoon

### Total Points

*Please make sure to mark all three sections:*

1. Mediation Plan

2. Mediation Session

3. Special

(for Preliminary Rounds only)

Award

*Please double check your calculation*

Total Mediation Plan	/ 4
Total Mediation Session	/ 46
Penalty Points	
<b>FINAL SCORE</b>	<b>/ 50</b>

*Please now indicate whether this Competing Team won or lost:*

**Won**

**Lost**

If the Competing Team on this Score Sheet has the higher number of points, this Competing Team has **won**. If the Competing Team on this Score Sheet has the lower number of points, this Competing Team has **lost**. There must be a difference of at least 1 point between the two Competing Teams. Accordingly, you cannot give the same number of points to both Competing Teams.

Signature \_\_\_\_\_

## Mediation Score Sheet – Preliminary Rounds

Please tick one box for each criterion

The Mediation Session: <u>Your Interests</u>	Excellent	Very Good	Good	Satisfactory	Poor
<b>Opening Statement of Your Perspective and Interests</b>  Presentation of events giving rise to the dispute and relevant legal considerations. Conveying your interests. Showing willingness to collaborate.	<input type="checkbox"/> 6 points	<input type="checkbox"/> 4 points	<input type="checkbox"/> 2 points	<input type="checkbox"/> 1 point	<input type="checkbox"/> 0 points
<b>Advancing Your Interests</b>  Ability to advance your business and other interests throughout the Mediation consistent with your Confidential Information, while recognizing the interests of the other Party and without sacrificing your interests. Flexibility in adapting to the unexpected, while still advancing your interests. Awareness, and, where appropriate, assertion of your BATNA.	<input type="checkbox"/> 8 points	<input type="checkbox"/> 6 points	<input type="checkbox"/> 4 points	<input type="checkbox"/> 2 point	<input type="checkbox"/> 0 points
<b>Team Work: Counsel &amp; Client</b>  Working together as a team, effectively communicating with each other, sharing responsibility appropriately and providing mutual backup.	<input type="checkbox"/> 6 points	<input type="checkbox"/> 4 points	<input type="checkbox"/> 2 points	<input type="checkbox"/> 1 point	<input type="checkbox"/> 0 points

Sub – total      \_\_\_\_\_ / 20

## Mediation Score Sheet – Preliminary Rounds

Please tick one box for each criterion

The Mediation Session: <u>Working with the other Party</u>	Excellent	Very Good	Good	Satisfactory	Poor
<b>Information Gathering and Ascertaining the Other Party's Interests</b>  Seeking relevant information and to understand the other Party's interests. Demonstration of active listening skills.	<input type="checkbox"/> 6 points	<input type="checkbox"/> 4 points	<input type="checkbox"/> 2 points	<input type="checkbox"/> 1 point	<input type="checkbox"/> 0 points
<b>Seeking to Collaborate with the Other Party</b>  Taking initiatives to build a problem-solving relationship with the other Party. Making appropriate strategic decisions on what to disclose or not.	<input type="checkbox"/> 6 points	<input type="checkbox"/> 4 points	<input type="checkbox"/> 2 points	<input type="checkbox"/> 1 point	<input type="checkbox"/> 0 points
<b>Working Together to Develop Options</b>  Generation of a range of options designed to meet your own and the other Party's interests, without premature evaluation.	<input type="checkbox"/> 6 points	<input type="checkbox"/> 4 points	<input type="checkbox"/> 2 points	<input type="checkbox"/> 1 point	<input type="checkbox"/> 0 points

The Mediation Session: <u>Working with the Mediator</u>	Excellent	Very Good	Good	Satisfactory	Poor
<b>Making Good Use of the Mediator</b>  Appropriate use of the Mediator's assistance and response to the Mediator's interventions. Generally, working with the Mediator in a constructive way.	<input type="checkbox"/> 8 points	<input type="checkbox"/> 6 points	<input type="checkbox"/> 4 points	<input type="checkbox"/> 2 point	<input type="checkbox"/> 0 points

Sub – total                 / 26

## B. Mediation Score Sheet – Final Rounds

Your full name \_\_\_\_\_

Name of Competing Team \_\_\_\_\_

*Mark the appropriate round by checking the box with X*

### Preliminary Finals

Sunday, 29 July  Morning

### Final

Sunday, 29 July  Afternoon

## Total Points

*Please double check your calculation*

Total Mediation Session	/ 46
Penalty Points	
<b>FINAL SCORE</b>	<b>/ 46</b>

*Please now indicate whether this Competing Team won or lost:*

**Won**       **Lost**

If the Competing Team on this Score Sheet has the higher number of points, this Competing Team has **won**. If the Competing Team on this Score Sheet has the lower number of points, this Competing Team has **lost**. There must be a difference of at least 1 point between the two Competing Teams. Accordingly, you cannot give the same number of points to both Competing Teams.

Signature \_\_\_\_\_

## *Mediation Score Sheet – Final Rounds*

Please tick one box for each criterion

The Mediation Session: <u>Your Interests</u>	Excellent	Very Good	Good	Satisfactory	Poor
<b>Opening Statement of Your Perspective and Interests</b>  Presentation of events giving rise to the dispute and relevant legal considerations. Conveying your interests. Showing willingness to collaborate.	<input type="checkbox"/> 6 points	<input type="checkbox"/> 4 points	<input type="checkbox"/> 2 points	<input type="checkbox"/> 1 point	<input type="checkbox"/> 0 points
<b>Advancing Your Interests</b>  Ability to advance your business and other interests throughout the Mediation consistent with your Confidential Information, while recognizing the interests of the other Party and without sacrificing your interests. Flexibility in adapting to the unexpected, while still advancing your interests. Awareness and assertion of your BATNA where necessary, and where appropriate assertion of your BATNA.	<input type="checkbox"/> 8 points	<input type="checkbox"/> 6 points	<input type="checkbox"/> 4 points	<input type="checkbox"/> 2 point	<input type="checkbox"/> 0 points
<b>Team Work: Counsel &amp; Client</b>  Working together as a team, effectively communicating with each other, sharing responsibility appropriately and providing mutual backup.	<input type="checkbox"/> 6 points	<input type="checkbox"/> 4 points	<input type="checkbox"/> 2 points	<input type="checkbox"/> 1 point	<input type="checkbox"/> 0 points

Sub – total                 / 20

## Mediation Score Sheet – Final Rounds

Please tick one box for each criterion

The Mediation Session: <u>Working with the other Party</u>	Excellent	Very Good	Good	Satisfactory	Poor
<b>Information Gathering and Ascertaining the Other Party's Interests</b>  Seeking relevant information and to understand the other Party's interests. Demonstration of active listening skills.	<input type="checkbox"/> 6 points	<input type="checkbox"/> 4 points	<input type="checkbox"/> 2 points	<input type="checkbox"/> 1 point	<input type="checkbox"/> 0 points
<b>Seeking to Collaborate with the Other Party</b>  Taking initiatives to build a problem-solving relationship with the other Party. Making appropriate strategic decisions on what to disclose or not.	<input type="checkbox"/> 6 points	<input type="checkbox"/> 4 points	<input type="checkbox"/> 2 points	<input type="checkbox"/> 1 point	<input type="checkbox"/> 0 points
<b>Working Together to Develop Options</b>  Generation of a range of options designed to meet your own and the other Party's interests, without premature evaluation.	<input type="checkbox"/> 6 points	<input type="checkbox"/> 4 points	<input type="checkbox"/> 2 points	<input type="checkbox"/> 1 point	<input type="checkbox"/> 0 points

The Mediation Session: <u>Working with the Mediator</u>	Excellent	Very Good	Good	Satisfactory	Poor
<b>Making Good Use of the Mediator</b>  Appropriate use of the Mediator's assistance and response to the Mediator's interventions. Generally, working with the Mediator in a constructive way.	<input type="checkbox"/> 8 points	<input type="checkbox"/> 6 points	<input type="checkbox"/> 4 points	<input type="checkbox"/> 2 point	<input type="checkbox"/> 0 points

Sub – total      \_\_\_\_\_ / 26

### C. Special Award Score Sheet – Preliminary Rounds

You can nominate each Team for a **maximum of three** Special Awards per Mediation during the Preliminary Rounds.

Consequently, please **tick a maximum of three boxes** according to the Special Award and the number of points you wish to distribute. If you tick more than three boxes, the Organizing Committee will only take into consideration the three Special Awards the Team scores highest in or randomly select three boxes.

Your full name \_\_\_\_\_

Name of Competing Team \_\_\_\_\_

	3 points This Team showed excellent skills in this area.	2 points This Team showed very good skills in this area.	1 point This Team showed above average skills in this area.
Best Mediation Plan			
Best Opening Statement of Your Perspective and Interests			
Best Mediation Advocacy Skill: Advancing your Interests			
Best Team Work: Counsel and Client			
Best Acknowledgement of Cultural Differences			
Best Relationship Building with the Other Team			
Best Public Speaker			
Best Creative Solution Generation			
Best Interaction with the Mediator			
Best Team from a University Participating in the Competition for the First Time (reference is a list of first time participating universities identified by the Organizing Committee, see Competition brochure)			



## ***ANNEX II***

### ***Instructions for Participants***

#### ***A. Rules***

Please review carefully the Rules including all Annexes: please prepare well so that you fully understand what is required of you.

#### ***B. Mediator***

Please do remember that the Competition is a mediation one, not a negotiation one, so do use the Mediator.

#### ***C. Mediation Plan***

Pursuant to Rule 3 of the Rules, each Team must provide the Organizing Committee on or before 16 July 2018 with copies of its finalized Mediation Plans for the Preliminary Rounds (with a copy of the Brief Biographies attached). Following submission to the Organizing Committee, Teams will not be permitted to modify their Mediation Plans.

The Mediation Plan is crucial to a Team's preparation for the mediation. In it, a Team sets out its underlying interests, goals and strategies, defines its best alternative to a negotiated agreement (BATNA), and also reflects on the other Party's possible interests and BATNA. In so doing, the Team works closely through the case, and, by putting its ideas down in precise form in writing, the Team makes sure it has a clear understanding of the case and its own stake in it, as well as what might matter to the other Party. The Mediation Plan is seen as a basis for effective preparation rather than a substantive part of the formal Competition scoring, where it scores just 8%. The Mediation Plan is a way for Teams to ensure that they are well prepared and thus improve their performance. Please note that Judges read and score the Mediation Plans before the mediation begins, and the impression these make will influence the way Judges perceive a Team's preparation. A professional, complete, effectively presented and well-formatted Mediation Plan makes a difference.

The Mediation Plan for each Mediation Session during the Preliminary Rounds must be no more than 2 pages in 12-point, Arial font, and 1.5 spacing. It will not be accepted by the Organizing Committee if it does not comply with this format.

Copies of the Mediation Plan (with a copy of the Brief Biographies attached) must be provided by the Teams and handed to the Mediation Session Supervisor at the start of the Mediation Session during the Preliminary Rounds.

Accordingly, students should plan to have two copies of each Mediation Plan (with a copy of the Brief Biographies attached) available at the start of each Mediation Session during the Preliminary Rounds.

The Mediation Plan should contain a brief evaluation under each of the following headings:

1. Mediation Strategy: what is the Team's strategy including its goals, objectives and its likely success for resolving the conflict;
2. Division of responsibilities and tactics between Client and Counsel during the Mediation Session – explain how the Team plans to share responsibilities between Counsel and Client in the Mediation Session – explain why the Team chose the particular responsibility sharing by reference to the Mediation Problem;
3. The Team's underlying interests – describe the interests that the Party plans to advance in the Mediation Session by reference to the Mediation Problem;
4. The Team's BATNA;
5. The other Party's likely underlying interests – describe the likely interests of the other Party by reference to the Mediation Problem;
6. The other Party's likely BATNA – describe the likely BATNA of the other party by reference to the Mediation Problem.

A "strategy" refers to the overall approach taken to achieve a good settlement whereas a "tactic" refers to specific action used to try to achieve or advance the strategy.

### ***D. Feedback Session***

Participants are advised that Judges and Mediators are invited to share their observations and constructive criticism with Competing Teams about their performance in the Mediation during the feedback session.

Judges have been instructed that they are to give feedback in accordance with the Judges' feedback guidelines in Annex IV.C. Under no circumstances will this time be used by a Judge to denigrate a Competing Team.

### ***E. Staying Within The Record***

Rule 4.3 'Staying within the Record' sets out the limit of the additional information which is not included in the Problems that can be used by the Teams during the Mediation.

Indeed, Teams are discouraged from carrying out research as problems are self-contained and as excessive research could distract their attention from the preparation for the actual Mediation. An excessive use of additional information during the Mediation could also be counterproductive for the Teams, and may draw the Teams beyond the scope of the Competition itself.

Nevertheless, doing *some* research of real facts related to the Problems is permitted if it helps the Mediation move forward and the Teams to find a creative solution of the Problem.

As it is very difficult to draw a line between the two scenarios in a set Rule, Judges have entire discretion in evaluating whether the Teams comply with this Rule.

## ***ANNEX III***

### ***Instructions for Mediators***

#### ***A. General Information***

This is a mediation competition, not a negotiation competition. The aim is to demonstrate today's best practice in international commercial mediation, on the part of all Competing Teams in the Mediation, as well as you as Mediator, within the constraints of the Competition, as set out below.

As Mediator in the Competition you perform the valuable role of facilitating the Teams to demonstrate their mediation skills. It is essential that the Mediators participating in the Competition adopt a consistent and uniform approach to the Mediation. With this in mind, please conduct each Mediation using the following guidelines:

1. How you approach your role as Mediator in the Mediation determines the quality of the learning experience that each student will have during the Competition. Your primary goal as a Mediator is to inspire the greatest quality of Team performance during the Competition.
2. Please prepare well so that you fully understand what is required of you.
3. You must read in advance of the Competition the Rules including all Annexes and the General Information (but not the Confidential Information) for each Problem.
4. You must read in advance the Problems, but not the Confidential Information.
5. You must not read the Competing Teams' Mediation Plans.
6. Your Mediator's opening statement should be less than five minutes in duration. For the purpose and content of your opening statement please refer to B below.
7. You should encourage each Competing Team to adopt practical and realistic solutions to Problems, and to take account of financial and/or business considerations.
8. You should encourage Competing Teams to address all important issues during the Mediation and you should discourage them from postponing "difficult" ones to imaginary future sessions.
9. Please note, however, that it is not the aim of a Mediation to settle all issues in dispute but to progress towards acceptable and realistic solutions.

10. As set out in B below, you are requested to adopt a facilitative style during the Mediation, independent of your personal style in real life. Accordingly, you should not:

- suggest specific options for settlement;
- express a view as to who is right and who is wrong;
- be directive.

11. Please remember that the Mediation is short and lasts only 85 minutes. During these 85 minutes the Competing Teams should be encouraged by you to exercise their skills whilst you exercise your skills as Mediator as set out more particularly in B and C below.

12. Caucuses are explained in Rule 2.1.3.

Caucusing is optional for the Competing Teams, and it is important to let the Competing Teams make their own decision as to whether or not to have a Caucus.

Even if you use a no-Caucus model of mediation in your practice or you think that the time chosen to take a Caucus by a Competing Team is not appropriate, please allow each Competing Team to take a Caucus when requested and call for one when you consider it appropriate in accordance with Rule 2.1.3. Each Caucus should last no more than five minutes.

13. You may remain in the room while the Judges score the Mediation Plans during the Preliminary Rounds, and when they score at the end of the Mediation.

14. You should also provide feedback to the students after the Judges' feedback session.

## ***B. Picture of Mediator's Role***

The expectation is that Mediators will – despite personal preferences and styles – have a shared understanding of the commercial mediation model underlying the Competition. For that reason, one can focus on the chronological dynamic, the so-called phase model of mediation (I.) and the individual Mediator roles and connected techniques (II.). Against that background, the collection of possible interventions presented in section D will become better understood.

## ***1. Phase Model of Interest-Based, Facilitative Mediation***

*[Please note that due to the time constraints, the final phases might not be reached in all sessions.]*

### *Phase 1: Establishing Working Atmosphere*

The Mediation usually begins with a short opening stage during which all participants are introduced and the Mediator gives an introduction of the character and elements of the process. In this phase, the Mediator has four principal goals: establishing contact with the participants as well as an overall atmosphere of trust; explaining the process; clarifying Parties' intentions and ability to mediate; and proposing ground rules for the communication between all participants.

### *Phase 2: Fact-Finding/Information Gathering*

The goal of the Mediation at this next phase is to elicit all information necessary to identify the particular issues needing resolution, and the dimensions of those issues. This means identifying all relevant facts, including economic, political, emotional, and other factors involved in each Party's view of the various issues. In the opening statements, each Party is afforded a limited amount of time to present its viewpoint and the main facts and legal arguments on which it is based. The Mediator will usually ask clarifying questions.

### *Phase 3: Working Through Conflict*

The third phase constitutes the heart of the process of interest-based mediation. The essential task is to explore and elicit the interests that will need to be met by any agreement (and which underlie the positions) and information shared by the Parties so far. During this phase, often starting from strongly divergent viewpoints, the Mediator needs to actively support the Parties to recognize and appreciate their own as well as the other Party's interests and perception of the issues.

### *Phase 4: Developing and Evaluating Options*

Once the Parties have ascertained the necessary information and identified their positions and underlying interests, the Mediator can help them to develop options without being taken to be making offers. In doing so, it can prove vital to explore the full range of possibilities. The Mediator needs to counteract the tendency of any Party to seize upon his or her proposal as the only solution.

Often, the Parties discard or hesitate to present valuable options simply because they begin to evaluate in their minds and conclude that an option would ultimately prove unacceptable.

To counter this, it is best if the Parties first collect multiple options without evaluating them.

### Phase 5: Agreement and Closure

When the negotiations have come to an end, through an agreement or otherwise, the mediation has to be wrapped up by the Mediator. A failure to reach an agreement should not be viewed as a failure of the process. In the Competition, the goal is not to reach resolution or settlement of the dispute.

## **2. Mediator Roles**

With the above phases as reference, the following Mediator roles and connected techniques prove relevant. Because the spectrum of suitable Mediator techniques and intervention depends on the personal strategy and character of the Mediator, the following assembly of aspects must be understood as a non-definitive selection.

### ***Process Controller***

Within the interest-based, facilitative mediation model, and subject to the right of the Teams to require a Caucus, the Mediator has full process but no outcome control. He or she establishes the protocol, suggests procedures, controls the timing and structures the agenda.

### ***Communication Facilitator***

In the role as facilitator of communication, the Mediator identifies issues and gathers information, helps to clarify facts, to obtain missing information and thereby helps to determine whether or not available bargaining space exists. He or she can also be supportive in separating negotiable from non-negotiable issues. By developing a framework for exchange and understanding, the Mediator facilitates the elaboration of underlying interests with Parties. Overall, he or she fosters meaningful communication that is conducive to reaching agreement.

### ***Formulator of Interests***

Given the high relevance of interests in mediation, both eliciting and actively reframing these interests is one of the essential and challenging functions a Mediator has.

### ***Facilitator of Cognitive Change***

In the context of cognitive misperception, with the ability of reframing issues, the Mediator can serve as a veritable agent of reality. This role is most important in situations where stalemate is caused more by different or wrong perceptions of the same issues or other psychological factors, rather than by conflicts of interests. A Mediator can help to dissolve psychological distancing, such as stereotyping, scapegoating and partisan perceptions, and ensure that all participants have a more rational perception of the threat or value potential of a given scenario.

### ***Provider of Creative, Problem-Solving Atmosphere***

Another essential role of the Mediator is that of supporting the Parties in generating options as well as providing a basis for selection when it comes to finding an appropriate solution. The application of brainstorming methods, the creation of an atmosphere where it is possible to raise ideas for solving the problem without committing to them, are roles generally attributed to the Mediator. Mediators can actively encourage settlement in many ways including verbal, non-verbal, procedural and environmental methods and styles – all without taking control or decision making away from the parties.

The Mediator actively engages the Parties in discussions as to assets they have that could be of interest to the other Party – even if they may appear to have nothing to do with the case at hand – in order to create value and enrich the resolution process.

### ***Agent of Reality***

It is a key function of the Mediator to test the (sometimes overconfident) assessments and expectations of the Parties without the mediator expressing an opinion.

### ***Impasse Breaking***

The Mediator deals with deadlocks and impasses in an active and transparent fashion, encouraging Parties to talk about the respective backgrounds. If necessary, the Mediator also uses more provocative techniques in order to overcome deadlocks.

### C. *Flowchart Mediation Process*

COMPETITION	FLOWCHART MEDIATION PROCESS
Mediation Plan	Preparation & Case Management
Mediation	1. Opening of the proceeding // Establishing Working Atmosphere
	2. Fact –Finding // Compilation of Information and Issues
	3. Working Through Conflict // Interest Profiling
	4. Developing and Evaluating Options
Not necessarily part of the Competition	Conclusion of the Proceeding // Agreement and Closure
Not part of the Competition	Implementation & Follow-up

### D. *Mediator’s Intervention Sheet*

The expectation is that Mediators will allow the Competing Teams to play the decisive part in the Mediation, but will nevertheless actively support them in doing so. It is therefore important that each Mediator gives plenty of space and time for the Competing Teams to show their own communication and mediation skills, while also intervening meaningfully when this is helpful. Here are some standard mediator interventions with some reflection on their use in the Competition, where Competing Teams often also display these skills.

### ***1. Open questions***

To facilitate agenda setting, further information exchange, understanding of the issues and interests, and to invite a comprehensive discussion of what is important.

*What has brought you to mediation today?*

*Is there anything else?*

*Can you tell me more about how you see this?*

*Before we move on, is there anything else you need to say about this?*

### ***2. Use of a flip-chart***

Parties in the Competition often find it helpful to use a flip-chart to create a visual record of matters such as:

- Agenda-setting
- Brainstorming options
- Details of agreements that have been made

Parties often request the Mediator to do this and it is an appropriate role for the Mediator to undertake unless otherwise agreed between the Mediator and the Parties.

### ***3. Reformulating Positions as Interests***

To facilitate a better understanding of what matters and help the Parties move beyond conflicting positions and towards options for resolution.

*Can you explain why that is important to you?*

*May I ask you to become less specific for a moment and rather talk about the motivation behind what you are actually demanding – what difference would this make to you?*

*Can you say something about the reasons why you are asking for this?*

#### **4. Summarizing**

To facilitate understanding of interests and potential points of difference and agreement, to slow the conversation down, to give the Parties a chance to correct the summary and thus give everyone a better understanding of what matters, to check if there is common understanding of what is being talked about or has been agreed.

*What I understand so far is ...*

*At the moment, it looks like this ...*

*I will just run through the points raised / covered / agreed so far. Please correct me if I get anything wrong or miss anything.*

#### **5. Promoting Empathy**

To facilitate mutual understanding and perspective shift. Often done by the Mediator mirroring or “looping” what one Party has said and their emotions or perspective, and sometimes by an invitation to the Parties to put themselves in the other’s shoes.

*Ok, so you feel ... Is that right?*

*It seems that there are differing perspectives on this. Let's try to summarize the different views.*

*I wonder if you could try to say how you think the other Party feels about this?*

*Can you imagine how the other Party sees this?*

#### **6. Reframing**

To facilitate communication by detoxifying or depersonalizing a statement so that a message can be heard and dialogue can continue.

*If I understand this correctly, you feel that communication from the other Party could have been better?*

*So you would feel that in order to move forward you need some positive sign from the other Party?*

## ***7. Reality Testing***

To facilitate a better understanding of a situation and sometimes to challenge the parties. In the Competition, this may also be in Caucus.

*If you agreed that, would it meet your interests?*

*Do you think this can be done? What are the strengths and weaknesses of the idea?*

*What will you do if you cannot agree on this?*

*What have you got to lose – or to gain – if you reveal that information?*

## ***8. Deeply Honest Questions***

To facilitate a deeper transformative perspective on the conflict. In the Competition this may be suitable for some of the more personally framed problems.

*What did the other Party do that you found hurtful?*

*You feel that what would help here is an apology. Right?*

*Can you imagine the effect this has had on the other Party?*

## ***9. Hypothetical 'What If' Questions***

To facilitate a focus on the future, to test options, to ascertain what really matters.

*What if you woke up tomorrow and everything was resolved? What would the world look like?*

*What if you agreed to this?*

## ***10. Activating Parties' Creativity***

To facilitate thinking outside of the box and the generation of creative options.

*Can we try to list all the ideas we have so far and then perhaps see if we can come up with anymore?*

*Is there anything else that could be suggested?*

*Let's see if we can build on that idea. How can you modify it to make it more attractive?*

*Can you imagine how someone else might see this? What would a neutral third-party suggest you do?*

### *E. Mediators' Feedback*

In the feedback session, Mediators give feedback to the Teams after the Judges have given their feedback. The Mediators have up to ten minutes for this. Mediators are asked to give encouraging feedback to the students and are not required to follow any specified feedback procedure - in contrast to Judges who are asked to follow the procedure given in Annex IV C. Teams appreciate personal reflection by the Mediator on how the Mediation progressed and what the Mediator appreciated or even found challenging when working with the Teams. This feedback is not prescriptive or evaluative, but appreciative and warm.

## *ANNEX IV*

### *Instructions for Judges*

#### *A. General Information*

1. As Judges in this Competition, you perform two extremely important functions. First, you evaluate and score the quality of performance by the Competing Teams in accordance with B below. Secondly, you are invited to **give measured, balanced and constructive feedback in accordance with the feedback guidelines in C below**, in a manner calculated to empower the students and increase their learning from this experience.
2. **All Judges must read the Rules including all Annexes, the Problems and the Confidential Information before the Competition. Please prepare well so that you understand what is required of you.**
3. Actual and apparent neutrality, impartiality and independence of each Judge are of the utmost importance. Accordingly, please try in advance of the Competition to identify any biases you may have and take a conscious decision to discard them. Regularly ask yourself whether you are being fair and take particular care to score each Competing Team in accordance with the Judges' scoring guidelines in B below.
4. During the Preliminary Rounds all Judges must read each Competing Team's Mediation Plan (and attached Brief Biographies) at the beginning of a Mediation Session.
5. The Mediation Plans will be scored separately in accordance with Rule 3.0. Accordingly you must not take them into account when scoring the Competing Teams' performance in the Mediation. The Mediator may stay in the room while the judges score the Mediation Plan.
6. **For the sake of ensuring fairness and equality, you must use the judging criteria, as set out in B below, to evaluate and score the Competing Teams, even if such criteria do not conform to your concept of best practice.**
7. Although the language of the competition is English, its international character means that it draws Teams from many different cultures. There are some obvious differences, such as between the native and non-native English speakers, and there are more subtle differences such

as between the members of English speaking Teams who come from different countries. Judges are encouraged to do two things in this respect:

- i) To read the Team Brief Biographies prior to judging. All Team's biographies are included in the Competition Brochure. This will help them to:
  - identify what cultural issues may emerge during the Mediation;
  - challenge assumptions about who are native English speakers and who are not;
  - know the Competing Team members' real names that Judges can use in feedback.

Teams may contain students whose cultural and linguistic backgrounds are not immediately apparent. Judges should bear this in mind. Please note that experience has shown that that it might be more difficult for non-native English speaking students to express a full range of emotions as they might be using their energy to find the right words.

- ii) To consider how, within the Mediation, Competing Teams demonstrate a sensitivity to and respect for potential cultural and linguistic differences in a way that allows them to be 'soft on the people and hard on the problem' as the proponents of principled negotiation recommend.
8. Do not penalize any Competing Teams for failing to reach settlement. Do not reward any Competing Teams for reaching settlement. Due to the tight timeframe, full settlement is not the aim of the Competition. Do reward Competing Teams for strategies which facilitate progression to resolution. While settlement would suggest finalized and signed agreements, resolution is understood as the Team's ability to make progress in understanding their conflict and considering possible solutions.
  9. Judges have entire discretion as to whether any research carried out is permitted under Rule 4.3, as mentioned in paragraph E of Annex II. In doing so, Judges should particularly take into account whether the information presented by the Teams actually contributed to the advancement of the Mediation.
  10. Each Judge must first independently score each Competing Team. The Judges may then confer with each other prior to finalizing their Score Sheets. If need be, the Judges may subsequently adapt their individual scores. The Mediator may stay in the room while the Judges score.

11. The Judges do not have to award the same number of points or agree on which Competing Team should be awarded more points.
12. You must indicate on your Score Sheet which Competing Team won and which Competing Team lost.
13. Accordingly, you cannot award the exact same amount of points to both Competing Teams. There must be a difference of at least one point.
14. You must complete a Score Sheet for each Competing Team before providing feedback.
15. Your Score Sheets will be collected by the Mediation Session Supervisor after each Mediation Session.
16. Once Competing Teams and Coaches have returned to the room, you should provide feedback to each Competing Team in accordance with C. In order to avoid disturbances, Coaches and Observers for both Competing Teams must remain in the room through the entire feedback session.

## *B. Judges' Scoring Guidelines*

### *1. What is being scored?*

Judges are asked to mark on the basis that they are looking for the most effective deal makers who make best use of the mediation process, whilst remaining consistent with their Confidential Information. This will involve evidence of skills such as flexibility, listening and empathy and of a Competing Team's showing that it is capable of moving towards a collaborative outcome. The specific skills to be evaluated by the Judges are set out in the Score Sheets in Annex I.

### *2. Consistency*

In order to achieve consistency, Judges are required to award points in line with the Score Sheet (Annex I.). This will enable the Judges to quickly, easily and consistently establish the standard at which the Competing Teams are performing. The respective Score Sheets will be sent to the Teams following the Competition and will therefore provide additional feedback.

Should Judges wish to provide additional comments to the Competing Teams, they are invited to include them directly on the Score Sheet or on an extra sheet of paper which they attach to the Score Sheet.

### *3. Definition of the scoring levels*

There are 5 descriptors: Excellent, Very Good, Good, Satisfactory, Poor.

As judge, your starting point for scoring is the "**Good**" descriptor. **Good** is the measure of a team's performance in the mediation if the team is displaying all the elements of the particular scoring criterion and the mediation is going well but the team cannot be assessed as delivering an overall great performance. From **Good** judges may then move up or down the descriptors.

Broadly, the majority of teams will display a **Good** or **Very Good** performance. Assessment at **Excellent** and **Poor** will be rare and exceptional. **Satisfactory** will be an appropriate assessment for a performance that does not meet the standard of **Good** but is not **Poor**.

For example: In assessing "Team Work: Counsel & Client" – a team that was working together effectively and communicating with each other but failed to exhibit sharing responsibility or providing mutual back up would be assessed as **Satisfactory**.

**Excellent:** The Team was outstanding compared with the typical or usual standard in **every** element of the criterion.

**Very Good:** The Team was outstanding in **some** but not all elements of the criterion or above the typical or usual standard in **every** element.

**Good:** The Team was above the typical or usual standard in **some** but not all elements of the criterion or at the typical or usual standard in **every** element.

**Satisfactory:** The Team was at the typical or usual standard in **some** but not all elements of the criterion.

**Poor:** The Team was substantially below the typical or usual standard in **some** elements or did not demonstrate the behaviour described in the criterion.

## *C. Judges' Feedback Guidelines*

### *1. Feedback*

The focus of the Competition is on the development of the students' mediation representation skills. This is achieved by their practice of mediation representation during the Competition and feedback from you as Judges. The aim is to provide a positive learning experience for the students. To achieve this consistently and fairly across all of the Mediations in the Competition, all Judges are asked to follow the guidelines set out below.

Relevant and developmental feedback to the Competing Teams at the end of each Mediation Session in accordance with the guidelines set out in these instructions is an essential part of the Competition. Measured, balanced and constructive comment enables the participating students to learn and to develop their skills.

It is vital that Judges give feedback that is:

- clear and succinct
- measured and focused
- balanced (fair)
- constructive and digestible
- respectful

Judges should be aware that in giving feedback the students perceive you as experienced Professionals and consequently will take what you say very seriously.

#### **How are fairness and consistency achieved?**

Use the guidelines for giving feedback. Adherence to the guidelines will ensure your feedback is:

- constructive and effective;
- appreciated and understood by students and
- provides solid points for students to take into their next Mediation.

The method by which you are asked to give feedback is based on the style developed by the National Institute of Trial Advocacy (NITA®). A well-defined and recognised feedback protocol delivers consistency and maximises student learning. Your adherence to the format set out below is vital because:

1. Research has shown that in skills assessments, students can assimilate no more than two or three learning points at a time. It is for this reason you are asked to refer to no more than two points of feedback per Team.
2. Using the NITA® method assists in the giving of clear and direct feedback that is balanced and non-judgemental without being harsh. It avoids diluted or mixed messages.
3. Students must receive feedback that they can use in their next Mediation Sessions to enable them to develop their skills.

The Organizing Committee wants all students to feel that their experience was worth the effort of their participation and journey to the Competition venue. The Organizing Committee thanks you for the extra effort you give to make the feedback session a positive, constructive experience for each of the students.

## ***2. Method for Delivery of Oral Feedback to each Competing Team following the Mediation***

During the Mediation Session, each Judge should identify **two** examples of behaviours or conduct by each Competing Team (ideally one for each Team member) that **either**:

- **were effective** on the other Team, or produced a positive impact on the Mediation (i.e. something that the team should develop and use again); **or**
- **would benefit from improvement** (i.e. something that the Team should think about not doing again or doing differently next time)

Ideally, when providing feedback to each Team, each Judge should choose different behaviours or conduct upon which to provide feedback, although this is not essential.

Start your feedback point by explicitly linking it to a category on the Score Sheet. For each example, feedback should be given using **all** of the following four elements.

1. **Headline:** "I want to talk to you about..." (name one of the 7 categories from the Score Sheet).
2. **Playback:** Replay what the students said or did. This must be replayed accurately because it will establish credibility for what you are about to say.
3. **Rationale:** Say why it was useful or not useful. Make it short, clear and credible.
4. **Prescription:** "Next time, why not try..." make sure that you have chosen something that you can fix or improve further. Think about giving a demonstration.

To ensure consistent, helpful feedback Judges are asked to:

- Be direct and constructive
- Provide a critique which recognises the level of experience of students – not Judges;
- Devote the same attention to each of the two Competing Teams.

**Process in outline:**

- a) Say which Team, and name the student you are addressing;
- b) Name a category from the Score Sheet;
- c) Describe precisely what you saw or heard the students do or say;
- d) Say what they did or said worked well, or did not work so well from your perspective;
- e) Make a recommendation for a different approach or choice of words or for more of the same (reinforcing feedback). "Here are some things you might want to consider as options..."

### *3. Examples of Feedback using this method.*

#### Example A:

##### Behaviour or conduct observed:

*During the opening statement, Team A, the Requesting Party, hands to Team B a document. It is neither referred to during Team A's opening nor during the Mediation Session. Team B however uses it in their opening to advance their interests.*

Feedback to Team A following the 4 steps might look like this:

1. **Headline:** [set the context by reference to the Score Sheet heading]

"I want to talk to you about your opening statement of your perspective and interests. In particular, hand-outs and props."

2. **Playback:** [this must be an accurate recall of what happened or what was said]

"During the first minute of your opening statement, you handed to Team B a document but you did not explain the purpose of the document and you did not refer to it again during the Mediation Session. Team B, however, made reference to your document in their opening statement and used it to convey their interests and a willingness to collaborate."

3. **Rationale:** [why did it work or did not work?]

"By not explaining the purpose or significance of your document in relation to your interests or position, you lost the opportunity of making an early impact upon Team B to advance your interests. Team B took advantage of the error and used your own document to successfully advance their interests."

4. **Prescription:** [What you should do/not do in your next Mediation Session]

"Handouts can be useful if they have a strategic purpose. Without this they can be an unnecessary distraction. Next time, think carefully about what the document is intended to achieve. Think about how you will refer to it during the mediation and the impact it will have on the other party."

## Example B:

### Behaviour or conduct observed:

*In the middle of the Mediation Session, Team B, the Responding Party, makes a statement to Team A which sets out ground rules for collaboration with Team A to generate options. The statement produces a breakthrough in the progress of the Mediation Session.*

Feedback to Team B following the 4 steps might look like this:

1. **Headline:** [set the context by reference to the Score Sheet heading]

"I want to talk to you about your seeking to collaborate with the other party".

2. **Playback:** [this must be an accurate recall of what happened or what was said]

"You (i.e. Team B) said:

*...it is not about the claim. It is the deep-rooted question of trust and a proposal to reinstate [client's name]. You need to understand this before we talk about figures..."*

3. **Rationale:** [why did it work or did not work?]

"This worked well because it appealed to the fundamental issue of trust and produced a very effective platform for building a problem-solving relationship with the other party. This then created the basis for option generation and moved the Mediation Session on. Seeking a collaboration based on a clear understanding of your client's underlying concerns strengthened the problem solving relationship and facilitated option generation to meet these concerns."

4. **Prescription:** [What you should do/not do in your next Mediation Session]

"Next time, and in the future, seek to identify ways to achieve a collaborative relationship with the other party by making your concerns clear."

### *D. Judge's Feedback Aide Memoire*

Team: \_\_\_\_\_

Judge: \_\_\_\_\_

**Headline:** What I want to comment upon: "I want to talk to you about..."

**Playback:** What you said or did (it must be accurate and specific). It is the most important part of the feedback because it establishes credibility.

**Rationale:** What was useful/What was not so useful. Make this short, clear and credible

**Prescription:** "Why not try..." Make sure you choose something that you can fix or can improve further. You will be critiquing a skill so think about giving a demonstration.