

Australian Disputes Centre

International Chamber of Commerce

ASIA-PACIFIC

COMMERCIAL MEDIATION COMPETITION

COMPETITION RULES

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RULE 0.0 DEFINITIONS

The following terms have the corresponding meanings:

“ADC” – refers to the Australian Disputes Centre

“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 their 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.

“Centres” refers to the Australian Disputes Centre, and 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 institution 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 2023 ADC-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 Organising 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 Organising Committee who evaluates and scores the Teams’ performance during a Mediation Session in accordance with the Judging Criteria.

“Judging Criteria” refers 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 Organising Committee to keep time during a Mediation Session and make sure the Rules are followed.

“Mediator” refers to a professional mediator selected by The Organising 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.

“ODR Platform” refers to the Online Dispute Resolution Platform chosen by The Organising Committee.

“Organising Committee” refers to a group of staff of ADC-ICC Australia which is in charge of organising 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 based 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 Organising 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 Organising 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.

“Post Secondary Institution” refers to a University or other institution providing education to students in the field of mediation in compliance with Rule 5.0.

“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 Organising 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 authorised by The Organising 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 Organising Committee.

RULE 1.0 ORGANISATION 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.

The Australian Disputes Centre (ADC) has over 36 years of experience in assisting University Students and professionals develop mediation skills, and devising rules to facilitate the resolution of disputes for government agencies, communities and commercial entities. ADC offers a wide range of dispute resolution rules for commercial disputes, including the ADC Rules for Arbitration, the ADC Mediation Guidelines, the ADC Expert Determination Rules, ADC Guidelines for Commercial Conciliation and the ADC Workplace Mediation Guidelines. Details about the dispute resolution services offered by ADC can be found at disputescentre.com.au

The 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.

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 the ADC's and ICC's hope that the Competition will encourage the teaching and learning of effective mediation. The ADC and ICC seek to empower tomorrow's business leaders and legal practitioners in best meeting 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, three Judges during the Preliminary Finals, and five Judges during the Final.

Each institution 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 Organising Committee will randomly determine each Team's opponent 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 Student Pledge

At the beginning of the session, the Mediation Session Supervisors, will take attendance and record the names and schools of the participating competitors, and will read out the following text, once for each team:

“Do you, the students of xxx University presenting on behalf of the parties, solemnly promise that you will abide by the Rules of Mediation Competition, and that you will not communicate with or in any way receive help from coaches, fellow team mates or anyone else during this Mediation?”

Both members of the team then reply, “We do solemnly promise.”

Rule 2.1.2 Timing

There is one timing system for all rounds as illustrated in the tables below:

Preliminary Rounds

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

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

Final Rounds

<u>Total Time for Mediation Session</u>	= 135 min (2 hrs and 15 min)
Time to settle in the room	= 5 min (2 hrs 10 min remaining)
Mediation	= 85 min (45 min remaining)
End of Mediation Session	

Scoring = 15 min

*Feedback = 30 min

*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 2.1.3 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 main room during the Break and go to their breakout room. Coaches, other members of the Teams not participating orally in the Mediation Session, and all other persons must remain inside the main 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 2.1.4 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 main room. The Judges, Coaches, other Team members, and all observers will remain in the main 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 in their breakout room during a Caucus.

Summary table of the possible caucuses and breaks				
CAUCUSES				
	Team A	Team B	Duration	Who leaves the main room
Caucus requested by Team	1	1	5 min	Members of the other Competing Team. The Mediation Session Supervisor can move between rooms.
Caucus requested by Mediator	1	1	5 min	
CROSS CAUCUSES				
	Both Counsel	Both Clients		
Cross-Caucus requested by Team A	1		5 min	Members of the other Competing Team. The Mediation Session Supervisor can move between rooms.
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. The Mediation Session Supervisor can move between rooms.

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 that they need input from the Mediator to progress the Mediation. However, students are strongly encouraged to spend the majority of the Mediation in a joint session in order to communicate directly with the other Party. A Competing Team's reasonable use or 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 Judges during the Preliminary Rounds. The Judges will evaluate and score the performance of the Teams according to the Judging Criteria.

The Organising 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 match with a different Mediator and different Judges in each round; however, due to limited availabilities, this might not always be possible.

The Organising 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. Unless a Problem explicitly indicates otherwise, for purposes of the Competition, it is assumed that the place has no governing law and the general principles of uniform international commercial law applies as jurisdiction.

Rule 2.6 Handout

During each Mediation, each Team may present 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 distributed to the Mediation Session Supervisor just prior to the 5 minutes settle in period. The Mediation Session Supervisor will share the handout with the Mediator, Judges and opponent Team at the request of the Team that produced the handout. Competing Teams are permitted to annotate this handout when presented through 'Share Screen' by the Mediation Session Supervisor during the course of the Mediation. Competing Teams are prohibited from using (for general presentation or presentation to the Mediator during Caucus) any other objects, handouts, exhibits or documents prepared in advance, including videos, 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. 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, other than the tablets, laptops, etc. used to access the Competition's ODR Platform, and in particular any artefact capable of recording information is not permitted to be activated in the virtual room where the online Mediation Session takes place. Photographing, and screen recording during the Mediation Session is also forbidden. This applies to Teams, Coaches, Professionals, Observers and Visitors.

Only Mediation Session Supervisor, Judges and the Mediator have an active control of electronic devices (such stopwatch for timekeeping) required during session and The Organising 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.

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

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 Organising Committee.

(b) The Organising Committee has total discretion in deciding whether a Volunteer or a Visitor can observe in any Mediation Session throughout the Competition, 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) 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 turn off their video and microphone so they cannot be seen or heard by the Competing Team associated with them. The Mediation Session Supervisor will make sure this rule is observed and will have the final word on whether compliance is satisfactory or not.

(e) During the Final Rounds, 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 Organising Committee (which will organise 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 Mediation Session in that Final Round.

(g) The Organising Committee ensures, as a minimum, that all the online 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 Organising Committee will make every effort to ensure that the online 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 choose 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 online room, the Coaches and other members of the Team competing in that session have priority over 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 online room whilst the Mediation Session is in progress.

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

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

Rule 2.11 Judges' Scoring

Prior to the Mediation Sessions in the Preliminary Rounds, the Judges will have read and scored the Competing Teams' Mediation Plans using the Mediation Plan Score Sheet.

Following the Mediation, the Teams, Coaches, and Observers remain in the room and the Judges shall leave the room and 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 a Competing Team for one or more Special Awards by completing the Special Award Score Sheet.

Judges must check that the Score Sheets are correctly filled in and that their calculations are correct before handing them to the Mediation Session Supervisor.

In case of doubt or miscalculations, the Organising Committee has complete discretion in interpreting and/or correcting the Score Sheets without consulting the Judge concerned, unless it has an impact on the outcome of that Round (Win or Lose).

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

Thereafter, the judges will re-enter the main room with the Teams, Coaches, and observers.

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 except the Final. Feedback will be based on each Competing Team's performance in the Mediation Session.

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, they 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 generally encouraged (including regarding the formulation of 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, nor the content of any Confidential Information, with the only exception being 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 Session, only the two Competing Teams, the Mediator, the Mediation Session Supervisor and a member of The Organising Committee (if any) are allowed to speak, whereas anybody else present in the online room must turn off their video and microphone feed.

Rule 2.14 Winning the Preliminary Rounds

The Team with the greatest number of points as per the Mediation Score Sheets completed by the Judges will be the winner of that round in the Preliminary Rounds. Points attributed in the Special Awards Score Sheets only count for the attribution of the Special Awards, and do not influence the result of the round, nor the Team's subsequent progression in the Competition.

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. The ranking of the top 8 Teams after the Preliminary Rounds will be published on the Competition website. Teams may also ask the Organising Committee for their individual ranking by email.

Rule 2.17 Submitting a complaint

After the end of each round, Teams, Judges and Mediators will receive a ‘Feedback Form’. This form allows each participant to give confidential feedback or complaints. Likewise, you may also submit a formal complaint to the Organising Committee by sending an email to APCMC@disputescentre.com.au

The process of complaint-handling is driven up through the Organising Committee and handled directly with the person who has had the complaint registered against them. If you have an urgent complaint that you believe has an adverse impact on your team, then you can talk with the APCMC Competition Contact Officer, who is your main point of contact for the competition.

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 Team number as supplied by the Organising Committee. The names of each of the members of the Team and their Brief Biographies must be provided in a separate document.

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 Organising Committee if it does not comply with these requirements.

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 Organising Committee by email to APCMC@disputescentre.com.au by **18 August 2023**. Mediation Plans for the Preliminary Rounds will not be accepted after this date.

Teams will not be permitted to modify their Mediation Plans, nor submit updated Mediation Plans, after initial submission to the Organising Committee.

Teams not submitting their Mediation Plans will fail to obtain any points for the Mediation Plan criteria, pursuant to the Score Sheet (Annex I.A).

Rule 3.3 Scoring of the Mediation Plans

The Mediation Plans will be scored by the Judges prior to the start 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 the Requesting Party and the Responding Party.

Judges shall receive copies of the General Information and the Confidential Information for each Party and shall read these prior to judging any Mediation Sessions. Mediators shall receive a copy 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 be permitted to 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 Final Rounds will also be sent in advance. However, Confidential Information and assignment of roles for each of the Final Rounds will be provided at the end of the Preliminary Rounds and the Preliminary Final.

Teams, Coaches, Professionals, members of The Organising Committee and anyone else who knows the Confidential Information may not directly or indirectly disclose any Confidential Information to any other person. However, 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 APCMC@disputescentre.com.au by **21 July 2023**.

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

Teams are permitted to submit a maximum of one written question for clarification or interpretation of either the General Information or the Confidential Information for each Competition Problem. The Organising 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.

It is strictly forbidden for Teams to:

- deviate from the facts,
- create their own background story,
- misrepresent facts, or
- create new facts.

Teams are discouraged from carrying out research. If they nevertheless decide to do so, any information obtained during research 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 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 Post-Secondary Institutions

- a) The Organising Committee only accepts applications from any University or Post-Secondary Institution.
- b) Any University or other Post-Secondary Institution providing education to students in the field of mediation in the Asia-Pacific region (or other locations, at the discretion of the organising committee) may apply.
- c) Each Team must consist of a minimum of two students, to a maximum of four students.
- d) Each University or Post-Secondary Institution can choose in its total discretion which students will be part of their representative Team, 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 or more Post-Secondary Institutions 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 postgraduate doctorate students) registered in a University or Post-Secondary Institution 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 educational institution.
- (c) To be eligible, students must be no more than 30 years old at any time during the Competition duration.
- (d) 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 equivalent) 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 Rule 5.2 will be disqualified from the Competition in accordance with Rule 8.0. If only one member of the Team breaches Article 5.2(a) or 5.2(c), it is within the discretion of The Organising 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.

In accordance with Rule 8.0, it is within the discretion of the Organising Committee to disqualify the whole Team should Rule 5.2 not be followed.

If a Team is not present at the commencement time for the Mediation Session and it causes delays to the round, it is at the Judges' discretion to apply a point penalty for late attendance.

RULE 6.0 TEAM APPLICATION AND REGISTRATION GUIDELINES

Rule 6.1 Application Process

Each Team wishing to participate must apply online on the Australian Disputes Centre's website: <https://disputescentre.com.au/apcmc-university-teams/> within the application period, which ends at **5.00pm (AEST) on 2 June 2023**.

The Organising Committee will inform Teams of their acceptance or non-acceptance by email within 3 business days of the Team's Online Application, and in accordance with the schedule published online.

Subsequently, each University that has been accepted must pay their Registration Fee, and provide the Organising Committee (within the time limit indicated) with the names, contact details, and Brief Biography of each Team member **within 14 days of the Organising Committee's confirmation of acceptance, or by 23 June 2023, whichever date is earlier**. A template will be made available by the Organising 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 and its Coach(es), each Team must declare that all Team members are eligible under Rule 5.2. Passports and visas are not required for the Competition in 2023 as the Competition is being held online.

Rule 6.2 Selection Criteria

The Organising Committee has discretion to decide which teams are accepted to participate in the Competition.

The Organising Committee will select Universities based on the following criteria, in no particular order:

- Preference will be given to Universities that have an alternative dispute resolution curriculum (special focus on mediation is an advantage);
- Performance in previous ADC-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 Organising Committee will make a selection in its absolute discretion.

Rule 6.3 Registration Fee

Upon acceptance of the Team by the Organising Committee, each Team must pay the full registration fee within the time limit as indicated by the Organising Committee. 50% of the registration fee will be refunded if notice of cancellation is received in writing before **14 June 2023**. No refund will be made for cancellations received after this date.

Please note that the ADC and ICC Australia reserve 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. The ADC and 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 Organising Committee will lead to disqualification in accordance with Rule 8.0.

Rule 6.4 Team Contact

Each Team must designate a Team Contact to the Organising Committee. Notice to the Team Contact constitutes notice to all Team members throughout the Competition.

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 Organising Committee to receive applications. Details on the application process and the deadlines will be published on the Australian Disputes Centre's website <https://www.disputescentre.com.au/apcmc-volunteers/>

The ADC and ICC Australia will select in their absolute discretion the Professionals to participate in the 2023 Competition.

The Organising 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 training.

Rule 7.2 Statement of Independence

Once selected, all Judges and Mediators shall provide to The Organising Committee a Statement of Independence declaring their neutrality, impartiality, and independence to judge

and/or mediate any of the Teams in the Competition and disclose any relationships with any Teams, a Team member, a Coach or a person affiliated with a Team.

The Organising Committee can disqualify a Judge from judging or a Mediator from mediating a round if the Organising Committee considers that they have any personal relationship with a Team member and/or any Teams, a Coach or a person affiliated with a Team which affects his/her actual or apparent neutrality, impartiality and independence.

Rule 7.3 Respect

All Professionals in the Competition are reminded to be particularly vigilant in avoiding any actions (including making any comments) that may be perceived as inappropriate and/or insensitive to differences in culture, gender, age, sexual orientation, national origin, race, religion, and ethnicity.

Rule 7.4 Coaches

Coaches may not act as Judges or Mediators in any Mediation Session.

Judges and Mediators may not act as Coaches at any time in relation to the Competition. Judges and Mediators may train Teams with or without a Coach in preparing for the Competition, if the following restrictions are respected:

Such training:

Can take place only before the Competition Problems are circulated to the Teams, Judges or Mediators, which is when the Competition is deemed to have commenced:

- Cannot in any way relate to current Competition Problems, and
- Automatically disqualifies a Professional from judging or mediating that Team in the Competition.

Any training or assistance by Judges and Mediators after the disclosure of the General information of the Problems to the Teams must be notified to and authorised in writing by the Organising Committee.

No training or assistance by Judges and Mediators is allowed during the Competition.

Failure to observe this Rule may result in the disqualification of the Team and the Professional in accordance with Rule 8.0.

Rule 7.5 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 Organising 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 one point reduction per round may be imposed for violation of Rule 5.3.

A maximum three point reduction per round 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, 7.4 or 7.5.

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

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

RULE 9.0 AWARDS

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

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

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

RULE 10.0 ADC-ICC AUSTRALIA ORGANISING COMMITTEE

Rule 10.1 Power to Take Additional Measures

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

Rule 10.2 Interpretation of Rules

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

ANNEX I. SCORE SHEETS

**The ADC-ICC APCMC Judges use online scoresheets.
The following replicates the online Score Sheets for information only.**

1. Mediation Score Sheet – Preliminary Rounds

Your full name _____

Name of Competing Team _____



Please make sure to mark all three sections:

1. Mediation Plan

2. Mediation Session

3. Special Award
(for Preliminary Rounds only)

Please double check your calculation

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

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 _____

2. Mediation Score Sheet – Preliminary Rounds

Please tick one box for each criterion

<p>Opening Statement of Your Perspective and Interests</p> <p>Presentation of events giving rise to the dispute and relevant legal considerations. Conveying your interests. Showing willingness to collaborate.</p>	<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
<p>Advancing Your Interests</p> <p>Ability to advance your business and other interests throughout the Mediation consistent with your Confidential Information, while recognizing the interests of the other Party without sacrificing your own interests. Flexibility in adapting to the unexpected, while still advancing your interests. Awareness, and, where appropriate, assertion of your BATNA.</p>	<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
<p>Team Work: Counsel & Client</p> <p>Working together as a team, effectively communicating with each other, sharing responsibility appropriately and providing mutual backup.</p>	<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

Information Gathering and Ascertaining the Other Party's Interests Seeking relevant information and understanding 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
Seeking to Collaborate with the Other Party Taking initiatives to build a constructive, problem-solving relationship with the other Party. Making appropriate strategic decisions on when and 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
Working Together to Develop Options 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

Making Good Use of the Mediator 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

Mediation Score Sheet – Final Rounds

***The ADC-ICC APCMC Judges use online scoresheets.
The following replicates the online Score Sheets for information only.***

Your full name _____

Name of Competing Team _____



Please double check your calculation

Total Mediation Session	/ 46
Penalty Points	
FINAL SCORE	/ 46

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

<p>Opening Statement of Your Perspective and Interests</p> <p>Presentation of events giving rise to the dispute and relevant legal considerations. Conveying your interests. Showing willingness to collaborate.</p>	<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
<p>Advancing Your Interests</p> <p>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 own interests. Awareness and assertion of your BATNA where necessary, and where appropriate assertion of your BATNA.</p>	<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
<p>Team Work: Counsel & Client</p> <p>Working together as a team, effectively communicating with each other, sharing responsibility appropriately and providing mutual backup.</p>	<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

Information Gathering and Ascertaining the Other Party's Interests Seeking relevant information and understanding 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
Seeking to Collaborate with the Other Party Taking initiatives to build a constructive, problem-solving relationship with the other Party. Making appropriate strategic decisions on when and 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
Working Together to Develop Options 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

Making Good Use of the Mediator 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

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 Organising Committee will only take into consideration the three Special Awards areas the Team scores highest in or randomly select three Awards if their scores are the same.

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 Participating in the Competition for the First Time (see Competition brochure for a list of first time participating universities identified by the Organising Committee,)			

ANNEX II Instructions for Participants

A. Rules

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

B. Mediator

Please remember that the Competition is on mediation, not negotiation, so do make use of the Mediator.

C. Mediation Plan

Pursuant to Rule 3 of the Rules, each Team must provide the Organising Committee copies of its finalised Mediation Plans for the Preliminary Rounds (with a copy of the Brief Biographies attached) on or before **5.00pm (AEST) on 18 August 2023**. Following submission to the Organising 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 (accounting for 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, Calibri font, and 1.5 spacing**. It will not be accepted by The Organising Committee if it does not comply with this format.

Students should make available a copy of their Mediation Plan to the Organising Committee by **18 August 2023**, who will provide it to the session Judge prior to the Preliminary Rounds.

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

1. Mediation Strategy - outline 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 chooses 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.

For the Final Rounds, Mediation Plans are not required.

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 not included in the Problems that can be used by the Teams during the Mediation.

Indeed, Teams are discouraged from carrying out independent research as problems are self-contained and excessive research could distract their attention from the preparation for the actual Mediation. 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 not only helps the Mediation move forward, but also assists the Teams to find a creative solution to 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 negotiation skills in the context of mediation. 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 section 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; and
 - be directive.
11. Please remember that the Mediation is short and lasts only 85 minutes. During these 85 minutes, you should encourage the Competing Teams to exercise their skills whilst you perform your role as the Mediator as set out in detail in section 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 personal 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, the Mediator can focus on the chronological, dynamic, the so-called ‘phase model’ of mediation (I.) as well as 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 a 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 recognise 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 present 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. Since 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. The Mediator 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 an agreement.

Formulator of Interests

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

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 bring to question 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 reservations. 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; Competing Teams often also display these skills.

1. Open questions

Open questions are used to facilitate agenda setting, further information exchange, understanding of the issues and interests, and to invite a comprehensive discussion of what is important. Examples include:

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 the online chat facility to create a visual record of matters such as:

- Agenda-setting,
- Brainstorming options, and
- 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

This entails a questioning technique used to facilitate a better understanding of what matters and help the Parties move beyond conflicting positions and towards options for resolution. Examples include:

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. Summarising

Summarising facilitates understanding of interests and potential points of difference or agreement, slows the conversation down, gives the Parties a chance to correct the summary to engender a better understanding of what matters to each side, and checks if there is

common understanding of what is being talked about or areas of consensus. Common summarising starters include:

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

This helps to facilitate mutual understanding and perspective shift, often done by the Mediator mirroring or “looping” what one Party has said and their emotions or perspectives, and sometimes by an invitation to the Parties to put themselves in the other’s shoes. The Mediator can ask questions such as:

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

It seems that there are differing perspectives on this. Let’s try to summarise 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

This helps to facilitate communication by detoxifying or depersonalising a statement so that a message can be heard and dialogue can continue. The Mediator can ask questions such as:

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

This questioning technique will o facilitate a better understanding of a situation and sometimes challenge the Parties. In the Competition, this may also be raised in Caucuses. Examples of questions include:

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

These questions are useful for eliciting a deeper, more transformative perspective on the conflict. In the Competition, this may be suitable for some of the more personally framed problems. Examples include:

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

These questions facilitate a focus on the future, test options, and help to ascertain what really matters. The Mediator can ask questions such as:

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

Mediators can ask questions to facilitate thinking outside of the box and the generation of creative options. Examples include:

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

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 specific feedback procedure - contrary 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 liked or 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 Section B below. Secondly, you are invited to **give measured, balanced and constructive feedback in accordance with the feedback guidelines in Section 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 outlined in Section 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 actual 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 Section 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) Read the Team Brief Biographies prior to judging. All Team's biographies are included in the Competition Brochure. This will help Judges to:

- ☐ identify what cultural issues may emerge during the Mediation;
- ☐ challenge assumptions about who are native English speakers and who are not; and
- ☐ know the Competing Team members' real names to use during feedback.

Teams may contain students whose cultural and linguistic backgrounds are not immediately apparent. Judges should bear this in mind. Please note that past competitions showed it might be more difficult for non-native English speaking students to express a full range of emotions since they are not as accustomed to the language.

ii) Also 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 penalise any Competing Teams for failing to reach settlement. Do not reward any Competing Teams for reaching settlement. Due to the tight time frame, full settlement is not the aim of the Competition. Do reward Competing Teams for strategies which facilitate progression towards resolution. While settlements generally feature finalised 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. Having done so, the Judges may then confer with each other prior to finalising 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 an online Score Sheet for each Competing Team before providing feedback.
 15. Once Competing Teams and Coaches have returned to the room, you should provide feedback to each Competing Team in accordance with Section C. In order to avoid disturbances, Coaches and Observers for both Competing Teams must remain in the room throughout the entire feedback session.
- B. Before leaving the mediation Zoom meeting room, your Score Sheets are to:
- a. be submitted via the online judging form, and
 - b. confirmed as 'received' by the Mediation Session Supervisor

B. Judges' Scoring Guidelines

1. What is being scored?

Judges are asked to score on the basis that they are looking for the most effective deal makers who make the 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 as well as a Competing Team's ability to move 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 to 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 piece of paper that can be attached to the Score Sheet.

3. Definition of the scoring levels

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

As the Judge, your starting point for scoring is the "**Good**" descriptor. **Good** is the measure of a team's performance in the mediation if a Team displayed **all** the elements of the particular scoring criterion and the mediation went 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 responsibility sharing or provide mutual back-up would be assessed as **Satisfactory**.

Excellent: The Team was outstanding compared to 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 behaviours 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. Accordingly, you are asked to refer to no more than two points of feedback per Team.
2. The NITA® method assists you to give 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 implement in their next Mediation Sessions to enable skill development.

The Organising Committee wants all students to feel that their experience was worth the effort of their participation and preparation. The Organising 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 conducts to comment on, 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 the 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 used 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.”

Judge's Feedback Aide Memoire

***The ADC-ICC APCMC Judges use online scoresheets.
The following replicates details on online Score Sheets, for information only.***

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.