



**International Chamber of Commerce**

*The world business organization*

**ICC Dispute Resolution Services – ADR**

**6<sup>th</sup> ICC INTERNATIONAL COMMERCIAL  
MEDIATION COMPETITION**

**COMPETITION RULES**

Friday 4 February 2011 to Wednesday 9 February 2011

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## **COMPETITION RULES**

### **RULE 0.0 DEFINITIONS**

The following terms have the corresponding meanings:

- “ADR” means Amicable Dispute Resolution, as provided by ICC.
- “ADR Rules” means the ICC ADR Rules.
- “BATNA” means Best Alternative to a Negotiated Agreement, and refers to what a Party's best case scenario would be if the Parties fail to reach an agreement.
- “Break” means a 3 minute period of time that is granted only once per Team per Mediation Session to the two students acting as Counsel and Client for a private Team discussion (other members of the Team, the Coach and other persons are not permitted to participate in the Break) and during which the overall time of the Mediation Session continues to run.
- “Caucus” means a separate meeting between the Mediator and a Team.
- “Coach” means the one person selected by a Team or the Team's University, who is permitted to accompany the Team to the Competition.
- “Confidential Information” means the background factual information for the Problem for the exclusive use of a Party, the Judges and the Mediator.
- “Competition” means the 2011 ICC International Commercial Mediation Competition.
- “Counsel” and “Client” refer to the roles taken by two members of a Team during each Mediation Session.
- “Crossed Caucus” means a meeting between the Mediator and Counsel for both Parties *or* meeting between the Mediator and the Clients of both Parties.
- “Drafting Working Group” refers to the group in charge of drafting the Competition Problems.

- “Eligible Student” means a person defined in Rule 5.3.
- “Final Rounds” means the Eighth-Finals, Quarter-Finals, Semi-Finals and the Final.
- “General Information” means the background factual information for the Problem for the use by each Party, the Judges and the Mediator.
- “ICC” means the International Chamber of Commerce headquartered in Paris.
- “Judge” means a professional mediator selected by the Organizing Committee to apply the Judging Criteria during a Mediation Session.
- “Judging Criteria” means the criteria set out in the Score Sheet.
- “Law Student” means an Eligible Student studying law.
- “Mediation Plan” means each Team’s written case analysis, submitted to the Judges and the Mediator prior to the Mediation Session pursuant to Rule 3.0.
- “Mediation Session” means a mediation between two Teams as described in Rule 2.1.
- “Mediator” means a professional mediator selected by the Organizing Committee to take the role of Mediator.
- “Organizing Committee” means the official ICC group in charge of organizing and managing the Competition.
- “Penalties” means points deducted for any Rule violation pursuant to Rule 8.1.
- “Prohibited Assistance” means advice, instructions, or other communication to a Team that is not in compliance with Rule 2.8.
- “Preliminary Rounds” means the eliminatory phase prior to the Final Rounds.
- “Problem” means an official international commercial dispute case study distributed by the Organizing Committee, as supplemented or corrected by any Problem Clarifications, that Teams will attempt to resolve with the help of the Mediator during the Mediation Sessions.

- “Problem Clarifications” means the official clarifications or corrections of the Competition Problem and of the Rules, as published pursuant to Rule 4.2.
- “Problem-Solving Approach” means an approach to mediation in which participants discern each other’s interests, brainstorm options and create a solution that meets their interests and needs better than their BATNA.
- “Requesting Party” and “Responding Party” mean the Team (or the members of a Team) which argues on behalf of the party requesting mediation or the party responding to the request for mediation respectively at any given point in the Competition.
- “Rules” mean these Competition Rules.
- “Score Sheet” means the document in accordance with the sample set out in Annex I.
- “Team” means a group of 2 to 4 Eligible Students accepted by the Organizing Committee to participate and which does participate in the Competition.
- “Tie” means that the two Judges assigned to a particular Mediation Session in the Preliminary Rounds have circled the word “win” on their score sheets for different Teams.
- “Timekeeper” means a person appointed by the Organizing Committee to keep time during a Mediation Session.
- “WATNA” means Worst Alternative to a Negotiated Agreement, and refers to what a Party’s worst case scenario would be if the Parties’ fail to reach an agreement.

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

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

The International Chamber of Commerce has 90 years’ 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.

Details of the dispute resolution services offered by ICC are to be found on its website [www.iccadr.org](http://www.iccadr.org).

Amicable settlement is a desirable solution for almost all business conflicts.

Mediation is the most frequently used amicable settlement technique.

**The Competition assumes that the parties did not agree on another amicable settlement technique, under the ICC ADR Rules, and chose mediation.**

The focus of the Competition is the effective combination of Client representation, collaborative problem-solving skills and the use of the Mediator to progress to a settlement. It is ICC's hope that the Competition will encourage the teaching and learning of effective representation and mediation skills so that tomorrow's legal practitioners and business people can better meet the dispute resolution needs of an increasingly cross-cultural global market.

***Rule 1.2 Language***

The official and only language of the Competition will be English.

***Rule 1.3 Format***

The Competition will first consist of four Preliminary Rounds on the first three days of the Competition.

In principle, each Team will participate in a Mediation Session at least once each day on one of the four different Problems during the Preliminary Rounds. Depending on the Competition schedule, a Team may participate in two Mediation Sessions, each with a different Problem, in one day.

The Final Rounds will be held on the last two days of the Competition on the four Problems assigned to the Eighth-Finals in the morning of the fourth day, Quarter-Finals in the afternoon of the fourth day, the Semi-Finals in the morning of the fifth day, and the Final in the afternoon of the fifth day.

A Mediation Session will consist of two Teams, with two Team members on each side representing the Requesting Party and the Responding Party respectively, as

well as the Mediator and two Judges in the Preliminary Rounds and three Judges in the Final Rounds.

Each university may nominate two to four students to participate in a Team. Only two students per Team will participate orally in the roles of Client and Counsel per Mediation Session. **Due to logistical restraints, Teams will NOT be permitted to invite observers other than their individual Coaches to attend the Competition or the Mediation Sessions, save as arranged with the Organizing Committee.**

Any violation of this Rule shall result in the disqualification from the Competition of the whole of the Team concerned.

**RULE 2.0 MEDIATION SESSION PROCEDURES**

***Rule 2.1 General Procedures***

In advance of the Competition, the Organizing Committee will randomly assign Teams for the Preliminary Rounds (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 Session, 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. 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.

Timing

Each Mediation Session will run for a total of one hundred thirty-five minutes, eighty-five minutes of which will be the actual mediation and twenty minutes of which will be the Judges' feedback of the Teams (ten minutes per Team). The remaining Mediation Session time will include five minutes for all participants to locate their assigned mediation rooms and ten minutes for the Judges and Mediator to read the Teams' Mediation Plans, and fifteen minutes for Judges to work on the score sheets after the mediation. The timing of each session is illustrated below:

Total time for Mediation Session = 135 min (2 hrs and 15 min)

Time for all participants to find rooms	= 5 min (2 hrs and 10 min remaining)
Time for Judges to read Mediation Plans	= 10 min (2 hrs remaining)
Mediation	= 85 min (35 min remaining)
Scoring	= 15 min (20 min remaining)
Feedback	= 20 min (0 min remaining)

### Breaks

Each Team may take one break of no more than three minutes during the Mediation Session. If a Team calls for a Break, both Teams must leave the room during the Break, but the Coach and members of the Team not participating orally in the Mediation Session must remain inside the room.

### Caucuses

External or internal dynamics can create changes during the Mediation Session. Especially problems with the relationship between the parties or within a Team, problems with the process, and problems with substantive issues may require a separate meeting between the Mediator and a Team. Caucus is one of the most common and effective contingent strategies in mediation practice. To call a Caucus is highly dependent on the right timing as well as the needs and skills of the Teams and the Mediator. Each Team, as well as the Mediator, will have the option to call for one not more than five minute Caucus at any time. Each Team will also have the option to call [one] not more than five minute Crossed-Caucus at any time. The Mediator shall also have the option to call for one not-more-than-five minute Crossed-Caucus per Team. The number of Caucuses and Crossed-Caucuses are illustrated below:

Caucuses permitted by request per Team	= One
Crossed-Caucus permitted by request per Team	= One
Caucus permitted by request by Mediator	= One per Team
Crossed-caucus permitted by request by Mediator	= One per Team

The Team that requests a Caucus will stay in the room with the Mediator and only the members of the other Team will leave the room.

**Taking a Break or making use of the Caucus or Crossed-Caucus does not suspend time on the overall 85-minute mediation; time continues to run.**

***Rule 2.2 Judging Criteria***

The Judging Criteria are applied to the performance of both the Counsel and Client in the Team.

**No extra points will be gained by reaching a settlement during the Mediation Session.**

Rather the Teams are required to be explicit about their claims and to defend their interests strongly.

***Rule 2.3 Mediators and Judges***

In each Mediation Session, an experienced professional mediator will serve as the facilitative Mediator. Experienced professional mediators will serve as Judges. The Judges will score the performance of the Teams according to the Judging Criteria. Every attempt will be made for the Teams to face a different Mediator and different Judges in each round.

The Organizing Committee is responsible for selecting experienced Mediators and Judges who understand and practice the techniques of facilitative mediation.

The Organizing Committee will use its best efforts to ensure that the Mediators and Judges are independent and impartial from the Teams they are judging.

***Rule 2.4 Timekeeping***

Responsibility rests with the Timekeepers for timekeeping during the Mediation Sessions, Caucuses, and Breaks.

Their decision on timekeeping will be final.

**Abuse of time limits shall result in a penalty (Rule 8.1).**

***Rule 2.5 Governing Law***

Although the mediation exercises may refer to non-fictional places, for purposes of the Competition, it is assumed that there is no governing law, and that the jurisdiction applies general principles of uniform international commercial law.

Any exceptions will be explicitly stated in the General Information and during the orientation session, which will be held on Friday 4 February 2011.

**Rule 2.6 Exhibits and Props**

Teams may prepare in advance only one exhibit, limited to one page with type-written print in 12-point font for each Mediation Session. Such page may include diagrams and/or graphic representations. Copies of this page shall be handed to the Mediator and the Judges when first produced by a Team. Teams are permitted to write on this exhibit during the course of the Mediation Session. Teams are prohibited from using any other exhibits or papers prepared in advance including video, computers, calculators, or other technology and displays, and failure to observe this Rule shall result in a penalty.

**Rule 2.7 Permissible Assistance to Teams**

The Coach may advise and assist the Team in its planning and preparation for the Competition, including in advance of the Final rounds.

**Rule 2.8 Prohibited Assistance**

**No one, including the Coach, may give advice, assistance or instructions to, or communicate or attempt to communicate with any of the participants, in any way, during the Mediation Session.**

**Violation of this Rule, regardless of the substance thereof, and regardless of whether initiated by a participant or by any other person, will result in disqualification from the Competition of the whole of the Team concerned.** Harmless error will not be a defence to a complaint based on violation of this rule.

**Rule 2.9 Observers**

(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 invited by the Organizing Committee.

(b) Teams and Coaches may attend all Mediation Sessions during the Competition, unless otherwise prohibited by the Organizing Committee which will organize access to the Mediation Sessions.

(c) Teams and Coaches may not attend the Mediation Session of a Team against which the Organizing Committee has assigned their Team to compete in the future.

(d) Teams and Coaches may not attend a Mediation Session during which a Competition Problem is discussed that has not yet been dealt with by that Team in a Mediation Session (save where the Team has not qualified for the Round in question).

(e) Observers will not be allowed to leave the room whilst the Mediation Session is in progress.

(f) Failure to comply with this rule will result in a or disqualification as defined under Rule 8.1.

### ***Rule 2.10 Judges' Scoring***

Following the 85-minute mediation, the Mediator, the Teams, Coaches and observers shall leave the room and the Judges will score the performance of each Team in accordance with the procedure set out in Annex IV.

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

### ***Rule 2.11 Feedback***

Each of the Judges will then provide feedback to each Team for no more than 10 minutes each. The Requesting Party will be provided with feedback first.

Feedback will be based on each Team's performance in the Mediation Session and based on its Mediation Plan.

Judges must ensure that their feedback is consistent and fair and that they do not show favouritism towards one Team.

**Judges may give constructive and positive feedback, but must not reveal to any Team the results of their individual determinations, the Teams' scores or the contents of the Confidential Information.**

The Mediator may also provide feedback during the feedback session, after the Judges' feedback.

**Rule 2.12    *Winning the Preliminary Rounds***

The Team with the largest number of individual Score Sheets designating “Win” for that Team per round will be the winner of that round in the Preliminary Rounds, irrespective of the number of points scored.

**Rule 2.13    *Ranking of Teams***

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

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

**Rule 2.14    *Scores and Ranking provided to the Teams***

Score Sheets and comments sheets will be provided to the Teams after the end of the Competition, as well as the ranking of the top twenty universities.

**RULE 3.0    **MEDIATION PLAN****

Each Team shall provide a Mediation Plan according to the annexed Instructions for Participants.

It is the responsibility of each Team to ensure that the brief biographies of each of its members supplied to the Organizing Committee are attached to its Mediation Plan.

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

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

## **RULE 4.0 COMPETITION PROBLEMS**

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

Each Problem will consist of General Information for all participants and Confidential Information for each Requesting Party and for each Responding Party and their respective Counsel. Judges and Mediators shall receive copies of the General Information and the Confidential Information for each party.

Eight Problems will be sent to all Teams before the start of the Competition. All Teams will receive General Information and Confidential Information for the four Preliminary Rounds in advance. General information for the Eighth-Final, Quarter-Final, Semi-Final and Final will also be sent in advance. However, Confidential Information will only be distributed respectively before each of such rounds.

Each Team must prepare and finalize their Mediation Plans for each Problem in the Preliminary Rounds and must provide them to the Organizing Committee on or before **30 January 2011**. Teams will not be permitted to modify such Mediation Plans after submission to the Organizing Committee.

Teams proceeding to the Final Rounds must prepare their Mediation Plans in advance of the Final Rounds, for provision at each respective Mediation Session.

Teams, Coaches, Judges and Mediators may not directly or indirectly disclose any Confidential Information to any other person, save that disclosure by Teams during a Mediation Session is permitted.

### **Final Rounds**

Confidential Information and assignment of roles for the Final Rounds will be provided at the end of the Preliminary Rounds, Eighth-Finals, Quarter-Finals and Semi-Finals.

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

Every effort will be made to ensure that Problems are clear. The Organizing Committee will hold an orientation session on 4 February 2011. Each Team may submit to the Organizing Committee on or before **1 December 2010** a maximum of

one written question for clarification or interpretation per Problem by the Drafting Working Group.

These requests shall relate only to the General Information of the Problems and not to the Confidential Information. The Drafting Working Group will have complete discretion in answering questions relating to the Problems; however, no new facts will be added to the Problems.

While Teams may not make up new facts, the facts of the Problems are subject to reasonable interpretation. Whether a Team's interpretation is reasonable is a matter entirely within the discretion of the Judges.

***Rule 4.3 Staying Within the Record***

Teams may draw reasonable inferences from the facts provided.

Failure to stay within the record may result in a penalty in accordance with Rule 8.1.

**RULE 5.0 PARTICIPATION AND ELIGIBILITY**

***Rule 5.1 Selection Criteria***

The Organizing Committee will determine the exact number of Teams participating in the Competition.

The Organizing Committee will select Teams based on the following criteria:

- preference will be given to universities who have previously participated in the Competition;
- preference will be given to universities who have an ADR curriculum;
- 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 Teams, the Organizing Committee will make a random selection by flipping a coin.

### **Rule 5.2 Attendance**

Each Team may be accompanied at the Competition by only one Coach. Additional persons and students who are not members of a Team may NOT accompany a Team to attend the Competition.

### **Rule 5.3 Eligible Student**

(a) The Competition is open to all full and part-time university students (to the exclusion of post-graduate doctorate students) registered in the university during the academic period during which the Competition is held. Persons who are entitled to practice law in any jurisdiction, by having passed a bar exam or otherwise, are NOT Eligible Students. However, students who have gained their qualification to practice law **automatically** with the completion of their **undergraduate** law studies (i.e. without a further bar exam or similar) and who certify that they have not yet practiced as lawyer (i.e. provided legal advice to clients) are Eligible Students provided they are currently registered in a law school.

(b) Only students studying law may take the role of Counsel.

(c) Team members do not have to be of the same nationality as that of their universities.

(d) Each university may nominate only one Team.

(e) Any Team that breaches this Rule 5.3 will be **disqualified** from the Competition.

(f) In particular, in order to enable as many Eligible Students as possible to participate in the Competition over the years, no person may participate in a Team in more than one ICC International Commercial Mediation Competition.

## **RULE 6.0 TEAM REGISTRATION**

### **Rule 6.1 Team Registration Form**

Each Team must submit to the Organizing Committee a completed registration form with the contact details and short CVs of each Team member justifying eligibility under Rule 5.3.

**Rule 6.2     Registration Fee**

Upon acceptance of the Team by the Organizing Committee, each Team must pay the registration fee within the time limit as indicated by the Organizing Committee.

**Rule 6.3     Team Contact**

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

**RULE 7.0     JUDGES AND MEDIATORS**

**Rule 7.1     Statement of Independence**

All Judges and Mediators shall provide to the Organizing Committee a Statement of Independence declaring his/her neutrality, impartiality and independence to judge or mediate any of the Teams in the Competition and disclosing any relationships with any Team's university, a Team or a person affiliated with a Team.

The Organizing Committee may only disqualify a Judge from judging or a Mediator from mediating a round if the Organizing Committee considers that she or he has an affiliation with a Team member and/or any Team's university or Coach which threatens neutrality, impartiality and independence.

**Rule 7.2     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.

**Rule 7.3     Confidential Information**

Judges and Mediators must keep the contents of the Confidential Information strictly secret from Teams.

**Teams and Coaches may not directly or indirectly disclose any Confidential Information to any other person, save that Coaches may disclose it to their own Teams. Failure to comply with this rule will result in immediate disqualification from the Competition.**

## **RULE 8.0 PENALTIES**

### ***Rule 8.1 Application of Penalties***

If a violation of the Rules is considered to have been committed by a Team or one of its members, the Organizing Committee can impose a penalty.

A maximum five point reduction will be applicable if Rules 2.4, 2.9, or 4.3 have been violated.

Disqualification from the Competition will result from a violation of Rules 2.9, 5.3 and 7.3.

## **RULE 9.0 AWARDS**

The Organizing Committee shall make arrangements for appropriate recognition of Teams that achieve 1<sup>st</sup> Place, 2<sup>nd</sup> Place and for Runners-up in the Competition and shall also make the following special awards:

- Best Mediation Plan
- Best advocating skill for the Preliminary Rounds
- Best relationship building with the other Team
- Best team work
- Best acknowledgement of cultural differences during the Preliminary Rounds
- Best non-native English speaker
- Best opening statement
- Best engagement in brainstorming creative options
- Best use of the Mediator
- Best Team from a university, identified by the Organizing Committee in its list of participants as participating in the Competition for the first time

Furthermore, after the Competition, the Organizing Committee will issue each member of each Team with a formal Certificate of Participation in the Competition (save in the case of disqualification).

## **RULE 10.0 ICC ORGANIZING COMMITTEE**

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

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

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

The Organizing Committee's interpretation as to the implementation of the Rules shall be final.

## ANNEX I

### SAMPLE OF JUDGES' SCORE SHEET

# 6<sup>th</sup> ICC International Commercial Mediation Competition

## SCORESHEET FOR JUDGES

*Please return this completed sheet to the Timekeeper or to the Organizing Committee after the Mediation and before the feedback session. This sheet will also be provided to the Teams after the Competition.*

*Please make sure to fill-in or circle all the requested information below.*

*Please use legible handwriting.*

**Full name:** \_\_\_\_\_

Please circle the appropriate round

Preliminary Rounds: Day 1 morning or afternoon / Day 2 morning or afternoon / Day 3 morning or afternoon / Eighth Finals / Quarter Finals / Semi Finals / Final

Date: \_\_\_\_\_

University represented by the Team: \_\_\_\_\_

1= poor

2= below adequate

3= adequate

4= above adequate

5= outstanding

***Please note that criteria called “Using Opportunities in the Mediation Process” will be scored between 1 and 5, and the resultant score doubled.***

CRITERIA	SCORE
<p><b>Presentation of Case in Opening Statements and Throughout</b></p> <ul style="list-style-type: none"> <li>• Presented facts and law in a way that could be understood by other side.</li> <li>• Offered proposals in a way that reflected careful planning and skilful implementation.</li> <li>• Reflected desire to understand other side’s real interests and needs.</li> <li>• Defended own claims and interests convincingly.</li> <li>• Accurately assessed and discussed litigation/arbitration benefits and risks, as well as other consequences of failing to reach settlement (in joint session and/or caucus).</li> </ul>	<p><b>(1-5)</b></p> <p style="text-align: right;"><b>/5</b></p>
<p><b>Teamwork Between Counsel and Client</b> (Both Counsel and Client must participate in each Mediation Session)</p> <ul style="list-style-type: none"> <li>• Effectively divided responsibilities in light of Client’s strengths and weaknesses.</li> <li>• Communicated effectively with each other.</li> <li>• Worked together as a coordinated Team.</li> <li>• Counsel ensured that Client was able to make informed choices about settlement possibilities.</li> </ul>	<p><b>(1-5)</b></p> <p style="text-align: right;"><b>/5</b></p>
<p><b>Problem-Solving Relationship Building</b></p> <ul style="list-style-type: none"> <li>• Took initiatives to build a problem-solving relationship with the other Team.</li> <li>• Recognized the other side’s interests.</li> <li>• Took initiatives to convert the other Team into problem solvers.</li> </ul>	<p><b>(1-5)</b></p> <p style="text-align: right;"><b>/5</b></p>
<p><b>Information Gathering and Communications with Other Side</b></p> <ul style="list-style-type: none"> <li>• Used active listening skills to promote communications.</li> <li>• Used appropriate questioning techniques to gather information.</li> <li>• Tested assumptions and collected necessary information at appropriate times.</li> <li>• Sensitively used techniques to ensure effective communication when one side or both sides does/do not speak English as a first language.</li> </ul>	<p><b>(1-5)</b></p> <p style="text-align: right;"><b>/5</b></p>

CRITERIA	SCORE
<p><b>Generating and Selecting Creative Options</b></p> <ul style="list-style-type: none"> <li>• Generated a range of legal and non-legal options to meet the Team's own and the other side's interests.</li> <li>• Separated inventing options from evaluating them and formulating offers.</li> <li>• Evaluated and selected options based on interests and, when appropriate, objective criteria.</li> <li>• Actively encouraged the development of creative ideas.</li> <li>• Attempted to avoid and overcome potential or actual impasses.</li> <li>• Adopted practical and realistic solutions to Problems.</li> </ul>	<p><b>(1-5)</b></p> <p style="text-align: right;"><b>/5</b></p>
<p><b>Using Opportunities in the Mediation Process (score 1 – 10)</b></p> <ul style="list-style-type: none"> <li>• Responded appropriately to the Mediator's style.</li> <li>• Used the Mediator to help to move towards resolution.</li> <li>• Chose appropriately whether and when to use a Caucus; if Caucus used, used Caucus effectively.</li> <li>• Responded appropriately to developments that occurred during the Mediation Session, especially new information and unforeseen moves by other side or the Mediator.</li> </ul>	<p><b>(1-10)</b></p> <p style="text-align: right;"><b>/10</b></p>
<p><b>Advocating Client's Interests – PART A</b></p> <ul style="list-style-type: none"> <li>• Understood and advanced Client's legal and non-legal interests throughout the mediation process.</li> </ul>	<p><b>(1-5)</b></p> <p style="text-align: right;"><b>/5</b></p>
<p><b>Advocating Client's Interests – PART B</b></p> <ul style="list-style-type: none"> <li>• Did not inappropriately sacrifice Client's interests.</li> </ul>	<p><b>(1-5)</b></p> <p style="text-align: right;"><b>/5</b></p>
<p><b>Rule 3. – Quality of Mediation Plan</b></p> <p>Mediation Plan accurately evaluated the strategic strong points and weak points of the Requesting Party and the Responding Party, their respective BATNAs, WATNAs and their respective objectives, goals, real interests and needs during the Mediation Session.</p>	<p><b>(1-5)</b></p> <p style="text-align: right;"><b>/5</b></p>
<p style="text-align: right;"><b>Subtotal</b></p>	<p style="text-align: right;"><b>/50</b></p>

CRITERIA	SCORE
<b>RULE 2.5 – TIME PENALTY:</b> Deduct up to 5 points if the Team continually abused the time limits (in consultation with the Organizing Committee).	<b>(-5-0)</b>  <b>/-5</b>
<b>RULE 4.3 – FAILURE TO STAY WITHIN THE RECORD PENALTY:</b> Deduct up to 5 points for any violation of Rule 4.3.	<b>(-5-0)</b>  <b>/-5</b>
<b>RULE 2.9 – OBSERVER’S PENALTY:</b> Deduct up to 5 points for any violation of Rule 2.9.	<b>(-5-0)</b>  <b>/-5</b>
<b>Discretionary bonus:</b> Judges may add up to 3 points to a Team’s score to reward excellence in an area not covered by the judging criteria.	
<b>Total Team Score</b>	<b>/53</b>
Please designate this Team by circling Win or Lose	<b>Win</b>  <b>Lose</b>

**REMARKS / NOTES:**

### SPECIAL AWARDS (maximum of three nominations)

You can nominate each Team for a maximum of THREE Special Awards.

Please tick on the left column for which three Special Awards you nominate this Team.

Please choose on the right the score with which you nominate this Team for the Special Award.

The Scores are:

3 Points = must awarded

2 Points = should be awarded

1 Point = could be awarded

PLEASE TICK <u>ONLY 3</u> FROM THE LIST	SPECIAL AWARD	1 POINT	2 POINTS	3 POINTS
	• Best Mediation Plan			
	• Best advocating skill for the Preliminary Rounds			
	• Best relationship building with the other Team			
	• Best team work			
	• Best acknowledgement of cultural differences during the Preliminary Rounds			
	• Best non-native English speaker			
	• Best opening statement			
	• Best engagement in brainstorming creative options			
	• Best use of the Mediator			
	• Best Team from a university participating in the Competition for the first time ( <i>for identification see list of universities exhibited in each room</i> )			

## **ANNEX II**

### **INSTRUCTIONS FOR PARTICIPANTS**

#### **1. Rules**

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

#### **2. Mediator**

Please remember that the Competition is a mediation one so do use the Mediator.

#### **3. Mediation Plan**

Pursuant to Rule 3 of the Rules, each Team must provide the Organizing Committee on or before 30 January 2011 copies of its finalized Mediation Plans for the Preliminary Rounds (with copy biographies attached). Upon submission to the Organizing Committee, Teams will not be permitted to modify their Mediation Plans.

The Mediation Plan for each Mediation Session can be no more than 2 pages in 12-point, time new roman, 1.5 spacing.

A copy of the Mediation Plan (with copy biographies attached) shall be provided by the Teams to each Judge and the Mediator at the start of the Mediation Session.

Accordingly, students should plan to have at least four copies of each Mediation Plan (with copy biographies attached) available at the start of each round including two (three in the Final Rounds) for the Judges and one for the Mediator.

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

(1) The Team's BATNA

(2) The Team's WATNA

(3) "Responsibility Sharing" – explain *how* the Team plans to share responsibilities between the Counsel and the Client in the Mediation Session;

- (4) "Allocation Strategy" – explain *why* the Team chose the particular responsibility sharing;
- (5) "Your Side's Interests" – describe the interests that the Party plans to advance in the Mediation Session;
- (6) "Other Party's Interests" – describe the likely interests of the other Party;
- (7) "Other Party's BATNA" – describe the likely BATNA of the other Party  
and
- (8) "Mediation Strategy" – the mediation strategy in light of the preceding factors.

Teams should hand their Mediation Plans to the Judges and the Mediator immediately prior to the beginning of the Mediation Session.

Before the Mediation Session begins, the Judges and the Mediator shall read each Team's Mediation Plan.

For the Final Rounds (Eighth, Quarter, Semi, and Final) where there may be limited time to prepare for the Mediation Session, the Mediation Plan may be in the form of a hand-written or typed outline. For such Rounds, a computer and printer will be made available by the Organizing Committee for all Teams who wish to print their Mediation Plans.

#### **4. Feedback Session**

Once Teams and Coaches have returned to the room after the Judges have completed their Score Sheets, the feedback session is a time for the Judges and Mediator to exchange with the Teams their reactions, views and positive criticism on their Mediation Session. Under no circumstances, should this time be used to denigrate or criticize the opposing Team.

In order to avoid disturbances, Coaches and Teams must remain in the room throughout the feedback sessions for both Teams.

## **ANNEX III**

### **INSTRUCTIONS FOR MEDIATORS**

*It is essential that the Mediators participating in the Competition adopt a consistent and uniform approach to the Mediation Sessions. With this in mind, please conduct each Mediation Session using the following guidelines:*

1. **How you approach your role as mediator in this Competition determines the quality of the learning experience that each student will have during the mediation exercise.** Please keep foremost in your mind that this Competition is an extra-curricular activity for students where the primary focus should be on the student Teams. Your primary goal as a Mediator is to inspire the greatest quality of Team performance during the Competition: you should allow the Teams to show well rather than showing well yourself as Mediator.
2. All Mediators must read in advance of the Competition the Rules including all Annexes, the Problems and the Confidential Information. Please prepare well so that you understand what is required of you.
3. Your Mediator's opening statement should address, at minimum, the following:
  - role of the Mediator as a facilitator of the process
  - ground rules for the Parties and their representatives (e.g. do not interrupt)
  - use of Caucus
  - confidentiality of matters discussed in joint session and in Caucus

**Your mediator's opening statement should be less than five minutes in duration.**

4. All Mediators must read each Team's Mediation Plan before each Mediation Session.
5. **You should adopt a facilitative style, rather than an evaluative or directive one.** No matter what your regular professional practice is, you should permit

each Team to present its case even if you believe it is counter-productive and artificial.

You should encourage each Team to adopt practical and realistic solutions to Problems, and to take account of financial considerations.

Teams should be encouraged to address all issues: they should avoid postponing "difficult " ones to imaginary future sessions.

6. All your interventions should aim to promote the students' participation in creative Problem solving and development of settlement options. **Please do not suggest options for settlement. Please refrain expressing a view as to who is right and who is wrong and from being directive.** Remember that the Mediation Session is short and lasts only 85 minutes. This also does not mean that you should remain completely silent after your opening statement. The goal is for you to adapt your role to the needs of the students.
7. Caucusing is explained in Rules 2.1.

Caucusing is optional for the students, and it is important to let the Teams decide upon a Caucus.

**Even if you use a no-Caucus model of mediation in your practice or you think that the time chosen by the student Team is not appropriate, please allow the students to take a Caucus when requested.**

Each caucus should last no more than five minutes.

8. You may also provide comments to the students after the Judges' feedback session, provided they are based on the criteria contained in the Score Sheet.

## **ANNEX IV**

### **INSTRUCTIONS FOR JUDGES**

1. As Judges in this Competition, you perform two extremely important functions. First, you evaluate and score the quality of representation by the student Teams. Secondly, you are invited to **give measured, balanced and constructive feedback** in a manner calculated to empower the students and increase their learning from this experience.
2. **All Judges must read in advance of the Competition the Rules including all Annexes, the Problems and the Confidential Information. 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 Team against the Judging Criteria.
4. Please note that experience has shown that the range of expression/ emotionality could be less for non-English mother tongue Teams who could be using more energy to get the words right.
5. All Judges must read each Team's Mediation Plan (and attached biographies) before the Mediation Session begins.

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

(1) The Team's BATNA

(2) The Team's WATNA

(3) "Responsibility Sharing" – explain *how* the Team plans to share responsibilities between the Counsel and the Client in the Mediation Session;

(4) "Allocation Strategy" – explain *why* the Team chose the particular sharing of responsibility;

(5) “Your Side’s Interests” – describe the interests that the Party plans to advance in the Mediation Session;

(6) “Other Party’s Interests” – describe the likely interests of the other Party;

(7) “Other Party’s BATNA” – describe the likely BATNA of the other Party

and

(8) “Mediation Strategy” – the mediation strategy in light of the five preceding factors.

### **Timekeeping**

The Organizing Committee will assign a Time Keeper to observe the Mediation Session in order to assist with timekeeping.

### **Scoring**

**1. For the sake of ensuring fairness and equality, you must use the Judging Criteria to evaluate the Teams, even if such criteria do not conform to your concept of best practice.**

2. 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:

i) To read the Team biographies prior to judging. This will help them to identify:

- what cultural issues may emerge during the mediation;

- to challenge assumptions about who are native English speakers and who are not.

Teams may contain students whose cultural and linguistic backgrounds are not immediately apparent.

ii) To consider how, within the mediation session, 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.

3. **Do not penalize any Teams for failing to reach resolution. Do not reward any Teams for reaching settlement. Full settlement is not the point of the Competition due to the tight timeframe. Do reward Teams for strategies which facilitate progression to settlement. An example of such a strategy is where a Team builds up a relationship with the other side through agreement on less contentious issues without avoiding discussion on more contentious ones.**
4. **Do not reward good acting skills but do reward realism in the role play.**
5. Each **Judge** must first independently score each Team. **The Judges may then confer with each other prior to finalizing their Score Sheets.**
6. You must complete a Score Sheet for each Team before providing feedback.
7. In the event of a Tie, both Teams shall score one point each.

Your Score Sheets will be collected from you after each Mediation Session.

### **Feedback**

Once Teams and Coaches have returned to the room after the Judges have completed their Score Sheets, you should provide feedback to each Team after the Mediation Session. In order to avoid disturbances, Coaches for all Teams must remain in the room through the entire feedback sessions for both Teams.

## **PLEASE PAY CAREFUL ATTENTION TO THE FOLLOWING:**

During the scheduled feedback time, please give **measured, balanced and constructive feedback** to the students in a manner calculated to empower them and increase their learning from this experience. **You are role models to these students** and they will take seriously what you have to say. You should **see yourself as a mentor** who **carefully chooses words** when evaluating the students' work and keep in mind that the students have invested significant extra-curricular time and money to participate in this event. They are in a vulnerable state when receiving feedback from you under the conditions of Competition. Therefore, **your approach to giving feedback will determine the quality of each student's entire experience.** Please note that your feedback should be tied to the Judging Criteria as opposed to your "real world" experience. However, after you have completed your Competition feedback, you may discuss with the participants your views on how the Competition differs from your actual mediation experience (if time permits), keeping mind that you are not allowed to share with them your scoring results.

You should be both rigorous and careful in your comments. It is very important that you tell the students precisely the good aspects of their performance. Even if you are mostly dissatisfied, you should be able to state what was done well. It also is important to state objectively and precisely the areas that could be improved upon. **Avoid the use of harsh, charged, and judgmental language and make it clear to the Teams that you are expressing your personal perceptions and subjective opinions.** This may be difficult for you to do when you have strong negative reactions to the performance you observed. Therefore, **please take every precaution to filter/edit your remarks before you utter them.** Do not comment on the personal appearances of the Team members.

The Organizing Committee wants each student to feel that his/her experience was worth the effort of his/her participation and journey to Paris. Thank you for the extra effort you give to make the feedback session a positive, constructive experience for each of the students.