



ICDR-AAA EU-U.S. Privacy Shield Annex I Arbitration Rules

Effective as of September 15, 2017

The EU-U.S. Privacy Shield Annex I Binding Arbitration Program

These Rules govern arbitrations that take place pursuant to the requirements of Annex I of the EU-U.S. Privacy Shield Framework (“Framework”), which provide the terms under which Privacy Shield Organizations are obligated to arbitrate claims pursuant to the Privacy Shield Principle of Recourse, Enforcement and Liability.¹

The ICDR-AAA

The International Centre for Dispute Resolution (“ICDR”) is the international division of the American Arbitration Association (“AAA”), and is the administrator for the Privacy Shield Annex I Binding Arbitration program. The ICDR-AAA provides dispute resolution services around the world and incorporates best international arbitration practices that are designed to deliver fair, efficient, and economic proceedings.

The ICDR-AAA in cooperation with the U.S. Department of Commerce and the European Commission has developed arbitration rules for Privacy Shield Annex I arbitrations which are included below. Those rules incorporate the required terms that are contained within the Privacy Shield Framework and Annex I in particular.

ICDR-AAA EU-U.S. Privacy Shield Annex I Arbitration Rules

Rule 1: Scope of These Rules

1. These ICDR-AAA EU U.S. Privacy Shield Annex I Arbitration Rules (“Rules”) shall apply where an EU individual seeks to determine whether an organization participating in the Privacy Shield Framework has violated its obligations under the Privacy Shield Principles (“Principles”) as to that individual, and whether any such violation remains fully or partially unremedied (“residual claims”). This arbitration option is available only for these purposes.
2. An individual (referred to in these Rules as the “Claimant”) who decides to invoke this arbitration option must take the following steps prior to initiating an arbitration claim:
 - (a) raise the claimed violation directly with the organization (referred to in these Rules as the “Respondent”) and afford the organization an opportunity to resolve the issue within the 45-day timeframe set forth in the Principles;
 - (b) make use of the independent recourse mechanism under the Principles, which is at no cost to the individual;and

¹ On September 15, 2017, the U.S. Department of Commerce and the European Commission agreed to the adoption of these Arbitration Rules to govern the binding arbitration process provided for in Annex I of the Privacy Shield Framework.



- (c) raise the issue through the Claimant's Data Protection Authority to the Department of Commerce and afford the Department of Commerce an opportunity to use best efforts to resolve the issue within a 90-day timeframe.
3. This arbitration option may not be invoked under either of the following circumstances:
- (a) the Claimant's same claimed violation of the Principles:
- (1) has previously been subject to binding arbitration;
 - (2) was the subject of a final judgment entered in a court action to which the Claimant was a party; or
 - (3) was previously settled by the parties.
- (b) An EU Data Protection Authority ("DPA"):
- (1) has authority under Sections III.5 or III.9 of the Principles; or
 - (2) has the authority to resolve the claimed violation directly with the Respondent. A DPA's authority to resolve the same claim against an EU data controller does not alone preclude invocation of this arbitration option against a different legal entity not bound by the DPA authority.
4. These Rules govern the arbitration, except that, where any such rule is in conflict with any provision of the Framework or the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail. The ICDR-AAA is the Administrator of these Rules.²

Rule 2: Notice and Filing Requirements

1. An EU individual may initiate an arbitration pursuant to this program, subject to the pre-arbitration requirements listed in Rule 1, by filing a request for arbitration utilizing the "EU-U.S. Privacy Shield Annex I Notice of Arbitration Form" located on the ICDR's website <http://go.adr.org/privacyshieldAnnexI.html>, and all other required documents, along with a copy to the Respondent, by e-mail or mail if necessary.
2. The arbitration shall be deemed to commence on the date on which the ICDR-AAA receives the EU-U.S. Privacy Shield Annex I Notice of Arbitration Form and all other required documents pursuant to the following Rule 2(3).
3. In addition to the completed EU-U.S. Privacy Shield Annex I Notice of Arbitration Form the request for arbitration shall contain the following information:
 - (a) a summary of steps taken pursuant to Rule 1 to resolve the claim pertaining to the alleged violation, including documentation from the EU DPA identifying the date the Complaint Referral Form was sent to the U.S. Department of Commerce;
 - (b) a description of the alleged violation and at the option of the Claimant any supporting documents the Claimant wishes to enter into evidence and/or a discussion of law relating to the alleged violation and of any facts supporting it;
 - (c) the relief or remedy sought; and

² The US Department of Commerce designated the ICDR-AAA to manage the Arbitral Fund and to administer arbitrations proceeding pursuant to Annex I.



- (d) the names, addresses, telephone numbers and email addresses of all the parties and if known, of their representatives.
4. The ICDR-AAA shall have the authority to determine if the administrative filing requirements contained in this Rule 2 have been met.
 5. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is made. If the last day of such a period is an official holiday at the place received, the period is extended through the first business day that follows. Official holidays occurring during the running of the period of time are included in calculating the period.
 6. Upon receipt of the Notice of Arbitration, the ICDR-AAA shall communicate with all parties with respect to the arbitration and shall acknowledge the commencement of the arbitration.

Rule 3: Answer

1. Within 10 days after the commencement of the arbitration, the Respondent shall submit an Answer to the Claimant and the ICDR-AAA in writing and attaching copies of any supporting documents the Respondent wishes to enter into evidence. When no Answer is filed to the Notice of Arbitration, the alleged violation shall be deemed as denied by the opposing party and Rule 13(2) applies. All communications will be by email where possible unless otherwise agreed by the parties or as directed by the arbitrator(s).
2. Failure of a Respondent to submit an Answer shall not preclude the arbitration from proceeding.

Rule 4: Administrative Conference

The ICDR-AAA shall conduct an administrative conference call before the arbitral tribunal is constituted to facilitate party discussion and agreement on issues such as consulting with the parties as to arbitrator selection, process efficiencies, and any other administrative matters.

Rule 5: Number of Arbitrators

The arbitration panel shall consist of one or three arbitrators, as agreed to by the parties. If the parties do not reach agreement, the ICDR-AAA shall determine the number of arbitrators in its discretion considering the novelty, scope, complexity, and other circumstances of the case.

Rule 6: Appointment of Arbitrators

1. Once the Answer is received, the deadline for the submission of the Answer has passed, or at a time determined by the ICDR-AAA in its discretion, the ICDR-AAA will proceed with the appointment of arbitrator(s). In making the appointments the ICDR-AAA shall use the following list method as provided in Rule 6(3).
2. All arbitrators appointed pursuant to these Rules shall be selected from the EU-U.S. Privacy Shield List of Arbitrators, which has been jointly developed between the U.S. Department of Commerce and the European Commission.



3. Arbitrators shall be appointed as follows:
 - (a) For the appointment of a sole arbitrator:
 - (1) The ICDR-AAA shall simultaneously submit to each party an identical list of five proposed arbitrators, based on considerations raised by the parties during the administrative conference under Rule 4. The parties may agree to an arbitrator from this list and shall so advise the ICDR-AAA.
 - (2) If the parties are unable to agree upon an arbitrator, each party may strike two names objected to from the list, number the remaining names in order of preference and return the list to the ICDR-AAA within 10 days of the transmittal date the list of proposed arbitrators was sent to the parties. The parties are not required to exchange selection lists. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on the parties' lists and in accordance with the designated order of mutual preference, the ICDR-AAA shall invite an arbitrator(s) to serve.
 - (3) If the appointment cannot be made from the submitted lists, including if acceptable arbitrators are unable or unavailable to act, the ICDR-AAA may make the appointment without the circulation of additional lists.
 - (b) For the appointment of three arbitrators:
 - (1) The same process specified for the appointment of a sole arbitrator in Rule 6(3)(a) shall be followed except that the ICDR-AAA shall simultaneously submit to each party an identical list of 10 proposed arbitrators from which the parties may agree to three arbitrators, and if so, shall advise the ICDR-AAA.
 - (2) The tribunal may by agreement designate the presiding arbitrator. Absent agreement by the tribunal the ICDR-AAA shall designate the presiding arbitrator taking into account the expertise of the arbitrators.
 - (c) The parties will be given notice by the ICDR-AAA of the appointment of the arbitrator(s), together with any disclosures the arbitrator(s) may make.
4. In the event the ICDR-AAA determines that compelling circumstances require it in a particular case, an alternative arbitrator appointment process may be employed by the ICDR-AAA, including the administrative appointment of one or more arbitrators.
5. The appointment of an arbitrator is effective upon receipt by the ICDR-AAA of its Notice of Appointment form completed and signed by the arbitrator.

Rule 7: Impartiality and Independence of Arbitrator(s)

1. Arbitrators acting under these Rules shall be impartial and independent and shall act in accordance with the terms of the Notice of Appointment provided by the ICDR-AAA.
2. Upon accepting appointment, an arbitrator shall sign the Notice of Appointment provided by the ICDR-AAA affirming that the arbitrator is available to serve and is independent and impartial. The arbitrator shall disclose any circumstances that may give rise to justifiable doubts as to the arbitrator's impartiality or independence and any other relevant facts the arbitrator wishes to bring to the attention of the parties.



3. If, at any stage during the arbitration, circumstances arise that may give rise to such doubts, an arbitrator or party shall promptly disclose such information to all parties and to the ICDR-AAA. Upon receipt of such information from an arbitrator or a party, the ICDR-AAA shall communicate it to all parties and to the tribunal.
4. Disclosure by an arbitrator or party does not necessarily indicate belief by the arbitrator or party that the disclosed information gives rise to justifiable doubts as to the arbitrator's impartiality or independence.
5. Failure of a party to disclose any circumstances that may give rise to justifiable doubts as to an arbitrator's impartiality or independence within a reasonable period after the party becomes aware of such information constitutes a waiver of the right to challenge an arbitrator based on those circumstances.
6. No party or anyone acting on its behalf shall have any *ex parte* communication relating to the case with any arbitrator.

Rule 8: Challenge of an Arbitrator

1. A party may challenge an arbitrator whenever circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence. A party shall send a written notice of the challenge to the ICDR-AAA within 5 days after being notified of the appointment of the arbitrator or within 15 days after the circumstances giving rise to the challenge become known to that party. The challenge shall state in writing the reasons for the challenge. The party shall not send this notice to any member of the arbitral tribunal.
2. Upon receipt of such a challenge, the ICDR-AAA shall notify the other party of the challenge and give such party an opportunity to respond. The ICDR-AAA shall not send the notice of challenge to any member of the tribunal but shall notify the tribunal that a challenge has been received, without identifying the party challenging. The ICDR-AAA may advise the challenged arbitrator of the challenge and request information from the challenged arbitrator relating to the challenge. When an arbitrator has been challenged by a party, the other party may agree to the acceptance of the challenge and, if there is agreement, the arbitrator shall withdraw. The challenged arbitrator, after consultation with the ICDR-AAA, also may withdraw in the absence of such agreement. In neither case does withdrawal imply acceptance of the validity of the grounds for the challenge.
3. If the other party does not agree to the challenge or the challenged arbitrator does not withdraw, the ICDR-AAA in its sole discretion shall make the decision on the challenge.
4. The ICDR-AAA, on its own initiative, may remove an arbitrator for failing to perform his or her duties with diligence and in good faith. The ICDR-AAA will inform the U.S. Department of Commerce and the European Commission if an arbitrator is removed under this provision.

Rule 9: Replacement of an Arbitrator

1. If an arbitrator resigns, is incapable of performing the duties of an arbitrator, or is removed for any reason and the office becomes vacant, a substitute arbitrator shall be appointed pursuant to the provisions of Rule 6, unless the parties otherwise agree.



2. If a substitute arbitrator is appointed under this Rule, unless the parties otherwise agree the arbitral tribunal shall determine at its sole discretion whether all or part of the case shall be repeated or reconsidered.
3. If an arbitrator on a three-person arbitral tribunal fails to participate in the arbitration for reasons other than those identified in Rule 9(1), the two other arbitrators shall have the power in their sole discretion to continue the arbitration and to make any decision, ruling, order, or award, notwithstanding the failure of the third arbitrator to participate. In determining whether to continue the arbitration or to render any decision, ruling, order, or award without the participation of an arbitrator, the two other arbitrators shall take into account the stage of the arbitration, the reason, if any, expressed by the third arbitrator for such non-participation and such other matters as they consider appropriate in the circumstances of the case. In the event that the two other arbitrators determine not to continue the arbitration without the participation of the third arbitrator, the ICDR-AAA on proof satisfactory to it shall declare the office vacant, and a substitute arbitrator shall be appointed pursuant to the provisions of Rule 6, unless the parties otherwise agree.

Rule 10: Party Representation

1. Any party may be represented in the arbitration but is not required to do so. However each party must bear its own attorney's fees. The names, addresses, telephone numbers, fax numbers, and email addresses of representatives shall be communicated in writing to the other party and to the ICDR-AAA.
2. No representative of the U.S., EU, or any EU Member State or any other governmental authority, public authority, or enforcement authority may participate in these arbitrations, provided, that at the request of an EU individual, EU DPAs may provide assistance in the preparation only of the Notice referenced in Rule 2, but EU DPAs may not have access to discovery or any other materials related to these arbitrations.

Rule 11: Place of Arbitration

The location of the arbitration will be the United States and the award shall be deemed made in New York City. The Claimant may choose video or telephone participation, which will be provided at no cost to the Claimant. In-person participation will not be required.

Rule 12: Language of Arbitration

1. The language of the arbitration will be English unless otherwise agreed by the parties.
2. The tribunal may order that any documents delivered in another language shall be accompanied by a translation into the language of the arbitration or English as deemed appropriate.
3. Upon a reasoned request, and taking into account whether the Claimant is represented by an attorney, interpretation at the arbitral hearing as well as translation of arbitral materials, including as required under Rule 12 (2), will be provided at no cost to the Claimant, unless the panel finds that, under the circumstances of the specific arbitration, this would lead to unjustified or disproportionate costs.



Rule 13: Arbitral Jurisdiction

1. The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence, scope, or validity of its authority pursuant to the EU-U.S. Privacy Shield Annex I Binding Arbitration Program.
2. A party must object to the jurisdiction of the tribunal or to arbitral jurisdiction respecting the admissibility of an alleged violation no later than the filing of the Answer, as provided in Rule 3.
3. Issues regarding arbitral jurisdiction raised prior to the constitution of the tribunal shall not preclude the ICDR-AAA from proceeding with administration and shall be referred to the tribunal for determination once constituted.

Rule 14: Conduct of Proceedings

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in whatever manner it considers appropriate, provided that the parties are treated with equality and impartiality and that each party has the right to be heard and is given a fair opportunity to present its case.
2. The tribunal shall conduct the proceedings with a view to expediting the resolution of the dispute. The tribunal shall, promptly after being constituted, conduct a preparatory conference call with the parties for the purpose of organizing, scheduling, and agreeing to procedures, including the setting of deadlines for any written submissions by the parties. In establishing procedures for the case, the tribunal and the parties may consider how technology, including electronic communications, telephonic or video conferences could be used to increase the efficiency and economy of the proceedings.
3. The tribunal may decide preliminary issues, direct the order of proof, exclude cumulative or irrelevant testimony or other evidence, and direct the parties to focus their presentations on issues whose resolution could dispose of all or part of the case.
4. At any time during the proceedings, the tribunal may order the parties to produce documents, exhibits, or other evidence it deems necessary or appropriate.
5. Documents or information submitted to the tribunal by one party shall at the same time be transmitted by that party to all parties and to the ICDR-AAA.
6. The tribunal shall determine the admissibility, relevance, materiality, and weight of the evidence.
7. The parties shall make every effort to avoid unnecessary delay and expense in the arbitration. The arbitral tribunal may draw adverse inferences, and take such additional steps as are necessary to protect the efficiency and integrity of the arbitration. Arbitrations should be completed within 90 days of the delivery of the Notice to the Respondent, unless otherwise agreed to by the parties.



Rule 15: Exchange of Information

1. The arbitral tribunal shall manage the exchange of information between the parties with a view to maintaining fairness, efficiency, and economy. The tribunal and the parties should endeavor to avoid unnecessary delay and expense while at the same time avoiding surprise, assuring equality of treatment, and safeguarding each party's opportunity to present its claims and defenses fairly.
2. The parties may provide the tribunal with their views on the appropriate level of information exchange for each case, but the tribunal retains final authority. To the extent that the parties wish to depart from this Rule, they may do so only by written agreement and in consultation with the tribunal.
3. The parties shall exchange all documents upon which each intends to rely on a schedule set by the tribunal.
4. Individual-specific discovery may be permitted if necessary and the tribunal may, upon application, require a party to make available to another party documents in that party's possession not otherwise available to the party seeking the documents, that are reasonably believed to exist and to be relevant and material to the outcome of the case. Requests for documents shall contain a description of specific documents or classes of documents, along with an explanation of their relevance and materiality to the outcome of the case. Such discovery will be treated confidentially and will only be used in connection with the arbitration.
5. The tribunal may condition any exchange of information subject to claims of commercial or technical confidentiality on appropriate measures to protect such confidentiality.
6. When documents to be exchanged are maintained in electronic form, the party in possession of such documents may make them available in the form (which may be paper copies) most convenient and economical for it, unless the tribunal determines, on application, that there is a compelling need for access to the documents in a different form. Requests for documents maintained in electronic form should be narrowly focused and structured to make searching for them as economical as possible. The tribunal may direct testing or other means of focusing and limiting any search.
7. In the event a party fails to comply with an order for information exchange, the tribunal may draw adverse inferences and may take such failure into account in the award.

Rule 16: Privilege

The arbitral tribunal shall take into account applicable principles of privilege, such as those involving the confidentiality of communications between a lawyer and client. When the parties, their counsel, or their documents would be subject under applicable law to different rules, the tribunal should, to the extent possible, apply the same rule to all parties, giving preference to the rule that provides the highest level of protection.

Rule 17: Default

1. If a Respondent fails to submit an Answer in accordance with Rule 3, the arbitral tribunal may proceed with the arbitration.



2. If a party, duly notified under these Rules, fails to participate in a hearing without showing sufficient cause for such failure, the tribunal may proceed with the hearing.
3. If a party, duly invited to produce evidence or take any other steps in the proceedings, fails to do so within the time established by the tribunal without showing sufficient cause for such failure, the tribunal may make the award on the evidence before it.

Rule 18: Closure of Hearing

1. The arbitral tribunal may ask the parties if they have any further submissions and upon receiving negative replies or if satisfied that the record is complete, the tribunal may declare the arbitral hearing closed.
2. The tribunal in its discretion, on its own motion, or upon application of a party, may reopen the arbitral hearing at any time before the award is made.

Rule 19: Waiver

A party who knows of any non-compliance with any provision or requirement of the Rules or the provisions of the Privacy Shield Annex I program, and proceeds with the arbitration without promptly stating an objection in writing waives the right to object. This provision shall not apply to unrepresented parties.

Rule 20: Awards, Orders, Decisions and Rulings

1. In addition to making a final award, the arbitral tribunal may make interim, interlocutory, or partial awards, orders, decisions, and rulings.
2. When there is more than one arbitrator, any award, order, decision, or ruling of the tribunal shall be made by a majority of the arbitrators.
3. When the parties or the tribunal so authorize, the presiding arbitrator may make orders, decisions, or rulings on questions of procedure, including exchanges of information, subject to revision by the tribunal.

Rule 21: Time, Form, and Effect of Award

1. Awards shall be made in writing by the arbitral tribunal and shall be final and binding on the parties. The tribunal shall make every effort to deliberate and prepare the award as quickly as possible after the hearing. Unless otherwise agreed by the parties or the ICDR-AAA, the final award shall be made no later than 20 days from the date of the closing of the hearing. The parties shall carry out any such award without delay. The tribunal shall state the reasons upon which an award is based.
2. An award shall be signed by the arbitrator(s) and shall state the date on which the award was made and the place of arbitration pursuant to Rule 11. Where there is more than one arbitrator and any of them fails to sign an award, the award shall include or be accompanied by a statement of the reason for the absence of such signature.



3. An award may be made public by the ICDR-AAA only with the consent of all parties, or as required by law or the Department of Commerce.
4. The award shall be transmitted in draft form by the tribunal to the ICDR-AAA. The award shall be communicated to the parties and the Department of Commerce by the ICDR-AAA.
5. If applicable law requires an award to be filed or registered, the tribunal shall cause such requirement to be satisfied. It is the responsibility of the parties to bring such requirements to the attention of the tribunal.
6. Once the arbitration process is invoked and an award issued, the Claimant forgoes the option to seek relief for the same claimed violation in another forum, except that if non-monetary equitable relief does not fully remedy the claimed violation, the Claimant's invocation of arbitration will not preclude a claim for damages that is otherwise available in the courts.

Rule 22: Applicable Laws and Remedies

1. In accordance with Section I.7 of the Principles, U.S. law will apply to questions of interpretation and compliance with the Principles and relevant privacy policies by Privacy Shield organizations, except where such organizations have committed to cooperate with EU DPAs.
2. The arbitral tribunal has the authority to impose individual-specific, non-monetary equitable relief (such as access, correction, deletion, or return of the individual's data in question) necessary to remedy the violation of the Principles only with respect to the individual. These are the only powers of the arbitration panel with respect to remedies. In considering remedies, the arbitration panel is required to consider other remedies that already have been imposed by other mechanisms under the Privacy Shield. No damages, costs, fees, or other remedies are available. Each party bears its own attorney's fees.

Rule 23: Settlement or Other Reasons for Termination

1. If the parties settle the dispute before a final award is made, the arbitral tribunal shall terminate the arbitration and, if requested by all parties, may record the settlement in the form of a consent award on agreed terms. The tribunal is not obliged to give reasons for such an award.
2. If continuation of the arbitration becomes unnecessary or impossible the arbitration may be suspended or terminated by the ICDR-AAA (if the tribunal has not been constituted) or the arbitral tribunal. The tribunal shall issue an order terminating the arbitration, unless a party raises justifiable grounds for objection upon notice to the parties.

Rule 24: Interpretation and Correction of Award

1. Within 20 days after the receipt of an award, any party, with notice to the other party, may request the arbitral tribunal to interpret the award or correct any clerical, typographical, or computational errors found in the award.



2. If the tribunal considers such a request justified after considering the contentions of the parties, it shall comply with such a request within 20 days after receipt of the parties' last submissions respecting the requested interpretation or correction of clerical, typographical or computational errors found in the award. Any interpretation or correction shall contain the reasoning and shall form part of the award.
3. The tribunal on its own initiative may, within 20 days of the date of the award, correct any clerical, typographical, or computational errors.

Rule 25: Costs of Arbitration

1. Arbitrators should take reasonable steps to minimize the costs or fees of the arbitrations.
2. As provided for in Annex I of the Privacy Shield Framework, the ICDR-AAA is the manager of the Arbitral Fund, which will cover the arbitral costs, including arbitrator fees, up to maximum amounts ("caps"). Attorney's fees and any travel expenses incurred by the parties are not covered costs.

Rule 26: Confidentiality

1. Confidential information disclosed during the arbitration by the parties shall not be divulged by an arbitrator or by the ICDR-AAA. Except as may be otherwise agreed by the parties or required by applicable law, the members of the arbitral tribunal and the ICDR-AAA shall keep confidential all matters relating to the arbitration or the award.
2. Unless the parties agree otherwise, the tribunal may make orders concerning the confidentiality of the arbitration or any matters in connection with the arbitration and may take measures for protecting trade secrets and confidential information.

Rule 27: Exclusion of Liability

The members of the arbitral tribunal, appointed under Rule 6, and the ICDR-AAA shall not be liable to any party for any act or omission in connection with any arbitration under these Rules, except to the extent that such a limitation of liability is prohibited by applicable law. The parties agree that no arbitrator, nor the ICDR-AAA, shall be under any obligation to make any statement about the arbitration, and no party shall seek to make any of these persons a party or witness in any judicial or other proceedings relating to the arbitration.

Rule 28: Interpretation of Rules

The arbitral tribunal appointed under Rule 6 shall interpret and apply these Rules insofar as they relate to their powers and duties. The ICDR-AAA shall interpret and apply all other Rules.

If you have questions regarding this program or for any further information regarding the ICDR-AAA's international dispute resolution services, please feel free to call or email Luis Martinez at MartinezL@adr.org +1.212.716.5833.