



# Code of Conduct for Arbitrators Appointed to EU-U.S. DPF Annex I Arbitrations

Effective as of July 10, 2023

Arbitrators appointed to arbitrations pursuant to Annex I of the EU-U.S. Data Privacy Framework (“EU-U.S. DPF”) Principles shall be subject to the terms of this code of conduct (“Code”). The Code applies to arbitrators in arbitrations administered by the International Centre for Dispute Resolution® (“ICDR®”) in accordance with the ICDR-AAA® EU-U.S. DPF Annex I Arbitration Rules (“Rules”).<sup>1</sup> The Code is intended to be consistent with the EU-U.S. DPF Principles, the Rules and generally accepted ethical standards for arbitrators, however to the extent the Code conflicts in some respect with the EU-U.S. DPF Principles, the Rules, or applicable law, those other sources of authority shall control over the Code with regard to the issue in conflict.

**CANON I. An arbitrator should uphold the integrity and fairness of the arbitration process.**

- A.** An arbitrator has a responsibility not only to the parties but also to the process of arbitration itself, and must observe high standards of conduct so that the integrity and fairness of the process will be preserved. Accordingly, an arbitrator should recognize a responsibility to the public, to the parties whose rights will be decided, and to all other participants in the proceeding.
- B.** One should accept appointment as an arbitrator only if fully satisfied:
  - (1)** that he or she can serve impartially;
  - (2)** that he or she can serve independently from the parties, potential witnesses, and the other arbitrators;
  - (3)** that he or she is competent to serve; and
  - (4)** that he or she can be available to commence the arbitration in accordance with the requirements of the proceeding and thereafter to devote the time and attention to its completion that the parties are reasonably entitled to expect.
- C.** After accepting appointment, while serving as an arbitrator, and for a reasonable period of time after the decision in a case, an arbitrator should:
  - (1)** avoid entering into any business, professional, or personal relationship, or acquiring any financial or personal interest, which is likely to affect impartiality or which might reasonably create the appearance of partiality;

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<sup>1</sup> On September 15, 2017, the U.S. Department of Commerce and the European Commission agreed to the adoption of a set of arbitration rules to govern the binding arbitration process provided for in Annex I of the EU-U.S. Privacy Shield Framework Principles, as well as code of conduct for arbitrators consistent with generally accepted ethical standards for commercial arbitrators and Annex I of those Principles. The EU-U.S. Privacy Shield Framework Principles have been amended as the “EU-U.S. Data Privacy Framework Principles”. The U.S. Department of Commerce and the European Commission agreed to adapt the arbitration rules and code of conduct to reflect the updates under the EU-U.S. DPF.



- (2) avoid entering into any relationship, or acquiring an interest, in circumstances which might reasonably create the appearance that they had been influenced in the arbitration by the anticipation or expectation of the relationship or interest; however,
  - (3) existence of any of the matters or circumstances described in this paragraph C does not render it unethical for one to serve as an arbitrator where the parties have consented to the arbitrator's appointment or continued services following full disclosure of the relevant facts in accordance with Canon II.
- D.** Arbitrators should conduct themselves in a way that is fair to all parties and should not be swayed by outside pressure, public clamor, and fear of criticism or self-interest. They should avoid conduct and statements that give the appearance of partiality toward or against any party.
- E.** An arbitrator's authority is derived from the EU-U.S. DPF and the Rules, and an arbitrator should neither exceed that authority nor do less than is required to exercise that authority completely.
- F.** An arbitrator should conduct the arbitration process so as to achieve the purpose stated in Annex I of the EU-U.S. DPF Principles: "...to provide a prompt, independent, and fair mechanism, at the option of individuals, for resolution of any claimed violations of the Principles not resolved by any of the other EU-U.S. DPF mechanisms" An arbitrator should make all reasonable efforts to prevent delaying tactics, harassment of parties or other participants, or other abuse or disruption of the arbitration process.
- G.** The ethical obligations of an arbitrator begin upon acceptance of the appointment and continue throughout all stages of the proceeding.
- H.** An arbitrator who withdraws prior to the completion of the arbitration, whether due to unanticipated circumstances that would make it impracticable to continue, upon the request of one or more of the parties, or for any other reason, should take reasonable steps to protect the interests of the parties in the arbitration, including return of evidentiary materials and the protection of confidentiality.

**CANON II. An arbitrator should disclose any interest or relationship likely to affect impartiality or which might create an appearance of partiality.**

- A.** Persons who are requested to serve as arbitrators should, before accepting, disclose:
- (1) Any known direct or indirect financial or personal interest in the outcome of the arbitration;
  - (2) Any known existing or past financial, business, professional or personal relationships which might reasonably affect impartiality or lack of independence in the eyes of any of the parties. For example, prospective arbitrators should disclose any such relationships which they personally have with any party or its lawyer, with any co-arbitrator, or with any individual whom they have been told will be a witness. They should also disclose any such relationships involving their families or household members or their current employers, partners, or professional or business associates that can be ascertained by reasonable efforts;
  - (3) The nature and extent of any prior knowledge they may have of the dispute; and
  - (4) Any other matters, they are obligated to disclose pursuant to the Rules, the practices of the ICDR, or applicable law regulating arbitrator disclosure.



- B.** Persons who are requested to accept appointment as arbitrators should make a reasonable effort to inform themselves of any interests or relationships described in paragraph A.
- C.** The obligation to disclose interests or relationships described in paragraph A is a continuing duty which requires a person who accepts appointment as an arbitrator to disclose, as soon as practicable, at any stage of the arbitration, any such interests or relationships which may arise, or which are recalled or discovered.
- D.** Any doubt as to whether or not disclosure is to be made should be resolved in favor of disclosure.
- E.** Disclosure should be made to all parties according to the Rules. Where more than one arbitrator has been appointed, each should inform the others of all matters disclosed.
- F.** When parties, with knowledge of a person's interests and relationships, nevertheless desire that person to serve as an arbitrator, that person may properly serve.
- G.** If an arbitrator is requested by all parties to withdraw, the arbitrator must do so. If an arbitrator is requested to withdraw by one party, but the other party does not agree that the arbitrator should withdraw, the request to remove the arbitrator shall be resolved pursuant to the process provided for in the Rules.
- H.** If compliance by a prospective arbitrator with any provision of this Code would require disclosure of confidential or privileged information, the prospective arbitrator should either:
  - (1)** Secure the consent to the disclosure from the person who furnished the information or the holder of the privilege; or
  - (2)** Withdraw.

**CANON III. An arbitrator should avoid impropriety or the appearance of impropriety in communicating with parties.**

- A.** An arbitrator or prospective arbitrator should not discuss a proceeding with any party or their representatives in the absence of any other party or their representatives, except in emergency circumstances, or where a party fails to be present at a hearing after having been given due notice, or if all parties expressly consent, the arbitrator may discuss the case with any party who is present.
- B.** Whenever an arbitrator communicates in writing with one party, the arbitrator should at the same time send a copy of the communication to the other party, and whenever the arbitrator receives any written communication concerning the case from one party which has not already been sent to every other party, the arbitrator should send or cause it to be sent to the other parties.

**CANON IV. An arbitrator should conduct the proceedings fairly and diligently.**

- A.** An arbitrator should conduct the proceedings in an even-handed manner. The arbitrator should be patient and courteous to the parties, their representatives, and the witnesses and should encourage similar conduct by all participants.
- B.** The arbitrator should afford to all parties the right to be heard and due notice of the time and place of any hearing. The arbitrator should allow each party a fair opportunity to present its evidence and arguments.



- C. The arbitrator should not deny any party the opportunity to be represented by counsel or by any other person chosen by the party.
- D. If a party fails to appear after due notice, the arbitrator should proceed with the arbitration when authorized to do so, but only after receiving assurance that appropriate notice has been given to the absent party.
- E. When the arbitrator determines that more information than has been presented by the parties is required to decide the case, it is not improper for the arbitrator to ask questions, call witnesses, and request documents or other evidence.
- F. Co-arbitrators should afford each other full opportunity to participate in all aspects of the proceedings.

**CANON V. An arbitrator should make decisions in a just, independent and deliberate manner.**

- A. The arbitrator should, after careful deliberation, decide all issues submitted for determination. An arbitrator should decide no other issues.
- B. An arbitrator should decide all matters justly, exercising independent judgment, and should not permit outside pressure to affect the decision.
- C. An arbitrator should not delegate the duty to decide to any other person.

**CANON VI. An arbitrator should be faithful to the relationship of trust and confidentiality inherent in that office.**

- A. An arbitrator is in a relationship of trust to the parties and should not, at any time, use confidential information acquired during the arbitration proceeding to gain personal advantage or advantage for others, or to affect adversely the interest of another.
- B. The arbitrator should keep confidential all matters relating to the arbitration proceedings and decision.
- C. It is not proper at any time for an arbitrator to inform anyone of any decision in advance of the time it is given to all parties. In a proceeding in which there is more than one arbitrator, it is not proper at any time for an arbitrator to inform anyone about the substance of the deliberations of the arbitrators. After an arbitration award has been made, it is not proper for an arbitrator to assist in proceedings to enforce or challenge the award.

**CANON VII. An arbitrator should adhere to standards of integrity and fairness when making arrangements for compensation and reimbursement of expenses.**

- A. Arbitrators who accept appointment pursuant to the EU-U.S. DPF Principles must do so with the understanding that payment for their services will be made in the manner specified in the Rules, including caps on fees and costs that may be imposed.
- B. Communications related to arbitrator compensation shall be made through the ICDR-AAA, and not directly through the parties.