

# Registry Service Provider Code of Conduct and Conflict of Interest

Code of Conduct Guidelines and Conflict of Interest  
Guidelines for the Registry Service Provider Evaluation  
Program

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# 1. Code of Conduct and Conflict of Interest Guidelines

A number of independent experts and groups play a part in performing the various reviews in the evaluation process. These experts and groups (collectively, for the purposes of this document, known as “Service Providers”) include:

- Evaluation panel firms and individual persons appointed by the panel firm to conduct an evaluation;
- Dispute resolution service providers and dispute resolution expert panelists;
- Independent objectors firms and independent objectors.

These Code of Conduct and Conflict of Interest Guidelines explained below apply to all these Service Providers.

## 1.1. Code of Conduct

The purpose of the New gTLD Program (“Program”) Code of Conduct (“Code”) is to prevent actual, potential, or perceived conflicts of interest and unethical behavior by Service Providers for the Program. This document is intended to set forth the principles of the Code of Conduct and nothing in this Code should be considered or interpreted as limiting duties, obligations, or legal requirements with which Service Providers must comply.

The ethical obligations of Service Providers begin upon acceptance of their respective appointments. Service Providers shall conduct themselves as thoughtful, competent, well prepared, and impartial professionals throughout the application evaluation, objection, and dispute resolution processes. Service Providers are expected to comply with equity and high ethical standards while assuring the Internet community, its constituents, and the public, of a Service Provider’s objectivity, integrity, confidentiality, and credibility. Unethical actions, or even the appearance of conflicts of interest, are not acceptable.

Once a Service Provider has accepted an appointment, the Service Provider should not withdraw or abandon the appointment unless compelled to do so by unanticipated circumstances that would render it impossible or impracticable to continue, or if a Service Provider becomes aware of a conflict of interest situation, as described in the “New gTLD Program Conflicts of Interest Guidelines” (see subsection 2.4.3.2).

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A Service Provider that withdraws prior to the completion of the application evaluation or objection and dispute resolution processes, whether upon the Service Provider's initiative or upon the request of one or more of the applicants, should take reasonable steps to protect the interests of the applicants/parties in the application evaluation or objection and dispute resolution processes, including return of evidentiary materials and maintaining the confidentiality of any confidential information or materials.

## 1.1.1. Principles

Service Providers are expected to be guided by the following principles in carrying out their respective responsibilities.

### 1.1.1.1. Bias

Service Providers shall:

- Not advance personal agendas or non-ICANN approved agendas in the evaluation of applications or dispute resolution proceedings;
- Examine facts as they exist and not be influenced by past reputation, media accounts, or unverified statements about the applications being evaluated or the matter(s) at issue in the dispute resolution proceeding;
- Exclude themselves from participating in the evaluation of an application or a dispute resolution proceeding if, to their knowledge, there is some predisposing factor that could prejudice them with respect to such evaluation or proceeding;
- Exclude themselves from evaluation activities or dispute resolution proceedings if they are philosophically opposed to or are on record as having made criticisms about a specific type of applicant, application, or matter at issue in the evaluation or the dispute resolution proceeding; and
- 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. Service providers should avoid conduct and statements that give the appearance of partiality toward or against any applicant, application, or party to the dispute resolution proceeding.

### 1.1.1.2. Compensation / Gifts

Service Providers shall not request or accept any compensation whatsoever or any gifts of substance<sup>1</sup> from the applicant being reviewed, anyone affiliated with the applicant, or any party or party affiliate involved in the dispute resolution proceeding. If in doubt, a service provider should err on the side of caution by declining gifts of any kind. Note, however, that during a

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<sup>1</sup> Gifts of substance would include any gift greater than USD 25 in value

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dispute resolution proceeding, an applicant who is the objector is required to submit payment directly to the applicable dispute resolution service provider to cover the applicant's share of fees and expenses of the members of the Panel. Accepting this payment does not mean a dispute resolution panelist is in violation of the Code of Conduct in this section. Refer to the Dispute Resolution Procedures document contained in the Applicant Guidebook for more information about fees and payments.

### 1.1.1.3. Conflicts of Interest

Service providers shall act in accordance with the "New gTLD Program Conflicts of Interest Guidelines."

### 1.1.1.4. Confidentiality

Confidentiality is an integral part of the application evaluation as well as objection and dispute resolution processes. Service Providers must have access to sensitive information in order to conduct evaluations or dispute resolution proceedings. Service Providers must maintain confidentiality of information entrusted to them by ICANN and the applicant and any other confidential information provided to them from whatever source, except when disclosure is legally mandated or has been authorized by ICANN. "Confidential information" includes materials submitted to, or obtained or generated by, ICANN and the ICANN evaluators, dispute resolution panelists, or independent objectors in connection with an application, including evaluations, analyses and any other materials prepared in connection with the evaluation of an Application; provided, however, that information will not be disclosed or published to the extent that the Registry Service Provider Handbook expressly states that such information will be kept confidential, except as required by law or judicial process (see the Terms and Conditions for more information).

### 1.1.1.5. Data Protection and Privacy

All Service Providers are required to comply with New gTLD Program data protection principles.

### 1.1.1.6. Affirmation

All Service Providers shall read this Code of Conduct prior to commencing evaluation or participating in a particular dispute resolution proceeding and shall certify in writing that they have done so, agree to comply with, and understand the code.

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## 2. Conflict of Interest Guidelines for Service Providers

It is recognized that Service providers may have a large number of employees in several countries serving numerous clients. In fact, it is possible that a number of Service Providers may be very well known within the registry/registrar community and have provided professional services to a number of potential applicants. To safeguard against the potential for inappropriate influence and to ensure applications are evaluated in an objective and independent manner, ICANN has established the following Conflict of Interest guidelines and procedures for Service Providers for the New gTLD Program. ICANN will require the Service Providers to ensure that all entities and individuals appointed by them:

- Document acknowledgement and understanding of the Conflict of Interest guidelines.
- Agree to comply with the Conflict of Interest guidelines.
- Disclose all business relationships engaged in at any time during the past six months from initial appointment that are directly or indirectly related to ICANN's New gTLD Program.

Where possible, ICANN will identify and secure primary and backup providers for evaluation and dispute resolution. In conjunction with service providers, ICANN will identify conflicts and re-assign applications as appropriate to secondary or contingent third-party providers to perform the reviews.

### 2.1. Guidelines

The following guidelines are the minimum standards with which all Service Providers must comply.<sup>2</sup> A fundamental principle underlying these Guidelines is that each Service Provider must be impartial and independent of the application(s), applicant(s), and parties at the time they accept their respective appointments to act as a Service Provider, and must remain so during the entire course of the application evaluation or dispute resolution processes.

A Service Provider shall decline to accept an appointment or, if the evaluation or proceeding has already commenced, refuse to continue to act if they have any doubt as to their ability to be impartial or independent. The same principle applies if such facts or circumstances existed prior to appointment or have arisen since the appointment.

If facts or circumstances exist that may give rise to doubts as to a Service Provider's impartiality or independence, the Service Provider shall disclose such facts or circumstances to the applicant(s) and appointing authority prior to accepting the appointment or, if thereafter, as soon

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<sup>2</sup> These Guidelines do not apply to applicants, which are covered under separate Codes of Conduct.

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as they learn of them. Any doubt as to whether any Service Provider should disclose certain facts or circumstances should be resolved in favor of disclosure.

It is recognized that it is impossible to foresee and cover all circumstances in which a potential conflict of interest might arise. In these cases, a Service Provider should evaluate whether the existing facts and circumstances would lead a reasonable person to conclude that there is an actual conflict of interest. If conflicts of interest are found to exist, ICANN will work with Service Providers to reassign applications as appropriate.

Service Providers and Immediate Family Members:

- Must not be under contract, have or be included in a current proposal to provide professional services for or on behalf of the relevant applicants or any party(ies) to a dispute resolution proceeding during the compliance period, which begins upon acceptance of the appointment.
- Must not currently hold or be committed to acquire any interest in a privately-held applicant or any party(ies) to a dispute resolution proceeding.
- Must not currently hold or be committed to acquire more than 1% of any publicly listed applicant's or any party(ies) to a dispute resolution proceeding outstanding equity securities or other ownership interests.
- Must not be involved or have an interest in a joint venture, partnership, or other business arrangement with the applicant or any party(ies) to a dispute resolution proceeding.
- Must not have been named in a lawsuit with or against the applicant or any party(ies) to a dispute resolution proceeding.
- Must not be a:
  - Director, officer, or employee, or in any capacity equivalent to that of a member of management of the applicant or any party(ies) to a dispute resolution proceeding;
  - Promoter, underwriter, or voting trustee of the applicant or any party(ies) to a dispute resolution proceeding; or
  - Trustee for any pension or profit-sharing trust of the applicant or any party(ies) to a dispute resolution proceeding.

Note that service providers also maintain their own conflict of interest procedures that Panelists are required to comply with.

## 3. Definitions

**Panelist:** An evaluation panelist or a dispute resolution service provider panelist is any primary, secondary, and contingent third-party panelist engaged by a service provider to review new gTLD applications.

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**Immediate Family Member:** Immediate Family Member is a spouse, spousal equivalent, or dependent (whether or not related) of an Evaluation Panelist, a dispute resolution service provider panelist, or an Independent Objector.

**Professional Services:** Professional services include but are not limited to legal services, financial audit, financial planning / investment, outsourced services, consulting services such as business / management / internal audit, tax, information technology, registry / registrar services.

**Service Providers:** Individuals and entities providing services or supporting processes for the New gTLD Program, including but not limited to the application evaluation, objection processes, or dispute resolution processes.<sup>3</sup>

## 4. Code of Conduct Violations

Breaches of the Code of Conduct by Service Providers, whether intentional or not, shall be reviewed by ICANN, which may make recommendations for corrective action, if deemed necessary. Breaches of the Code may be cause for removal of the person, persons, or provider committing the infraction, in accordance with relevant contractual provisions.

In a case where ICANN determines that a Service Provider has failed to comply with the Code of Conduct, the results of a Service Provider's review for all assigned applications may be discarded and the affected applications will undergo a review by new Service Providers.

Concerns of applicants regarding Service Providers should be communicated via the defined support channels (see Registry Service Provider Handbook). Concerns of the general public regarding the Code of Conduct (i.e., non-applicants) can be raised via the Community Action Forum or through other avenues such as the Ombudsman and the Reconsideration Request process.

## 5. Conflicts of Interest Process for Service Providers

The information below provides an overview of the process by which the ICANN organization ensures that Service Providers contracted by ICANN to support various functions throughout the application evaluation, objection, and dispute resolution processes for the New gTLD Program are free from conflicts of interest.

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<sup>3</sup> For example: evaluation firms or persons appointed by evaluation firms; dispute resolution providers or expert panelists appointed by dispute resolution providers; or, independent objector firms and independent objectors appointed by independent objector firms.



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## 5.1 Prior to Contracting with Service Providers

1. Service Providers for the New gTLD Program are selected through ICANN's standard procurement process.
2. Calls for Expression of Interest, Requests for Proposals, and Requests for Information are issued to solicit qualified Service Providers to perform activities for many aspects of the Program, including application evaluation, and dispute resolution.
3. Certain services may require more than one Service Provider to perform a particular Program activity. This approach allows ICANN to address any conflict of interest issues.
4. ICANN requires potential Service Providers to provide background information, including information about their parent company, a list of their top customers, and references.
5. To be considered, potential Service Providers must demonstrate to ICANN org's satisfaction that there are no material conflicts, as per the Conflict of Interest Guidelines described in this document at the time of the bid and that the Service Providers have controls in place to ensure new or changed resources do not have conflicts.
6. ICANN org reviews for conflicts before contracting with Service Providers; however, this matter may become relevant once applications are submitted, where a Service Provider may have a conflict with one or more applicants.

## 5.2 Contracted Service Providers

1. If selected, the Service Provider enters into a contract with ICANN.
2. Prior to allocating any applications to Service Providers, ICANN requires that Service Providers perform conflict-of-interest checks for the Panelists in accordance with the requirements of this document, and provide ICANN with the results. ICANN allocates applications taking these results into account.
3. Contracted Service Providers are also required to contractually comply with and document acknowledgement that they understand ICANN's Conflict of Interest policies and guidelines established in this document.<sup>4</sup>
4. Accordingly, the Service Provider is required to complete and deliver annually a "Contractor Conflicts of Interest Disclosure" form. ICANN has developed this form to assist it in identifying those business and family relationships between or among itself, its directors, liaisons, officers, employees, and contractors that may create a current or future actual or potential conflict of interest. Additionally, this form is designed to facilitate compliance with disclosure obligations described in ICANN's Conflicts of Interest Policy.
5. In the event that the Service Provider is an entity, the Conflicts of Interest Disclosure form is to be completed by an authorized person of the entity representing the responses are provided in an individual capacity to the best of his/her knowledge.

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<sup>4</sup> The Conflict of Interest Guidelines in this document define the minimum standards with which Service Providers have to comply.

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6. The completed Conflicts of Interest Disclosure Form is sent to ICANN by the Service Provider.
  7. The Conflicts of Interest Disclosure Form is reviewed by ICANN to make sure it aligns with existing ICANN conflicts of interest policies and guidelines.
  8. In the event that there are any material changes during the current year in the information provided in the Conflicts of Interest Disclosure Form, the Service Provider should promptly notify ICANN.
  9. In addition, the Service Provider is also required to agree that it will revise and update the Conflicts of Interest Disclosure Form when and to the extent to which it becomes aware of circumstances that would require such a revision, and in all events at least annually.
  10. To the extent that conflicts of interest are identified that do not embody ICANN's mission and purpose, ICANN may seek to terminate the agreement, according to the negotiated terms regarding termination in the Service Provider's agreement.

### 5.3 Subcontractors

1. With respect to third-party subcontractors of a Service Provider, ICANN org requires that subcontractors must be disclosed to ICANN org and approved before providing services.
2. ICANN's current Contractor Agreement includes a standard provision whereby no other individuals or third-party subcontractors will be engaged on a project or have access to the confidential information provided by ICANN regarding the project. Exceptions may be made on a case-by-case basis if approved by ICANN.
3. If approved, ICANN will provide revised language to use for the Contractor's Agreement and a checklist of required documents (i.e., non-disclosure agreement, conflict of interest form, etc.).
4. ICANN will review the completed documents to ensure the information provided aligns with existing ICANN conflicts of interest policies and guidelines.

**Disclaimer:** This process will be updated as necessary.

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## Annex: Relevant Recommendations

Recommendation 8.1: ICANN must develop a transparent process to ensure that dispute resolution service provider panelists, Independent Objectors, and application evaluators are free from conflicts of interest. This process must serve as a supplement to the existing Code of Conduct Guidelines for Panelists, Conflict of Interest Guidelines for Panelists, and ICANN Board Conflicts of Interest Policy.<sup>5</sup>

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<https://www.icann.org/resources/pages/governance/coi-en#:~:text=The%20purpose%20of%20this%20Bo,ard.the%20Internet%20community%2C%20as%20a>



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