



## **Resolute Systems, LLC Commercial Arbitration Rules**

### **1. Agreement of Parties**

The following arbitration rules shall apply whenever parties sign a document or contract that states they will abide by them. These rules are applicable to voluntary arbitration procedures and contract-mandated arbitration. Parties may modify any provision, in writing, by mutual agreement. These rules and any amendment of them shall apply except for any such provision that may be inconsistent with applicable law or when modified in writing by the parties.

### **2. Initiation of Arbitration**

#### **A. Contractual Agreement**

Any party wishing to initiate arbitration by prior contractual agreement under Resolute Systems' Tri-Panel Commercial Arbitration Rules will follow these procedures:

The initiating party shall serve written notice to the opposing party via registered mail or overnight courier. This notice shall set forth the nature of the dispute, the dollar amount, if any, involved, and the remedy sought. A copy of this notice shall be sent to Resolute Systems at 1661 N. Water Street, Milwaukee, WI 53202. The responding party must answer the filing party, in writing via registered mail or overnight courier, within 21 days. A copy of the answer must also be sent to Resolute Systems. Once Resolute is in receipt of the notice and answer, the case will be assigned to the appropriate ADR Consultant for coordination.

The Resolute ADR Consultant will contact the respondent and determine if there is a counterclaim. If the respondent intends to file a counterclaim, it must serve notice against the filing party setting forth the nature of the dispute, the dollar amount, if any, involved, and the remedy sought. The filing party must answer the counterclaim in same.

If the respondent fails to answer the notice of arbitration, and/or if the filer fails to answer the counterclaim, it/they will be treated as a denial(s) of the claim(s). Such denial(s) will not delay the arbitration in any manner.

B. Voluntary Submission

Parties to any existing dispute may initiate an arbitration by contacting Resolute Systems, LLC's ADR Consulting Division at (800) 359-4222 and request that Resolute Systems, LLC. contact all parties involved and invite them to participate in arbitration. There will be no charge to the filing party unless Resolute Systems, LLC is able to obtain agreement from the other parties to participate in arbitration.

**3. Panel of Arbitrators**

Resolute Systems, LLC shall establish and maintain a Panel of Neutrals that will form the Arbitrator Pool.

**4. Selection of Arbitrator(s)**

**Single Arbitrator**

Resolute Systems, LLC will submit a Panel of Neutrals from which the parties shall have 21 days to find a mutually acceptable arbitrator. Resolute Systems, LLC will facilitate the appointment of the arbitrator from the names chosen by the parties.

If the parties are contractually bound to a Resolute Systems' arbitration and cannot agree upon the arbitrator within 21 days of the initiation of the arbitration for any reason, including but not limited to the arbitrator being unable to act, Resolute Systems will appoint the neutral.

In the case of voluntary arbitration, if the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the selection cannot be made from the submitted lists, parties may request that Resolute Systems, LLC appoint the arbitrator from among members of the Panel of Neutrals.

**Tri-Panel Arbitration**

By agreement of the parties, arbitrators will be appointed in one of these fashions:

Option 1: Resolute Systems, LLC will submit a Panel of at least five potential arbitrators. Each party will appoint one arbitrator from that panel. The two appointed-arbitrators will then select the panel chair.

Option 2: Resolute Systems, LLC will submit a Panel of five potential arbitrators. Each party is allowed to strike one arbitrator from the panel. The remaining 3 arbitrators will be assigned to the arbitration panel, and Resolute Systems will appoint the chair. If more than three arbitrators remain on the panel after the strikes, Resolute Systems will appoint the 3 arbitrators from the remaining pool.

If the parties are contractually bound to a Resolute Systems' arbitration and cannot agree upon a selection system within 21 days of the initiation of the arbitration, Resolute Systems will appoint the arbitrators.

## **5. Qualifications of Arbitrators**

No person shall serve as an arbitrator in any arbitration in which that person has any financial or personal interest. An arbitrator shall disclose any circumstances likely to create a presumption of bias that might disqualify that arbitrator as an impartial arbitrator. If for any reason an appointed arbitrator should be unable to perform the duties of the office, Parties will have 2 days from when the original arbitrator disclosed his inability to perform to mutually agree on a replacement from among those names remaining on the list(s) submitted to the parties. If an appointment cannot be made from the list(s), Resolute Systems, LLC will appoint a replacement from among those names remaining on the list(s) submitted to the parties.

## **6. Administrative Conference**

Once the arbitrator(s) is appointed, Resolute Systems will schedule an administrative conference with the arbitrator(s) to specify the issues to be resolved, guide discovery, stipulate any mutually agreed upon procedures or rules that may expedite the arbitration process, establish scheduling orders, and address any other concern by any party to the arbitration. Nothing discussed during the administrative conference will affect or amend the **Resolute** Arbitration Rules without the mutual consent of all participating parties, including **Resolute Systems**.

In tri-panel arbitration, the parties may by mutual agreement, designate the arbitration panel chair to hear and decide any discovery or procedural disputes; consider subpoena requests; establish and enforce deadlines; and rule on motions.

## **7. Hearing Date, Time and Location**

With the input of the arbitrator(s), the parties shall mutually agree upon the date(s), time and place for each hearing. Resolute Systems, LLC shall deliver by electronic mail to each party notice thereof, unless the parties by mutual agreement waive such notice or modify the terms thereof. Notices sent to parties must be signed and postmarked or received by Resolute Systems, LLC within seven days of being sent or Resolute shall have the right to cancel said hearing. If the parties are unable to agree upon a mutually acceptable date, time and place for each hearing within 5 days of a neutral being appointed, Resolute Systems, LLC will specify the date, time and location of the hearing.

Upon confirmation of the hearing dates, Resolute Systems will send deposit invoices to the parties covering the reserved time, as well as the estimated preparation time, in accordance with the fee scheduled provided to the parties.

## **8. Representation**

Counsel or any other authorized representative may represent any party.

## **9. Stenographic Record**

Any party wishing a stenographic record shall make arrangements directly with a stenographer and shall notify the other party, in writing, of such arrangements in advance of the hearing. The requesting party or parties shall pay the cost of the record if such transcript is agreed by the parties

to be, or determined by the arbitrators to be, the official record of the proceeding, it must be made available to the arbitrators and to the other party for inspection at a time and place determined by the arbitrators

#### **10. Interpreters**

Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of such service.

#### **11. Attendance at Hearings**

The arbitrator(s) shall maintain the privacy of the hearings unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrator(s) shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator(s) to determine the propriety of the attendance of any other person.

#### **12. Postponements**

The arbitrator(s) may, for good cause, postpone the hearing upon the request of a party or upon the arbitrator's own initiative. The arbitrator(s) shall grant such postponement when all of the parties agree thereto. Any party requesting the postponement shall pay a \$300.00 processing fee to Resolute Systems, LLC.

#### **13. Oaths**

Before proceeding with the first hearing, the arbitrator(s) may take an oath of office and, if required by law, shall do so. The arbitrator(s) may require witnesses to testify under oath administered by any duly qualified person and, if required by law or requested by either party, shall do so.

#### **14. Arbitration in the Absence of a Party or Counsel**

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or counsel whom, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the default of party. The arbitrator(s) shall require the party who is present to submit such evidence as is deemed necessary for the making of an award.

#### **15. Arbitration Hearing**

The hearing may be conducted by the arbitrator(s) in any manner, which permits a fair presentation of the case by the parties.

#### **16. Evidence**

The arbitrator(s) shall be the judge of the relevance and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary.

#### **17. Closing of Hearing**

The arbitrator(s) shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard in accordance with the Arbitration Agreement. The arbitrators shall declare the hearing closed upon determination that there are no further presentations.

## **18. Majority Decision**

Whenever there is more than one arbitrator, all decisions of the arbitrators must be by at least a majority. The award must also be made by at least majority unless the concurrence of all is expressly required by the Arbitration Agreement or by law.

## **19. Arbitration Award**

The arbitration award shall be in writing and shall be signed by the arbitrator(s). The arbitrator(s) shall render the award promptly and, unless otherwise agreed by the parties or specified by law, no later than fourteen days from the date of closing the hearing, or, if oral hearings have been waived, from the date of transmitting the final statements and proofs to the arbitrators.

## **20. Waiver of Procedures**

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state objection thereto in writing shall be deemed to have waived the right to object.

## **21. Extensions of Time**

The parties may modify any period of time by mutual written agreement. Resolute Systems, LLC may for good cause extend any period of time for making the award. Resolute Systems, LLC, shall notify the parties of any such extension and its reason therefore.

## **22. Serving of Notice**

(a) Each party shall be deemed to have consented that any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules, for any court action in connection therewith; or for the entry of judgment on any award made under these rules may be served upon such party by mail addressed to such party or its attorney at the last known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard thereto has been granted to such party.

(b) To facilitate communication between the parties and Resolute Systems, LLC, the parties agree that communications received from each other or Resolute Systems, LLC via electronic mail, facsimile machine, telex, telegram, or other written forms of electronic communication are valid and proper notice under these rules.

## **23. Scope of Award**

The parties agree that any decision rendered by the arbitrator(s) is conclusive only as to the matters being adjudicated in said arbitration, pertaining to the parties present. The decision of the arbitrator(s) is not res judicata nor will it have collateral estoppel effect as to the same or similar issues in companion claims or actions arising out of the incident which is the subject of said arbitration.

## **24. Award upon Settlement**

If the parties settle their dispute during the course of the arbitration, the arbitrator(s) may, upon their request, set forth the terms of the agreed settlement in an award.

**25. Delivery of Award to Parties**

Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail addressed to such party or its attorney at the last known address, personal service of the award, or the filing of the award in any other manner that may be permitted by law.

**26. Expenses**

The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the arbitration, including required traveling and other expenses of the arbitrators and of Resolute Systems, LLC representatives, and the expenses of any witness and the cost of any proof produced at the direct request of the arbitrators, shall be borne equally by the parties, unless they agree otherwise.

**27. Applications to Court and Exclusions of Liability**

(a) No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

(b) Neither Resolute Systems, LLC nor any arbitrator in a proceeding under these rules is a necessary party in judicial proceedings relating to the arbitration or mediation.

(c) Parties to these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(d) Neither Resolute Systems, LLC nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

**28. Release of Documents for Judicial Proceedings**

Resolute Systems, LLC shall, upon the written request of a party, furnish to such party, at its expense, certified copies of any papers in Resolute Systems, LLC's possession that may be required in judicial proceedings relating to the arbitration.

**29. Interpretation and Application of Rules**

The arbitrators shall interpret and apply these rules insofar as they relate to the arbitrators' powers and duties. All other rules shall be interpreted and applied by Resolute Systems, LLC.

## Sample Arbitration Clauses

The following commercial arbitration clauses may be inserted into any commercial contract at the discretion of any party contemplating such action:

### Sample 1 Arbitration Only

Any and all disputes, demands, claims or controversies hereto arising out of or relating to this contract or the breach thereof, shall be settled by a **Resolute Systems'** binding arbitration in accordance with **Resolute Systems'** Arbitration Rules, and judgment upon the award rendered by the arbitrator may be entered into any court or administrative tribunal having jurisdiction thereof.

### Sample 2 Mediation Prior to Binding Arbitration

Any and all disputes, demands, claims or controversies hereto arising out of or relating to this contract or the breach thereof, shall be settled through **Resolute Systems**, first by attempting voluntary settlement through a non-binding mediation conference administered by **Resolute Systems, LLC** within 60 days of the written request of any party, and absent a voluntary settlement through non-binding mediation, by a **Resolute Systems'** binding arbitration in accordance with **Resolute Systems'** Commercial Arbitration Rules, and judgment upon the award rendered by the arbitrator may be entered into any court or administrative tribunal having jurisdiction thereof.