

# The Arbitration Scheme for The European Timeshare Industry

for members of

## Resort Development Organisation (RDO) Ltd

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### Scheme Rules

*These Arbitration Rules apply to disputes arising on or after 1 January 2017*

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### 1. General

- 1.1 The Arbitration Scheme for the European Timeshare Industry (“the Scheme”) provides an independent and legally binding process for resolving disputes between RDO Members (“Respondents”) and their customers (“Claimants”) in relation to claims for compensation arising from an alleged breach of a timeshare agreement (“Timeshare Agreement”) or from an alleged breach of the RDO Code of Conduct which occurred in the making or performance of a Timeshare Agreement.
- 1.2 The Scheme is administered by NetNeutrals EU, an independent dispute resolution body.
- 1.3 Under the RDO Code of Conduct the Respondent, by virtue of being an RDO Member at the time the Timeshare Agreement is made, the member has agreed to participate in the Scheme if the Claimant wishes to do so, and has agreed to honour any arbitration award made under the Scheme in accordance with its terms.

- 1.4 NetNeutrals EU will appoint an independent Arbitrator to decide the outcome of eligible disputes under the Scheme. The arbitration will proceed on the basis of written evidence and submissions only via the online platform located at [www.netneutrals.eu](http://www.netneutrals.eu).
- 1.5 The arbitrator will make an award, with reasons, after considering all of the evidence and submissions. Awards made under the Scheme are final and binding on all parties, though any party has the right to seek leave to appeal in the courts.
- 1.6 All arbitrations under the Scheme will be deemed to take place in Dublin, Ireland. The Seat of the Arbitration is Ireland, and the place of arbitration, within the meaning of Art 20 of the UNCITRAL Model Law on International Commercial Arbitration, 1985, as amended, is deemed to be Ireland.

## 2. Scope of the Scheme

- 2.1 A dispute may only be referred to arbitration under the Scheme where the Claimant has:
  - 2.1.1 Entered in to a Timeshare Agreement with an RDO Member on or after 1 January 2018; and
  - 2.1.2 Either:
    - 2.1.2.1 The Claimant has completed the RDO Member's internal complaints procedure but has not reached a resolution to the Claimant's satisfaction within sixty (60) working days of the commencement of the RDO Member's internal complaints procedure; or
    - 2.1.2.2 The Claimant's complaint has been referred to NetNeutrals EU's Online Mediation Service for the European Timeshare Industry ("the Mediation Service") but a settlement has failed to be reached within the period set out under the Mediation Service. In this circumstance, the Claimant must apply to the Scheme within 20 working days of the conclusion of the Mediation Service's process.

- 2.2 The Scheme cannot be used to settle disputes which fall into one or more of the following categories:
- 2.2.1 A dispute brought by someone other than a customer of an RDO Member;
  - 2.2.2 A dispute brought against an organisation that is not an RDO Member;
  - 2.2.3 A dispute which has been or is the subject of court proceedings or an alternative independent procedure for the determination of disputes (unless such proceedings or alternative procedure have been abandoned, stayed or suspended);
  - 2.2.4 A dispute that is the subject of an existing or previous valid application made to the Service;
  - 2.2.5 A dispute relating to a Timeshare Agreement that has been entered into in the course of any business activity by the Claimant;
  - 2.2.6 Timeshare loans or any other dispute within the remit of a statutory financial ombudsman scheme;
  - 2.2.7 A dispute in which the Claimant is seeking redress for death, personal injury, illness or other non-pecuniary loss;
  - 2.2.8 A dispute arising from or relating to:
    - 2.2.8.1 any alleged breach of a management agreement relating to the timeshare which is the subject of the Timeshare Agreement, claimed to be committed by the parties to such management agreement, or
    - 2.2.8.2 any alleged breach of an agreement to provide to the Claimant an exchange service ancillary to such a timeshare.
  - 2.2.9 A dispute involving a claim for a total sum of money less than €1,000.
  - 2.2.10 A dispute which, in the opinion of NetNeutrals EU Administration or the arbitrator is frivolous and/or vexatious;
  - 2.2.11 A dispute which, in the opinion of NetNeutrals EU, would seriously inhibit the effective operation of the Scheme if it were dealt with.

- 2.3 As an exception, a dispute which does not meet eligibility requirements above can be eligible for arbitration under the Scheme where all parties to the dispute and RDO and NetNeutrals EU agree. In such circumstances, additional charges to use the Scheme may apply and would have to be agreed between the relevant parties prior to the Scheme's acceptance of the dispute.
- 2.4 The authority to determine whether a dispute falls within the scope of the Scheme rests with NetNeutrals EU Administration. The decision of NetNeutrals EU Administration regarding the eligibility of a dispute is final.
- 2.5 In the event that NetNeutrals EU decides that a dispute is not eligible, NetNeutrals EU will notify the Claimant in writing of this decision and will provide reasons as to why the dispute is not eligible.

### **3. Applying for arbitration**

- 3.1 An application for arbitration must be made by the Claimant on the NetNeutrals EU website ([www.netneutrals.eu](http://www.netneutrals.eu)) or the prescribed form, accompanied by payment of the arbitration fee, as detailed in Schedule 1 – Case Fees. This application, along with all supporting evidence (together “the Claim Documents”) must be sent to NetNeutrals EU.
- 3.2 The contents of the Claim Documents must be in English or the language of the process as directed by the Arbitrator. Where video evidence is submitted, any commentary must be in English or in the language of the process as directed by the Arbitrator.
- 3.3 The Claim Documents must include:
  - 3.3.1 A full description of the claim or claims made against the Respondent and the reasoning for that claim or claims; and
  - 3.3.2 All evidence that is available to support the claim, including, but not exclusively, complaints lodged prior to or during the purchase, or photographs, video evidence, credit card chits for any disbursements which are claimed; and
  - 3.3.3 A legible copy of the relevant Timeshare Agreement; and
  - 3.3.4 A summary of the remedy or remedies that the Claimant is seeking from the Respondent;

- 3.3.5 A declaration that every reasonable effort has been made to resolve the dispute through the Respondent's internal complaints procedure.
- 3.4 If the Claimant is unable to submit the Timeshare Agreement, the Respondent shall submit a copy of the Timeshare Agreement with the Defence if it is still under its control.
- 3.5 Upon receipt of the Claim Documents, NetNeutrals EU will have the right to refuse to refer the dispute to arbitration if it considers the dispute to fall outside the scope of the Scheme, as defined by these Rules.
- 3.6 The arbitration procedure is deemed to have commenced when the completed claim documents are received by NetNeutrals EU accompanied by the prescribed arbitration fee.

#### **4. Respondent's challenge to an application**

- 4.1 On receipt of the Claim Documents, the Respondent may challenge the validity of the dispute on the grounds that it contravenes these Rules. In the event of such a challenge, the Respondent may request the early appointment of the arbitrator to decide on the validity of the dispute as a preliminary issue.
- 4.2 In support of such a request, the Respondent must, within 10 working days from the date of receipt of the Claim Documents, submit in writing reasons why the dispute raised by the Claimant is not eligible under these Rules, accompanied by payment of the prescribed arbitration fee. Failure to provide such submission and payment will result in the challenge being disallowed.
- 4.3 Upon receipt of a challenge with reasons and the prescribed arbitration fee from the Respondent, NetNeutrals EU will give the Claimant a period of 10 working days within which to provide in writing reasons why the dispute is eligible under these Rules.
- 4.4 NetNeutrals EU will provide the Claimant with a copy of the Respondent's challenge and allow ten days for the Claimant to respond, which will be provided to the Arbitrator.
- 4.5 An Arbitrator will consider the Respondent's challenge and any response from the Claimant, and will decide whether or not the dispute is eligible under the Rules within fifteen working days.

- 4.6 If the Arbitrator decides that the dispute is not eligible under the Rules, the parties will be so advised and NetNeutrals EU will close the case. The parties will remain free to pursue the claim elsewhere.
- 4.7 If the Arbitrator decides that the dispute is eligible for determination by arbitration under the Rules, the parties will be so advised and the case will proceed. The Respondent will be given a period of 15 working days from the date on which the Arbitrator's decision to allow the application during which to defend or settle the claim.

## **5. The arbitration procedure**

- 5.1 The Arbitrator will have the widest discretion permitted by law to resolve the dispute in a final manner in accordance with natural justice. Pursuant to article 11 of the ADR Directive 2013/11/EU consumers shall not be deprived of the protection afforded to them by the mandatory rules of the law of the EU Member State in which they are habitually resident. In particular, the Arbitrator has the power to direct the procedure of the arbitration, including varying time limits and other procedural requirements, and to:
  - 5.1.1 allow the parties to submit further evidence and/or amend any of the submissions already made;
  - 5.1.2 order the parties to produce goods, documents, property or other items for inspection;
  - 5.1.3 conduct enquiries and receive and consider additional evidence as the arbitrator considers appropriate;
  - 5.1.4 allow the Respondent to join another RDO Member into the arbitration, upon written request from the Respondent;
  - 5.1.5 award interest on any sum awarded, even if not requested;
  - 5.1.6 proceed with the arbitration if either party fails to comply with these Rules or with the arbitrator's directions;
  - 5.1.7 end the arbitration if the Arbitrator considers the case to be incapable of resolution under the Scheme, or if the parties settle their dispute prior to an award being made;
  - 5.1.8 order the Claimant or Respondent to repay the other for the cost of the arbitration procedure.

- 5.2 The arbitration will proceed on the basis of written argument and evidence only. No oral hearing will be convened as part of the arbitration.
- 5.3 Upon receipt of the Claim Documents from the Claimant, NetNeutrals EU will forward a copy of the Claim Documents to the Respondent. The Respondent will have a period of 10 working days from the date of receipt of the Claim Documents to challenge the eligibility of the dispute under Rule 4. Respondent's challenge to an application above. If the Respondent does not challenge the eligibility of the dispute, the Respondent will have 15 working days from the date of receipt of the Claim Documents to either settle the claim with the Claimant or to submit to NetNeutrals EU a defence to the claim ("the Defence"), accompanied by payment of the prescribed arbitration fee.
- 5.4 If a settlement is reached between the parties within 15 working days from the date of the Respondent's receipt of the Claim Documents, the Claimant and the Respondent must notify RDO and NetNeutrals EU in writing that a settlement has been reached and that the arbitration should not proceed. Once such notification is received from both parties, NetNeutrals EU will close the case.
- 5.5 Any Defence provided by the Respondent must be in writing on the prescribed form, and must include:
  - 5.5.1 Details of those matters in the Claim Documents which are accepted or agreed;
  - 5.5.2 Details of those matters in the Claim Documents which are disputed, with reasons why;
  - 5.5.3 Any supporting evidence which the Respondent considers to be relevant;
  - 5.5.4 A copy of the signed Timeshare Agreement, if not provided by the Claimant, where available;
  - 5.5.5 The prescribed arbitration fee set out at Schedule 1 – Case Fees.

- 5.6 If the Respondent does not submit its Defence with the prescribed arbitration fee within the time allowed and does not send it within 10 working days of a reminder by NetNeutrals EU, and subject to NetNeutrals EU's general discretion to refuse to make an appointment, an arbitrator will be appointed by NetNeutrals EU. Subject to any directions given by the Arbitrator, which may include the submission of the overdue Defence within a specified time period, the dispute will be decided by reference only to the Claim Documents.
- 5.7 On receipt of the Defence and subject to NetNeutrals EU's general discretion to refuse to make an appointment, an Arbitrator will be appointed by NetNeutrals EU. At the same time, NetNeutrals EU will forward a copy of the Defence to the Claimant, who then has 15 working days from the date of receipt to submit, if they choose to do so, any comments they have on the Defence ("the Comments"). The customer cannot introduce any new claims in the Comments; the Arbitrator will disregard any new claims if made.
- 5.8 If Comments are submitted, they must include:
  - 5.8.1 Details of those matters in the Defence which are accepted or agreed;
  - 5.8.2 Details of those matters in the Defence which are disputed, with reasons why;
  - 5.8.3 Any further supporting documents relied on as evidence.
- 5.9 NetNeutrals EU will send a copy of any Claimant's Comments received to the Respondent, but the Respondent is not permitted to make any further comment without the written approval of the Arbitrator.
- 5.10 The Arbitrator may request from either party to submit further documents and/or information. If either party fails to submit such further documents and/or information within the timescale prescribed by the Arbitrator, the arbitration will proceed on the basis of the documents already before the Arbitrator.
- 5.11 The Arbitrator may, at his or her absolute discretion, accept or refuse to consider documents that are submitted outside the timescales set down by these Rules.



- 5.12 In considering any dispute under the Scheme, the Arbitrator shall give effect to RDO's Code of Conduct in force at the date of the creation of the Timeshare Agreement. In the event of a conflict between a rule of law and a provision of the Code, the interpretation most favourable to the Claimant shall prevail.
- 5.13 If at any time the Arbitrator considers that the dispute is not capable of proper resolution under these Rules, the parties will be so advised. In that case the Arbitrator's appointment will be cancelled, the application for arbitration will be treated as withdrawn and 75% of the case fees will be refunded to both parties.

## **6. The Arbitrator's award**

- 6.1 Within 20 working days of the date on which the last of the information or documents provided by the parties has been submitted to the Arbitrator, NetNeutrals EU will send a copy of the Arbitrator's award ("the Award") to each party.
- 6.2 The Award is final and legally binding on all parties. There is no right of appeal under the Irish Arbitration Act 2014.
- 6.3 In the Award, the Arbitrator shall expressly set out the extent to which (if at all) the Timeshare Agreement remains in force following the Award.
- 6.4 No Award can be made for an amount of more than the amount claimed in the Claim Documents.
- 6.5 No Award can exceed the actual loss suffered by the Claimant as proven to the satisfaction of the arbitrator.
- 6.6 Any claims arising from the same Timeshare Agreement irrespective of the time of claim will be consolidated in the Award.
- 6.7 Where the price to be paid under a Timeshare Agreement is partly discharged by the transfer by the Claimant of an existing Timeshare to the Respondent or to its order at a value there assigned to such existing Timeshare, the Respondent may satisfy any Award made against it to repay the assigned value (or part of that value) of that Timeshare by transferring to the Claimant a reasonably comparable Timeshare in good standing.

- 6.8 Unless otherwise directed by the Arbitrator, all parties shall comply with the Award within 15 working days of the date on which the Award is sent to the parties.
- 6.9 Any party may request the return of its original documents from NetNeutrals EU but must do so within 30 working days of the date on which the Award was issued. If no such request is made within 30 working days, NetNeutrals EU will securely destroy the documents.
- 6.10 Subject to the right of either party to request NetNeutrals EU to draw the Arbitrator's attention to any accidental slip or omission which the Arbitrator has power to correct by law, neither NetNeutrals EU nor the Arbitrator can enter into correspondence regarding the Award.

## **7. Costs**

- 7.1 The case fees paid by the parties, as detailed in Schedule 1 – Case Fees, constitute payment of NetNeutrals EU's administration fee and the Arbitrator's fee.
- 7.2 Subject to rules 7.3 and 7.4 below, each party shall bear its own costs of legal representation, and of preparing and submitting its case. No legal action may be brought to recover these costs. The parties are entitled to use legal representation if they wish, but there is no requirement to do so.
- 7.3 The arbitrator will direct in the Award that the losing party will reimburse the case fee of the other party, although the arbitrator has an overriding discretion to decide whether or not to apportion the costs of the arbitration in some other manner.
- 7.4 These provisions for costs will not apply to any recourse against the award.

## **8. Confidentiality**

- 8.1 Both the Claimant and the Respondent agree to not, at any time, disclose to any other any details of the arbitration, except as required or permitted by these Rules and the law.
- 8.2 NetNeutrals EU may gather and retain details, in summary form, of individual cases and, while preserving the anonymity of the parties, may publish such summaries on its website and to other arbitrators as a resource in order to encourage consistency of practice under these Rules.

NetNeutrals EU may also publish statistical as required by regulatory entities, and outline information on such disputes whilst preserving the anonymity of the parties.

## 9. Other

- 9.1 The law of Ireland shall apply to the arbitration. The seat of the arbitration shall be Dublin, Ireland. The arbitrator shall determine the applicable law of the Timeshare Agreement.
- 9.2 All references to 'working days' in these Rules shall be interpreted by reference to public and bank holidays in Ireland.
- 9.3 NetNeutrals EU will appoint a substitute arbitrator if the Arbitrator originally appointed is unable to deal with the dispute for any reason. NetNeutrals EU will inform the parties if such an appointment is made and the reasons for that appointment.
- 9.4 If the parties request for the arbitration to be conducted in a language other than English, NetNeutrals EU will endeavour to appoint an Arbitrator who can conduct the process in the requested language. However, in the event that NetNeutrals EU is unable to appoint an Arbitrator who can conduct the process in the requested language, the cost of any required interpretation to English will be shared equally between the parties. The parties will pay the cost of translating their own documents to English.
- 9.5 Neither NetNeutrals EU nor the Arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these Rules.
- 9.6 These Rules are subject to revision and amendment from time to time. The Rules in force at the time the application is made will govern any arbitration under the Scheme.

## Schedule 1 – Case Fees

The **Arbitration fee** is due prior to opening the case. The arbitration fees are split between the parties and are dependent on the amount of the claim as shown below:

<i>Amount of Claim</i>	<i>Total Arbitration fee</i>	<i>Cost per party</i>
Up to €6,000	€450 plus VAT	€225 plus VAT per party
€6,001 and up to €18,000	€550 plus VAT	€275 plus VAT per party
€18,001 and up to €30,000	€600 plus VAT	€300 plus VAT per party
over €30,000	€1,100 plus VAT	€550 plus VAT per party

1. The Claimant will pay an arbitration fee as detailed above when submitting an application form.
2. The Respondent will pay a case fee of as detailed above when submitting the Defence.
3. All fees will be subject to Irish VAT at the prevailing rate.
4. All Amounts Claimed include VAT.