

CLASS ACTION

Arbitration Rules & Procedures, 2023

Effective January 30, 2023



MILES

MEDIATION & ARBITRATION

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Rule 1: Applicability¹

- (i) Unless either otherwise specifically agreed upon between the concerned parties or ordered by a court of competent jurisdiction to refer the dispute to arbitration, Miles Mediation & Arbitration Services, LLC ("**Miles**") shall not facilitate or conduct any disputes pertaining to class actions.
- (ii) The present Miles Class Action Arbitration Rules & Procedures, 2023 ("**Class Action Rules**") shall apply to disputes arising out of all agreements or contractual arrangements that provides for arbitration in accordance with any of the rules under Miles where either of the parties to such agreement or contractual arrangement submits the dispute for arbitration either on behalf of or against a class or purported class.
- (iii) The Class Action Rules shall supplement any other applicable rules incorporated by parties in their respective agreements/ contractual arrangements.
- (iv) The Class Action Rules shall also apply either upon reference to Miles from a court of competent jurisdiction for adjudication and administration of the class action proceedings, or upon receiving a request from a party to a pending arbitration before Miles asserts claims on behalf of or against a class or apparent class.
- (v) In the event of discrepancies or inconsistencies between these Class Action Rules and any other rules under Miles, these Class Action Rules shall be applicable to the dispute. The arbitral tribunal/ arbitrator will have the sole authority and discretion to resolve any inconsistency between any agreement/ contractual arrangement between the parties and these Class Action Rules, and during such resolution, shall avoid any prejudice to the interests of absent members of the concerned class.
- (vi) Subject to these Class Action Rules, and applicable provisions of law, the arbitral tribunal/ arbitrator shall be bound by any orders passed by a court of competent jurisdiction relating to any matter that would otherwise be decided by an arbitral tribunal/ arbitrator under these Class Action Rules.

Rule 2: Appointment of the Arbitral Tribunal

Unless otherwise specifically agreed upon by the parties to the dispute, for all such arbitrations administered by Miles under these Class Action Rules, Miles will appoint a sole arbitrator from the Miles' Arbitration Panel to arbitrate the dispute.

Rule 3: Interpretation of the Arbitration Clause

- (i) Upon the appointment and establishment of the arbitral tribunal, as a preliminary issue, the arbitral tribunal shall pass a partial final award ("**Partial Award**") on the interpretation and construction of the agreement/ contractual arrangement between

¹ Rule headings are mentioned solely for the purposes of reference and is not subject to interpretation.

the parties and whether such agreement/ contractual arrangement permits the arbitration to proceed on behalf of or against a class.

- (ii) The Partial Award passed by the arbitral tribunal shall be subject to immediate judicial review within a period of thirty days from the receipt of the Partial Award by the parties. If either of the parties makes an appropriate application to a court of competent jurisdiction within the stipulated time period of thirty days to vacate the Partial Award, the arbitral tribunal shall stay the proceedings until it is informed of rulings by the court.
- (iii) If either a court of competent jurisdiction confirms the Partial Award or if the parties fail to make an application to a court within the stipulated time period of thirty days, the arbitral tribunal shall proceed with the arbitration.
- (iv) In its interpretation and construction of the agreement/ contractual arrangement between the parties, the arbitral tribunal shall not rely, consider, or examine these Class Action Rules or any other rules under Miles.

Rule 4: Prerequisites to a Class Certification

- (i) The arbitral tribunal has the sole discretion and authority to determine whether a class should be certified under applicable provisions of law.
- (ii) In deciding whether a class should be certified, the arbitral tribunal shall determine if the conditions set forth in (a) Rule 23(b), Federal Rules of Civil Procedure, (b) 23(a), Federal Rules of Civil Procedure for nomination of a class representative, and (c) and any other relevant provisions of applicable laws and regulations have been duly complied with by the class.

Rule 5: Class Certification

If a class satisfies all relevant provisions of Federal Rules of Civil Procedure, these Class Action Rules, and other laws and regulations, an action may be maintainable as a class action before the arbitral tribunal.

Rule 6: Certification Award

- (i) Upon determining that a class action is maintainable before the arbitral tribunal, the arbitral tribunal shall pass a partial final award ("**Certification Award**").
- (ii) Unless otherwise agreed upon by the parties, the Certification Award shall be reasoned and must specify the following:
 - (a) Definition of the class;
 - (b) Identify the class representative(s) under Rule 23(a), Federal Rules of Civil Procedure;
 - (c) Identify the class counsel;
 - (d) Claims raised by the class in the arbitration;
 - (e) Issues in the dispute between the parties as has been mutually agreed by all concerned parties;

- (f) Defenses, if any, raised; and
 - (g) Exclusion of certain members of class, if any, and reasons thereof.
- (iii) The Certification Award passed by the arbitral tribunal shall be subject to immediate judicial review within a period of thirty days from the receipt of the Certification Award by the parties. In the event that either of the parties makes an appropriate application to a court of competent jurisdiction within the stipulated time period of thirty days to vacate the Certification Award, the arbitral tribunal shall stay the proceedings until it is informed of rulings by the court.
- (iv) If either a court of competent jurisdiction confirms the Certification Award or if the parties fail to make an application to a court within the stipulated time period of thirty days, the arbitral tribunal shall proceed with the arbitration.
- (v) Upon an application by either party to the dispute, or upon any directions from a court of competent jurisdiction, the arbitral tribunal shall have the power to amend or alter the Certification Award.

Rule 7: Notice of Determination

- (i) Upon the confirmation of the Certification Award, the arbitral tribunal shall direct that the class members be provided the most appropriate notice, as is practicable under the circumstances (“**Notice of Determination**”).
- (ii) The Notice of Determination shall be given to all such members that can be identified through reasonable and most practicable means and efforts.
- (iii) The Notice of Determination must contain the following information, in concise, plain, and easily understood language:
- (a) Nature of the class action;
 - (b) The definition of the class certified;
 - (c) Claims raised by the class in the arbitration;
 - (d) Issues in the dispute between the parties as has been mutually agreed by all concerned parties;
 - (e) Defenses, if any, raised;
 - (f) Information that a class member may enter an appearance through counsel if the member so desires, and that any class members may attend the hearings;
 - (g) Information that the arbitral tribunal has the power and discretion to exclude from the class any member who requests such exclusion, and the manner in which such class member may be excluded;
 - (h) Binding nature of awards passed by the arbitral tribunal in class actions;

Rule 8: Final Award

- (i) Unless specifically agreed upon by the parties, the final award passed by the tribunal adjudicating on all merits of the dispute, shall be reasoned and define the class with specificity.
- (ii) The final award shall also describe (a) all such members to whom a notice under Rule 6 was directed; (b) all such entities that the arbitral tribunal finds to be members of the class; and (c) all such members who have expressly elected to opt out of the class.

Rule 9: Settlement, Voluntary Dismissal, or Compromise

- (i) No settlement, voluntary dismissal, or compromise of issues in dispute, either in whole or in part shall be effective unless approved by the arbitral tribunal.
- (ii) No settlement, voluntary dismissal, or compromise shall be approved unless the arbitral tribunal upon a hearing and reasoned finding holds that such settlement, voluntary dismissal, or compromise is fair, reasonable, and adequate.
- (iii) No settlement, voluntary dismissal, or compromise shall be binding on class members unless the arbitral tribunal directs that a reasonable notice be provided to all such class members who would be bound by the decision of the arbitral tribunal.
- (iv) Any agreement arising out of a settlement, voluntary dismissal, or compromise between the concerned parties shall be submitted to the arbitral tribunal for consideration and approval.
- (v) Prior to approving any proposed agreements, the arbitral tribunal shall afford an additional opportunity to request exclusion to all individual class members who had earlier been given an opportunity to request exclusion but failed to do so.
- (vi) A class member shall be given the opportunity to raise any objections that such class member may have to any proposed settlement, voluntary dismissal, or compromise submitted to the arbitral tribunal for its approval. All objections to the proposed settlement, voluntary dismissal, or compromise raised by the class members may be withdrawn only with the approval of the arbitral tribunal.

Rule 10: Public Disclosures

- (i) Given the nature of class actions, the proceedings before the arbitral tribunal shall not be confidential unless exigent circumstances, as recognized and approved by the arbitral tribunal apply.
- (ii) Upon an application made by any public entity and payment of \$25, Miles shall make available the following information:
 - (a) a copy of the demand for arbitration and responses, if any, thereof;

- (b) names and biographical information of the parties to the proceedings;
 - (c) names and biographical information of the legal representatives of the parties to the proceedings; and
 - (d) a list of all orders, partial awards, miscellaneous awards, and final awards passed by the arbitral tribunal.
- (iii) Any agreement entered between the parties pursuant to a settlement, voluntary dismissal, or compromise and approved by the arbitral tribunal may be made available to the public only upon unanimous agreement between all concerned parties. If all parties mutually consent to making the agreement public, any entity may make an application along with a payment of \$25 to Miles seeking a copy of the agreement.

Rule 11: Indemnity

- (i) Neither Miles, nor any arbitrator appointed under these Class Action Rules, shall be liable in damages to any party for any act or omission in connection with any arbitration undertaken pursuant to these Class Action Rules.
- (ii) All parties to any arbitration undertaken pursuant to these Class Action Rules shall indemnify and hold Miles and the arbitral tribunal harmless from any claim, litigation or dispute arising directly or indirectly out of the arbitration or any proceeding thereunder, to include all costs, expenses, and attorneys' fees, incurred directly or indirectly from any such claim, litigation, or dispute.

Rule 12: Document Retention

- (i) Neither Miles nor the arbitral tribunal shall not be required to maintain any official record of the arbitration proceedings and shall hold all materials submitted during the arbitration for only ninety (90) days after an award is issued.
- (ii) Neither Miles nor the arbitral tribunal shall be responsible for any documentation requested by the parties to the arbitration proceedings beyond the stipulated time period of ninety (90) days.

Rule 13: Miscellaneous

All applications, motions, or requests made by the parties, class members, or public entities must be addressed to arb@milesadr.com.