

CONSTRUCTION

Arbitration Rules & Procedures, 2023

Effective January 30, 2023



MILES

MEDIATION & ARBITRATION

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Rule 1. Applicability and Scope¹

- (i) Pursuant to an agreement or contractual arrangement between the parties, or upon directions from a court of competent jurisdiction, the Miles Construction Arbitration Rules & Procedures, 2023 ("**Construction Rules**") shall govern all such domestic disputes or claims arising out of or related to contracts involving constructions, materials, engineering, architecture, operations, equipment, and sureties that have been submitted for binding arbitration before Miles Mediation & Arbitration Services, LLC ("**Miles**").
- (ii) By consenting to arbitrate under the Construction Rules, all concerned parties to the arbitration proceedings shall be deemed to have made these Construction Rules a part and parcel of their arbitration agreement or contractual arrangement. In doing so, the parties shall agree that in the event of any contradiction between the Construction Rules and their arbitration agreement or contractual arrangement, the Construction Rules shall prevail.
- (iii) For the purposes of these Construction Rules:
 - a. "arbitrator" and "arbitral tribunal" shall be used interchangeably.
 - b. arbitration agreement shall mean to include all such clauses in the underlying contract between the parties that require all disputes and claims arising out of the contract to be resolved by arbitration, and any other supplementary agreements to the contract that require parties to submit all disputes and claims to arbitration.
 - c. contractual arrangement shall mean to include all such supplementary agreements entered between the parties prior to the commencement of the arbitration proceedings that require all disputes and claims arising out of prior contracts between the parties to be submitted to arbitration.
- (iv) If any provision(s) of these Construction Rules has been adjudicated by the arbitral tribunal to conflict with any law applicable to the arbitration proceedings, such applicable law will prevail over the specific provision of the Construction Rules.

Rule 2. Administration by Miles

- (i) By consenting to arbitrate under the Construction Rules, all concerned parties unanimously authorize Miles to administer the arbitration, either virtually, or in-person at any of its location, as Miles deems most appropriate and convenient for the parties and the arbitrator.

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

- (ii) If the parties' arbitration agreement or contractual arrangement provides that their disputes or claims shall be governed by procedures or rules not specified herein or in lieu of the Construction Rules, Miles shall accordingly administer the arbitration proceedings in accordance with such procedures or rules.
- (iii) If the parties' arbitration agreement or contractual arrangement provides for procedures or rules other than the Construction Rules, the parties may, file with Miles a Supplementary Agreement www.milesadr.com/supplementary-agreement/ requesting that the arbitral tribunal apply the Construction Rules, or any such other rules administered by Miles.

Rule 3. Commencement of Arbitration

- (i) An arbitration with Miles shall be deemed commenced upon receipt of a request for arbitration ("**Demand**") by the claimant which shall include the following:
 - (a) the details of parties to the dispute including registered name, postal address, telephone number, and email address;
 - (b) the details of the parties' legal representatives including their names, postal address, telephone number, and email address;
 - (c) a copy of the arbitration agreement contained in the underlying contract, contractual arrangement, or an order from a court of competent jurisdiction;
 - (d) the details of such arbitration agreement/ contractual arrangement/ court orders including law governing the arbitration, seat and language of the arbitral proceedings, and proposed appointment of the arbitrator;
 - (e) the details of the nature and circumstances of the dispute;
 - (f) the details of preliminary measures requested, if any; and
 - (g) the details of reliefs sought.
- (ii) The Demand can be filed by the claimant with Miles in one of the following ways:
 - (a) e-filing through www.milesadr.com/demand-for-arbitration/;
 - (b) by completing the draft Demand available on www.milesadr.com/demand-for-arbitration/ and physically filing the said Demand with any Miles' locations;
 - (c) by completing the draft Demand available on www.milesadr.com/demand-for-arbitration/ and emailing the said Demand to arb@milesadr.com.
- (iii) In addition to the Demand, the Claimant is required to pay an amount of \$1500 towards Miles' one-time administrative and commencement fees, due and payable at the time of Filing the Demand.

- (iv) Upon receiving the Demand, a case manager from Miles will issue a confirmation to the concerned parties acknowledging the receipt of the Demand within one (1) business day from the date of such receipt of the Demand ("**Acknowledgment**").

Rule 4: Consolidation of Arbitrations

- (i) Upon receipt of written confirmation from all involved parties, Miles shall consolidate two or more arbitrations.
- (ii) If all parties to the respective arbitrations are not agreeable to consolidation of the arbitrations, any such party requesting consolidation may file an application with Miles providing rationale and grounds for its request for consolidation. Such an application shall be filed with Miles within thirty (30) business days from the commencement of the latter filed arbitration. An extension may be granted to the requesting party by the arbitral tribunal to file its response upon showing good cause.
- (iii) Once Miles receives an application under Rule 4(ii), it shall have the authority to determine whether the application shall be adjudicated upon by (a) the arbitrator presiding over the arbitration in which the requesting party has filed the application, or (ii) another arbitrator appointed solely for the purposes of deciding on the consolidation.
- (iv) If another arbitrator is appointed solely for the purposes of deciding on the application seeking consolidation, such arbitrator shall be deemed *ex-functus officio* upon the conclusion of such decision, unless otherwise agreed upon by the parties.

Rule 5: Joinder of Parties

- (i) Upon receipt of written confirmation and relevant details from all involved parties, Miles shall join third parties to the arbitration proceedings.
- (ii) If all parties are not agreeable to such joinder of additional third parties, any such party requesting joinder may file an application with Miles providing rationale and grounds for its request for joinder. Such an application shall be filed with Miles within thirty (30) business days from the commencement of the arbitration. An extension may be granted to the requesting party by the arbitral tribunal to file its response upon showing good cause.
- (iii) Once Miles receives an application under Rule 5(ii), it shall have the authority to determine whether the application shall be adjudicated upon by (a) the arbitrator presiding over the arbitration, or (ii) another arbitrator appointed solely for the purposes of deciding on the joinder.

- (iv) If another arbitrator is appointed solely for the purposes of deciding on the application seeking joinder, such arbitrator shall be deemed *ex-functus officio* upon the conclusion of such decision, unless otherwise agreed upon by the parties.

Rule 6: Service

- (i) For the purposes of these Construction Rules, all pleadings, applications, and requests shall be served to the parties, Miles, and the nominated arbitrator/ arbitral tribunal through any of the following methods:
 - (a) All such methods that have been provided for by the applicable state and federal rules of civil procedures;
 - (b) Registered mail addressed to the party/ authorized representative/ registered agent;
 - (c) Electronic mail, with all correspondence being addressed to arb@milesadr.com; or
 - (d) Personal service.
- (ii) While calculating any period that has been prescribed under these Construction Rules, when any service is affected upon another party, Miles, or the arbitral tribunal by registered mail, an additional three (3) calendar days will be added to such stipulated period.
- (iii) The term "business day(s)" referred to under the Construction Rules specifically refers to Monday through Friday, except the legal public holidays specified in [5 U.S.C. 6103](#), or any day declared to be a holiday by federal statute or executive order.

Rule 7. Response, Counterclaims, and Amendment to Claims

- (i) Within two (2) business days from receiving the Acknowledgment from Miles, the claimant shall serve upon the respondent the Demand through any of the methods mentioned under Rule 6(i), Construction Rules.
- (ii) The respondent may serve its Response upon the claimant and Miles within fourteen (14) days from the date of receipt of the Demand. An extension may be granted to the respondent by the arbitral tribunal to file its response upon showing good cause. The respondent may refer to the format of the Response as is readily available on www.milesadr.com/draft-forms/.
- (iii) The claimant, in its discretion may opt to serve its rejoinder to the Response within fourteen (14) days from the date of receipt of the Response.
- (iv) In addition to its Response, the respondent may also serve the claimant and Miles, its counterclaim within fourteen (14) days from the date of receipt of the Demand, or at any such time during the arbitral proceedings with the leave of the arbitral tribunal. The counterclaim shall assert all grounds that the respondent seeks to rely upon, and remedies sought. Upon receipt of the counterclaim from the respondent, Miles shall

issue its Acknowledgment along with an invoice for Miles' administrative and commencement fees, which shall be due and payable upon receipt.

- (v) The claimant may respond to the counterclaim within fourteen (14) days from the date of receipt of the counterclaim. An extension may be granted to the claimant by the arbitral tribunal to file its response upon showing good cause.
- (vi) A party to the arbitration proceedings, with the leave of the arbitral tribunal, may at any time before the final arbitration hearing, file an application with Miles and the arbitral tribunal seeking to either increase or decrease the amount of the claim, or the counterclaim. The application should also be served upon the other party through any of the methods as specified in Rule 3(i), Construction Rules. However, no request to amend the claim or the counterclaim shall be addressed by the arbitral tribunal once the arbitration hearing is concluded.
- (vii) Any party's failure to timely submit a Response or Counterclaim shall not delay the arbitration.

Rule 8: Appointment of Sole Arbitrator

- (i) If the parties have agreed upon the appointment of a specific arbitrator, or any other such method of appointing the arbitrator, Miles shall abide by the parties' agreement. Such appointment of the arbitrator shall be listed in the Demand submitted by the claimant.
- (ii) If the parties have not agreed upon the appointment of an arbitrator, or the method of such appointment, Miles shall simultaneously send to all concerned parties a list of five arbitrators from the Miles Arbitration Panel, within ten (10) business days from the receipt of the notice of service. The parties shall then endeavor to confer with each other and agree to an arbitrator and inform Miles of their agreement.
- (iii) If the parties are unable to confer with each other and agree upon an arbitrator from the Miles Arbitration Panel, the parties shall have seven (7) business days from the date of receipt of proposed list of arbitrators to rank the arbitrators from order of their preference and send such order to Miles. Accordingly, upon receipt of such list of preference, Miles shall proceed to appoint the arbitrator. However, if either party to the arbitration fails to provide its list of preference, Miles shall presume that all such proposed arbitrators are acceptable to the non-responding party.

Rule 9: Appointment of Tripartite Arbitral Tribunal & Chairperson

- (i) If the parties have agreed upon the appointment of a tripartite arbitral tribunal, or any other such method of appointing the tripartite arbitral tribunal, Miles shall abide by the parties' agreement. Such appointment of the tripartite arbitral tribunal shall be listed in the Demand submitted by the claimant.
- (ii) If the parties have not agreed upon the appointment of a tripartite arbitral tribunal, or the method of such appointment, Miles shall simultaneously send to all concerned parties a list of five arbitrators from the Miles Arbitration Panel, within ten (10) business

days from the receipt of the notice of service. The parties shall then nominate an arbitrator, respectively and inform Miles of such nomination.

- (iii) If the parties are unable to nominate an arbitrator from the Miles Arbitration Panel, the parties shall have seven (7) business days from the date of receipt of proposed list of arbitrators to rank the arbitrators from order of their preference and send such order to Miles. Accordingly, upon receipt of such list of preference, Miles shall proceed to appoint the arbitrators, respectively. However, if either party to the arbitration fails to provide its list of preference, Miles shall presume that all such proposed arbitrators are acceptable to the non-responding party.
- (iv) For all tripartite or multipartite arbitral tribunals, one arbitrator shall be appointed as the panel chairperson. Unless otherwise agreed by the parties in their arbitration agreement or contractual arrangement, the chairperson shall be designated at Miles' discretion, by either the parties themselves or the party appointed arbitrators.
- (v) The chairperson shall be appointed from Miles' Arbitration Panel in the manner that has been stipulated in Rule 6 and Rule 7 of the Construction Rules, unless specifically agreed upon by the parties in the arbitration agreement or contractual arrangement.
- (vi) All arbitrators designated as party-appointed arbitrators shall be impartial, neutral, and independent of the appointing party, unless all concerned parties have agreed otherwise.

Rule 10: Jurisdictional Challenges

- (i) The arbitral tribunal shall have the sole discretion and power to rule on its own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or the contractual arrangement.
- (ii) For the purposes of ruling on its own jurisdiction, the arbitral tribunal shall treat an arbitration clause which forms part of an underlying contract as an agreement independent of the other terms of the contract. Any decision by the arbitral tribunal that the underlying contract is null and void shall not by itself render the arbitration clause invalid.
- (iii) Any objections by the parties to the proceedings that the arbitral tribunal lacks the jurisdiction to preside over the arbitration shall be raised no later than the filing of the Response or counterclaims, if any.
- (iv) The arbitral tribunal may rule on such raised objections either as a preliminary issue and in the form of an interim award, or as part of the final award, unless otherwise agreed upon by the parties.

Rule 11: Interpretation of Construction Rules

- (i) Upon its appointment, the arbitrator shall interpret and resolve all disputes pertaining to the interpretation and applicability of these Construction Rules, or any such rules that are applicable to the arbitration proceedings. In its determination, the arbitrator may take any assistance from Miles that it deems fit and appropriate. Any decision by

the arbitrator on the interpretation of these Construction Rules shall be final and binding on all parties.

- (ii) In the case of tripartite or multipartite arbitral tribunals, any decision on interpretation of the Construction Rules shall be decided upon by a majority vote of the arbitrators with any assistance from Miles as the arbitral tribunal deems fit and appropriate.

Rule 12: Disclosure of Arbitrator

- (i) Within five (5) business days from the appointment of the arbitrator or arbitral tribunal, each arbitrator shall disclose to all concerned parties of any circumstances that give rise to justifiable doubts as to their impartiality or independence, including but not limited to personal, professional, and monetary interests with the parties, legal representative, or in the subject matter of the dispute.
- (ii) The disclosure provided by the arbitrator shall remain in effect throughout the course of the arbitral proceedings. However, if during the arbitration, the arbitrator becomes aware of any additional facts or information that may preclude from continuing as an arbitrator, the arbitrator shall at the earliest inform all parties of such facts or information.

Rule 13: Engagement Agreement

- (i) Along with the disclosure, Miles shall also forward to the parties a copy of the arbitrator's engagement agreement that shall, *inter-alia*, include the following information:
 - (a) Cause title of the arbitration;
 - (b) Rules that shall govern the arbitration proceedings, institutional or otherwise,
 - (c) Schedule containing the applicable hourly rates/ fees of the arbitrator that shall govern the arbitration proceedings;
 - (d) Indemnification clause stating that neither Miles nor the arbitrator shall be liable for any damages to either party for any act or omission in connection with the arbitration proceedings.
- (ii) Upon receipt of the disclosure and the engagement agreement, the parties shall timely insert their electronic signature/ physical signatures in their respective placeholders and forward the documents to Miles.

Rule 14: Grounds of Challenge and Procedure for Disqualification

- (i) Any party to the arbitration may challenge the appointment or continuation of the arbitrator on the following grounds, within five (5) business days from the receipt of disclosures as provided for under Rule 12(i) and (ii):
 - (a) Documented partiality, lack of independence, or bias;
 - (b) De jure, or De facto inability to perform functions;

- (c) Impossibility to act without undue delay; or
 - (d) Any other grounds for disqualification as provided by state or federal law.
- (ii) Either on its own motion or upon receipt of an application from a party challenging the arbitrator, Miles shall decide whether the arbitrator should be disqualified on the grounds mentioned in Rule 12 (i) of the Construction Rules. Any decision by Miles shall be final and binding on all parties.

Rule 15: Filling Vacancies

- (i) If for reasons more specifically mentioned in Rule 12, or any other grounds that Miles deems fit and appropriate, an arbitrator has been disqualified, Miles shall declare the chair vacant.
- (ii) Any vacancy in the arbitral tribunal shall be filled in accordance with Rules 6 and 7 of these Construction Rules. However, if the vacancy arises after the arbitration hearing has commenced, the remainder of the arbitrators may nonetheless resume the hearing and adjudicate the dispute, unless the parties agree otherwise.
- (iii) If the parties are of the opinion that the vacant chair be filled by the appointment of a substitute arbitrator, the remainder of the arbitrators may determine if it is appropriate to duplicate any or part of the hearing.

Rule 16: Representation

- (i) The parties have the sole discretion in determining whether they will be represented by a legal counsel, any other representative, or by themselves. In their Demand and Response, respectively, parties shall disclose the details including the name, address, telephone number, and email address of their representatives, if any.
- (ii) Upon receiving the requisite consent from the former and the current representative, a party shall promptly notify Miles of any change in its representatives, along with their name, address, telephone number, and email address. Accordingly, Miles shall apprise the arbitral tribunal of such proposed change in legal representation of the party.
- (iii) The arbitral tribunal, while considering possible conflicts of interest, stage of the arbitration hearing, and submissions of the opposing counsel, has the discretion to withhold approval of the proposed change in the legal representation until it determines that the arbitration can resume efficiently.
- (iv) Unless otherwise agreed upon by all concerned parties, no party may unilaterally terminate or withdraw from the arbitration proceedings after receiving the Acknowledgment.

Rule 17: Initial Scheduling Conference

- (i) Once the appointment of the arbitrator/ arbitral tribunal has been confirmed by the parties, Miles shall schedule an initial conference between all parties and the arbitrator to establish the following details:
 - (a) Timelines for exchange of information and written discovery;
 - (b) Manner of sequestration or depositions of witness, and timelines thereof;
 - (c) Timelines for dispositive motions and their respective hearing dates;
 - (d) Timelines for any pre-hearing evidentiary motions;
 - (e) Issues that warrant adjudication by the arbitral tribunal along with the governing law and institutional rules;
 - (f) Location, date, and manner of final arbitration hearing;
 - (g) Timelines for submission of pre-hearing exhibits, pleadings, and list of witnesses and documents to be relied upon during the hearing; and
 - (h) Form of final award.
- (ii) Prior to the commencement of the initial scheduling conference, Miles shall forward to the parties a checklist of discussion points to be had with the arbitral tribunal, and a draft of proposed scheduling order. If the parties deem fit, they may confer with each other before the initial scheduling conference and insert relevant details in the proposed scheduling order.
- (iii) During the initial scheduling conference, the parties and the arbitrator shall discuss the constituents of the arbitration proceedings and any other impending issues that is necessary for the purposes of efficient conduct of the arbitration proceedings. Upon the conclusion of the initial scheduling conference, the arbitrator shall prepare and circulate a scheduling order ("**Procedural Order**") to all parties.
- (iv) A party to the arbitration proceeding may propose changes to timelines stipulated in the Procedural Order, upon showing good cause and obtaining consent of all other parties to the arbitration. Such proposed changes may be submitted to Miles in the form of a written request along with relevant grounds.

Rule 18: Interim Measures

- (i) The arbitrator has jurisdiction to grant interim measures, either upon an application by the party, or on its own motion.
- (ii) An interim measure can be granted by the arbitrator if it satisfied that such directions are necessary to:

- (a) Maintain or restore the *status quo* pending the determination of the dispute between the parties;
 - (b) Prevent current or imminent harm or prejudice to the arbitration proceedings;
 - (c) Preserve assets that can applied towards the satisfaction of the arbitration award; or
 - (d) Preserve such evidence that may be necessary and material for the effective resolution of dispute between the parties.
- (iii) The arbitrator may determine a request seeking interim measures either as a preliminary question or in an award on merits. The arbitrator may require that the requesting party make payment for the costs of such measures.

Rule 19: Exchange of Documents, Production of Witnesses, and other Relevant Information

- (i) As directed by the arbitrator in its Procedural Order, within the stipulated time, the parties shall:
- (a) Exchange such documents, information, or recordings which are in their possession or custody and the parties intend to rely upon during the arbitration hearing;
 - (b) Exchange such documents, information, or recordings which are known to them, and the parties intend to rely upon during the arbitration hearing;
 - (c) Make necessary requests for interrogatories, production of documents, admissions, and deposition of witnesses that are relevant and material to the outcome of the issues;
 - (d) Provide responses to any requests for information or documents that are relevant and material to the outcome of the issues;
 - (e) Make electronic documents available in the manner as is requested by the parties, or in any such other manner as has been directed by the arbitrator.
- (ii) If parties are unable to complete their exchange of documents and information, and deposition of witnesses and parties within the stipulated time mentioned under the Procedural Order, the parties shall make a formal written request to Miles and the arbitrator demonstrating good cause for seeking extension. Upon receipt of such request, the arbitrator may either conduct a brief conference with all parties to facilitate the proceedings swiftly or provide written approval extending the timelines.
- (iii) Upon receiving a request from either party to the arbitration, the arbitrator may issue a subpoena to secure attendance of a witness for the purposes of their deposition, or a subpoena *deuces tecum* to compel production of documents and make such

documents available for photocopying and perusal. The format of the subpoena and the subpoena *deuces tecum* are readily available on www.milesadr.com/draft-forms/.

Rule 20: Powers of Enforcement

- (i) To ensure effective resolution of the arbitration proceedings, the arbitrator shall have the power to issue all such orders that are necessary to enforce the provisions of these Construction Rules, or any such other institutional rules that are applicable to the arbitration proceedings.
- (ii) Such enforcement powers of the arbitrator include but are not limited to the following directions passed by the arbitrator:
 - (a) Compelling or condition production or exchange of documents and information;
 - (b) Imposing reasonable search parameters for electronic and other documents if the parties are unable to agree;
 - (c) Imposing costs on parties for production of voluminous or electronically stored documents or information;
 - (d) If either party to the arbitration willfully disobeys any order passed by the arbitrator, the arbitrator may draw adverse inferences, exclude evidence, and/or award costs that arise from such disobedience; and
 - (e) Issue any such order that is necessary to ensure the efficient conclusion of the arbitration proceedings.

Rule 21: Pre-Hearing Submissions

- (i) At least seven (7) business days prior to the scheduled arbitration hearing, the parties shall serve and exchange upon each other and Miles the following documents:
 - (a) List of witnesses that they intend to call, including any expert witnesses;
 - (b) Any written reports or presentations that the parties seek to rely upon during the arbitration hearing; and
 - (c) List of all exhibits that the parties intend to use at the hearing that have been pre-marked.
- (ii) Any dispute between the parties with respect to the admissibility of the exhibits must be raised at the earliest opportunity and should be raised with the arbitrator at least twenty-one (21) business days prior to the scheduled arbitration hearing.

Rule 22: Dispositive Motions

A dispositive motion may be filed by all parties jointly, or upon request of one of the parties to the arbitration by making a specific application to the arbitrator within the stipulated timelines provided in the Procedural Order. The arbitrator may allow such application if they are satisfied that the requesting party has demonstrated sufficient cause and likelihood of success.

Rule 23: Location, Date, and Manner of Hearing

- (i) The arbitrator shall, in its Procedural Order stipulated the location, date, and time, of the arbitration hearing. Additionally, the arbitrator shall determine if the arbitration hearing shall be conducted virtually, in-person, or in a hybrid manner.
- (ii) Miles shall send out a notice of arbitration hearing at least ten (10) business days prior to the arbitration hearing. Within two (2) business days of the receipt of such notice, either party to the arbitration shall request for any change in either the location, time, or mode of conducting the arbitration hearing. Unless a party demonstrates exigent circumstances or the parties mutually agree, the arbitrator shall not postpone the date of the arbitration hearing.

Rule 24: Securing Attendance of Witness and Documents for the Arbitration Hearing

- (i) Upon the written request of a party, the arbitrator may issue a subpoena to ensure attendance of a witness at the arbitration hearing, or a subpoena *deuces tecum* to secure production of documents that are relevant and material to the outcome of the issues that are to be adjudicated upon during the arbitration hearing.
- (ii) If a party or any such person subpoenaed opposes such request to compel attendance or production of documents, such party or person may file its objection before the arbitrator. The arbitrator shall rule on such objection while taking into account the weight of such evidence and the burden that may be imposed upon such party or person.
- (iii) For all such witnesses that are required to testify during the arbitration hearing, the arbitrator may direct that the witnesses be administered an oath under applicable laws.

Rule 25: Reporting of the Arbitration Hearing

- (i) A party that requires an official transcript of the arbitration hearing may make such arrangements to have a reporter present during the arbitration and shall duly inform Miles and other parties of such appointment of the reporter at least five (5) business days before the commencement of the arbitration hearing.

- (ii) The appointing party shall ensure that the official transcript of the arbitration hearing is filed with Miles upon its receipt and is served upon other parties to the arbitration hearing.
- (iii) Unless otherwise agreed upon by the parties, the appointing party shall be responsible for payment of costs incurred towards the appointment and fees of the court reporter.
- (iv) If a dispute arises between the parties with respect to the allocation of costs of the reporter, the arbitrator shall resolve such dispute at the earliest.

Rule 26: Ex-Parte Arbitration Hearing

If despite due notice provides to all parties, a party to the arbitration fails to obtain a postponement, or fails to be present, the arbitrator may proceed with the arbitration hearing, unless otherwise agreed upon by the parties in their arbitration agreement or contractual arrangement or required by applicable legal provisions. However, an award by the arbitrator shall not be solely made on the evidence and submissions of the parties that are present at the arbitration hearing. An arbitrator shall diligently and carefully peruse all evidence on record, and pass such award that is fair, just, and appropriate.

Rule 27: Arbitration Hearing through Oral Submissions

- (i) Unless otherwise directed by the arbitrator or agreed upon by the parties, the claimant shall first present its opening statement followed by production of relevant exhibits and evidence including witness testimony. Thereafter, the respondent shall have the opportunity to present its opening statement followed by production of relevant exhibits and evidence including witness testimony. All parties shall be given the opportunity to cross-examine the witness, should they so require. If the arbitrator so directs, the parties shall have the opportunity to submit rebuttals and rejoinders.
- (ii) The parties shall have the opportunity to make presentations, should they so desire, through video, PowerPoints, or any other electronic means of such documents or evidence that is relevant and material to the determination of outcome of the arbitration proceedings.
- (iii) For the purposes of admissibility of evidence, or certain witness testimony, the arbitrator may exercise its discretion and shall not be bound by the federal or state rules of evidence, unless agreed upon otherwise by the parties. The arbitrator has sole discretion to determine whether any evidence presented by the parties shall be presented virtually or in-person.

- (iv) Neither party to the arbitration shall offer into evidence any prior settlement offers made by the parties, or any such other statements submitted in miscellaneous mediation or conciliation proceedings for issues that are relevant to the present arbitration proceedings, unless otherwise agreed upon by the parties.
- (v) Upon conclusion of the oral arguments, exhibits and other relevant evidence, and witness testimonies by all concerned parties, the arbitrator shall declare the arbitration hearing closed. However, the arbitrator has discretion to re-open the hearing as is more particularly described in Rule 28, Construction Rules, or direct the parties to submit post-hearing briefs pursuant to Rule 26, Construction Rules.

Rule 28: Post-hearing Briefs

Once the arbitrator determines that the arbitration hearing is closed, the arbitrator, in its direction, may direct all parties to submit post-hearing briefs not exceeding seven (7) pages detailing their positions on all issues raised during the arbitration hearing, and any other information that the parties believe is material and relevant for the purposes of outcome of the arbitration. If the arbitrator so directs, the parties shall have the opportunity to submit rebuttal and/ or rejoinder briefs.

Rule 29: Arbitration Hearing through Written Submissions

Upon a mutual application by all concerned parties, the arbitrator can direct the parties to submit written submissions within a stipulated period along with exhibits that the parties seek to rely upon, *in lieu* of an oral hearing.

Rule 30: Reopening of the Arbitration Hearing

Either on the discretion of the arbitrator, or upon the application of a party demonstrating good cause, at any time before the award is made, the arbitrator may reopen the hearing to determine any residuary issues that arise in relation to the issues submitted to arbitration.

Rule 31: Confidentiality of the Arbitration Hearing

- (i) Unless otherwise agreed upon by the parties, court order, or applicable law, the arbitration hearing shall be conducted in confidentiality. Additionally, Miles and the arbitrator shall take all necessary steps to ensure the confidentiality of the arbitration proceedings, and all such protective measures that are required to protect sensitive information and trade secrets.
- (ii) Miles and the arbitrator shall have the sole discretion to exclude such persons, other than a party, representatives, witnesses, or such other person that is relevant and material to the determination of the outcome of the arbitration.

Rule 32: Consent Awards

- (i) If, during the arbitration proceedings, the parties settle their issues that were submitted to arbitration, the parties may request the arbitrator to reproduce the terms of the settlement agreement in a consent award. Such consent award will not be released to the parties until such time that the parties have duly paid their invoices to Miles.
- (ii) In addition to the terms of settlement, the consent award shall also contain details about the allocation of costs of the proceedings, including Miles' administrative and commencement fees, and the arbitrator's fee schedule as set out in the engagement agreement.

Rule 33: Final Award

- (i) As stipulated in the Procedural Order, the final award shall be in the form of either a reasoned decision, findings of law and fact, or an unreasoned decision.
- (ii) The final award shall be in writing and shall be executed in such form and manner as is require under the applicable provisions of law. In the event of a sole arbitrator, such sole arbitrator shall either physically or electronically sign the arbitration award. For panels consisting of more than one arbitrator, the award shall be signed by a majority of the arbitrators.
- (iii) When a panel of arbitrators has adjudicated the arbitration, the decision of the majority of the arbitrators shall constitute the final award.
- (iv) Unless otherwise agreed upon by the parties, the final award shall be made by the arbitrator within thirty (30) business days from the conclusion of the arbitration hearing, re-opened arbitration hearing, or written submissions of the parties. In all such matters where the parties submit post-hearing briefs, the thirty (30) business days shall be calculated from the date of receipt of the last submitted post-hearing brief.
- (v) The arbitrator also has the discretion and power to make any other decisions that it deems fit, including but not limited to interim measures, interim award, dispositive orders, and other such awards.
- (vi) In making its final award, the arbitrator may also allocate attorneys' fees, if requested by all parties, or if stipulated by the parties in their arbitration agreement/ contractual arrangement.

Rule 34: Submission of the Final Award to Parties

Once Miles receives the final award from the arbitrator, it shall electronically serve all parties with a copy of the final award. However, no such final award will be distributed by Miles to the parties unless all dues, expenses, costs, and fees as more precisely mentioned in the invoices is duly paid by all parties.

Rule 35: Modification of the Final Award

Within seven (7) business days from the receipt of the final award from Miles, either party to the arbitration, may make a written request to Miles seeking interpretation of the award, or any other clerical, typographical, or computational errors in the final award. However, the arbitrator shall not have the power to re-adjudicate the merits of any issues that were decided in the final award. The arbitrator shall endeavor to dispose of such request of the party within seven (7) business days from the receipt of such request from the party.

Rule 36: Enforcement of the Final Award

Any proceedings initiated by either party to the dispute shall be enforced, confirmed, or vacated in terms of applicable federal or state laws. All such parties that consent to arbitrating under these Construction Rules shall be presumed to have consented that the final award may be enforced, confirmed, or vacated in a court of competent jurisdiction.

Rule 37: Powers of Sanctions

- (i) If either party to the arbitration fails to comply with the directions of the arbitrator, the arbitrator, either on its own motion or upon a request from a party, shall have the power to impose sanctions to such defaulting party. The powers of the arbitrator to sanction such parties shall include drawing adverse inferences, excluding evidence, and/or awarding costs that arise from such disobedience.
- (ii) Any order or award of the arbitrator imposing sanctions on the parties shall be reasoned and shall state reasons warranting such sanctions.

Rule 38: Costs and Fees

- (i) For its administrative services, each party to the arbitration shall pay Miles an administrative and commencement fees of \$1500, as is more particularly specified under these Construction Rules. In the event, the parties fail to pay such administrative and commencement fees, Miles shall have the sole discretion to suspend the arbitration proceedings until such time the parties make the requisite payment.
- (ii) During the arbitration hearing, the parties shall make timely payment of the arbitrator's fees that shall be due and payable upon receipt, and as is more particularly specified in the engagement agreement. The arbitrator shall have the

power to preclude a party from presenting its case during the arbitration hearing if such party fails to make payment of his costs and expenses.

Rule 39: Destruction of Files

- (i) Miles shall not be required to maintain any official record of the arbitration and shall hold all materials submitted during the arbitration for only sixty (60) business days after an award is issued.
- (ii) Any materials that not reclaimed by the parties by the end of this period will be destroyed.

Rule 40: Exclusion of Liability and Indemnification

- (i) The parties irrevocably agree that they shall not call the arbitrator, or any employee of Miles as a witness of as an expert in any subsequent or related litigation involving the issues that formed a part of the arbitration proceedings before Miles.
- (ii) Neither Miles, nor any arbitrator appointed under these Construction Rules, shall be liable in damages to any party for any act or omission in connection with any arbitration undertaken pursuant to these Construction Rules.
- (iii) All parties to any arbitration undertaken pursuant to these Construction Rules shall indemnify and hold Miles and the Arbitrator 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.