

# Guide to drafting a Standard Arbitration Clause for Miles Mediation & Arbitration Services, LLC

## Brief Introduction

An arbitration clause in a contract or an accompanying arbitration agreement to the primary contract serves to refer any disputes that arise out of the contract or in relation to the contract to arbitration. This document purports to provide sample standard arbitration clauses that can be incorporated in varying contracts. Since arbitration is rooted in championing party-autonomy, the foregoing clauses can be amended to integrate differing needs and requirements of the involved parties. In addition, the clauses refer all possible disputes to Miles Mediation & Arbitration Services, LLC (“**Miles Mediation & Arbitration**”) which through its experienced and diverse panel of arbitrators, associates, and managers, allows for a timely and efficient resolution of conflicts.

## Draft Arbitration Clauses<sup>1</sup>

### (A) General Arbitration Clause

Any dispute, claim, conflict, or controversy arising out of, or in relation to this Agreement with respect to its termination, validity, enforcement, or interpretation thereof, including the existence, scope, or applicability of the present arbitration agreement shall be determined by arbitration before an arbitral tribunal consisting of [*number of arbitrators*]. The place of the arbitration shall be [*name of place*]. The arbitral proceedings shall be administered by Miles Mediation & Arbitration pursuant to Miles Rules of Arbitration. Any award passed by the arbitral tribunal may be enforced before any court of law having competent jurisdiction. Parties have the right to seek provisional remedies in aid of the arbitration proceedings from a court of competent jurisdiction.

### (B) Expedited Arbitration Clause

Any dispute, claim, conflict, or controversy arising out of, or in relation to this Agreement with respect to its termination, validity, enforcement, or interpretation thereof, including the existence, scope, or applicability of the present arbitration agreement shall be determined by arbitration before an arbitral tribunal consisting of [*number of arbitrators*]. The place of the arbitration shall be [*name of place*]. The arbitral proceedings shall be administered by Miles Mediation & Arbitration pursuant to [*enter details of governing rules*]. Any award passed by the arbitral tribunal may be enforced before any court of law having competent jurisdiction. Parties have the right to seek provisional remedies in aid of the arbitration proceedings from a court of competent jurisdiction.

### (C) Emergency Arbitrator Clause

- a. A party to any dispute, claim or controversy arising out of, or in relation to this Agreement with respect to its termination, validity, enforcement or interpretation thereof, that requires urgent interim/ provisional measures (“**Emergency Relief**”) where such Emergency Relief shall be defeated while awaiting the constitution of an arbitral tribunal, may submit an application setting out the grounds for such Emergency Relief to Miles Mediation & Arbitration pursuant to [*enter details of governing rules*].
- b. The Emergency Relief clause shall only apply to such parties that are signatories to the Arbitration Agreement, and shall include their heirs, assigns, and successors.

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<sup>1</sup> Disclaimer: The purpose of draft clauses is for informational and educational purposes only. Please note that by using these draft clauses, Miles Mediation & Arbitration Services, LLC is neither providing legal advice nor creating any attorney-client relationship with you. You should not act upon or rely on any information provided by this document, without engaging and seeking the advice of an attorney. Miles Mediation & Arbitration Services, LLC does not guarantee the enforceability of these draft clauses.

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- c. If the parties have either expressly opted out of the Emergency Relief provisions or have agreed to another pre-arbitral procedural that provides for similar urgent measures, the provisions for Emergency Relief shall not be applicable.

(D) Comprehensive Additional Arbitration Clauses\* (*Strictly Optional*)

The foregoing comprehensive provisions may be incorporated by the parties in the dispute resolution clauses contained in their contract or agreement to prevent interpretation by the arbitral tribunal/ arbitration institute of any ambiguities or equivocality.

1. Qualifications of the Arbitral Tribunal

Often, disputes that arise between the parties to an arbitration agreement concern specialized, niche areas of law. In such cases, it is imperative that the arbitral tribunal consist of neutrals that are qualified and experienced to deal with the subject-matter of the conflict, effectively and efficiently. Therefore, parties may incorporate into their agreements a specific clause briefly detailing the educational and professional qualifications of the proposed arbitrator/ arbitral tribunal.

### Model Clause

a. *Sole Arbitrator*

The parties hereby agree that the sole arbitrator must be:

- (i) A retired judge from a court of competent jurisdiction with prior experience in dealing with matters pertaining to [*name of the relevant field*]; or
- (ii) A qualified attorney with at least twelve (12) years of active practice and experience in dealing with matters pertaining to [*name of the relevant field*].

b. *Three-Arbitrator Panel*

The parties hereby agree that the arbitral tribunal comprising of three arbitrators possess the following requisite qualifications:

- (i) The Chair of the arbitral tribunal must be either a retired judge from a court of competent jurisdiction with prior experience in dealing with matters pertaining to [*name of the relevant field*], or a qualified attorney with at least twenty (20) years of active practice and experience in dealing with matters pertaining to [*name of the relevant field*].
- (ii) One of the party-nominated Arbitrators of the arbitral tribunal must be a qualified expert with demonstrated experience in the field of [*name of the relevant field*], irrespective of whether such expert is an attorney licensed to practice law in the United States of America.

2. Diverse, Inclusive, and Equitable Arbitral Panel

With a much-needed increase and requirement for diversity, inclusion, and equity at workplaces, committees, and rosters of professionals, parties may elect to incorporate such clause as is necessary to be presented with a diverse and represented panel of arbitrators. [The Equal Representation in Arbitration Pledge](#) specifically requires all pledging institutions to promote gender equality in their choice of arbitrators and provide all such female arbitrators with equal opportunities.

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### Model Clause

The parties hereby agree that appointments of arbitrators or arbitral panels will be based upon a fair and equitable representation of diverse neutrals while considering their gender, nationality, ethnicity, and sexual orientation. Furthermore, the parties shall endeavor to request arbitral institutions to include an equal representation of diverse neutrals on their rosters for appointment of arbitrators.

### 3. Confidentiality

As opposed to litigations where pleadings, attached documents, motions, orders, and judgments are available as public records for scrutiny by all individuals, one of the most important advantages to arbitration is the confidentiality of the proceedings that are conducted between the parties. However, to ensure that all parties maintain and respect the confidentiality of the arbitration proceedings, parties must incorporate an additional clause into their arbitration agreement.

### Model Clause

The parties hereby agree that all such pleadings, motions, exhibits, evidentiary documents, contents of hearings and orders/ awards, if any, made during the arbitration proceedings shall be strictly confidential unless necessitated by law, or in connection with an application to a court of competent jurisdiction for interim measures, or a judicial challenge to a partial or final award.

### 4. Law governing the Arbitration Agreement and Contract

Since arbitration as a mode of alternative dispute resolution prioritizes party autonomy, parties to the contractual agreement containing the arbitration clause or supplemented by an arbitration agreement, can decide upon the law that shall govern their contractual rights and duties, as well as the arbitration proceedings.

### Model Clause

The parties hereby agree that the validity, scope, and interpretation of the provisions of this Contract including the Arbitration Agreement shall be governed in accordance with the laws of the State of [*enter the name of the State*], notwithstanding the conflict or choice of law rules. All such arbitration proceedings conducted pursuant to the Contract shall be governed by the laws of [*enter either Federal Arbitration Act/ name of the State*].

### 5. Costs of the Arbitration Proceedings

### Model Clause

The parties hereby agree that the sole arbitrator or the arbitral panel shall have the sole discretion and power to award the prevailing party of all such costs and attorneys' fees reasonably incurred during the arbitral proceedings, including emergency reliefs, applications for interim measures, and judicial enforcement.

*\* Optional clauses guide the parties and arbitral tribunal in making informed decisions pertaining to, inter-alia, the formation of the arbitration panel, governing laws, and distribution of costs. While they are not mandatorily required, it is suggested that parties incorporate the clauses into their agreement to ensure strict interpretation and compliance.*