

## **MKMediation Rules and Procedures**

### **PRELIMINARY INFORMATION**

Stated herein are the rules and regulations governing the submission of disputes involving businesses and individuals to MKMediation. The rules and regulations stated herein have been designed for the benefit of the parties and are intended to ensure the quick, accurate and unbiased rendering of decisions. Any party who submits either an Application for arbitration to MKMediation or a Response to an Application for arbitration must agree to be bound by any decision rendered and all of the rules and regulations stated herein.

### **SECTION 1: GENERAL PROVISIONS**

- 1.1. Any company or team that provides goods or services within the esports or content creation industry, or contracts with individuals for the purpose of content creation or esports competition, may submit a claim as an Applicant to MKMediation for binding arbitration provided that the agreement with the individual contains an arbitration clause for the resolution of disputes or absent a written agreement to arbitrate, both parties agree to submit the dispute to binding arbitration with MKMediation. Where there is a written agreement between the parties, MKMediation strongly recommends that the agreement's arbitration provision be highlighted and that the individual have the option at the time of execution to opt out of the arbitration process. Such shall be done by requiring the individual to initial a box or other check off indicating their specific knowledge and consent to the arbitration process or choose to forego it in favor of litigation.
- 1.2. Any individual who is a party to a contract and the contract provides for the resolution of disputes through arbitration or absent a written agreement to arbitrate, both parties agree to submit the dispute to binding arbitration with MKMediation, may submit an Application for dispute resolution with MKMediation.
- 1.3. All decisions rendered by MKMediation shall be made by a neutral experienced in conflict resolution and/or industry knowledge and all such neutrals shall be impartial in their assessment of liability and award of damages. But for the basic rules of law (for example, Limitation Periods), the neutrals shall conduct no independent research and shall be bound to render a decision as to the legal standards or laws provided by the parties.
- 1.4. The filing of an Application for arbitration, will act to suspend any relevant Limitation Period. In the event that a matter is dismissed from arbitration, the Limitation Period, it would have otherwise expired, will be extended to ninety (90) days past the dismissal date.
- 1.5. Any notices required by the rules shall be given by email at the email address provided by the parties on the application. In the event that an email address is not available, the Applicant is responsible for notifying the respondent of the proceedings in accordance with the rules herein.

### **SECTION 2: JURISDICTION**

- 2.1. MKMediation arbitration services are limited to agreements entered into and to be executed in Canada, the United States of America, and its territories.
- 2.2. MKMediation shall have the jurisdiction to arbitrate claims for monetary damages, for equitable relief and/or in situations in which monetary and equitable relief is sought. In that regard,

MKMediation arbitrators may grant any relief that they determine to be fair and justified based on the agreement between the parties including but not limited to specific performance.

- 2.3. Submission of disputes requires that all parties involved agree to participate and be bound by a decision rendered by MKMediation.

### **SECTION 3: PROCEDURES**

- 3.1. A party wanting to submit a claim (referred to as the Applicant) must register as an MKMediation user through the MKMediation website.
- 3.2. Once registered, the Applicant may begin the process of filing a Notice to Arbitrate. MKMediation will then notify the Respondent that an arbitration has been filed against it/them.
- 3.3. If the Respondent does not acknowledge the arbitration and agree to participate within twenty-one (21) days, the Applicant will be notified that the Respondent is in default and will be instructed to complete the Application for Arbitration.
- 3.4. Upon receipt of the Application for Arbitration, the Respondent(s) shall have thirty (30) days within which to submit a Response to the Application. The Respondent(s) may do so by viewing the filed Application and supporting documents found from the MKMediation portal and then completing the Arbitration Response form.
- 3.5. The Respondent may, as part of the Response, file a counterclaim against the Applicant. In the event the Respondent does not assert a counterclaim, their right to do so shall be deemed to have been waived.
- 3.6. The Respondent in their Response may request that a hearing is held prior to any decision being made by the assigned arbitrator.
- 3.7. The Respondent must submit the following as attachments to their Response:
  - a. All documentary evidence to support their position as to liability or to refute the damages claimed by the Applicant.
  - b. If a counterclaim is filed, all documentary evidence to support their claim for damages and proof of payment of such damages.
- 3.8. Upon the receipt of a Response with a counterclaim, the Applicant shall have thirty (30) days to reply to the counterclaim. The Reply shall contain any evidence necessary to refute the claim asserted by the Respondent.
- 3.9. **Fees:** All fees are due at the time of filing any document under the rules or within thirty (30) days after an invoice for the fee(s) is rendered. Except as stated in this section, once both or all parties to a dispute have agreed (as required) to submit a matter to MKMediation for binding arbitration and all fees have been paid, the matter will be submitted to a neutral. No matters will be referred to a neutral for any type of action or decision unless all required fees have been paid. The following are exceptions to the general rule:
  - a. Where the Application has been filed and the fee paid, if the Respondent files a Response but does not pay the required fee within the time required, the Response will be stricken

and the matter referred to an arbitrator for a decision on the merits based on the Application alone.

- b. Where the Respondent has filed a counterclaim and the Applicant has failed to pay their required fee within the time required, the Application will be stricken and the Response with the counterclaim will be submitted to an arbitration for a decision on the merits based solely on the Response.
- c. The same rules as stated in sub-paragraph a and b above apply to all situations where parties are required to file a fee for a particular purpose with the exception of the clerical review fee. No fee will be required when the request for the review is filed. Where a clerical error is not found, the party will be required to pay the clerical review fee as stated in the schedule of fees.

3.10. **Defaults/Notices:** Where a party fails to file or respond as required by the rules, after proper notice has been given, all arbitrations will proceed as outlined in the rules. All notices will be sent to the e-mail address of the parties as stated on their user registration.

#### **SECTION 4: OPTIONAL MEDIATION**

- 4.1. Any party may request that a mediation session take place prior to the matter being assigned to an Arbitrator. MKMediation will seek to obtain the consent of the other party(ies). Where all parties agree, the mediation will be scheduled. Unless the parties agree otherwise, the parties shall bear the costs of the mediation equally.
- 4.2. All mediations shall be conducted via video conference unless any party requests that the mediation be held telephonically.
- 4.3. The request may be made at the time a party files an Application for arbitration, a Response to the Application or in their Reply, if one is filed. Any party may also request mediation at any time prior to the scheduling of an arbitration hearing. The party seeking the mediation must file a Request to mediate form with MKMediation and MKMediation will notify the other party(ies). Once the consent is obtained, the matter will be assigned to a mediator.
- 4.4. All MKMediation mediators will be selected by MKMediation and shall be experienced, neutral, and have no connection to any of the parties.
- 4.5. All communications made at the mediation are strictly confidential and nothing said or done at the mediation will be reflected in any manner in the arbitration file maintained by MKMediation.
- 4.6. Any party may request a postponement of mediation one time. Any request shall be made to the Mediator who shall reschedule the mediation. In the event that a party needs a second postponement, they will be subject to a rescheduling fee. In no event will a party be entitled to more than two postponements. If any party is not available for a scheduled mediation session after two postponements, the mediation request shall be denied and the matter referred to an Arbitrator.
- 4.7. In the event that a resolution/settlement is reached by the parties at any time, the Applicant shall complete and submit a Terms of Settlement to MKMediation. MKMediation will then issue an Agreed Arbitration Award which reflects the terms of the settlement which may be converted to a judgment for enforcement purposes.

## **SECTION 5: HEARINGS**

- 5.1. All arbitration hearings shall be conducted without a formal hearing unless any party requests that a video-conference hearing be held. This means that the arbitrator will render a Decision based solely upon the contentions of parties along with an examination of the evidence (eg. agreements, invoices, photographs, emails, etc.) provided.
- 5.2. Where a formal hearing is requested, either telephonically or by video-conference, Notice of such hearing will be given no less than three (3) weeks before the scheduled date.
- 5.3. Where no formal arbitration hearing is requested, the matter will be referred to an arbitrator when all of the parties have completed their submissions and uploaded their evidence.
- 5.4. If necessary, any party may utilize the services of a translator which will be provided at their sole cost and expense.
- 5.5. **Conflicts of Interest:** MKMediation shall provide the contact and/or biographical information of all parties to one or more potential arbitrators prior to assigning an arbitrator to the hearing. The arbitrator shall conduct an internal review for any potential conflicts of interest, and shall confirm the absence of any potential conflict of interest before agreeing to participate in the hearing.
- 5.6. Where one or more parties believes that there exists a possible conflict of interest in relation to the assigned arbitrator, the parties may: (i) on consent, request that another arbitrator be assigned to the hearing; or (ii) submit written reasons by way of the online portal detailing the potential conflict of interest and requesting that an arbitrator be re-assigned. Unless the request is on consent, the final decision as to whether a new arbitrator will be assigned shall be made solely in the discretion of MKMediation, with written reasons if necessary.

## **SECTION 6: DECISIONS**

- 6.1. If no formal hearing was held, a Decision will be rendered within thirty (30) days after all submissions, including contentions and supporting evidence, has been provided and all relevant deadlines have passed.
- 6.2. In the event a formal hearing, either telephonically or by video-conference, was held, the arbitrator will render a Decision within thirty (30) days from the date the hearing was held.
- 6.3. If the Response filed does not contain a request for a hearing, the matter will be referred to an arbitrator for a decision.
- 6.4. Decisions shall be rendered no later than sixty (60) days after completed submissions have been received or the deadline has passed. In the event that a hearing is held, the decision will be rendered no later than sixty (60) days from the hearing. The decision will be published to the file and notice of such decision will be given to the parties.
- 6.5. Unless an Appeal, Request for Clerical Review or other Civil Court proceeding is filed challenging the award, all decisions rendered are final and binding on all parties and must be paid within thirty (30) days of the date the rendered.

- a) In the event that an Appeal or Request for Clerical Review is filed, the thirty (30) days period to pay any award is suspended and starts to run when a decision on the appeal or clerical review is made and notice of the decision is sent to the parties.
  - b) In the event that litigation is commenced challenging the award, the thirty (30) day period shall not start to run until the conclusion of the litigation where the award is upheld.
  - c) In the event that any party files a lawsuit to enforce or challenge the award, all parties hereby acknowledge and agree that any service of papers related to the litigation may be served by e-mail at the address provided by the parties in their Application or Response.
- 6.6. The rendering of a decision by MKMediation on any disputes shall not be considered as Res Judicata or Collateral Estoppel in any other proceedings.
- 6.7. **Clerical Review:** Any party may file a Request for a Clerical Review of a decision based on a clerical error. A clerical error is defined as a typographical error in either a number or amount related to a decision or award or the misuse, inclusion or omission of a word which is clear from a reading of the Decision that is incorrect. Such request must be filed with MKMediation within twenty-one (21) days from the date that the Decision is rendered or the right is waived. If an error is found, there will be no fee for the review. If there is no clerical error found, the party will be charged a fee as indicated in our schedule of fees.

## **SECTION 7: APPEALS**

- 7.1. Within thirty (30) days from the date of publication of a decision, or if a clerical review has been requested, within thirty (30) days from the date that a decision on the clerical review has been rendered, any party may file an Appeal of the decision. The Appeal can only be based on one of two (2) reasons. First: The Arbitrator used the wrong law or legal standard or Second: The Arbitrator used the correct legal standard but applied it incorrectly as to the facts of the case as determined by the Arbitrator.
- 7.2. The non-appealing party(s) shall have the right to file a Response to the Appeal within thirty (30) days of receiving the Notice of Appeal.
- 7.3. The appeal will be conducted by a panel of three (3) arbitrators not previously involved in the matter and a decision on the appeal will be requested within sixty (60) days of the submitted request. No decision on the Appeal will be rendered until the applicable fee has been paid. If the fee remains unpaid for more than thirty (30) days after the invoice is issued, the appeal will be deemed withdrawn and the original decision will be final and binding.
- 7.4. **Clerical Review:** Any party may file a request for a clerical review of an appellate decision based on a clerical error. A clerical error is defined as a typographical error in either a number or amount related to a decision or award or the misuse, inclusion or omission of a word which is clear from a reading of the Appellate Decision that is incorrect. Such request must be filed with MKMediation within twenty-one (21) days from the date that the Appellate Decision is rendered or the right is waived. If an error is found, there will be no fee for the review. If there is no clerical error found, the party will be charged a fee as indicated in our schedule of fees.
- 7.5. In the event that no request for a clerical review of the appeal is filed, the payment of any award of damages shall be due within sixty (60) days of that date the decision on the appeal is rendered.