

# **Dispute Resolution Process**

**2015**

**GENERAL MOTORS LLC**

**THE GENERAL MOTORS LLC  
DISPUTE RESOLUTION PROCESS**

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# **THE GENERAL MOTORS LLC DISPUTE RESOLUTION PROCESS**

## **PREAMBLE**

General Motors LLC (“GM”) and its General Motors Dealers (“Dealers”) have agreed to use this Dispute Resolution Process (“the Process”) for the resolution of disputes and controversies that may arise between them under the Dealer Sales and Service Agreement (“Dealer Agreement”) or applicable laws. The objective of the Process is the fair resolution of disputes in a prompt and cost effective manner. The Process provides for mediation that is mandatory and non-binding, unless a solution is agreed upon by all parties. If the matter is not resolved then an option for voluntary binding arbitration is available.

## **JOINT MEDIATION/ARBITRATION COMMITTEE**

The Joint Mediation/Arbitration Committee (“JMAC”) will manage and oversee the Process, determine rules for dispute eligibility and resolve any disputes regarding the interpretation and applicability of these procedures. The JMAC also will select a national dispute resolution process firm (“Administrator”) to administer the Process and to maintain a trained pool of Mediators and Arbitrators (Mediator/Arbitrator Pool). The JMAC will be comprised of five dealers (three dealers will be active members of the JMAC and two dealers will be alternate members of the JMAC) and three GM Representatives. The dealer JMAC members will be selected by the appropriate GM Dealer Councils, including the Dealer Executive Board and will serve for a term determined by the JMAC. The JMAC may amend the Process procedures, and will report annually to the Dealer Executive Board.

## **MANDATORY MEDIATION**

Mediation is an informal process where each party is provided an opportunity to present its side of the dispute. Through joint meetings and confidential discussions with each side, the Mediation Panel will test positions and clarify objectives, as well as encourage new perspectives and mutually beneficial resolution options. No record shall be made of the mediation proceedings. All parties must come to the mediation with sufficient resources and authority to reach a final settlement.

Dealer and GM agree to submit all eligible disputes as defined by Subsection A (“Matters to be Mediated”) to mediation using the procedures set forth below prior to filing a complaint or protest in court or with an administrative agency based on its rights under the Dealer Agreement or applicable laws. A dealer or GM may file simultaneously with a court or an administrative agency if necessary to retain its rights under applicable law. In this event, Dealer and GM agree to ask the court or agency to stay proceedings until the mediation under this Process is concluded.

## **A. MATTERS TO BE MEDIATED**

The Process is available to GM and Dealers with a current GM Dealer Agreement (not terminated dealers, prospective dealers or any third party) to mediate disputes arising under the Dealer Agreement or applicable laws. The following matters are ineligible under the Process: i) terminations due to insolvency; ii) dealership closings due to failure to conduct customary sales and service operation during customary business hours for seven consecutive business days; iii) license revocation; iv) fraud or felony convictions; v) disputes requiring participation by a third party who does not agree to participate in mediation and; vi) disputes challenging GM Policies or Procedures as applied to dealers generally. Except for the ineligible matters described above, a dealer's standing to bring disputes or protests to the Process for disputes addressed by state law shall be the same as those conferred by state law in the jurisdiction of the proposed action.

GM and Dealers agree that delivery of a completed "Request for Mediation" form to the Administrator and notice by the Administrator to the other party will automatically defer any action by GM or Dealer on the eligible matter in dispute until the Process is completed, unless the dispute is not eligible for a stay under applicable motor vehicle state franchise law and GM determines that the automatic stay may adversely affect a third party's rights. If more than one Dealer requests mediation on an identical dispute with GM, the requests may be consolidated into a single mediation proceeding.

## **B. MEDIATION AND TIME SCHEDULE**

The time from the filing of a dispute to completion of the mediation will depend on the complexity of the case, necessary background information to be exchanged, and the number of parties. The Administrator will work to expedite the Process through the following three-step procedure:

Step 1. Filing - A Dealer or GM may initiate the Process by the delivery of a completed "Request for Mediation" form (attached), and a deposit as specified in the filing form to the Administrator. This form must be filed within thirty days of receipt of a disputed eligible final decision of either party. The form must also be submitted prior to the Dealer or GM initiating a complaint or protest in court or with an administrative agency over an eligible dispute, except if necessary to protect its rights as specified above. The Administrator will forward a copy of the form to the other named party(ies).

Step 2. Issue Review - Within five working days of the receipt of the filing form from the Administrator, the other named party(ies) to the mediation shall inform the Administrator of any objection based upon its opinion that the dispute is outside the scope of the Process. If there is no objection, the Administrator shall commence arrangements for the mediation at the close of the five-day period. If the Administrator receives an objection, the Administrator will refer the issue to the JMAC. The JMAC shall determine if the dispute is within the scope of the Process and whether standing exists. The Administrator shall notify the parties of the JMAC's decision, which shall be final (and return the filing fee if the dispute is not eligible).

Step 3. Arranging the Mediation - Within ten working days of the expiration period for objections or of the JMAC's determination that the request for mediation is eligible, the Administrator will provide a list of the potential trained mediators as outlined under Subsection D ("Mediation Panel Selection"). The Administrator also will arrange a preliminary telephone conference with representatives from each party. The purpose of the preliminary telephone conference is to:

- answer any questions about the Process.
- decide on the participation of legal counsel, outside experts, or other persons attending the Mediation.
- discuss the preparation of a short pre-mediation written statement or summary.
- confirm the mediation date, and complete arrangements for a mediation in one of the cities listed below:

Atlanta, GA, Boston, MA, Chicago, IL, Dallas, TX, Denver, CO, Detroit, MI,  
Fort Lauderdale, FL, Los Angeles, CA, Newark, NJ, Orlando, FL, Seattle, WA  
(This list may be amended from time to time at GM's discretion.)

The Administrator, and if necessary the JMAC, will resolve any disputes regarding pre-mediation arrangements. Every effort will be made to conduct the mediation within 30 days of the preliminary telephone conference call and to complete the mediation within one day or less.

### **C. MEDIATION PANEL**

The Mediation Panel will consist of one Independent Mediator (Independent Mediator should be a licensed attorney or retired judge), one Dealer Operator, and one GM Representative selected from the Mediator Pool.

The role of the Mediation Panel is as follows:

- The Mediation Panel will work with the parties to reach a negotiated settlement but will have no decision-making authority.
- Where an agreement is reached, a written memorandum of the agreement will be prepared and executed by each party.
- Within three days after the Mediation Panel adjourns, the Independent Mediator will advise the Administrator whether the matter is resolved.

### **D. MEDIATION PANEL SELECTION**

The Administrator will select five Dealer Operators, five GM Representatives, and an Independent Mediator from the trained Mediator Pool. The Administrator will send the lists of Dealer Operators and GM Representatives simultaneously to the Dealer and GM. The Dealer and GM may eliminate one name from each list, and will rank the remaining members of each list in order of preference. The Dealer and GM will return those lists to the Administrator within five days of receipt.

The Administrator will select one Dealer Operator and one GM Representative to serve with the Independent Mediator as the Mediation Panel, by identifying candidates with the highest combined ranking. If a tie occurs, the Administrator will select the Mediator at its discretion.

The Administrator will notify the Mediators when they have been selected and, at that time, each Mediator must disclose to the Administrator any circumstances that might preclude the Mediator from being objective and impartial. Should such a circumstance exist, the Administrator will notify the parties, who will discuss whether the Mediator should be disqualified. If the Dealer Operator or GM Representative is disqualified, the Mediator with the next highest ranking will be selected, or the entire process will be repeated, if necessary. If the Independent Mediator is disqualified, the Administrator will select a new Independent Mediator.

#### **E. EXCHANGE OF INFORMATION BEFORE THE MEDIATION**

At a mutually agreed time prior to the scheduled mediation, each party must submit to the Administrator documents it believes will be helpful in establishing its position in sufficient quantities for the parties and the Mediation Panel, and a list of all persons who will attend the mediation. At least five days before the mediation, the Administrator will provide a copy of all documents and an attendance list to the other party(ies). A party may informally suggest that the other party make available certain information or documents for the mediation that may be helpful in resolving the dispute, but no formal discovery is permitted in a mediation proceeding. To avoid surprise and to increase efficiency, documents or resources not previously disclosed will not be considered at the mediation, unless all parties agree or the Mediation Panel determines that the new information is essential for resolving the dispute.

#### **F. USE OF LEGAL COUNSEL AND EXPERTS**

The mediation is designed to be an informal business discussion. The parties do not need a legal counsel or outside experts and are encouraged not to incur such expense. However, a party may choose to have legal counsel or outside experts participate in the mediation. Their participation in the mediation session must be disclosed in the preliminary telephone conference. If the Dealer advises that it will not be represented by legal counsel or an expert, GM will not be represented by legal counsel or an expert.

### **VOLUNTARY BINDING ARBITRATION**

Arbitration offers General Motors and the General Motors dealers an additional opportunity to resolve disputes not concluded in the Mediation Process. Arbitration is voluntary and both parties must agree to use the process. Both parties present their positions to an Arbitration Panel and the Arbitration Panel renders a decision. Decisions rendered by the Arbitration Panel will be binding on both parties.

## **A. REQUEST FOR ARBITRATION**

If a matter eligible for mediation under the Process is not resolved through mediation, the Dealer or GM may request arbitration by filing a completed “Request for Binding Arbitration” form and a deposit as specified on the “Request for Binding Arbitration” form with the Administrator. The request must include a brief description of the dispute and all relief requested, including the specific amount of any monetary relief requested, and such other information as required by the form. A “Request for Binding Arbitration” must be filed within ten business days after the conclusion of the Mediation Process. The Administrator will forward the request to the other parties. The other party must decide within ten business days of receipt of the “Request for Binding Arbitration” whether to accept the offer to resolve the dispute through arbitration. Return of a signed copy of the “Request for Binding Arbitration” form to the Administrator signifies acceptance of the offer to arbitrate. If the Dealer and GM agree to binding arbitration under this process, any administrative or judicial proceedings filed by either party related to the dispute to be arbitrated must be dismissed with prejudice within 10 days of the agreement to arbitrate.

## **B. ARBITRATION PANEL SELECTION**

The Administrator will select five Dealer Operators, five GM Representatives, and three Independent Arbitrators (Independent Arbitrators must be a licensed attorney) from the trained Arbitrator Pool, and will send the lists simultaneously to the Dealer and GM within 10 days of the receipt of the executed “Request for Binding Arbitration”. The Dealer and GM may eliminate one name from the Dealer Operator list and one name from the GM Representative lists, and will rank the remaining members of each list in order of preference. The Dealer and GM will rank the three Independent Arbitrator candidates in order of preference. The Dealer and GM will return those lists to the Administrator within five days of receipt.

The Administrator will select one Dealer Operator, one GM Representative, and one Independent Arbitrator for the Arbitration Panel by identifying candidates with the highest combined ranking. If a tie occurs, the Administrator will select the Arbitrator at its discretion.

The Administrator will notify the Arbitrators when they have been selected and, at that time, each Arbitrator must disclose to the Administrator any circumstances that might preclude the Arbitrator from being objective and impartial. Should such a circumstance exist, the Administrator will notify the parties, who will discuss whether the Arbitrator should be disqualified. If the Dealer Operator, GM Representative, or Independent Arbitrator is disqualified, the Arbitrator with the next highest ranking will be selected, or the entire process will be repeated, if necessary.

## **C. DISCOVERY**

Discovery is permitted in any arbitration proceeding, but is limited to the production of documents specifically relevant to and considered by either party in assessing the disputed action and which are in the possession and control of the party from whom discovery is sought. Such document production should be consistent with the spirit of simple, efficient, and low cost dispute resolution intended by this Process, while at the same time ensuring a full and fair hearing. A document production request with specificity must be filed with the Administrator within fifteen days after

the commencement of the arbitration process. Within thirty days of receipt of such a request, the party to whom the request is directed must respond by:

- producing the requested documents with copies for each party and each Arbitrator.
- advising of a reasonable time and place at which the requested documents will be made available for inspection and copying.
- raising detailed objections with the Administrator, including any claims of privilege, to specific requests, and the Independent Arbitrator, with the assistance of the Arbitration Panel as necessary, will resolve such discovery disputes.

Within five days of receiving any objections, the Administrator will refer the matter to the Independent Arbitrator who will schedule a conference call with the parties to discuss the objections. Within five days of the call, the Independent Arbitrator, with the assistance of the Arbitration Panel as necessary, will rule on objections to produce.

#### **D. ARBITRATION SUMMARY**

The Dealer and GM will each prepare an Arbitration Summary of not more than ten pages. The Arbitration Summary will describe the basis for the dispute, identify the issues, explain the relief sought, identify the parties' representatives at the hearing, indicate those matters which the representatives will address and identify the documents to be presented by each representative. Each party must provide its summary and its witness list to the Administrator for distribution to the Arbitration Panel and to the other party(ies) no later than 20 days prior to the scheduled arbitration hearing. The Arbitration Panel will consider only those documents or statements prepared and submitted in accordance with this paragraph.

#### **E. USE OF LEGAL COUNSEL AND EXPERTS**

The Dealer will advise the Administrator at least 30 days prior to the scheduled arbitration hearing whether the Dealer will be represented by legal counsel or any expert witness at the hearing, and the Administrator will advise GM. If the Dealer advises that it will not be represented by legal counsel or an expert witness, GM will not be represented by legal counsel or an expert witness.

#### **F. ARBITRATION HEARING**

The Administrator will establish a hearing date that is within ninety days of the filing of the "Request for Binding Arbitration" form. The hearing will be within the involved region, unless the parties agree otherwise. The Administrator will notify the parties of the time and place of the hearing.

Each party will present its case through its selected representatives and witnesses. Witnesses will be subject to cross-examination related to the issues involved in the arbitration by the parties and the Arbitration Panel. The Dealer Operator need not be a representative, but must be present at the hearing. Each party will have the opportunity to respond to points made by the other party until the Arbitration Panel is satisfied that each party has had a full opportunity to present its position. The Arbitration Panel may, at any time during the hearing, ask for additional information



from any representative of either party. Formal rules of evidence will not apply. The Arbitration Panel, in its sole discretion, may have all or any portion of the proceedings transcribed or recorded. The Independent Arbitrator will ensure that the hearing is focused on the issues and is conducted in an orderly, efficient, and fair manner in accordance with the Process.

Attendance at the hearings will be limited to the parties, their representatives or witnesses, the Arbitration Panel, the Administrator, and any other persons the Arbitration Panel members determine are necessary to properly administer the hearing.

#### **G. POST HEARING BRIEFS**

There will be no post hearing briefs except in those cases where the Arbitration Panel determines that briefs are necessary for it to reach a conclusion. If briefs are requested, the Arbitration Panel will determine a permissible length. The briefs must be filed no later than fourteen days following the close of the hearing.

#### **H. DECISION**

The Arbitration Panel will issue its decision within seven days of the close of the hearing, or submission of post hearing briefs, whichever is later. In reaching its decision, the Arbitration Panel will consider general concepts of law and equity so that the decision will achieve a fair and just result, without modifying the terms of the Dealer Agreements between the parties. The Arbitration Panel may award monetary relief (not to exceed the specific amount requested in the “Request for Binding Arbitration”), or provide for such equitable relief concerning the matter in dispute that the Arbitration Panel considers fair and just to resolve the dispute. **THE DECISION OF THE ARBITRATION PANEL WILL BE BINDING UPON BOTH DEALER AND GM IN ACCORDANCE WITH THE UNITED STATES ARBITRATION ACT, TITLE 9, UNITED STATES CODE, SECTIONS 1-14.**

The Independent Arbitrator will provide advice and counsel to the other two Arbitration Panel members during the decision-making process, but will not participate in the decision-making process unless the Dealer Arbitrator and the GM Arbitrator on the Arbitration Panel are unable to agree upon a decision. In which case, the Independent Arbitrator will become the third decision-maker, and will cast the deciding vote.

### **GENERAL**

The General items listed in this section apply to both mediation and arbitration as outlined.

#### **A. CONFIDENTIALITY**

This Process is intended to resolve disputed claims. All offers, promises, conduct and statements, whether oral or written, by any of the parties, including the JMAC, the Administrator, and the Panel, and their agents, employees, experts, and legal counsel, at any time before, during or after

the Process; any documents created for the Process; and any mediation or arbitration agreements between the parties are confidential and privileged and will neither be discoverable, admissible, nor used for any purpose, including impeachment, in any pending or subsequent litigation, arbitration, mediation or administrative proceeding. Evidence that is otherwise discoverable or admissible will not be rendered non-discoverable or inadmissible as a result of its use in the Process. Any transcripts or recordings of a hearing under the Process are intended solely for use in connection with the Process and will be destroyed within thirty days from the date of the Panel's decision. **NO DECISION ISSUED OR AGREEMENT REACHED UNDER THE PROCESS WILL SERVE AS PRECEDENT IN ANY SUBSEQUENT MEDIATIONS, ARBITRATIONS, OR JUDICIAL PROCEEDINGS.**

#### **B. DISQUALIFICATION OF THE JMAC, MEDIATORS/ARBITRATORS, AND THE ADMINISTRATOR**

The parties to the Process will not call members of the JMAC, the Mediators/Arbitrators, or the Administrator or its employees or agents, as witnesses or experts, and each such individual will be disqualified as a witness or expert in any pending or subsequent litigation, arbitration or administrative proceeding relating to the dispute which is the subject of the Process.

#### **C. EXCLUSION OF LIABILITY**

Neither the members of the JMAC, the Administrator nor its employees or agents, GM nor its employees or agents, nor any of the Mediators/Arbitrators or their dealerships and employees, will be liable to any party for any act or omission in connection with any matter coming under this Process; nor will any such individual or entity be a necessary party in any judicial or administrative proceeding or arbitration relating to the matter coming under this Process.

#### **D. EXPENSES**

The Dealer and GM will share equally in all administrative expenses, including but not limited to travel, lodging and meals of the Administrator and the Panels, fees of the Independent Mediators/Arbitrators, rental of meeting or hearing rooms, any expenses for transcribing or recording the arbitration proceedings, and any other reasonable expenses relating to the Mediation and/or Arbitration Process. If Dealer does not pay the Administrator within thirty days of receiving an invoice, GM may reimburse the Administrator and offset this amount owing against any amounts GM owes Dealer. Each party is responsible for its own out of pocket expenses.