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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

14 \_\_\_\_\_ )  
15 IN RE: VOLKSWAGEN “CLEAN )  
DIESEL” MARKETING, SALES )  
16 PRACTICES, AND PRODUCTS )  
LIABILITY LITIGATION )

Case No: MDL No. 2672 CRB (JSC)

17 **THIRD PARTIAL CONSENT DECREE**

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Hon. Charles R. Breyer

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1           **WHEREAS**, Plaintiff United States of America, on behalf of the United States  
2 Environmental Protection Agency (“EPA”), filed a complaint in this action on January 4, 2016  
3 (as amended on October 7, 2016), against Volkswagen AG, Volkswagen Group of America, Inc.,  
4 Volkswagen Group of America Chattanooga Operations, LLC, Audi AG, Dr. Ing. h.c. F. Porsche  
5 AG, and Porsche Cars North America, Inc. (together, “Defendants”) alleging that Defendants  
6 violated Sections 203(a)(1), (2), (3)(A), and (3)(B) of the Clean Air Act (the “Act”), 42 U.S.C.  
7 §§ 7522(a)(1), (2), (3)(A), and (3)(B), with regard to approximately 500,000 model year 2009 to  
8 2015 motor vehicles containing 2.0 liter diesel engines (more specifically defined elsewhere as  
9 “2.0 Liter Subject Vehicles”) and approximately 90,000 model year 2009 to 2016 motor vehicles  
10 containing 3.0 liter diesel engines (more specifically defined elsewhere as “3.0 Liter Subject  
11 Vehicles”), for a total of approximately 590,000 motor vehicles (collectively, “Subject  
12 Vehicles”);

13           **WHEREAS**, the Complaint alleges that each Subject Vehicle contains, as part of the  
14 engine control module, certain computer algorithms that cause the emissions control system of  
15 those vehicles to perform differently during normal vehicle operation and use than during  
16 emissions testing. The Complaint alleges that these computer algorithms are prohibited defeat  
17 devices under the Act, and that during normal vehicle operation and use, the Subject Vehicles  
18 emit levels of oxides of nitrogen (“NOx”) significantly in excess of the EPA-compliant levels.  
19 The Complaint alleges and asserts four claims for relief related to the presence of the defeat  
20 devices in the Subject Vehicles;

21           **WHEREAS**, on June 28, 2016, the United States lodged a Partial Consent Decree, Dkt.  
22 No. 1605-1 (“First Partial Consent Decree”), concerning the 2.0 Liter Subject Vehicles, which  
23 was entered into by the United States, California, and certain Defendants (Volkswagen AG, Audi  
24

1 AG, Volkswagen Group of America, Inc., and Volkswagen Group of America Chattanooga  
2 Operations, LLC). The First Partial Consent Decree was entered by this Court on October 25,  
3 2016. Dkt. No. 2103;

4 **WHEREAS**, on December 20, 2016, the United States lodged a Second Partial Consent  
5 Decree, Dkt. No. 2520-1 (“Second Partial Consent Decree”), concerning the 3.0 Liter Subject  
6 Vehicles, which was entered into by the United States, California, and all Defendants;

7 **WHEREAS**, the First and Second Partial Consent Decrees address the cars on the road  
8 and the associated environmental consequences resulting from the past and future excess  
9 emissions. The United States enters into this Third Partial Consent Decree with Defendants  
10 (collectively, the “Parties”) to address Defendants’ liability under the Clean Air Act for civil  
11 penalties and injunctive relief to prevent similar violations in the future, which relief was  
12 reserved by the First and Second Partial Consent Decrees;

13 **WHEREAS**, Defendants admit that software in the 2.0 and 3.0 Liter Subject Vehicles  
14 enables the vehicles’ engine control modules to detect when the vehicles are being driven on the  
15 road, rather than undergoing Federal Test Procedures, and that this software renders certain  
16 emission control systems in the vehicles inoperative when the engine control module detects the  
17 vehicles are not undergoing Federal Test Procedures, resulting in emissions that exceed EPA-  
18 compliant levels when the vehicles are driven on the road;

19 **WHEREAS**, Defendants admit that this software was not disclosed in the Certificate of  
20 Conformity applications for the 2.0 and 3.0 Liter Subject Vehicles, and, as a result, the design  
21 specifications of the 2.0 and 3.0 Liter Subject Vehicles, as manufactured, differ materially from  
22 the design specifications described in the Certificate of Conformity applications;





1 this Paragraph. In the event of the insolvency of any Porsche Defendant or the failure by any  
2 Porsche Defendant to implement any applicable requirement of this Consent Decree, the  
3 remaining Porsche Defendant and the VW Defendants shall complete all such requirements.

4 5. Any legal successor or assign of any VW Defendant or Porsche Defendant shall  
5 remain jointly and severally liable for the payment and other performance obligations hereunder,  
6 except as described in Paragraph 4, above. Defendants shall include an agreement to so remain  
7 liable in the terms of any sale, acquisition, merger, or other transaction changing the ownership  
8 or control of any of the Defendants, and no change in the ownership or control of any Defendant  
9 shall affect the obligations hereunder of any Defendant without modification of the Decree in  
10 accordance with Section XVIII (Modification).  
11

12 6. Defendants shall provide a copy of this Consent Decree to the members of their  
13 respective Board of Management and/or Board of Directors and their executives whose duties  
14 might reasonably include compliance with any provision of this Decree. Defendants shall  
15 condition any contract providing for work required under this Consent Decree to be performed in  
16 conformity with the terms thereof. Defendants shall also ensure that any contractors, agents, and  
17 employees whose duties might reasonably include compliance with any provision of the Decree  
18 are made aware of those requirements of the Decree relevant to their performance.  
19

20 7. In any action to enforce this Consent Decree, Defendants shall not raise as a  
21 defense the failure by any of their officers, directors, employees, agents, contractors, or auditors  
22 to take any actions necessary to comply with the provisions of this Consent Decree.  
23

### 24 **III. DEFINITIONS**

25 8. Terms used in this Consent Decree that are defined in the Act or in regulations  
26 promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such  
27  
28

1 regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are  
2 used in this Consent Decree, the following definitions apply:

3 “2.0 Liter Subject Vehicles” has the meaning set forth in the Second Partial Consent  
4 Decree;

5 “3.0 Liter Subject Vehicles” has the meaning set forth in the Second Partial Consent  
6 Decree;

7 “Clean Air Act” or “Act” means 42 U.S.C. §§ 7401-7671q;

8 “Complaint” means the complaint filed by the United States in this action on January 4,  
9 2016 (as amended on October 7, 2016);

10 “Consent Decree” or “Decree” or “Third Partial Consent Decree” means this partial  
11 consent decree;

12 “Day” means a calendar day unless expressly stated to be a business day. In computing  
13 any period of time under this Consent Decree, where the last day would fall on a Saturday,  
14 Sunday, or federal holiday, the period shall run until the close of business of the next business  
15 day;

16 “Defendants” means the persons or entities named in the Complaint, specifically,  
17 Volkswagen AG, Volkswagen Group of America, Inc., Volkswagen Group of America  
18 Chattanooga Operations, LLC, Audi AG, Dr. Ing. h.c. F. Porsche AG, and Porsche Cars North  
19 America, Inc.;

20 “Effective Date” has the meaning set forth in Section XVI;

21 “Electronic Emissions Control Module (“ECM”) Software” means the electronic control  
22 unit(s), including the software and calibrations integrated in the ECM hardware, which control  
23



1 the engine, transmission, powertrain, emissions control system, and on-board diagnostic system  
2 functions in the vehicle;

3 “Environmental Management System” or “EMS” means the management system  
4 established by the VW Defendants to provide a structure to carry out specific activities related to  
5 environmental protection and compliance with U.S. environmental laws for vehicles marketed  
6 and sold by the VW Defendants in the United States;

8 “EPA” means the United States Environmental Protection Agency and any of its  
9 successor departments or agencies;

10 “First Partial Consent Decree” means the Partial Consent Decree entered in this action by  
11 the Court on October 25, 2016;

13 The “Golden Rules” Handbook means the specific internal procedures developed by the  
14 VW Defendants on January 25, 2016 (Version 1.0), or subsequent versions if any, to optimize  
15 the VW Defendants’ operational internal control system, which focuses on control unit software  
16 development, testing and monitoring procedures for vehicle certification, and escalation  
17 management in the Product Safety Committee (also referred to as “APS”);

19 “Materials” means Submissions and other documents, certifications, plans, reports,  
20 notifications, data, or other information that is required to be submitted pursuant to this Decree;

21 “Paragraph” means a portion of this Decree identified by an Arabic numeral;

22 “Parties” means the United States and Defendants;

23 “Porsche Defendants” means Dr. Ing. h.c. F. Porsche AG, and Porsche Cars North  
24 America, Inc.;

1 “Product Development Process” means Defendants’ process to manage the development  
2 of motor vehicles, including research and development, quality assurance, and compliance with  
3 U.S. environmental laws for vehicles marketed and sold by Defendants in the United States;

4 “Porsche Remediation Plan” means the plan approved by the Executive Board of Dr. Ing.  
5 h.c. F. Porsche AG in December 2016, or subsequent versions, if any, to develop and implement  
6 internal procedures for the development of vehicles that include emissions control systems  
7 designed to comply with U.S. environmental laws and regulations, and to ensure the segregation  
8 of duties relating to emission testing and certification of such vehicles;

9  
10 “Second Partial Consent Decree” means the Partial Consent Decree lodged in this action  
11 by the United States on December 20, 2016;

12  
13 “Section” means a portion of this Decree identified by a Roman numeral;

14 “Submission” means any plan, report, guidance, or other item that is required to be  
15 submitted for approval pursuant to this Consent Decree;

16 “United States” means the United States of America, acting on behalf of EPA, except  
17 when used in Paragraph 91.d, when it shall mean the United States of America; and

18  
19 “VW Defendants” means Volkswagen AG, Volkswagen Group of America, Inc.,  
20 Volkswagen Group of America Chattanooga Operations, LLC, and Audi AG.

21 **IV. CIVIL PENALTY**

22 9. Within 30 Days after the Effective Date of this Consent Decree, Defendants shall  
23 pay the sum of \$1,450,000,000 as a civil penalty, together with interest accruing from the date on  
24 which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as  
25 of the date of lodging. This civil penalty resolves the civil claims of EPA as set forth in  
26 Paragraph 90 herein, and of U.S. Customs and Border Protection (“CBP”), as set forth in the  
27  
28

1 separate Settlement Agreement between CBP and Defendants, executed as part of the  
2 coordinated federal settlements.

3 10. Defendants shall pay the civil penalty due at <https://www.pay.gov> to the U.S.  
4 Department of Justice (“DOJ”) account, in accordance with instructions provided to Defendants  
5 by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Northern  
6 District of California, San Francisco Division, after the Effective Date. The payment instructions  
7 provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number,  
8 which Defendants shall use to identify all payments required to be made in accordance with this  
9 Consent Decree. The FLU will provide the payment instructions to:  
10

11 Head of Treasury of Volkswagen AG  
12 Joerg Boche  
13 Joerg.boche@volkswagen.de  
14 011-49-5361-92-4184

15 on behalf of Defendants. Defendants may change the individual to receive payment instructions  
16 on its behalf by providing written notice of such change to the United States, EPA, and CBP in  
17 accordance with Section XV (Notices).  
18

19 11. At the time of payment, Defendants shall send notice that payment has been made:  
20 (a) to EPA via email at [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov) or via regular mail at EPA Cincinnati  
21 Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (b) to the United  
22 States via email or regular mail in accordance with Section XV; and (c) to EPA and CBP in  
23 accordance with Section XV. Such notice shall state that the payment is for (a) the civil penalty  
24 owed pursuant to the Consent Decree in *In re: Volkswagen “Clean Diesel” Marketing, Sales*  
25 *Practices, and Products Liability Litigation* and shall reference the civil action number, CDCS  
26 Number, and DOJ case number 90-5-2-1-11386, and (b) the CBP Settlement Agreement.  
27  
28

1           12. Defendants shall not deduct any penalties paid under this Decree pursuant to this  
2 Section or Section IX (Stipulated Penalties) in calculating their federal income taxes.

3                   **V. INJUNCTIVE RELIEF FOR THE VW DEFENDANTS**

4                                   **Product Development Process**

5           13. Segregation of Duties between Product Development and Certification  
6 Testing/Monitoring for the VW Defendants. Within 180 Days after the Effective Date, the VW  
7 Defendants shall implement measures to ensure that employees involved in certification testing  
8 and monitoring for purposes of vehicle certification under the Clean Air Act are organizationally  
9 separate from product development. The VW Defendants shall form and maintain an  
10 organizationally separate certification group (“Certification Group”) to manage, supervise, and  
11 conduct certification testing and monitoring. The Certification Group shall:  
12

13                                   a. Ensure that the VW Defendants have policies, procedures,  
14 practices, or processes for vehicle development that include emission control  
15 systems designed to comply with U.S. laws and regulations related to vehicle  
16 certification and emission standards;  
17

18                                   b. Conduct, or retain a qualified contractor to conduct, emissions  
19 certification testing of both production and in-use vehicles;  
20

21                                   c. Plan the testing program, obtain the vehicles, confirm that the  
22 configuration of the test vehicles is representative of the production vehicles, and  
23 test or retain a qualified contractor to test the certification vehicles consistent with  
24 EPA’s regulations for certification and in-use performance testing. The  
25 Certification Group may utilize testing facilities and technicians assigned to other  
26 units within the VW Defendants’ organization provided that the Certification  
27  
28

1 Group controls the certification testing; and

2 d. Supervise all certification personnel, provide appropriate training,  
3 and control access to certification vehicles.

4 14. Establishment of VW Defendants' Group Steering Committee(s). Within 90 Days  
5 after the Effective Date, the VW Defendants shall establish and maintain one or more Group  
6 Steering Committees, for monitoring and complying with current and future U.S. laws regarding  
7 vehicle certification and vehicle emissions. The VW Defendants shall establish rules of  
8 procedure for the Group Steering Committee(s) and shall define its tasks, authorities, and  
9 responsibilities, which shall include: (1) to document significant current U.S. laws, regulations,  
10 and legislation related to vehicle certification and automotive emissions, and track future  
11 developments in U.S. law related to vehicle certification and automotive emissions; (2) to  
12 monitor and assist the VW Defendants' compliance with U.S. requirements regarding exhaust  
13 emission standards and technology; and (3) to establish internal procedures and controls for the  
14 VW Defendants in order to achieve compliance with U.S. requirements regarding exhaust  
15 emission standards and technology.  
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19 15. PEMS Testing by the VW Defendants.

20 a. The VW Defendants (under the supervision of the Certification  
21 Group) shall test certain model year 2017, 2018, and 2019 light-duty motor  
22 vehicles using portable emissions measurement system ("PEMS") testing. For  
23 each model year, the VW Defendants shall perform PEMS testing on 33% of VW  
24 Defendants' EPA-certified test groups within that model year ("VW Test  
25 Groups"). For purposes of determining the number of VW Test Groups  
26 composing 33%, the VW Defendants shall round up or down to the nearest whole  
27  
28

1 VW Test Group number closest to 33%. EPA may select the VW Test Groups for  
2 testing under this Paragraph 15.a pursuant to the following schedule: for model  
3 year 2017, by no later than February 1, 2017; for model year 2018, by no later  
4 than December 31, 2017, or at the annual certification meeting with EPA,  
5 whichever is earlier; and for model year 2019, by no later than December 31,  
6 2018, or at the annual certification meeting with EPA, whichever is earlier. If  
7 EPA does not select the VW Test Groups pursuant to the schedule set forth in this  
8 Paragraph 15.a, then the VW Defendants shall select the VW Test Groups for  
9 PEMS testing. The VW Defendants shall select the VW Test Groups for model  
10 year 2017, model year 2018, and model year 2019 that will cover, in the  
11 aggregate, the full range of configurations of emission control systems on their  
12 light-duty vehicles for those model years, and shall not select a VW Test Group  
13 that was certified using carryover emissions data from another VW Test Group  
14 that has already been tested pursuant to this Paragraph (unless necessary to meet  
15 the 33% requirement). All testing under Paragraph 15.a for model year 2017 shall  
16 be completed by December 31, 2017. All testing under Paragraph 15.a for model  
17 years 2018 and 2019 shall be completed by September 30 of the calendar year for  
18 which the applicable model year is named, except that the VW Defendants and the  
19 United States may agree to a later date (but in no case later than December 31 of  
20 the applicable model year) sufficient to enable the VW Defendants to complete  
21 PEMS testing of the selected model year. The VW Defendants may, but are not  
22 required to, use the Third-Party Emissions Tester required by Paragraph 15.b to  
23 conduct the testing required by this Paragraph 15.a.  
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1                   b. In addition to the requirements of Paragraph 15.a, the VW  
2 Defendants shall retain an independent third-party emissions tester (“Third-Party  
3 Emissions Tester”). (The VW Defendants and Porsche Defendants may hire the  
4 same Third-Party Emissions Tester.) No attorney-client relationship shall exist or  
5 be formed between any VW Defendant and the Third-Party Emissions Tester. For  
6 each of model year 2017, 2018, and 2019, the VW Defendants shall ensure that  
7 the Third-Party Emissions Tester conducts PEMS testing on a vehicle from each  
8 of two VW Test Groups. Testing under this Paragraph 15.b does not count toward  
9 the testing required under Paragraph 15.a. These VW Test Groups selected for  
10 testing under this Paragraph 15.b shall be the VW Test Groups with the highest  
11 projected sales for the model year at the time of certification, or if applicable those  
12 VW Test Groups selected by EPA by letter to the VW Defendants, pursuant to  
13 Section XV (Notices). Any such letters shall be provided no later than June 30 of  
14 the year for which the model year is named. All testing under this Paragraph 15.b  
15 shall be completed by December 31 of the calendar year for which the applicable  
16 model year is named.

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20                   c. The VW Defendants shall satisfy the testing required by Paragraph  
21 15.a as follows, and shall ensure that the Third-Party Emissions Tester satisfies the  
22 testing required by Paragraph 15.a and b as follows:

- 23                   i. Test a VW Test Group by testing one sample vehicle  
24                   procured at random from the series production vehicles from that selected VW  
25                   Test Group;  
26                   ii. Perform the required third-party PEMS testing on public  
27  
28

1 roads in the United States, and perform all PEMS testing under real-world  
2 driving conditions over a range of ambient temperatures and pressures  
3 (including conditions not represented on the Federal Test Procedure) to  
4 measure emissions that are detectable on a serial vehicle via PEMS of the  
5 vehicle's regulated criteria air pollutants and CO<sub>2</sub>; and  
6

7 iii. Conduct the required PEMS testing according to test  
8 methods recorded before the testing commences. The Third-Party Emissions  
9 Tester shall use test methods independently from the VW Defendants.

10 d. Within 120 Days after the Effective Date, the VW Defendants  
11 shall submit to EPA for review and approval in accordance with Section VII  
12 (Approval of Submissions) a plan for PEMS testing under this Paragraph. Such  
13 plan shall include:  
14

15 i. A list of those test groups the VW Defendants will test for  
16 model year 2017;

17 ii. A written statement of qualifications for the proposed  
18 Third-Party Emissions Tester including its name, affiliation, and address, its  
19 experience in conducting PEMS testing, and a description of previous  
20 contracts or financial relationships of the proposed Third-Party Emissions  
21 Tester with the VW Defendants;  
22

23 iii. A list of all emissions and vehicle and engine parameters  
24 the VW Defendants will measure and record during each PEMS test they  
25 perform under this Paragraph;  
26

27 iv. A description of the test methods the VW Defendants  
28



1 propose to use including the routes and ambient conditions over which the  
2 vehicles shall be tested;

3 v. A template for the VW Defendants' summary report as  
4 described below; and

5 vi. A description of how the VW Defendants intend to satisfy  
6 all requirements of this Paragraph.  
7

8 e. For each model year, for the PEMS testing required by Paragraph  
9 15.a, the VW Defendants shall provide the test data, a detailed statement of all test  
10 methods used, and an executive summary of the data and methods (that includes  
11 the measured emissions of the vehicle's regulated criteria air pollutants and CO<sub>2</sub>)  
12 for all tests the VW Defendants performed under this Paragraph for that model  
13 year ("VW Defendants' Summary Report") to EPA as specified in Section XV  
14 (Notices). The VW Defendants' Summary Report for model year 2017 shall be  
15 due no later than March 1, 2018. The VW Defendants' Summary Report for  
16 model years 2018 and 2019 shall be due no later than November 30 of the  
17 calendar year for which the model year is named, unless the VW Defendants and  
18 the United States agree to a later date. Within 21 Days following submission of  
19 the VW Defendants' Summary Report to EPA, the VW Defendants shall post their  
20 Summary Report (redacted of any Confidential Business Information ("CBI") or  
21 personal information the disclosure of which is restricted by applicable law;  
22 however no emissions test methods and results may be claimed as CBI) in English  
23 and German at the public website required by Paragraph 51.  
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26

27 f. For each model year, for the PEMS testing required by Paragraph  
28

1 15.b, the VW Defendants shall ensure that the Third-Party Emissions Tester  
2 prepares one or more “Third-Party Emissions Tester Summary Report” including  
3 the test data, a detailed statement of all test methods used, and an executive  
4 summary of the data and methods (that includes the measured emissions of the  
5 vehicle’s regulated criteria air pollutants and CO<sub>2</sub>) for all testing the Third-Party  
6 Emissions Tester performed under this Paragraph for that model year. The VW  
7 Defendants shall provide the Third-Party Emissions Tester Summary Report to  
8 EPA as specified in Section XV (Notices) by no later than March 1 of the calendar  
9 year immediately after the calendar year for which the model year is named.  
10 Within 30 Days following submission of the Third-Party Emissions Tester  
11 Summary Report to EPA, the VW Defendants shall post the Third-Party  
12 Emissions Tester Summary Report (redacted of any CBI or personal information  
13 the disclosure of which is restricted by applicable law; however no emissions test  
14 methods and results may be claimed as CBI) in English and German at the public  
15 website required by Paragraph 51.  
16  
17  
18

19 g. The Parties agree and acknowledge that U.S. law does not set forth  
20 a standard by which PEMS testing can be used to determine compliance for  
21 purposes of certification under Title II of the Clean Air Act.  
22

23 16. Business Units within the Product Development Process. Within 180 Days after  
24 the Effective Date, the VW Defendants shall implement the internal procedures set out in the  
25 “Golden Rules” Handbook by establishing internal controls and rules of procedure, and by  
26 defining the tasks, authorities, and responsibilities for the business units, committees, and boards  
27 involved in the Product Development Process, including, but not limited to, the Product Safety  
28

1 Committee (also known as “APS”), the Change Control Board, and the Type Approval,  
2 Recyclability and Functional Safety Department (also known as “EGDT”); provided however,  
3 that implementation of software and information technology may extend beyond 180 Days after  
4 the Effective Date, and that these additional Days shall not count in determining the three-year  
5 period set forth in Paragraph 26. The “Golden Rules” Handbook and the internal controls and  
6 internal rules of procedure developed by the VW Defendants may be subject to reasonable  
7 modification, in consultation with the Department of Justice. The VW Defendants shall conduct  
8 regular employee training regarding the internal procedures, and shall monitor implementation of  
9 these procedures through the VW Defendants’ Governance, Risk, and Compliance (“GRC”)  
10 process.  
11  
12

13 17. Definition of Managers’ Responsibilities. Within 120 Days after the Effective  
14 Date, the VW Defendants shall define the tasks, authorities, and responsibilities of the managers  
15 involved in the Product Development Process with respect to compliance with U.S.  
16 environmental laws and regulations.  
17

18 18. Internal Audit. Within one year after the Effective Date, the VW Defendants shall  
19 conduct and complete an internal audit to track the implementation of the internal procedures in  
20 the “Golden Rules” Handbook relating to vehicle approval procedures with respect to U.S.  
21 environmental laws and regulations, ECM Software development in the Product Development  
22 Process, and escalation management in the Product Safety Committee (“APS”). The audit shall  
23 assess the effectiveness of those internal procedures and propose any corrective actions to  
24 improve their effectiveness.  
25

26 19. Reporting on Injunctive Relief Measures. The first annual report provided to the  
27 Department of Justice pursuant to Paragraph 47 shall include the information required by  
28

1 Paragraphs 18, 21, 22, and 23. In the second and third annual reports provided to the  
2 Department of Justice pursuant to Paragraph 47, the VW Defendants shall describe the measures  
3 that they have implemented to promote compliance with the requirements of Paragraphs 13, 14,  
4 15, 16, 17, 21, 22, and 23 of this Section V (Injunctive Relief for the VW Defendants), together  
5 with an assessment of the effectiveness of those measures in promoting compliance with U.S.  
6 environmental law and any corrective actions the VW Defendants have undertaken to improve  
7 their effectiveness in promoting compliance with U.S. environmental law. In the second and  
8 third annual reports provided to the Department of Justice pursuant to this Paragraph 19,  
9 Defendants shall also address: (1) all risks assessed and recorded as part of the annual GRC  
10 process relating to either compliance with U.S. environmental laws and regulations or risks of  
11 rule violations in the Product Development Process; (2) countermeasures taken by the VW  
12 Defendants' business units in response to those risks; and (3) management controls implemented  
13 by the VW Defendants' business units relating to those risks. The information required to be  
14 provided in the annual reports pursuant to this Paragraph 19 shall be certified in accordance with  
15 Paragraph 52.

16  
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18  
19 **Whistleblower System**

20 20. Implementation of Whistleblower System. Within 180 Days of the Effective Date,  
21 the VW Defendants shall implement and maintain the Volkswagen Group whistleblower system  
22 that was approved by the Board in September 2016. The VW Defendants shall retain  
23 professionally educated and trained employees to administer the system. Any whistleblower  
24 policy that applies to individuals whose work the VW Defendants reasonably anticipate may  
25 involve or relate to vehicles to be certified for sale in the United States shall designate violations  
26 of U.S. environmental laws or regulations as "serious violations" within the meaning of the  
27  
28

1 policy.

2 21. Report on case tracking. In each annual report provided to the Department of  
3 Justice pursuant to Paragraph 47, the VW Defendants shall submit a report, with a certification in  
4 accordance with Paragraph 52 of the Consent Decree, regarding case tracking under the  
5 Volkswagen Group whistleblower system of all whistleblower alerts relating to violations of  
6 U.S. environmental protection laws or regulations.  
7

8 **Employee Survey and Code of Compliance**

9 22. Annual Employee Survey. Within 90 Days after the Effective Date, the VW  
10 Defendants shall create for inclusion in their annual employee survey a question to monitor  
11 progress of the VW Defendants' integrity campaign as introduced on June 16, 2016, and, for  
12 teams whose work includes matters related to compliance with U.S. environmental laws,  
13 questions in appropriate managers' guides to the annual employee survey to gauge compliance  
14 with U.S. laws or regulations relating to environmental compliance. The VW Defendants shall  
15 establish a centralized process to monitor and address employee survey responses relating to the  
16 integrity campaign. In each annual report to the Department of Justice pursuant to Paragraph 47,  
17 the VW Defendants shall provide a summary of survey results relating to the integrity campaign.  
18  
19

20 23. Code of Conduct. Within 180 Days after the Effective Date, the VW Defendants  
21 shall ensure that the VW Defendants' corporate Code of Conduct includes provisions regarding  
22 (1) environmental protection and (2) responsibility for compliance. The VW Defendants shall  
23 require all new employees to attend training regarding the Code of Conduct. In each annual  
24 report to the Department of Justice pursuant to Paragraph 47, the VW Defendants shall provide a  
25 summary of training provided to employees regarding the Code of Conduct.  
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**Environmental Management System (“EMS”) Audit**

1  
2 24. EMS Audit. Within 90 Days after the Effective Date, the VW Defendants shall  
3 contract with and retain an independent third party to conduct an EMS audit pursuant to an  
4 industry-recognized standard for product development processes for vehicles to be certified for  
5 sale in the United States for each year for calendar years 2017, 2018, and 2019. Beginning with  
6 the EMS audit covering calendar year 2017, the EMS audit shall include: (1) an assessment of  
7 the VW Defendants’ processes to comply with U.S. environmental laws and regulations; and (2)  
8 a recommendation for corrective actions.  
9

10 25. Annual EMS Audit Report. Upon completion of each annual EMS audit report,  
11 the VW Defendants shall provide to the Department of Justice a copy of their annual EMS audit  
12 report covering calendar year 2017, 2018, and 2019. To the extent that any such report contains  
13 CBI, the VW Defendants shall simultaneously submit to Department of Justice for its review a  
14 summary version that can be made publicly available. Within 21 Days after a copy is provided  
15 to the Department of Justice, the VW Defendants shall post a copy of the annual EMS audit  
16 report (redacted of any CBI or personal information the disclosure of which is restricted by  
17 applicable law; however no emissions test methods and results may be claimed as CBI) in  
18 English and German on the public website required by Paragraph 51.  
19  
20

**Implementation Timeframe**

21  
22 26. The VW Defendants shall continue to implement the ongoing requirements of this  
23 Consent Decree, other than Section VI (Injunctive Relief for the Porsche Defendants), for a  
24 three-year period after the implementation of the requirements of Paragraph 16.  
25

**Independent Compliance Auditor**

26  
27 27. Retention of Independent Compliance Auditor. The VW Defendants shall retain,  
28

1 upon approval by the United States, a person or entity to serve as the Independent Compliance  
2 Auditor for the oversight of the VW Defendants' obligations under this Section V (Injunctive  
3 Relief for the VW Defendants) for a three-year period after the Effective Date.

4 a. Recommendation of Candidates for the Independent Compliance

5 Auditor. Within 60 Days after the Effective Date, the VW Defendants shall  
6 submit to the United States a list of three candidates for the position of the  
7 Independent Compliance Auditor. The VW Defendants shall:

8 i. Submit a resume, biographical information, and any  
9 relevant material concerning each of the candidate's competence and  
10 qualifications to serve as Independent Compliance Auditor;

11 ii. Describe any past, present, or future business or financial  
12 relationship that the candidate has with the VW Defendants or EPA. A  
13 candidate may not be an employee or an agent of the VW Defendants, VW  
14 Defendants' subsidiaries or the United States, nor may the candidate be  
15 currently engaged in any work for, or in representation of, the VW  
16 Defendants;

17 iii. Verify that, to the VW Defendants' best knowledge and  
18 based on the reasonably available information, either the candidate has no  
19 conflicts of interest with regard to this matter or any actual or apparent  
20 conflict has been waived by the VW Defendants and the United States;

21 iv. Verify that the candidate has agreed not to be employed by  
22 the VW Defendants, or their subsidiaries, for a minimum of two years after  
23 the termination of its term as the Independent Compliance Auditor; and  
24

1 v. Accompany all of the information listed above in  
2 subparagraph 27.a.i through a.iv with a certification in accordance with  
3 Paragraph 52 of the Consent Decree.

4 b. Selection of the Independent Compliance Auditor. After receiving  
5 the list of candidates from the VW Defendants, the United States shall select an  
6 Independent Compliance Auditor from among the candidates and notify the VW  
7 Defendants of such selection. Within 30 Days after notification by the United  
8 States of its selection, the VW Defendants shall retain the selected candidate to  
9 serve as the Independent Compliance Auditor. If the United States does not select  
10 any of the candidates submitted by the VW Defendants, the process under  
11 subparagraph 27.a shall be repeated until the Independent Compliance Auditor is  
12 selected.

13 c. Vacancy in the Position of the Independent Compliance Auditor.  
14 In the event that the Independent Compliance Auditor, once selected, is unable or  
15 unwilling to fulfill its duties as the Independent Compliance Auditor, the processes  
16 under subparagraphs a. and b. shall be used to select a new Independent  
17 Compliance Auditor.

18 d. Independent Compliance Monitor. If there is an Independent  
19 Compliance Monitor retained pursuant to Paragraph 15 of the Plea Agreement  
20 entered in *United States v. Volkswagen AG* (2017) (E.D. Mich.), the same  
21 individual shall function as the Independent Compliance Auditor under this  
22 Paragraph 27. Provided however that the VW Defendants acknowledge and agree  
23 that their obligations under this Consent Decree are independent of the Plea  
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1 Agreement. Thus, if for any reason the VW Defendants do not retain a Monitor  
2 under the Plea Agreement by such time as an Auditor is required to be retained by  
3 Paragraph 27.b of this Consent Decree, or if the Court does not enter the Plea  
4 Agreement by such time as an Auditor is required to be retained by Paragraph 27.b  
5 of this Consent Decree, the VW Defendants must still retain an Auditor that  
6 satisfies the requirements of Paragraph 27 of this Consent Decree.  
7

8 28. Access Rights and Duties of the Independent Compliance Auditor. The VW  
9 Defendants shall cooperate fully with the Auditor in any and all matters relating to the Auditor's  
10 duties as set forth in this Paragraph.

11 a. Audit Plan. The Independent Compliance Auditor shall carry out  
12 its duties based on: (1) review of relevant documents and procedures; (2) on-site  
13 observation of selected systems and procedures at the VW Defendants' sites,  
14 including internal controls, record-keeping, and internal audit procedures; (3)  
15 meetings with and interviews of relevant employees, managers, and directors; and  
16 (4) analyses, studies, and testing of the VW Defendants' compliance management  
17 system. Within 30 Days after retention, the Independent Compliance Auditor  
18 shall develop and submit to the Department of Justice for comment a draft audit  
19 plan that will establish a checklist of relevant compliance requirements,  
20 procedures for the exchange of any documents and information that the  
21 Independent Compliance Auditor needs to perform its duties, and any other terms  
22 that the Independent Compliance Auditor may deem necessary to effectuate its  
23 duties. By February 28 of each subsequent year, the Independent Compliance  
24 Auditor shall develop and submit to the Department of Justice for comment a draft  
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28

1 audit plan for its annual audit activities. The Independent Compliance Auditor  
2 shall take the Department of Justice's comments into consideration in developing  
3 each of the final audit plans.

4 b. Information and Access Rights Accorded to Independent  
5 Compliance Auditor, and Independent Compliance Auditor Notice to DOJ of Non-  
6 Compliance. The VW Defendants shall cooperate fully with the Independent  
7 Compliance Auditor and shall provide the Independent Compliance Auditor with  
8 any information and documents that the Auditor requests or may reasonably need  
9 to fulfill the duties listed in this Paragraph 28. The VW Defendants shall  
10 designate an Environmental Compliance Officer to liaise directly with the  
11 Independent Compliance Auditor regarding issues of information and access  
12 rights. The VW Defendants shall facilitate the Independent Compliance Auditor's  
13 access to the VW Defendants' documents, databases, and facilities where  
14 certification or compliance testing of the VW Defendants' vehicles occur. The  
15 VW Defendants shall use best efforts to make their employees or contractors  
16 available to answer questions or provide information that the Independent  
17 Compliance Auditor may need in the fulfillment of its duties. In the event that the  
18 VW Defendants seek to withhold from the Auditor access to information,  
19 documents, records, facilities, or current or former employees or contractors of the  
20 VW Defendants that may be subject to a claim of attorney-client privilege or to the  
21 attorney work product doctrine, or where the VW Defendants reasonably believe  
22 production or providing access would otherwise be inconsistent with applicable  
23 law, the VW Defendants shall work cooperatively with the Auditor to resolve the  
24

1 matter to the satisfaction of the Auditor consistent with applicable law. If the  
2 Independent Compliance Auditor believes the VW Defendants have violated the  
3 requirements of this Paragraph 28, the Independent Compliance Auditor shall  
4 promptly notify the Department of Justice, including a description of the alleged  
5 violations and supporting documentation as necessary.  
6

7 c. Annual Reports. The Independent Compliance Auditor shall  
8 review documents and take such reasonable measures as may be necessary to  
9 verify the VW Defendants' compliance with Section V (Injunctive Relief for the  
10 VW Defendants). For three years after the Effective Date, the Independent  
11 Compliance Auditor shall audit the VW Defendants' compliance with their  
12 obligations under Section V (Injunctive Relief for the VW Defendants) of this  
13 Consent Decree, and shall provide an annual report to the Department of Justice.  
14 The first annual report is due one year after the Effective Date, the second annual  
15 report is due two years after the Effective Date, and the third annual report is due  
16 three years after the Effective Date. The Independent Compliance Auditor shall  
17 concurrently provide a draft copy of its annual report to the Department of Justice  
18 and the VW Defendants. Within 30 Days after receipt of the draft report, the VW  
19 Defendants shall provide their comments, if any, to the Independent Compliance  
20 Auditor. The Independent Compliance Auditor may consider and reflect the VW  
21 Defendants' comments in its final report to the extent that the Independent  
22 Compliance Auditor deems appropriate in the exercise of its independent  
23 judgment. In the annual report, the Independent Compliance Auditor shall  
24 include, as applicable, findings that identify any noncompliance by the VW  
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1 Defendants with the requirements of Section V (Injunctive Relief for the VW  
2 Defendants), and shall recommend, as applicable, actions for the VW Defendants  
3 to take to achieve compliance. The Independent Compliance Auditor shall also  
4 monitor the VW Defendants' implementation of any action plan submitted  
5 pursuant to Paragraph 29, and shall indicate in the annual report the status of any  
6 corrective action. All final annual reports from the Independent Compliance  
7 Auditor (redacted of any CBI or personal information the disclosure of which is  
8 restricted by applicable law; however no emissions test methods and results may  
9 be claimed as CBI) shall be posted by the VW Defendants on the public website  
10 required by Paragraph 51 in both English and German within 21 Days after  
11 issuance.  
12

13  
14 d. Compensation of the Independent Compliance Auditor. The VW  
15 Defendants shall be responsible for compensating the Independent Compliance  
16 Auditor for the performance of its duties in accordance with the terms agreed upon  
17 by the VW Defendants and the selected Independent Compliance Auditor. Such  
18 terms of agreement shall clarify that the Independent Compliance Auditor is not an  
19 employee or an agent of the VW Defendants, and the Independent Compliance  
20 Auditor's work is not subject to the VW Defendants' assertion of attorney-client  
21 or work product privileges. Upon the Department of Justice's request, any  
22 agreements between the VW Defendants and the Independent Compliance Auditor  
23 shall be made available for the Department of Justice's review.  
24

25  
26 29. VW Defendants' Response to Independent Compliance Auditor's Report.

27 a. Action Plan. Within 60 Days after receiving an Independent  
28

1 Compliance Auditor’s final report containing a finding of noncompliance, the VW  
2 Defendants shall submit to the Department of Justice a response to the  
3 Independent Compliance Auditor’s findings and recommendations for corrective  
4 action. The VW Defendants’ response shall include, as applicable, an action plan  
5 to implement corrective measures as expeditiously as practicable, or an  
6 explanation of why corrective measures are not being implemented. After the VW  
7 Defendants have completed implementation of the corrective measures, if any, the  
8 VW Defendants shall provide a report to the Department of Justice with a  
9 certification, in accordance with Paragraph 52 of the Consent Decree, that the  
10 work has been completed.  
11

12  
13 b. Annual Meeting. Within 90 Days after receiving an Independent  
14 Compliance Auditor’s final report, the VW Defendants shall meet with the  
15 Department of Justice to discuss the Independent Compliance Audit and any  
16 suggestions, comments, or improvements that the VW Defendants may wish to  
17 discuss with the Department of Justice.  
18

19 **VI. INJUNCTIVE RELIEF FOR THE PORSCHE DEFENDANTS**

20 30. Segregation of Duties between Product Development and Certification

21 Testing/Monitoring. Within 90 Days after the Effective Date, the Porsche Defendants shall  
22 implement measures to ensure that employees involved in certification testing and monitoring  
23 are organizationally separate from those involved in product development. Consistent with the  
24 Porsche Remediation Plan, the Porsche Defendants shall, as set forth in Paragraph 31 below,  
25 improve policies, procedures, practices, or processes for the development of vehicles that include  
26 emission control systems designed to comply with U.S. laws and regulations related to emissions  
27  
28

1 standards and certifications, and to ensure that emissions certification testing of such vehicles is  
2 not performed by the organizational units responsible for product development.

3 31. Organization and Processes.

4 a. The Porsche Defendants shall implement cross-departmental  
5 segregation of duties by establishing a new organizational unit, the “Technical  
6 Conformity” unit, which shall have primary responsibility for: (1) developing and  
7 implementing the certification testing program; (2) coordinating a central list of  
8 auxiliary emission control devices (“AECs”) in vehicles; (3) interpreting  
9 technical provisions related to certification; and (4) communicating with  
10 government agencies regarding the certification of vehicles.  
11

12 b. For vehicles that the Porsche Defendants will certify for sale in the  
13 United States, the Technical Conformity organizational unit shall: (1) develop and  
14 implement the certification testing program, obtain and manage the certification  
15 test vehicles, confirm that the configuration of the test vehicles is representative of  
16 the production vehicles, and test the certification vehicles consistent with EPA’s  
17 regulations for certification; and (2) supervise all certification personnel, provide  
18 training for certification personnel, and control access to certification vehicles  
19 during certification emissions testing.  
20

21 c. In order to optimize internal processes regarding the interpretation  
22 of technical provisions relating to certification of vehicles, the Porsche Defendants  
23 shall centralize the responsibility for such interpretation in the Technical  
24 Conformity organizational unit.  
25

26 d. The Porsche Defendants shall restructure the Powertrain Change  
27  
28

1 Control Board (“CCB”) and the Product Safety Committee (“PSK”) in accordance  
2 with the Porsche Remediation Plan. The CCB, which is the central approval and  
3 escalation committee for ECM Software changes, shall be subject to internal  
4 procedures requiring increased standards for establishment of ECM Software  
5 change requests, stricter requirements for documentations of decisions, and  
6 expansion of the participants required for a CCB decision. The PSK shall be  
7 restructured to improve conformity with U.S. environmental laws and regulations  
8 for vehicles sold in the U.S.  
9

10 e. The Porsche Defendants shall establish rules of procedure for the  
11 approval of ECM Software development.  
12

13 f. The Porsche Defendants shall establish additional approval criteria  
14 for technical conformity in product development processes related to emissions  
15 control.  
16

17 g. The Porsche Defendants shall transfer responsibility for the  
18 conformity of production process from the Research and Development Division  
19 (“E”) to the Corporate Quality Department (“GQ”). GQ shall establish rules of  
20 procedure for conformity of production to determine compliance of vehicles with  
21 U.S. environmental laws and regulations.  
22

23 h. For vehicles certified for sale in the United States, GQ shall  
24 supervise the in-use performance testing of vehicles, which testing must be  
25 performed in accordance with EPA regulations.  
26

27 32. Establishment of the Porsche Defendants’ Project Management Office for the  
28 Porsche Remediation Plan. Within 90 Days after the Effective Date, the Porsche Defendants

1 shall establish and maintain a Project Management Office (“PMO”) for the Porsche Remediation  
2 Plan. The PMO shall ensure that an adequate organizational structure for monitoring and  
3 complying with current and future United States laws regarding vehicle certification and vehicle  
4 emissions is established. Consistent with the Porsche Remediation Plan, the PMO shall establish  
5 rules of procedure and set out tasks, authorities, and responsibilities for specific Porsche  
6 Defendants’ organizations: (1) to document significant current U.S. laws, regulations, and  
7 legislation related to vehicle certification and automotive emissions, and track future  
8 developments in United States law related to vehicle certification and automotive emissions; (2)  
9 to monitor and assist the Porsche Defendants’ compliance with U.S. requirements regarding  
10 exhaust emission standards and technology; and (3) to establish internal procedures and controls  
11 for the Porsche Defendants in order to achieve compliance with U.S. requirements regarding  
12 exhaust emission standards and technology.  
13  
14

15 33. PEMS Testing by the Porsche Defendants.

16 a. The Porsche Defendants (under the supervision of the Technical  
17 Conformity Group) shall test certain model year 2017, 2018, and 2019 light-duty  
18 motor vehicles using PEMS testing. For each model year, the Porsche Defendants  
19 shall perform PEMS testing on 33% of the Porsche Defendants’ EPA-certified test  
20 groups within that model year (“Porsche Test Groups”). For purposes of  
21 determining the number of Porsche Test Groups composing 33%, the Porsche  
22 Defendants shall round up or down to the nearest whole Porsche Test Group  
23 number closest to 33%. EPA may select the Porsche Test Groups for testing under  
24 this Paragraph 33.a pursuant to the following schedule: for model year 2017, by no  
25 later than February 1, 2017, for model year 2018, by no later than December 31,  
26  
27  
28



1 2017, or at the annual certification meeting with EPA, whichever is earlier, and for  
2 model year 2019, by no later than December 31, 2018, or at the annual  
3 certification meeting with EPA, whichever is earlier. If EPA does not select the  
4 Porsche Test Groups pursuant to the schedule set forth in this Paragraph 33.a, the  
5 Porsche Defendants shall select Porsche Test Groups for PEMS testing. The  
6 Porsche Defendants shall select Porsche Test Groups for model year 2017, model  
7 year 2018, and model year 2019 that will cover, in the aggregate, the full range of  
8 configurations of emission control systems on their light-duty vehicles for those  
9 model years, and shall not select a Porsche Test Group that was certified using  
10 carry-over emissions data from another Porsche Test Group that has already been  
11 tested pursuant to this Paragraph (unless necessary to meet the 33% requirement).  
12 All testing under this Paragraph 33.a for model year 2017 must be completed by  
13 December 31, 2017. All testing under this Paragraph 33.a for model years 2018  
14 and 2019 must be completed by September 30 of the calendar year for which the  
15 applicable model year is named, except that the Porsche Defendants and the  
16 United States may agree to a later date (but in no case later than December 31 of  
17 the applicable model year) sufficient to enable the Porsche Defendants to complete  
18 PEMS testing of the selected model year. The Porsche Defendants may, but are  
19 not required to, use the Third-Party Emissions Tester required by Paragraph 33.b  
20 to conduct the testing required by this Paragraph 33.a.

21  
22  
23  
24  
25 b. In addition to the requirements of Paragraph 33.a, the Porsche  
26 Defendants shall retain an independent Third-Party Emissions Tester. (The VW  
27 Defendants and Porsche Defendants may hire the same Third-Party Emissions  
28

1 Tester.) No attorney-client relationship shall exist or be formed between any  
2 Porsche Defendant and the Third-Party Emissions Tester. For each of model year  
3 2017, 2018, and 2019, the Porsche Defendants shall ensure that the Third-Party  
4 Emissions Tester conducts PEMS testing on one vehicle from one Porsche Test  
5 Group. Testing under this Paragraph 33.b does not count toward the testing  
6 required under Paragraph 33.a. The Porsche Test Group selected for testing under  
7 this Paragraph 33.b shall be the Porsche Test Group with the highest projected  
8 sales for the model year at the time of certification or, if applicable, the Porsche  
9 Test Group selected by EPA by letter to the Porsche Defendants pursuant to  
10 Section XV (Notices). Any such letters shall be provided no later than June 30 of  
11 the year for which the model year is named. All testing under this Paragraph 33.b  
12 shall be completed by December 31 of the calendar year for which the applicable  
13 model year is named.

14  
15  
16 c. The Porsche Defendants shall satisfy the testing required by  
17 Paragraph 33.a as follows, and shall ensure that the Third-Party Emissions Tester  
18 satisfies the testing required by Paragraphs 33.a and 33.b as follows:

19  
20 i. Test a Porsche Test Group by testing one sample vehicle  
21 procured at random from the series production vehicles from that selected  
22 Porsche Test Group;

23  
24 ii. Perform the required third-party PEMS testing on public  
25 roads in the United States, and perform all PEMS testing under real-world  
26 driving conditions over a range of ambient temperatures and pressures  
27 (including conditions not represented on the Federal Test Procedure) to  
28

1 measure emissions that are detectable on a serial vehicle via PEMS of the  
2 vehicle's regulated criteria air pollutants and CO<sub>2</sub>; and

3 iii. Conduct the required PEMS testing according to test  
4 methods recorded before the testing commences. The Third-Party Emissions  
5 Tester shall use test methods independently from the Porsche Defendants.  
6

7 d. Within 120 Days after the Effective Date, the Porsche Defendants  
8 shall submit to EPA for review and approval in accordance with Section VII  
9 (Approval of Submissions) a plan for PEMS testing under this Paragraph. Such  
10 plan shall include:

11 i. A list of those test groups the Porsche Defendants will test  
12 for model year 2017;

13 ii. A written statement of qualifications for the proposed  
14 Third-Party Emissions Tester including its name, affiliation, and address, its  
15 experience in conducting PEMS testing, and a description of previous  
16 contracts or financial relationships of the proposed Third-Party Emissions  
17 Tester with the Porsche Defendants;  
18

19 iii. A list of all emissions and vehicle and engine parameters  
20 the Porsche Defendants will measure and record during each PEMS test they  
21 perform under this Paragraph;  
22

23 iv. A description of the test methods the Porsche Defendants  
24 propose to use including the routes and ambient conditions over which the  
25 vehicles shall be tested;  
26

27 v. A template for the Porsche Defendants' summary report as  
28

1 described below; and

2 vi. A description of how the Porsche Defendants intend to  
3 satisfy all requirements of this Paragraph.

4 e. For each model year, for the PEMS testing required by Paragraph  
5 33.a, the Porsche Defendants shall provide the test data, a detailed statement of all  
6 test methods used, and an executive summary of the data and methods (that  
7 includes the measured emissions of the vehicle's regulated criteria air pollutants  
8 and CO<sub>2</sub>) for all tests the Porsche Defendants performed under this Paragraph for  
9 that model year ("Porsche Defendants' Summary Report") to EPA as specified in  
10 Section XV (Notices). The Porsche Defendants' Summary Report for model year  
11 2017 shall be due no later than March 1, 2018. The Porsche Defendants'  
12 Summary Report for model years 2018 and 2019 shall be due no later than  
13 November 30 of the calendar year for which the model year is named, unless the  
14 Porsche Defendants and the United States agree to a later date. Within 21 Days  
15 after submitting the Porsche Defendants' Summary Report to EPA, the Porsche  
16 Defendants shall post their Summary Report (redacted of any CBI or personal  
17 information the disclosure of which is restricted by applicable law; however no  
18 emissions test methods and results may be claimed as CBI) in English and German  
19 at the public website required by Paragraph 51.

20 f. For each model year, for the PEMS testing required by Paragraph  
21 33.b, the Porsche Defendants shall ensure that the Third-Party Emissions Tester  
22 prepares a Third-Party Emissions Tester Summary Report including the test data, a  
23 detailed statement of all test methods used, and an executive summary of the data  
24  
25  
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1 and methods (that includes the measured emissions of the vehicle's regulated  
2 criteria air pollutants and CO<sub>2</sub>) for all testing the Third-Party Emissions Tester  
3 performed under this Paragraph for that model year. The Porsche Defendants  
4 shall provide the Third-Party Emissions Tester Summary Report to EPA as  
5 specified in Section XV (Notices) by no later than March 1 of the calendar year  
6 immediately after the calendar year for which the model year is named. Within 30  
7 Days after submitting the Third-Party Emissions Tester Summary Report to EPA,  
8 the Porsche Defendants shall post the Third-Party Emissions Tester Summary  
9 Report (redacted of any CBI or personal information the disclosure of which is  
10 restricted by applicable law; however no emissions test methods and results may  
11 be claimed as CBI) in English and German at the public website required by  
12 Paragraph 51.

13  
14  
15 g. The Parties agree and acknowledge that U.S. law does not set forth  
16 a standard by which PEMS testing can be used to determine compliance for  
17 purposes of certification under Title II of the Clean Air Act.

18  
19 34. Business Units within Product Development Process. Within 18 months after the  
20 Effective Date, the Porsche Defendants shall implement the Porsche Remediation Plan by  
21 establishing internal controls and rules of procedure, and by defining the tasks, authorities, and  
22 responsibilities for the business units, committees, and boards involved in the Product  
23 Development Process, including, but not limited to, the PSK, the CCB, the Technical Conformity  
24 organizational unit, and the Product Safety & Compliance Department, as described in the  
25 Remediation Plan. The internal controls and internal rules of procedure developed by the  
26 Porsche Defendants may be subject to reasonable modification, in consultation with the  
27  
28

1 Department of Justice. The Porsche Defendants shall monitor implementation of these  
2 procedures through the Porsche Defendants' Internal Audit Department.

3 35. Supplier Contracts. The Porsche Defendants shall adjust or modify supplier  
4 contracts to include standardized requirements pertaining to conformity with U.S. legal  
5 requirements for vehicle emissions, certification, and information reporting.  
6

7 36. Definition of Managers' Responsibilities. Within 90 Days after the Effective Date,  
8 the Porsche Defendants shall define the tasks, authorities, and responsibilities of the managers  
9 involved in the Product Development Process, including with respect to compliance with U.S.  
10 environmental laws and regulations.

11 37. Whistleblower System. Upon the Effective Date, the Porsche Defendants shall  
12 maintain the whistleblower/employee reporting system for the Porsche Defendants' employees,  
13 which ensures that the identity and anonymity of whistleblowers is protected. The Porsche  
14 Defendants shall retain a minimum of two external, independent, and experienced professionals  
15 to act as ombudsmen; the ombudsmen shall be obliged to maintain professional confidentiality.  
16 The Porsche Defendants shall conduct periodic training events to publicize the availability of  
17 reporting options for employees and to explain the procedures and protections of the  
18 whistleblower system. Violations of the U.S. environmental laws and regulations shall be treated  
19 as serious violations within the Porsche Defendants' whistleblower system. In each semi-annual  
20 report provided to the Department of Justice, the Porsche Defendants shall submit a report of all  
21 whistleblower alerts relating to violations of U.S. environmental laws or regulations.  
22  
23  
24

25 38. Compliance Awareness – Employee Training.

26 a. Within 90 Days after the Effective Date, the Porsche Defendants  
27 shall revise the Porsche Defendants' corporate Code of Conduct to include  
28

1 compliance with environmental laws or regulations within the Code's discussion  
2 of (1) environmental protection and (2) responsibility for compliance. The  
3 Porsche Defendants shall ensure that the Code of Conduct is discussed with new  
4 employees during new employee orientation and inform current employees about  
5 the amended content.

6  
7 b. The Porsche Defendants shall provide technical product  
8 conformity training to employees involved in the Product Development Process to  
9 ensure appropriate knowledge of the following topics: correct use of test  
10 equipment, guidelines for handling test data, overview of U.S. emission-relevant  
11 regulations and standards, and AECD-relevant topics.

12  
13 c. In each semi-annual report to the Department of Justice, the  
14 Porsche Defendants shall provide a summary of training provided to employees as  
15 described in this Paragraph 38.

16 39. Semi-Annual Reporting on the Porsche Defendants' Implementation of the  
17 Porsche Remediation Plan and Internal Audit.  
18

19 a. Semi-Annual Reporting. On a semi-annual basis (January 31 and  
20 July 31 of each year), the Porsche Defendants' Head of Internal Audit shall submit  
21 a report, with a certification in accordance with Paragraph 52 of the Consent  
22 Decree, to the Department of Justice, identifying the objectives, as defined in the  
23 Remediation Plan, which have been completed and track the status of objectives  
24 that have not yet been completed, including the identification of any issues that  
25 may delay the implementation of the same. Each semi-annual report shall also  
26 provide information regarding the Porsche Defendants' compliance with the  
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28

1 requirements of Paragraphs 30 through 38.

2 b. Internal Audit. Within two years after the Effective Date, or  
3 earlier as consistent with the timelines and schedule of the Porsche Remediation  
4 Plan, the Porsche Defendants shall conduct and complete an internal audit to track  
5 the implementation of internal procedures relating to approval procedures or  
6 software development in the Product Development Process. The audit shall  
7 assess: (1) the implementation and effectiveness of the internal procedures, as  
8 specifically set forth in the Porsche Remediation Plan, and propose any corrective  
9 actions to improve their effectiveness; and (2) the escalation of critical issues, as  
10 defined in the Porsche Remediation Plan, to report recipients, including the  
11 Executive Board of Dr. Ing. h.c. F. Porsche AG. Following completion, the  
12 Porsche Defendants shall provide a copy of the audit report to the Department of  
13 Justice.

14 40. Provided that Defendants have commenced implementation of the Porsche  
15 Remediation Plan pursuant to the provisions of this Consent Decree and are implementing the  
16 Remediation Plan substantially consistent with the timelines established in the Remediation Plan,  
17 then the requirements of this Section VI (Injunctive Relief for the Porsche Defendants) shall be  
18 deemed to be implemented for purposes of Section XIX (Termination) as of June 30, 2020.

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21  
22 **VII. APPROVAL OF SUBMISSIONS**

23 41. After review of any Submission required by Paragraph 15 or Paragraph 33, EPA  
24 shall in writing: (a) approve the Submission; (b) approve the Submission upon specified  
25 conditions; (c) approve part of the Submission and disapprove the remainder; or (d) disapprove  
26 the Submission. In the event of disapproval, in full or in part, of any portion of the Submission,  
27  
28



1 if not already provided with the disapproval, upon request of any one of the Defendants, EPA  
2 will provide in writing the reasons for such disapproval.

3 42. If the Submission is approved pursuant to Paragraph 41, the VW Defendants or the  
4 Porsche Defendants, as applicable, shall take all actions required by the Submission in  
5 accordance with the schedules and requirements of the Submission, as approved. If the  
6 Submission is conditionally approved or approved only in part pursuant to Paragraph 41(b) or  
7 (c), the VW Defendants or the Porsche Defendants, as applicable, shall, upon written direction  
8 from EPA, take all actions required by the Submission that EPA determines are technically  
9 severable from any disapproved portions.  
10

11 43. If the Submission is disapproved in whole or in part pursuant to Paragraph 41(c) or  
12 (d), the VW Defendants or the Porsche Defendants, as applicable, shall, within 30 Days or such  
13 other time as the Parties agree to in writing, correct all deficiencies and resubmit the Submission,  
14 or disapproved portion thereof, for approval, in accordance with Paragraphs 41 to 42. If the  
15 resubmission is approved in whole or in part, the VW Defendants or the Porsche Defendants, as  
16 applicable, shall proceed in accordance with Paragraph 42.  
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18

19 44. If a resubmitted Submission, or portion thereof, is disapproved in whole or in part,  
20 EPA may again require the VW Defendants or the Porsche Defendants, as applicable, to correct  
21 any deficiencies, in accordance with Paragraphs 42 and 43, or EPA may itself correct any  
22 deficiencies.  
23

24 45. Defendants may elect to invoke the dispute resolution procedures set forth in  
25 Section XI (Dispute Resolution) concerning any decision of EPA to disapprove, approve on  
26 specified conditions, modify, or correct a Submission. If one or more Defendants elect to invoke  
27 dispute resolution, they shall do so within 30 Days (or such other time as the Parties agree to in  
28

1 writing) after receipt of the applicable decision.

2 46. Any stipulated penalties applicable to the original Submission, as provided in  
3 Section IX (Stipulated Penalties), shall accrue during the 30-Day period or other specified period  
4 pursuant to Paragraph 43. Such stipulated penalties shall not be payable unless the resubmission  
5 of the Submission is untimely or is disapproved in whole or in part; provided that, if the original  
6 Submission was so deficient as to constitute a material breach of the VW Defendants' or the  
7 Porsche Defendants', as applicable, obligations under this Decree in making that Submission, the  
8 stipulated penalties applicable to the original Submission shall be due and payable  
9 notwithstanding any subsequent resubmission.  
10

11 **VIII. REPORTING AND CERTIFICATION REQUIREMENTS**

12 47. Timing of Reports. The VW Defendants shall submit an annual report  
13 incorporating information required by Paragraphs 19, 21, 22, 23, and 28. The first annual report  
14 is due one year after the Effective Date; the second annual report is due two years after the  
15 Effective Date, and the third annual report is due three years after the Effective Date. The  
16 reports required by Paragraphs 15, 18, 25, and 49.b shall be due as set forth in those Paragraphs.  
17

18 48. Defendants may assert that information submitted under this Consent Decree is  
19 protected as CBI as set out in 40 C.F.R. Part 2.  
20

21 49. Reporting of Violations.

22 a. If the VW Defendants or the Porsche Defendants reasonably  
23 believe they have violated, or that they may violate, any requirement of this  
24 Consent Decree, such Defendants shall notify EPA of such violation and its likely  
25 duration, in a written report submitted within 14 business Days after the Day such  
26 Defendants first reasonably believe that a violation has occurred or may occur,  
27  
28

1 with an explanation of the violation's likely cause and of the remedial steps taken,  
2 or to be taken, to prevent or minimize such violation. If the VW Defendants or the  
3 Porsche Defendants believe the cause of a violation cannot be fully explained at  
4 the time the report is due, such Defendants shall so state in the report. The VW  
5 Defendants or the Porsche Defendants, as applicable, shall investigate the cause of  
6 the violation and shall then submit an amendment to the report, including a full  
7 explanation of the cause of the violation, within 30 Days after the Day on which  
8 such Defendants reasonably believe they have determined the cause of the  
9 violation. Nothing in this Paragraph or the following Paragraph relieves  
10 Defendants of their obligation to provide the notice required by Section X (Force  
11 Majeure).  
12

13  
14 b. Semi-Annual Report of Violations. On January 31 and July 31 of  
15 each year, the VW Defendants and Porsche Defendants shall each submit a  
16 summary to the United States of any violations of the Decree that occurred during  
17 the preceding six months (or potentially shorter period for the first semi-annual  
18 report), and that are required to be reported pursuant to subparagraph 49.a,  
19 including the date of the violation, the date the notice of violation was sent, and a  
20 brief description of the violation.  
21

22  
23 50. Whenever the VW Defendants or the Porsche Defendants reasonably believe that  
24 any violation of this Consent Decree or any other event affecting the VW Defendants' or the  
25 Porsche Defendants' performance under this Decree may pose an immediate threat to the public  
26 health or welfare or the environment, such Defendants shall notify EPA by email as soon as  
27 practicable, but no later than 24 hours after such Defendants first reasonably believe the violation  
28

1 or event has occurred. This procedure is in addition to the requirements set forth in Paragraph  
2 49.

3 51. All reports required to be posted to a public website by this Consent Decree shall  
4 be accessible on the public website [www.VWCourtSettlement.com](http://www.VWCourtSettlement.com), used by Defendants pursuant  
5 to the First Partial Consent Decree, and a link to such website shall be displayed on  
6 [www.vw.com](http://www.vw.com), [www.audiusa.com](http://www.audiusa.com), and [www.porsche.com](http://www.porsche.com).

8 52. Each report to be certified pursuant to this Paragraph shall be signed by an officer  
9 or director of the VW Defendants or the Porsche Defendants, as appropriate, and shall include  
10 the following sworn certification, which may instead be certified as provided in 28 U.S.C. §  
11 1746:  
12

13 I certify under penalty of perjury under the laws of the United States that this  
14 document and all attachments were prepared under my direction or supervision in  
15 accordance with a system designed to assure that qualified personnel properly  
16 gather and evaluate the information submitted. Based on my inquiry of the person  
17 or persons who manage the system, or those persons directly responsible for  
18 gathering the information, the information submitted is, to the best of my  
19 knowledge and belief, true, correct, and complete. I have no personal knowledge,  
information or belief that the information submitted is other than true, correct, and  
complete. I am aware that there are significant penalties for submitting false  
information, including the possibility of fine and imprisonment for knowing  
violations.

20 53. Defendants agree that the certification required by Paragraph 52 is subject to 18  
21 U.S.C. §§ 1001(a) and 1621.

22 54. The certification requirement in Paragraph 52 does not apply to emergency or  
23 similar notifications where compliance would be impractical.  
24

25 55. The reporting requirements of this Consent Decree do not relieve Defendants of  
26 any reporting obligations required by the Act or implementing regulations, or by any other  
27 federal, state, or local law, regulation, permit, or other requirement.  
28

1 56. Any information provided pursuant to this Consent Decree may be used by the  
 2 United States in any proceeding to enforce the provisions of this Consent Decree and as  
 3 otherwise permitted by law.

4 **IX. STIPULATED PENALTIES**

5 57. Defendants shall be liable for stipulated penalties to the United States for  
 6 violations of this Consent Decree as specified in this Section, unless excused under Section X  
 7 (Force Majeure). A violation includes failing to perform any obligation required by the terms of  
 8 this Decree, according to all applicable requirements of this Decree and within the specified time  
 9 schedules established by or approved under this Decree.  
 10

11 58. Late Payment of Civil Penalty. If Defendants fail to pay the civil penalty required  
 12 under Section IV (Civil Penalty) of this Decree when due, then Defendants shall pay stipulated  
 13 penalties that accrue for each Day that the civil penalty payment is late:  
 14

<u>Stipulated Penalty</u>	<u>Duration of Compliance Failure</u>
Interest (per Paragraph 63)	1st through 4th Day
\$50,000	5th through 30th Day
\$100,000	31st through 45th Day
\$200,000	46th Day and beyond

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21 59. Injunctive Relief Requirements for the VW Defendants

22 a. Independent Certification Group, Group Steering Committee, and  
 23 Whistleblower System. The VW Defendants shall pay stipulated penalties per  
 24 each Day for each Day that the establishment, maintenance, or implementation of  
 25 an organizationally-separate certification group, the Group Steering Committee(s),  
 26 or the whistleblower system is overdue or is otherwise not in accordance with the  
 27 requirements set forth in Paragraphs 13, 14, and 20, as follows. However, any  
 28

1 such stipulated penalties shall not accrue if, during the period of noncompliance  
 2 alleged by the United States: the VW Defendants (1) took reasonable and  
 3 substantial measures to comply with the obligation; and (2) had an objectively  
 4 reasonable belief that they had complied with the obligation, which shall be  
 5 established by a certification pursuant to Paragraph 52 and any other evidence the  
 6 VW Defendants may submit. Such certification and evidence shall be submitted  
 7 by the VW Defendants to the United States within 30 Days of receiving the United  
 8 States' stipulated penalty demand together with a description of the measures the  
 9 VW Defendants are taking to address the noncompliance identified in the United  
 10 States' demand. The United States shall evaluate the evidence submitted by the  
 11 VW Defendants to determine whether to modify or withdraw the United States'  
 12 stipulated penalty demand. If the United States, after reviewing such evidence,  
 13 elects to impose stipulated penalties on any VW Defendant(s), such VW  
 14 Defendant(s) have the right to invoke the Dispute Resolution procedures set forth  
 15 in Section XI (Dispute Resolution). Any stipulated penalties pursuant to this  
 16 Paragraph shall be as follows, running from the date of accrual as determined  
 17 pursuant to this Paragraph:  
 18  
 19  
 20

<u>Stipulated penalty</u>	<u>Duration of compliance failure</u>
\$2,000	1st through 14th Day
\$10,000	15th through 30th Day
\$50,000	31st Day and beyond

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 25  
 26 b. PEMS Testing Program. The VW Defendants shall pay stipulated  
 27 penalties per each Day for each Day that the PEMS testing program is overdue or  
 28

1 is otherwise not in accordance with the requirements set forth in Paragraph 15, as  
 2 follows:

<u>Stipulated penalty</u>	<u>Duration of compliance failure</u>
\$2,000	1st through 14th Day
\$10,000	15th through 30th Day
\$50,000	31st Day and beyond

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8 c. “Golden Rules” Handbook Implementation and Annual EMS

9 Audits. The VW Defendants shall pay stipulated penalties per each Day for each  
 10 Day that the audit of “Golden Rules” Handbook implementation is overdue or is  
 11 otherwise not in accordance with the requirements set forth in Paragraph 18, and  
 12 the VW Defendants shall pay stipulated penalties per each Day for each Day that  
 13 an annual EMS audit, or a related audit report or that the requirement to post an  
 14 annual EMS audit report on the VW Defendants’ website is overdue or is  
 15 otherwise not in accordance with the requirements set forth in Paragraphs 24 and  
 16 25, as follows:

<u>Stipulated penalty</u>	<u>Duration of compliance failure</u>
\$1,000	1st through 14th Day
\$5,000	15th through 30th Day
\$10,000	31st Day and beyond

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23 d. Annual Reporting. The VW Defendants shall pay stipulated  
 24 penalties per each Day for each Day on which an annual report that includes the  
 25 information required by Paragraphs 19, 21, 22, and 23 is overdue or is otherwise  
 26 not in accordance with the requirements set forth in Paragraph 47, as follows:  
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<u>Stipulated penalty</u>	<u>Duration of compliance failure</u>
\$2,000	1st through 14th Day
\$10,000	15th through 30th Day
\$50,000	31st Day and beyond

e. Independent Compliance Auditor. The VW Defendants shall pay stipulated penalties per each Day for each Day on which the list of candidates, the retaining of the Compliance Auditor, the report of proposed corrective measures, or the posting of the final annual reports on the VW Defendants’ website is overdue or is otherwise not in accordance with the requirements set forth in Paragraphs 27 and 29, as follows:

<u>Stipulated penalty</u>	<u>Duration of compliance failure</u>
\$1,000	1st through 14th Day
\$5,000	15th through 30th Day
\$10,000	31st Day and beyond

The VW Defendants shall pay stipulated penalties per Day for each Day on which the report of implementation of corrective measures is overdue or is otherwise not in accordance with the requirements set forth in Paragraph 29, as follows:

<u>Stipulated penalty</u>	<u>Duration of compliance failure</u>
\$2,000	1st through 14th Day
\$10,000	15th through 30th Day
\$50,000	31st Day and beyond

f. Independent Compliance Auditor Information and Access. If the United States believes that the VW Defendants are in violation of the requirements



1 set forth in Paragraph 28.b (Information and Access Rights Accorded to  
 2 Independent Compliance Auditor), the United States may provide notice of such  
 3 violations pursuant to Section XV (Notices) to the VW Defendants. The VW  
 4 Defendants shall have 30 Days from receipt of the notice to address the alleged  
 5 violations or invoke Dispute Resolution. If after 30 Days following receipt by the  
 6 VW Defendants of the United States’ notice, the United States believes the VW  
 7 Defendants are in violation of the requirements set forth in Paragraph 28, then the  
 8 VW Defendants shall be subject to stipulated penalties, as follows:

<u>Stipulated penalty</u>	<u>Duration of compliance failure</u>
\$1,000	31st through 45th Day
\$5,000	46th through 60th Day
\$10,000	61st Day and beyond

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15 60. Injunctive Relief Requirements for the Porsche Defendants

16 a. Technical Conformity Unit, Project Management Office, and  
 17 Whistleblower System. The Porsche Defendants shall pay stipulated penalties per  
 18 each Day for each Day that the establishment, maintenance, or implementation of  
 19 the Technical Conformity organizational unit, the Project Management Office, or  
 20 the whistleblower system is overdue or is otherwise not in accordance with the  
 21 requirements set forth in Paragraphs 31, 32, or 37, as follows. However, any such  
 22 stipulated penalties shall not accrue if, during the period of noncompliance alleged  
 23 by the United States: the Porsche Defendants (1) took reasonable and substantial  
 24 measures to comply with the obligation; and (2) had an objectively reasonable  
 25 belief that they had complied with the obligation, which shall be established by a  
 26 certification pursuant to Paragraph 52 and any other evidence the Porsche  
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1 Defendants may submit. Such certification and evidence shall be submitted by the  
 2 Porsche Defendants to the United States within 30 Days of receiving the United  
 3 States’ stipulated penalty demand together with a description of the measures the  
 4 Porsche Defendants are taking to address the noncompliance identified in the  
 5 United States’ demand. The United States shall evaluate the evidence submitted  
 6 by the Porsche Defendants to determine whether to modify or withdraw the United  
 7 States’ stipulated penalty demand. If the United States, after reviewing such  
 8 evidence, elects to impose stipulated penalties on any Porsche Defendant(s), such  
 9 Porsche Defendant(s) have the right to invoke the Dispute Resolution procedures  
 10 set forth in Section XI (Dispute Resolution). Any stipulated penalties pursuant to  
 11 this Paragraph shall be as follows, running from the date of accrual as determined  
 12 pursuant to this Paragraph:  
 13  
 14

<u>Stipulated penalty</u>	<u>Duration of compliance failure</u>
\$2,000	1st through 14th Day
\$10,000	15th through 30th Day
\$50,000	31st Day and beyond

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 20 b. PEMS Testing Program. The Porsche Defendants shall pay  
 21 stipulated penalties per each Day for each Day that the PEMS testing program is  
 22 overdue or is otherwise not in accordance with the requirements set forth in  
 23 Paragraph 33, as follows:  
 24

<u>Stipulated penalty</u>	<u>Duration of compliance failure</u>
\$2,000	1st through 14th Day
\$10,000	15th through 30th Day
\$50,000	31st Day and beyond

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c. Porsche Remediation Plan Audit. The Porsche Defendants shall pay stipulated penalties per each Day for each Day that the audit of the Porsche Remediation Plan required by Paragraph 39.b is overdue or is otherwise not in accordance with the requirements set forth in Paragraph 39.b, as follows:

<u>Stipulated penalty</u>	<u>Duration of compliance failure</u>
\$1,000	1st through 14th Day
\$5,000	15th through 30th Day
\$10,000	31st Day and beyond

d. Semi-Annual Reporting. The Porsche Defendants shall pay stipulated penalties per each Day for each Day on which a semi-annual report that includes the information required by Paragraph 39.a is overdue or is otherwise not in accordance with the requirements set forth in Paragraph 39.a, as follows:

<u>Stipulated penalty</u>	<u>Duration of compliance failure</u>
\$2,000	1st through 14th Day
\$10,000	15th through 30th Day
\$50,000	31st Day and beyond

61. Reporting of Violations and Certification Requirements

a. Reporting of Violations. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements of Paragraph 49 (Reporting of Violations):

<u>Stipulated penalty</u>	<u>Duration of compliance failure</u>
\$2,000	1st through 14th Day
\$5,000	15th through 30th Day
\$10,000	31st Day and beyond



1 Defendants' failure to pay any stipulated penalties.

2       64. Stipulated Penalty Demands and Payment. The United States will issue any  
3 demand for stipulated penalties required by this Consent Decree. The VW Defendants or the  
4 Porsche Defendants, as appropriate, shall pay stipulated penalties to the United States within 30  
5 Days after a written demand by the United States, unless such Defendants invoke the dispute  
6 resolution procedures under Section XI (Dispute Resolution) within the 30-Day period.  
7

8       65. The United States may, in the unreviewable exercise of its discretion, reduce or  
9 waive stipulated penalties otherwise due it under this Consent Decree.

10       66. Stipulated penalties shall continue to accrue as provided in Paragraph 62 during  
11 any Dispute Resolution, but need not be paid until the following:  
12

13               a. If the dispute is resolved by agreement of the Parties or by a  
14 decision of EPA that is not appealed to the Court, the appropriate Defendants shall  
15 pay accrued stipulated penalties determined to be owing, together with interest, as  
16 provided in Paragraph 63, to the United States within 30 Days of the Effective  
17 Date of the agreement or the receipt of EPA's decision or order.  
18

19               b. If the dispute is appealed to the Court and the United States  
20 prevails in whole or in part, the appropriate Defendants shall pay all accrued  
21 penalties determined by the Court to be owing, together with interest as provided  
22 in Paragraph 63, within 60 Days after receiving the Court's decision or order,  
23 except as provided in subparagraph c, below.  
24

25               c. If any Party appeals the District Court's decision, the appropriate  
26 Defendants shall pay all accrued penalties determined to be owing, together with  
27 interest as provided in Paragraph 63, within 15 Days of receiving the final  
28

1           appellate court decision.

2           67.    The VW Defendants or the Porsche Defendants, as appropriate, shall pay  
3 stipulated penalties owing to the United States in the manner set forth and with the confirmation  
4 notices required by Paragraphs 10 to 11, except that the transmittal letter shall state that the  
5 payment is for stipulated penalties and shall state for which violation(s) the penalties are being  
6 paid.  
7

8           68.    If the VW Defendants or the Porsche Defendants, as appropriate, fail to pay  
9 stipulated penalties according to the terms of this Consent Decree, such Defendants shall be  
10 liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date  
11 payment became due. Nothing in this Paragraph shall be construed to limit the United States  
12 from seeking any remedy otherwise provided by law for Defendants' failure to pay any  
13 stipulated penalties.  
14

15           69.    The payment of stipulated penalties and interest, if any, shall not alter in any way  
16 Defendants' obligation to complete the performance of the requirements of this Consent Decree.  
17

18           70.    Non-Exclusivity of Remedy. Stipulated penalties are not the United States'  
19 exclusive remedy for violations of this Consent Decree, including violations of the Consent  
20 Decree that are also violations of law. Subject to the provisions in Section XIII (Effect of  
21 Settlement/Reservation of Rights), the United States reserves all legal and equitable remedies  
22 available to enforce the provisions of this Consent Decree. In addition to the remedies  
23 specifically reserved and those specifically agreed to elsewhere in this Consent Decree, the  
24 United States expressly reserves the right to seek any other relief it deems appropriate for any  
25 Defendant's violation of this Consent Decree, including but not limited to an action against such  
26 Defendant for statutory penalties where applicable, additional injunctive relief, mitigation or  
27  
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1 offset measures, contempt, and/or criminal sanctions. However, the amount of any statutory  
2 penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to  
3 the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree for the  
4 same violation.

5  
6 **X. FORCE MAJEURE**

7 71. “Force majeure,” for purposes of this Consent Decree, is defined as any event  
8 arising from causes beyond the control of Defendants, of any entity controlled by Defendants, or  
9 of Defendants’ contractors, that delays or prevents the performance of any obligation under this  
10 Consent Decree despite Defendants’ best efforts to fulfill the obligation. The requirement that  
11 Defendants exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate  
12 any potential force majeure event and best efforts to address the effects of any potential force  
13 majeure event (a) as it is occurring, and (b) following the potential force majeure, such that the  
14 delay and any adverse effects of the delay are minimized. “Force majeure” does not include  
15 Defendants’ financial inability to perform any obligation under this Consent Decree.  
16

17  
18 72. If any event occurs or has occurred that may delay the performance of any  
19 obligation under this Consent Decree, for which Defendants intend or may intend to assert a  
20 claim of force majeure, whether or not caused by a force majeure event, Defendants shall  
21 provide notice by email to the United States, within 7 Days of when Defendants first knew that  
22 the event might cause a delay. Within 14 Days thereafter, Defendants shall provide in writing to  
23 the United States an explanation and description of the reasons for the delay; the anticipated  
24 duration of the delay; all actions taken or to be taken to prevent or minimize the delay or the  
25 effect of the delay; a schedule for implementation of any such measures; Defendants’ rationale  
26 for attributing such delay to a force majeure event if it intends to assert such a claim; and a  
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1 statement as to whether, in the opinion of Defendants, such event may cause or contribute to an  
2 endangerment to public health, welfare, or the environment. Defendants shall include with any  
3 notice all available documentation supporting the claim that the delay was attributable to a force  
4 majeure event. Failure to comply with the above requirements shall preclude Defendants from  
5 asserting any claim of force majeure for that event for the period of time of such failure to  
6 comply, and for any additional delay caused by such failure. The VW Defendants shall be  
7 deemed to know of any circumstance of which the VW Defendants or the Porsche Defendants,  
8 any entity controlled by the VW Defendants or the Porsche Defendants, or their respective  
9 contractors knew or should have known. The Porsche Defendants shall be deemed to know of  
10 any circumstance of which the Porsche Defendants, any entity controlled by the Porsche  
11 Defendants, or the Porsche Defendants' contractors knew or should have known.  
12  
13

14         73. If the United States agrees that the delay or anticipated delay is attributable to a  
15 force majeure event, the time for performance of the obligations under this Consent Decree that  
16 are affected by the force majeure event will be extended by the United States for such time as is  
17 necessary to complete those obligations. An extension of the time for performance of the  
18 obligations affected by the force majeure event shall not, of itself, extend the time for  
19 performance of any other obligation. The United States will notify Defendants in writing of the  
20 length of the extension, if any, for performance of the obligations affected by the force majeure  
21 event.  
22

23  
24         74. If the United States does not agree that the delay or anticipated delay has been or  
25 will be caused by a force majeure event, the United States will notify Defendants in writing of its  
26 decision.  
27

28         75. If Defendants elect to invoke the dispute resolution procedures set forth in Section



1 XI (Dispute Resolution), they shall do so no later than 15 Days after receipt of the United States'  
2 notice. In any such proceeding, Defendants shall have the burden of demonstrating by a  
3 preponderance of the evidence that the delay or anticipated delay has been or will be caused by a  
4 force majeure event, that the duration of the delay or the extension sought was or will be  
5 warranted under the circumstances, that best efforts were exercised to avoid and mitigate the  
6 effects of the delay, and that Defendants complied with the requirements of Paragraphs 71 and  
7 72. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation by  
8 Defendants of the affected obligation of this Consent Decree identified to the United States and  
9 the Court.  
10

11 **XI. DISPUTE RESOLUTION**

12 76. Unless otherwise expressly provided for in this Consent Decree, the dispute  
13 resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising  
14 under or with respect to this Consent Decree. Failure by the VW Defendants or the Porsche  
15 Defendants to seek resolution of a dispute under this Section shall preclude such Defendants  
16 from raising any such issue as a defense to an action by the United States to enforce any  
17 obligation of Defendants arising under this Decree.  
18

19 77. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under  
20 this Consent Decree shall first be the subject of informal negotiations. The dispute shall be  
21 considered to have arisen when Defendants send the United States by mail a written Notice of  
22 Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal  
23 negotiations shall not exceed 30 Days after the date the dispute arises, unless that period is  
24 modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations,  
25 then the position advanced by the United States shall be considered binding unless, within 30  
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1 Days after the conclusion of the informal negotiation period, Defendants invoke formal dispute  
2 resolution procedures as set forth below.

3 78. Formal Dispute Resolution. Defendants shall invoke formal dispute resolution  
4 procedures, within the time period provided in Paragraph 77, by serving on the United States a  
5 written Statement of Position regarding the matter in dispute. The Statement of Position shall  
6 include, but need not be limited to, any factual data, analysis, or opinion supporting Defendants'  
7 position and any supporting documentation relied upon by Defendants.  
8

9 79. The United States will serve its Statement of Position within 45 Days after receipt  
10 of Defendants' Statement of Position. The United States' Statement of Position will include, but  
11 need not be limited to, any factual data, analysis, or opinion supporting that position and any  
12 supporting documentation relied upon by the United States. The United States' Statement of  
13 Position shall be binding on Defendants, unless Defendants file a motion for judicial review of  
14 the dispute in accordance with Paragraph 80.  
15

16 80. Defendants may seek judicial review of the dispute by filing with the Court and  
17 serving on the United States, in accordance with Section XV (Notices), a motion requesting  
18 judicial resolution of the dispute. The motion must be filed within 10 Days after receipt of the  
19 United States' Statement of Position pursuant to the preceding Paragraph. The motion shall  
20 contain a written statement of Defendants' position on the matter in dispute, including any  
21 supporting factual data, analysis, opinion, or documentation, and shall set forth the relief  
22 requested and any schedule within which the dispute must be resolved for orderly  
23 implementation of the Consent Decree.  
24

25 81. The United States will respond to Defendants' motion within the time period  
26 allowed by the Local Rules of this Court. Defendants may file a reply memorandum, to the  
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1 extent permitted by the Local Rules.

2 82. Standard of Review for Judicial Disputes

3 a. Disputes Concerning Matters Accorded Record Review. Except as  
4 otherwise provided in this Consent Decree, in EPA's review of the plans  
5 submitted under Paragraph 15 and in any disputes that are accorded review on the  
6 administrative record under applicable principles of administrative law,  
7 Defendants shall have the burden of demonstrating, based on the administrative  
8 record, that the position of the United States is arbitrary and capricious or  
9 otherwise not in accordance with law. Prior to the filing of any motion, the Parties  
10 may submit additional Materials to be part of the administrative record pursuant to  
11 applicable principles of administrative law.  
12

13  
14 b. Other Disputes. Except as otherwise provided in this Consent  
15 Decree, in any other dispute brought pursuant to Paragraph 80, Defendants shall  
16 bear the burden of demonstrating by a preponderance of the evidence that their  
17 actions were in compliance with this Consent Decree.  
18

19 83. In any disputes brought under this Section, it is hereby expressly acknowledged  
20 and agreed that this Consent Decree was jointly drafted in good faith by the United States and  
21 Defendants. Accordingly, the Parties hereby agree that any and all rules of construction to the  
22 effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute  
23 concerning the terms, meaning, or interpretation of this Consent Decree.  
24

25 84. The invocation of dispute resolution procedures under this Section shall not, by  
26 itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent  
27 Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with  
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1 respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but  
2 payment shall be stayed pending resolution of the dispute as provided in Paragraph 66. If  
3 Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as  
4 provided in Section IX (Stipulated Penalties).

5 **XII. INFORMATION COLLECTION AND RETENTION**

6 85. The United States and its representatives, including attorneys, contractors, and  
7 consultants, shall have the right of entry, upon presentation of credentials, at all reasonable times  
8 into any of Defendants' offices, plants, or facilities:  
9

- 10 a. to monitor the progress of activities required under this Consent  
11 Decree;  
12 b. to verify any data or information submitted to the United States in  
13 accordance with the terms of this Consent Decree;  
14 c. to inspect records related to this Consent Decree;  
15 d. to conduct testing related to this Consent Decree;  
16 e. to obtain documentary evidence, including photographs and similar  
17 data, related to this Consent Decree;  
18 f. to assess Defendants' compliance with this Consent Decree; and  
19 g. for other purposes as set forth in 42 U.S.C. § 7542(b).

20 86. Until three years after the termination of this Consent Decree, Defendants shall  
21 retain, and shall instruct their contractors, agents, and auditors to preserve all non-identical  
22 copies of all documents, records, reports, or other information (including documents, records, or  
23 other information in electronic form) (hereinafter referred to as "Records") in their or their  
24 contractors', agents', or auditors' possession or control, or that come into their or their  
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1 contractors', agents', or auditors' possession or control, relating to Defendants' performance of  
2 their obligations under this Consent Decree. This information-retention requirement shall apply  
3 regardless of any contrary corporate or institutional policies or procedures. At any time during  
4 this information-retention period, upon request by the United States, Defendants shall provide  
5 copies of any Records required to be maintained under this Paragraph, notwithstanding any  
6 limitation or requirement imposed by foreign laws. Nothing in this Paragraph shall apply to any  
7 documents in the possession, custody, or control of any outside legal counsel retained by  
8 Defendants in connection with this Consent Decree or of any contractors or agents retained by  
9 such outside legal counsel solely to assist in the legal representation of Defendants. Defendants  
10 may assert that certain Records are privileged or protected as provided under federal law. If  
11 Defendants assert such a privilege or protection, they shall provide the following: (a) the title of  
12 the Record; (b) the date of the Record; (c) the name and title of each author of the Record; (d) the  
13 name and title of each addressee and recipient; (e) a description of the subject of the Record; and  
14 (f) the privilege or protection asserted by Defendants. However, Defendants may make no claim  
15 of privilege or protection regarding the portion of any Record that Defendants are required to  
16 create or generate pursuant to this Consent Decree.  
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20 87. At the conclusion of the information-retention period provided in the preceding  
21 Paragraph, the VW Defendants and the Porsche Defendants shall notify the United States at least  
22 90 Days prior to the destruction of any Records subject to the requirements of the preceding  
23 Paragraph and, upon request by the United States, such Defendants shall deliver any such  
24 Records to the Department of Justice. Defendants may assert that certain Records are privileged  
25 or protected as provided under federal law. If Defendants assert such a privilege or protection,  
26 they shall provide the following: (a) the title of the Record; (b) the date of the Record; (c) the  
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1 name and title of each author of the Record; (d) the name and title of each addressee and  
2 recipient; (e) a description of the subject of the Record; and (f) the privilege or protection  
3 asserted by Defendants. However, Defendants may make no claim of privilege or protection  
4 regarding the portion of any Record that Defendants are required to create or generate pursuant  
5 to this Consent Decree.

6  
7 88. Defendants may also assert that information required to be provided under this  
8 Section is protected as CBI as defined in Paragraph 48. As to any information that Defendants  
9 seek to protect as CBI, Defendants shall follow the procedures set forth in 40 C.F.R. Part 2.

10 89. This Consent Decree in no way limits or affects any right of entry and inspection,  
11 or any right to obtain information, held by the United States pursuant to applicable federal laws,  
12 regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to  
13 maintain documents, records, or other information imposed by applicable federal or state laws,  
14 regulations, or permits.  
15

16 **XIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

17  
18 90. This Third Partial Consent Decree shall resolve and settle the United States' Clean  
19 Air Act civil claims related to: (1) any conduct described in the Complaint; (2) any conduct  
20 related to the emissions, or compliance with U.S. emissions standards, of the Subject Vehicles;  
21 and (3) any conduct related to the Subject Vehicles and disclosed by or on behalf of the  
22 Defendants to, or otherwise known to, the Department of Justice or EPA as of the date of this  
23 Agreement for the following relief:  
24

- 25 a. injunctive relief that is intended to enjoin, prevent, and deter future  
26 violations of the Act of the types alleged in the Complaint; and  
27 b. the assessment of civil penalties against Defendants.  
28

1           91. The United States reserves, and this Third Partial Consent Decree is without  
2 prejudice to, all claims, rights, and remedies against Defendants with respect to all matters not  
3 expressly resolved in Paragraph 90. Notwithstanding any other provision of this Decree, the  
4 United States reserves all claims, rights, and remedies against Defendants with respect to:

5                           a. All rights reserved under the First and Second Partial Consent  
6 Decrees, except as provided in Paragraph 90 of this Decree;

7                           b. All rights reserved by Paragraph 70 of this Consent Decree;

8                           c. Any criminal liability;

9                           d. Any claim(s) of the United States or any agency of the United  
10 States, other than EPA; and  
11

12                           e. United States of America versus Volkswagen Aktiengesellschaft,  
13 File reference: 5 O 2269/16 (784), Regional Court Braunschweig, Germany.  
14

15           92. This Consent Decree shall not be construed to limit the rights of the United States  
16 to obtain penalties or injunctive relief under the Act or implementing regulations, or under other  
17 federal or state laws, regulations, or permit conditions, except as specifically provided in  
18 Paragraph 90. The United States further reserves all legal and equitable remedies to address any  
19 imminent and substantial endangerment to the public health or welfare or the environment  
20 arising at any of Defendants' facilities, or posed by Defendants' 2.0 or 3.0 Liter Subject  
21 Vehicles, whether related to the violations addressed in this Consent Decree or otherwise.  
22

23           93. In any subsequent administrative or judicial proceeding initiated by the United  
24 States for injunctive relief, civil penalties, or other appropriate relief relating to Defendants'  
25 violations, Defendants shall not assert, and may not maintain, any defense or claim based upon  
26 the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion,  
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1 claim-splitting, or other defenses based upon any contention that the claims raised by the United  
2 States in the subsequent proceeding were or should have been brought in the instant case, except  
3 with respect to the claims that have been specifically resolved pursuant to Paragraph 90.

4 94. By entering into this Consent Decree, the United States is not enforcing the laws of  
5 other countries, including the emissions laws or regulations of any jurisdiction outside the United  
6 States. Nothing in this Consent Decree is intended to apply to, or affect, Defendants' obligations  
7 under the laws or regulations of any jurisdiction outside the United States. At the same time, the  
8 laws and regulations of other countries shall not affect the Defendants' obligations under this  
9 Consent Decree.  
10

11 95. This Consent Decree is not a permit, or a modification of any permit, under any  
12 federal, state, or local laws or regulations. Defendants are responsible for achieving and  
13 maintaining complete compliance with all applicable federal, state, and local laws, regulations,  
14 and permits; and Defendants' compliance with this Consent Decree shall be no defense to any  
15 action commenced pursuant to any such laws, regulations, or permits, except as set forth herein.  
16 The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in  
17 any manner that Defendants' compliance with any aspect of this Consent Decree will result in  
18 compliance with provisions of the Act, or with any other provisions of United States, state, or  
19 local laws, regulations, or permits.  
20

21 96. This Consent Decree does not limit or affect the rights of Defendants or of the  
22 United States against any third parties, not party to this Consent Decree, nor does it limit the  
23 rights of third parties, not party to this Consent Decree, against Defendants, except as otherwise  
24 provided by law.  
25

26 97. This Consent Decree shall not be construed to create rights in, or grant any cause  
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1 of action to, any third party not party to this Consent Decree.

2 **XIV. COSTS**

3 98. The Parties shall bear their own costs of this Consent Decree, including attorneys'  
4 fees, except that the United States shall be entitled to collect the costs and reasonable attorneys'  
5 fees incurred in any action necessary to collect any portion of the civil penalty or any stipulated  
6 penalties due under this Consent Decree but not paid by the VW Defendants or the Porsche  
7 Defendants, as appropriate.  
8

9 **XV. NOTICES**

10 99. Except as specified elsewhere in this Decree, whenever any Materials are required  
11 to be submitted pursuant to this Consent Decree, or whenever any communication is required in  
12 any action or proceeding related to or bearing upon this Consent Decree or the rights or  
13 obligations thereunder, they shall be submitted with a cover letter or otherwise be made in  
14 writing (except that if any attachment is voluminous, it shall be provided on a disk, hard drive, or  
15 other equivalent successor technology), and shall be addressed as follows:  
16  
17

18 As to the United States: DOJ at the email or mail addresses below,  
19 with a preference for email unless otherwise  
20 specified  
21 and  
22 EPA at the email and mail addresses below

23 As to DOJ by mail: EES Case Management Unit  
24 Environment and Natural Resources  
25 Division  
26 U.S. Department of Justice  
27 P.O. Box 7611  
28 Washington, D.C. 20044-7611  
Re: DJ # 90-5-2-1-11386

As to DOJ by overnight mail: Chief  
Environmental Enforcement Section  
Environment and Natural Resources

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Division  
U.S. Department of Justice  
601 D St. NW  
Washington, D.C. 20004

As to DOJ by email:

eescdcopy.enrd@usdoj.gov  
Re: DJ # 90-5-2-1-11386

As to EPA:

By mail and email to:  
Director, Air Enforcement Division  
1200 Pennsylvania Avenue NW  
William J Clinton South Building  
MC 2242A  
Washington, DC 20460  
VW\_settlement@epa.gov

As to CBP by mail:

AnnMarie Highsmith  
Deputy Chief Counsel  
Office of Chief Counsel  
U.S. Customs and Border Protection  
1300 Pennsylvania Avenue, NW  
Suite 4.4B  
Washington, DC 20229

As to CBP by email:

AnnMarie Highsmith  
Deputy Chief Counsel  
annmarie.highsmith@cbp.dhs.gov

As to Volkswagen AG by mail:

Volkswagen AG  
Berliner Ring 2  
38440 Wolfsburg, Germany  
Attention: Company Secretary

With copies to each of the following:

Volkswagen AG  
Berliner Ring 2  
38440 Wolfsburg, Germany  
Attention: Group General Counsel

Volkswagen Group of  
America, Inc.  
2200 Ferdinand Porsche Dr.  
Herndon, VA 20171  
Attention: U.S. General Counsel

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As to Audi AG by mail:

Audi AG  
Auto-Union-Straße 1  
85045 Ingolstadt, Germany  
Attention: Company Secretary

With copies to each of the following:

Volkswagen AG  
Berliner Ring 2  
38440 Wolfsburg, Germany  
Attention: Group General Counsel

Volkswagen Group of  
America, Inc.  
2200 Ferdinand Porsche Dr.  
Herndon, VA 20171  
Attention: U.S. General Counsel

As to Volkswagen Group of  
America, Inc. by mail:

Volkswagen Group of  
America, Inc.  
2200 Ferdinand Porsche Dr.  
Herndon, VA 20171  
Attention: Company Secretary

With copies to each of the following:

Volkswagen Group of  
America, Inc.  
2200 Ferdinand Porsche Dr.  
Herndon, VA 20171  
Attention: President

Volkswagen Group of  
America, Inc.  
2200 Ferdinand Porsche Dr.  
Herndon, VA 20171  
Attention: U.S. General Counsel

As to Volkswagen Group of America  
Chattanooga Operations, LLC by mail:

Volkswagen Group of America  
Chattanooga Operations, LLC  
8001 Volkswagen Dr.  
Chattanooga, TN 37416  
Attention: Company Secretary

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With copies to each of the following:

Volkswagen Group of  
America, Inc.  
2200 Ferdinand Porsche Dr.  
Herndon, VA 20171  
Attention: President

Volkswagen Group of  
America, Inc.  
2200 Ferdinand Porsche Dr.  
Herndon, VA 20171  
Attention: U.S. General Counsel

As to Dr. Ing. h.c. F. Porsche AG by mail: Dr. Ing. h.c. F. Porsche Aktiengesellschaft  
Porscheplatz 1, D-70435 Stuttgart  
Attention:  
GR/ Rechtsabteilung/ General Counsel

As to Porsche Cars North America, Inc.: Porsche Cars North America, Inc.  
1 Porsche Dr.  
Atlanta, GA 30354  
Attention: Secretary  
With copy by email to [offsecy@porsche.us](mailto:offsecy@porsche.us)

As to one or more of the  
Defendants by email:

Robert J. Giuffra, Jr.  
Sharon L. Nelles  
Granta Nakayama  
Cari Dawson

[giuffrar@sullcrom.com](mailto:giuffrar@sullcrom.com)  
[nelless@sullcrom.com](mailto:nelless@sullcrom.com)  
[gnakayama@kslaw.com](mailto:gnakayama@kslaw.com)  
[cari.dawson@alston.com](mailto:cari.dawson@alston.com)

As to one or more of the  
Defendants by mail:

Robert J. Giuffra, Jr.  
Sharon L. Nelles  
Sullivan & Cromwell LLP  
125 Broad Street  
New York, New York 10004

Granta Nakayama  
King & Spalding LLP  
1700 Pennsylvania Ave., N.W., Suite 200  
Washington, DC 20006

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Cari Dawson  
Alston & Bird LLP  
One Atlantic Center  
1201 West Peachtree Street  
Atlanta, Georgia 30309-3424

100. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

101. Communications submitted pursuant to this Section shall be deemed submitted upon (1) mailing or emailing as required and where Defendants have a choice, or (2) where both email and mail are required, when both methods have been accomplished, except as provided elsewhere in this Consent Decree or by mutual agreement of the Parties in writing.

102. The Parties anticipate that a non-public secure web-based electronic portal may be developed in the future for submission of Materials. The Parties may agree in the future to use such a portal, or any other means, for submission of Materials. Any such agreement shall be approved as a non-material modification to the Decree in accordance with Paragraphs 105 to 106.

**XVI. EFFECTIVE DATE**

103. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court’s docket.

**XVII. RETENTION OF JURISDICTION**

104. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections XI (Dispute Resolution) and XVIII (Modification),

1 or effectuating or enforcing compliance with the terms of this Decree.

2 **XVIII. MODIFICATION**

3 105. Except as otherwise provided herein, the terms of this Consent Decree may be  
4 modified only by a subsequent written agreement signed by all the Parties. Where the  
5 modification constitutes a material change to this Decree, it shall be effective only upon approval  
6 by the Court.

7  
8 106. The United States will file any non-material modifications with the Court. Once  
9 the non-material modification has been filed, Defendants shall post the filed version (with ECF  
10 stamp) on the website required by Paragraph 51.

11 107. Any disputes concerning modification of this Decree shall be resolved pursuant to  
12 Section XI (Dispute Resolution), provided, however, that instead of the burden of proof provided  
13 by Paragraph 82, the Party seeking the modification bears the burden of demonstrating that it is  
14 entitled to the requested modification in accordance with Fed. R. Civ. P. 60(b).

15  
16 **XIX. TERMINATION**

17 108. After Defendants have paid the civil penalty required in Section IV (Civil Penalty),  
18 and the VW Defendants have implemented the requirements of Section V (Injunctive Relief for  
19 the VW Defendants) and Section VIII (Reporting and Certification Requirements), and have paid  
20 any accrued stipulated penalties as required by this Consent Decree, but in any event no later  
21 than four years after the Effective Date, the VW Defendants may serve upon the United States a  
22 Request for Termination. The Request for Termination will state that the VW Defendants have  
23 satisfied those requirements and be submitted with all necessary supporting documentation.

24  
25  
26 109. After the Defendants have paid the civil penalty required in Section IV (Civil  
27 Penalty), and the Porsche Defendants have implemented the requirements of Section VI  
28

1 (Injunctive Relief for the Porsche Defendants) and Section VIII (Reporting and Certification  
2 Requirements), and have paid any accrued stipulated penalties as required by this Consent  
3 Decree, but in any event no later than four years after the Effective Date, the Porsche Defendants  
4 may serve upon the United States a Request for Termination. The Request for Termination will  
5 state that the Porsche Defendants have satisfied those requirements and be submitted with all  
6 necessary supporting documentation.  
7

8 110. Following receipt by the United States of the VW Defendants' or the Porsche  
9 Defendants' Request for Termination, the Parties shall confer informally concerning the Request  
10 and any disagreement that the Parties may have as to whether such Defendants have  
11 satisfactorily complied with the requirements for termination of this Consent Decree. If the  
12 United States agrees that the Decree may be terminated, the United States will file a motion to  
13 terminate the Decree.  
14

15 111. If the United States does not agree that the Decree may be terminated, such  
16 Defendants may invoke Dispute Resolution under Section XI. However, such Defendants shall  
17 not seek Dispute Resolution of any dispute regarding termination until 90 Days after service of  
18 their Request for Termination.  
19

20 **XX. PUBLIC PARTICIPATION**

21 112. This Consent Decree shall be lodged with the Court for a period of not less than 30  
22 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States  
23 reserves the right to withdraw or withhold its consent if the comments regarding the Consent  
24 Decree disclose facts or considerations indicating that the Consent Decree is inappropriate,  
25 improper, or inadequate. Defendants consent to entry of this Consent Decree without further  
26 notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to  
27  
28

1 challenge any provision of the Decree, unless the United States has notified Defendants in  
2 writing that it no longer supports entry of the Decree.

3 **XXI. SIGNATORIES/SERVICE**

4 113. Each undersigned representative of Defendants, and the Assistant Attorney  
5 General for the Environment and Natural Resources Division of the DOJ certifies that he or she  
6 is fully authorized to enter into the terms and conditions of this Consent Decree and to execute  
7 and legally bind the Party he or she represents to this document.  
8

9 114. This Consent Decree may be signed in counterparts, and its validity shall not be  
10 challenged on that basis. For purposes of this Consent Decree, a signature page that is  
11 transmitted electronically (*e.g.*, by facsimile or e-mailed “PDF”) shall have the same effect as an  
12 original.  
13

14 **XXII. INTEGRATION**

15 115. This Consent Decree constitutes the final, complete, and exclusive agreement and  
16 understanding among the Parties with respect to the settlement embodied in the Decree and  
17 supersedes all prior agreements and understandings, whether oral or written, concerning the  
18 settlement embodied herein, with the acknowledgment that this settlement is one of several  
19 coordinated resolutions of various federal civil and criminal claims related to the conduct alleged  
20 in the Complaint, to be set forth in other agreements that may reference but are not part of this  
21 agreement. Other than deliverables that are subsequently submitted and approved pursuant to  
22 this Decree, the Parties acknowledge that there are no documents, representations, inducements,  
23 agreements, understandings, or promises that constitute any part of this Decree or the settlement  
24 it represents other than those expressly contained in this Consent Decree.  
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**XXIII. FINAL JUDGMENT**

116. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

Dated and entered this \_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *In re:*  
2 *Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation,*

3 FOR THE UNITED STATES OF AMERICA:

4 1/11/17  
5 Date

[Redacted signature]

6 JOHN C. CRUDEN  
7 Assistant Attorney General  
8 Environment and Natural Resources Division  
9 U.S. Department of Justice

[Redacted signature]

10 JOSHUA H. VAN EATON  
11 BETHANY ENGEL  
12 GABRIEL ALLEN  
13 LESLIE ALLEN  
14 PATRICK BRYAN  
15 NIGEL COONEY  
16 KAREN DWORKIN  
17 DANICA GLASER  
18 RUBEN GOMEZ  
19 ANNA GRACE  
20 SHEILA McANANEY  
21 ROBERT MULLANEY  
22 RICHIE KHANH NGUYEN  
23 ERIKA WELLS  
24 Environmental Enforcement Section  
25 Environment and Natural Resources Division  
26 United States Department of Justice  
27 P.O. Box 7611  
28 Washington, D.C. 20044-7611  
Telephone: (202) 514-5474  
Facsimile: (202) 514-0097  
josh.van.eaton@usdoj.gov  
bethany.engel@usdoj.gov

*Counsel for the United States*

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FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

1/10/17  
Date

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CYNTHIA GILES  
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Office of Enforcement and Compliance Assurance  
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FOR VOLKSWAGEN AG:

Date: Jan. 11, 2017



FRANCISCO JAVIER GARCIA SANZ  
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Date: Jan. 11, 2017



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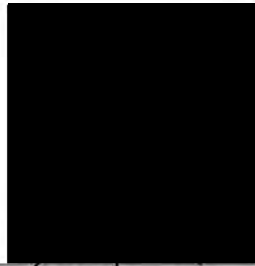
FOR AUDI AG:

Date: *January 11, 2017*



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Date: *January 11, 2017*



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FOR VOLKSWAGEN GROUP OF AMERICA, INC.:

Date: Jan. 11, 2017

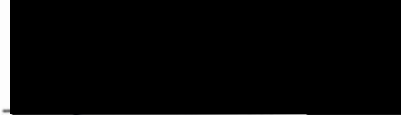


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FOR VOLKSWAGEN GROUP OF AMERICA CHATTANOOGA OPERATIONS, LLC:

Date: Jan. 11, 2017



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2 INC., and VOLKSWAGEN GROUP OF AMERICA CHATTANOOGA OPERATIONS, LLC  
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5 January 11, 2017

6 Date



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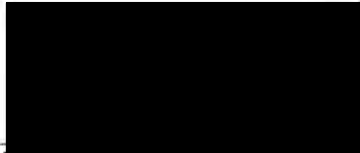


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FOR DR. ING. h.c. F. PORSCHE AG:

Date:

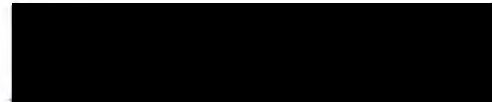
1/11/2017



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FOR PORSCHE CARS NORTH AMERICA, INC.:

Date: 1/10/17

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1 COUNSEL FOR DR. ING. H.C. F. PORSCHE AG and PORSCHE CARS NORTH AMERICA,  
2 INC.:

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4 Date:

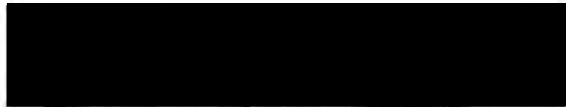
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