UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: VOLKSWAGEN "CLEAN DIESEL" MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION
_____/

This Order Relates To:
United States of America v. Volkswagen AG et al., Case No. 16-cv-295 (N.D. Cal.)
_____/

MDL No. 2672 CRB (JSC)

ORDER GRANTING THE UNITED STATES' MOTION TO ENTER PROPOSED AMENDED CONSENT DECREE

In September 2015, Volkswagen publicly admitted it had secretly installed a defeat device—software designed to cheat emissions tests and deceive federal and state regulators—in certain Volkswagen- and Audi-branded turbocharged direct injection ("TDI") diesel engine vehicles. Litigation quickly followed, and hundreds of actions were soon centralized in the above-captioned multidistrict litigation ("MDL"). One of these lawsuits is an action brought by the United States Department of Justice ("United States") on behalf of the U.S. Environmental Protection Agency ("EPA") for violations of the Clean Air Act, 42 U.S.C. § 7401 et seq.

After five months of intensive negotiations under the supervision of a Court-appointed Settlement Master, the United States; the People of the State of California, by and through the California Air Resources Board ("CARB") and Kamala D. Harris, Attorney General of the State of California (collectively, "California"); Volkswagen AG ("VW AG"); Audi AG; Volkswagen Group of America, Inc. ("VWGoA"); and Volkswagen Group of America Chattanooga Operations, LLC ("VW Chattanooga") (collectively, "Volkswagen") reached a Partial Consent Decree that resolves claims concerning the 2.0-liter TDI diesel engine vehicles. (*See* Dkt. No. 1605.) Now, just over one year after news of the defeat device became public, the United States moves for the entry of the proposed Amended Partial Consent Decree ("Consent Decree"). (Dkt.

No. 1973.) The Court held a hearing on the matter on October 18, 2016. For the reasons set forth below, the Court **GRANTS** the United States' Motion for Approval and Entry of the Partial Consent Decree.

I. BACKGROUND

A. Factual History

In September 2015, Volkswagen admitted it had secretly manufactured and installed a defeat device in nearly 500,000 2.0-liter TDI Volkswagen- and Audi-branded diesel engine vehicles ("subject vehicles"). The defeat device renders the subject vehicles' emissions controls inoperable unless the vehicles are undergoing emissions testing. It was only by installing the defeat device that Volkswagen was able to obtain Certificates of Conformity from EPA and Executive Orders from the California Air Resources Board ("CARB"); in reality, these vehicles emit nitrous oxides ("NOx") at a factor of up to 40 times the EPA-permitted limit.

B. Procedural History

In January 2016, the United States sued VW AG; VWGoA; VW Chattanooga; Audi AG; Dr. Ing. H.c. F. Porsche AG ("Porsche AG"); and Porsche Cars North America, Inc. ("PCNA") (collectively, "Defendants") for violations of Section 203 of the Clean Air Act, 42 U.S.C. § 7522. (*See* Dkt. No. 1 ¶¶ 102-31, U.S. Action.)[1] Specifically, the United States claims Defendants (1) imported and sold uncertified vehicles in violation of 42 U.S.C. § 7522(a)(1); (2) manufactured, sold, or installed a defeat device in violation of 42 U.S.C. § 7522(a)(3)(B); (3) tampered by rendering inoperative the certified pollution control system in violation of 42 U.S.C. § 7522(a)(3)(A); and (4) failed to report information required by EPA to determine whether Volkswagen acted in compliance with motor vehicle emissions standards in violation of 42 U.S.C. § 7522 (a)(2)(A). (*See id.*) The United States seeks civil penalties and injunctive relief. (*See id.* ¶¶ a-h.)

Soon after the United States filed its Complaint, the United States, the State of California,

[1] Unless otherwise noted, citations in this Order refer to documents filed in the MDL docket, 15-md-2672. Citations to the U.S. Action refer to documents filed in *United States of America v. Volkswagen AG et al.*, Case No. 16-cv-295.

and Volkswagen[2] engaged in intensive settlement negotiations under the guidance of Robert S. Mueller III, the Court-appointed Settlement Master and former Director of the Federal Bureau of Investigation. In April 2016, the parties reached an agreement in principle (*see* Dkt. No. 1439 at 4:25-5:7) and on June 28, 2016, the United States lodged its proposed Partial Consent Decree (*see* Dkt. No. 1605).

In accordance with 28 C.F.R. § 50.7(b), the United States held a 30-day comment period between July 6, 2016 and August 5, 2016. (Dkt. No. 1973 at 6-7; 8 Fed. Reg. 44051 (July 6, 2016).) A total of 1,195 private citizens, state and local government entities, businesses, and institutions and associations submitted comments. (Dkt. No. 1973 at 7; *see* Dkt. No. 1973-3.)

C. Consent Decree Terms

The Consent Decree partially resolves claims asserted by the United States for injunctive relief against Volkswagen concerning the 2.0-liter TDI diesel engine vehicles. (Dkt. No. 1973-1 at 4.) It also partially resolves California's 2.0-liter engine claims for injunctive relief for violations of California environmental and unfair competition laws.[3] (*Id.*) California joins the United States' Motion. (Dkt. No. 1974.) Volkswagen has submitted a statement of consent to and entry of the Consent Decree. (Dkt. No. 1975.)

The Consent Decree requires Volkswagen to remove or modify at least 85% of the subject vehicles registered as of September 17, 2015 across the United States ("National Recall Rate Target" for the "National Recall Rate") and in California ("California Recall Rate Target" for the "California Recall Rate") from the roads by June 30, 2019. (Dkt. No. 1973-1 ¶ 3; App'x A ¶ 6.1, Dkt. No. 1973-1.) To do so, Volkswagen must offer every owner and lessee of a subject vehicle a buyback or lease termination or an approved emissions modification (a "Fix"), if one is approved by EPA and CARB. (Dkt. No. 1973-1 ¶ 3; *see* App'x A-B, *id.*) If Volkswagen fails to meet the Recall Rate, it must pay additional monetary penalties. (App'x A ¶ 6.3, *id.*; *see* App'x D, *id.*)

---

[2] Porsche AG and PCNA are not among the Settling Defendants. The proposed Partial Consent Decree does not resolve any claims against either Porsche AG or PCNA.

[3] The Clean Air Act authorizes CARB as a co-regulator "to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines[.]" 42 U.S.C. § 7543(2)(A).

Specifically, Volkswagen must pay $85 million for each 1% that the National Recall Rate falls short of the National Recall Rate Target and $13.5 million for each 1% that the California Recall Rate falls short of the California Recall Rate Target. (App'x A ¶ 6.3.1-6.3.2, *id.*)

Volkswagen further agrees to make $2 billion of investments over ten years in projects that support the increased use of zero emission vehicles ("ZEV"). (*See* App'x C, *id.*) Such projects include, but are not limited to, the development, construction, and maintenance of ZEV-related infrastructure. (*Id.*) Of the $2 billion, $1.2 billion shall be directed toward national ZEV investments and $800 million shall be used for ZEV investments in California. (App'x C ¶¶ 2.1, 3.1; *id.*)

In addition, Volkswagen shall pay $2.7 billion into an Environmental Mitigation Trust to fund projects to reduce emissions of NOx caused by the subject vehicles. (*See* App'x D, *id.*) Any penalties Volkswagen pays for failing to meet the National and California Recall Rate Targets shall be placed in the Environmental Mitigation Trust as well. (App'x A ¶¶ 6.3.1-6.3.2, *id.*)

II. LEGAL STANDARD

Courts may approve a proposed consent decree when it is "fundamentally fair, adequate and reasonable" and "conform[s] to applicable laws." *United States v. State of Oregon*, 913 F.2d 576, 580 (9th Cir. 1990). Courts consider consent decrees in light of the public policy favoring settlement. *Sierra Club v. McCarthy*, 2015 WL 889142, at *5 (N.D. Cal. Mar. 2, 2015) (citing *United States v. Comunidades Unidas Contra La Contaminacion*, 204 F.3d 275, 280 (1st Cir. 2000)). "This policy is strengthened when a government agency charged with protecting the public interest 'has pulled the laboring oar in constructing the proposed settlement.'" *United States v. Montrose Chem. Corp. of Cal.*, 50 F.3d 741, 746 (9th Cir. 1995) (quoting *United States v. Cannons Eng'g Corp.*, 899 F.2d 79, 84 (1st Cir. 1990)). But when a consent decree affects the public interest, courts have a heightened responsibility to protect those interests so as to safeguard those who did not participate in the negotiations of the decree. *Oregon*, 913 F.2d at 581. That said, the consent decree need not "be 'in the public's *best* interest' if it is otherwise reasonable." *Id.* (emphasis in original) (quoting *S.E.C. v. Randolph*, 736 F.2d 525, 529 (9th Cir. 1984)).

In applying the "fair, adequate and reasonable" standard, courts examine both procedural

and substantive fairness. *See United States v. Coeur d'Alenes Co.*, 767 F.3d 873, 877 (9th Cir. 2014); *Cannons Eng'g Corp.*, 899 F.2d at 86. Procedural fairness requires arms-length settlement negotiations, *In re Tutu Water Wells CERCLA Litigation*, 326 F.3d 201, 207 (3d Cir. 2003), and a "negotiation process [that] was 'fair and full of adversarial vigor,'" *United States v. Google Incorporated*, 2012 WL 5833994, at *2 (N.D. Cal. Nov. 16, 2012) (quoting *United States v. Telluride Co.*, 849 F. Supp. 1400, 1402 (D. Colo. 1994)). "[O]nce the court is satisfied that the decree was the product of good faith, arms-length negotiations, a negotiated decree is presumptively valid and the objecting party has a heavy burden of demonstrating that the decree is unreasonable." *Oregon*, 913 F.2d at 581 (internal quotation marks and citation omitted).

Substantive fairness requires courts to "find that the agreement is based upon, and roughly correlated with, some acceptable measure of comparative fault, apportioning liability among the settling parties according to rational (if necessarily imprecise) estimates of how much harm each potentially responsible party has done." *Arizona v. City of Tucson*, 761 F.3d 1005, 1012 (9th Cir. 2014), *cert. denied sub nom. ABB Inc. v. Ariz. Bd. of Regents*, 136 S. Ct. 30 (2015), *and cert. denied sub nom. Arizona v. Ashton Co. Inc. Contractors & Eng'rs*, 136 S. Ct. 30 (2015). Courts do not ask "whether the settlement is one which the court itself might have fashioned, or considers as ideal[.]" *Cannons Eng'g Corp.*, 899 F.2d at 84. "Rather, the court's approval is nothing more than an amalgam of delicate balancing, gross approximations and rough justice." *Oregon*, 913 F.2d at 581 (internal quotation marks omitted). The consent decree need only "represent[] a reasonable factual and legal determination." (*Id.* (internal quotation marks omitted).)

III. DISCUSSION

A. Procedural Fairness

Courts evaluate procedural fairness by "look[ing] to the negotiation process and attempt[ing] to gauge its candor, openness, and bargaining balance." *Cannons Eng'g Corp.*, 899 F.2d at 86. The Consent Decree is the result of non-collusive, adversarial negotiations and is thus procedurally fair. *See* Dkt. No. 1977 ¶ 4; *Sierra Club*, 2015 WL 889142, at *12 (concluding proposed consent decree was procedurally fair where the consent was the result of "adversarial negotiations conducted over approximately six months"); *United States v. Chevron U.S.A., Inc.*,

380 F. Supp. 2d 1104, 1112 (N.D. Cal. 2005) ("[T]he process of negotiations was non-collusive and therefore procedurally fair." (citing *United States v. Colorado*, 937 F.2d 505, 509 (10th Cir. 1991)).

Over the course of five months, the United States, California, and Volkswagen (collectively, the "Parties") frequently met in Washington, D.C.; El Monte, California; and Ann Arbor, Michigan. (Dkt. No. 1973 at 9.) The Parties also held meetings with the Federal Trade Commission ("FTC") and the Plaintiffs' Steering Committee ("PSC") to discuss issues of mutual concern. (Dkt. No. 1973 at 9-10; *see* Dkt. No. 1977 ¶ 5.) The Settlement Master reports there were at least 40 such meetings and in-person conferences. (Dkt. No. 1977 ¶ 5.)

EPA's and CARB's attorneys and technical experts worked with Volkswagen to identify and address the complex and technical aspects of the Consent Decree. (Dkt. No 1973 at 9.) EPA and CARB also advised as to the engineering challenges of modifying the subject vehicles, as well as the environmental concerns addressed by the Consent Decree's mitigation and ZEV features. (*Id.*) In addition, the Parties consulted outside experts to further apprise the Parties of their negotiating positions. (*Id.*)

That negotiations were conducted under the Settlement Master's supervision suggests an absence of collusion. *See In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (while a neutral mediator's presence "is not on its own dispositive of whether the end product is a fair, adequate, and reasonable settlement agreement" it is nevertheless "a factor weighing in favor of a finding of non-collusiveness"). The number of meetings with the Parties, both alone and with the other MDL participants, further indicates a "negotiation process [that] was fair and full of adversarial vigor." *United States v. Pac. Gas & Elec.*, 776 F. Supp. 2d 1007, 1025 (N.D. Cal. 2011) (internal quotation marks omitted)). The Parties were also sufficiently informed to evaluate their claims and any offers of compromise. Accordingly, the Court concludes the Consent Decree is procedurally fair.

B. Substantive Fairness

A consent decree is substantively fair when the "party . . . bear[s] the cost of the harm for which it is legally responsible." *Cannons Eng'g Corp.*, 899 F.2d at 87. To make this

determination, "the district court [must] be fully informed regarding the costs and benefits of the decree." *Chevron*, 380 F. Supp. 2d at 1113.

Having reviewed the terms of the Consent Decree, the Court finds it is substantively fair. The Clean Air Act has four goals:

> (1) to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population;
> (2) to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution;
> (3) to provide technical and financial assistance to State and local governments in connection with the development and execution of their air pollution prevention and control programs; and
> (4) to encourage and assist the development and operation of regional air pollution prevention and control programs.

42 U.S.C. § 7401(b).

The Consent Decree establishes both consumer and environmental remedies which further the Act's purpose. Consumer remedies remove the subject vehicles from the road in their current state, either through a buyback process or by fixing them. Environmental remedies negate the subject vehicles' excess NOx emissions and require Volkswagen to make significant investments in ZEV use and availability. This is consistent with the Clean Air Act and in the public interest.

1. Emissions Modification Recall

The Consent Decree also requires Volkswagen to offer consumers a free EPA- and CARB-approved Fix as an alternative to a buyback. (*See* App'x B, Dkt. No. 1973-1.) Appendix B of the Consent Decree also establishes the process for Volkswagen to submit a proposed Fix to EPA and CARB for approval; the technical standards each proposed Fix must meet; and the process by which EPA and CARB will approve or disapprove each proposed Fix. (App'x B §§ 3-5, *id.*) Volkswagen is also required to rigorously test each proposed Fix; Appendix B sets forth specific requirements for those testing procedures. (App'x B § 3, *id.*) Moreover, as part of the Fix, Volkswagen will remove all defeat devices in every vehicle which receives a Fix (a "modified vehicle") and place a label that among other things discloses the Fix, the fuel economy rating of the modified vehicle, and the emission control components installed as part of the Fix. (App'x B ¶¶ 3.1.3, 3.1.6.) Volkswagen will also offer consumers an extended emissions warranty that

covers the emission control system and engine long block. (App'x B ¶ 3.9, *id.*)

The Consent Decree sets an aggressive timeline for Volkswagen to submit proposed Fixes. (*See* App'x B ¶ 4.2, Dkt. No. 1973-1.) Volkswagen's first expected submittal deadline is November 11, 2016, less than a month away. (*Id.*) Though challenging, this schedule is necessary to avoid any undue delays in addressing the excess NOx emissions. It also ensures consumers will have a sense as to when they will know whether a Fix is possible. Indeed, a Fix is not guaranteed; the availability of one is contingent on EPA and CARB's approval and satisfaction that it meets the stringent requirements set forth in Appendix B. If one does become available, the Consent Decree requires Volkswagen to offer it to every owner and lessee of the relevant subject vehicles free of charge and notwithstanding the owner's or lessee's participation in a class action settlement.[4] (App'x A ¶¶ 5.1-5.1.2, *id.*) Volkswagen must continue to offer consumers an approved Fix indefinitely. (App'x A ¶ 5.2, *id.*)

Despite the fact that a proposed Fix must undergo stringent test procedures and receive EPA and CARB approval, the Fix still represents a compromise. The United States recognizes there are "engineering limitations faced by all parties – that a fully-compliant 'fix' that brings these vehicles to their certified standard and has no detrimental impacts on vehicle performance is not achievable within a realistic timeframe." (Dkt. No. 1973 at 14.) For that reason, Appendix B does not require any Fix to bring the subject vehicles to the same standard to which they originally certified. (*Id.*) Given the need to expeditiously address excess NOx emissions, the Court is satisfied this is a fair concession. *See Oregon*, 913 F.2d at 581 ("[A] consent decree need not impose all the obligations authorized by law. [ ] Rather, the court's approval is nothing more than an amalgam of delicate balancing, gross approximations and rough justice." (internal quotation marks and citations omitted)). While not a perfect solution, by EPA and CARB estimates, a Fix "will reduce NOx emissions from the vast majority of vehicles by approximately 80 to 90 percent compared to their original condition." (*Id.* at 12-13.) This is certainly preferable to waiting for

[4] While the Consent Decree does not provide compensation for consumers, certain owners and lessees may be eligible for cash in addition to a Fix under the terms of the FTC's proposed Consent Order and the PSC's Consumer and Reseller Dealership Class Action Settlement Agreement ("Class Action Settlement"). (*See* Dkt. Nos. 1607, 1685.)

Volkswagen to develop a Fix that fully brings the subject vehicles to their original certification; during that time, vehicles would continue emitting NOx emissions at unacceptable levels. The proposed solution also "avoids the adverse environmental consequences that would result from scrapping nearly half a million noncompliant cars." (*Id.* at 14.) Moreover, a Fix cannot be viewed in a vacuum; the Consent Decree further requires environmental remediation which will also address excess emissions. Together, this significantly reduces emissions caused by the subject vehicles. This compromise is therefore fair and consistent with both the Consent Decree's ultimate goal of reducing excess NOx emissions and the CAA's purpose of protecting air quality in the interests of public health and welfare. *See* 42 U.S.C. § 7401(b)(1).

There were many comments regarding the difficulty of evaluating the Fix option. (Dkt. No. 1973-12 at 5.) Specifically, commenters expressed concerns regarding the uncertainty of when a Fix may become available and the effects a Fix may have on vehicle performance. (*Id.*) But the schedule set forth in Appendix B ensures Volkswagen will submit a proposed fix in the near future. The Consent Decree also requires Volkswagen to notify consumers if a Fix is approved or disapproved before they must select a buyback or a Fix and to provide a detailed emissions modification disclosure that explains how the Fix will likely impact vehicle performance and emissions control. (*See* App'x B ¶ 5.1.1-5.1.2, Dkt. No. 1973-1.) This allows consumers the opportunity to evaluate their options and choose accordingly. If a consumer decides a Fix is not appropriate, the buyback option remains available. Given that consumers will have the ability evaluate any approved Fix and may elect another remedy if the Fix is unsatisfactory, the Court cannot conclude this remedy is substantively unfair.

2. Buyback Recall and Lease Termination

Because a Fix cannot bring the subject vehicles into full compliance with emissions standards, the Consent Decree requires Volkswagen to also offer every consumer the choice of a buyback or a lease termination. (*See* App'x A, Dkt. No. 1973-1.) Appendix A requires Volkswagen to purchase subject vehicles from owners at no less than "the cost of retail purchase of a comparable replacement vehicle of similar value, condition, and mileage as of September 17, 2015" ("Retail Replacement Value"). (App'x A ¶¶ 2.13, 4.1, *id.*) The Retail Replacement Value

is consistent with the buyback price set forth in the Class Action Settlement. (*See* Dkt. No. 1685 ¶ 4.2.1.) Offering a buyback or lease termination further ensures the subject vehicles will be removed from the roads. Indeed, this mechanism offers an immediate, concrete solution that addresses the subject vehicles. While a Fix is still forthcoming and not guaranteed, Volkswagen must begin offering buybacks and lease terminations within 15 days of the Consent Decree's effective date. (*See* App'x A ¶¶ 4.1, 4.3.)

Approximately 450 commenters expressed dissatisfaction about the compensation for a buyback, arguing compensation should be based on another valuation, such as retail value, private sale value, or purchase price, or should include related costs like sales tax, aftermarket add-ons, and extended warranties. (Dkt. No. 1973-12 at 1.) The issue of compensation, however, is a matter for the Class Action Settlement, which focuses on consumers. In contrast, the Clean Air Act's concern—and thus the Consent Decree's as well—is the protection of air quality as it relates to the public health and welfare. *See* 42 U.S.C. § 7401(b)(1). That said, requiring Volkswagen to purchase the subject vehicles is critical to the success of the implementation of the buyback program. Without an offer of monetary compensation in exchange for the return of their vehicles, consumers would have little incentive to participate in a buyback, thus thwarting attempts to remove the vehicles and reduce the excess emissions. Notably, the exact buyback price is not determined by the Consent Decree; rather, the Class Action Settlement and the FTC Consent Order dictate the exact compensation Volkswagen will pay.

3. Environmental Mitigation Trust

Volkswagen also agrees to create an Environmental Mitigation Trust to fund projects that reduce NOx emissions. (App'x D ¶ 2.0.3, Dkt. No. 1973-1.) The Consent Decree requires Volkswagen to make three payments of $900 million over the course of three years for a total of $2.7 billion. (Dkt. No. 1973-1 ¶ 14.) States, Indian tribes, Puerto Rico, and the District of Columbia may recommend candidates to serve as Trustee to manage the Trust; the United States will then move the Court to appoint a Trustee to manage the Trust. (*Id.* ¶¶ 15(d)-(e).)

Upon the Trust's establishment, those same governmental entities may apply to become beneficiaries of the Trust by submitting a Certification Form. (App'x D ¶ 4.0, Dkt. No. 1973-1;

see App'x D-1; *id.*) There are a number of eligible mitigation projects in which beneficiaries may participate, for instance, projects that to reduce NOx emissions in freight trucks; school, shuttle, or transit buses; ferries and tugs; and airport ground support equipment. (App'x D-2, *id.*) Each beneficiary can request an initial allocation of funds as set forth in Appendix D-1. (*See* App'x D-1, *id.*) The initial allocation is based on the number of subject vehicles registered in each jurisdiction; the minimum funding allocation is $7.5 million for each beneficiary. (Dkt. No. 1973 at 17.) The Trustee will adjust these amounts based on the participation of potential beneficiaries. (*Id.*) Moreover, any monetary penalties Volkswagen pays for failing to achieve the National or California Recall Rate Target will be invested in the Trust. (App'x A ¶ 6.3, Dkt. No. 1973-1.)

According to EPA, "the amount that Settling Defendants are required to initially contribute to the trust fund is sufficient to fund projects to fully mitigate the total, lifetime excess NOx emissions from the 2.0 liter vehicles." (Dkt. No. 1973 at 18.) This "ensures that Settling Defendants appropriately mitigate all past and future excess NOx pollution caused by the 2.0 liter vehicles that do not meet emissions standards." (*Id.*) Accordingly, the Court finds the establishment of the Environmental Mitigation Trust substantively fair. Funding projects to mitigate NOx emissions furthers both the public interest and the Clean Air Act's goals by taking steps to ensure cleaner air.

4. ZEV Investments

In addition to funding the Environmental Mitigation Trust, the Consent Decree requires Volkswagen to invest $2 billion over a ten year period in ZEV technology. (*See* App'x C, Dkt. No. 1973-1.) The $2 billion shall be divided such that $1.2 billion will be directed toward nationwide ZEV investments and $800 million will be put toward California ZEV investments. (App'x C ¶¶ 2.1, 3.1; *id.*) Volkswagen is required to solicit from state, local, and tribal governments and federal agencies suggestions on a national investment plan. (App'x C ¶ 2.3, *id.*) In accordance with Appendix C, Volkswagen can make three types of investments in the national plan: (1) installation of ZEV infrastructure, (2) development of brand-neutral educational or public outreach programs that increase public awareness of ZEVs, or (3) development of programs to increase public exposure and/or access to ZEVs. (App'x C ¶ 2.1, *id.*; *see* App'x C ¶¶ 1.10.1-

1.10.3.) With regard to the California plan, Volkswagen will also invest in the development of a new heavy-duty ZEV fueling infrastructure; a scrap and replace program; and a "Green City" initiative, which involves "the operation of ZEV car sharing services, zero emission transit applications, and zero emission freight transport projects." (App'x C ¶¶ 1.10.1-1.10.4, *id.*)

The Court finds the ZEV investment requirement substantively fair. Whereas the Environmental Mitigation Trust seeks to reduce the harm caused by the subject vehicles, the ZEV investments promotes actual environmentally-friendly vehicles. A commitment of investments in such technology furthers the purpose of the Clean Air Act by promoting the research and development of programs that address air pollution. *See* 42 U.S.C. § 7401(b)(2).

IV. CONCLUSION

Having reviewed the proposed Consent Decree, the Court **GRANTS** the United States' Motion. The Consent Decree is a reasonable settlement that is the result of non-collusive and adversarial negotiations. Moreover, the Consent Decree takes a multifaceted approach to mitigate the harm caused by the 2.0-liter diesel engine vehicle and to reduce future NOx emissions. These actions are reasonable and advance the purposes of the Clean Air Act.

This Order disposes of Docket No. 1973.

IT IS SO ORDERED.

Dated: October 25, 2016

CHARLES R. BREYER
United States District Judge

United States District Court
Northern District of California

JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division

JOSHUA H. VAN EATON (WA-39871)
BETHANY ENGEL (MA-660840)
Trial Attorneys
Environmental Enforcement Section

U.S. Department of Justice
P.O. Box 7611
Washington DC 20044-7611
Telephone: (202) 514-5474
Facsimile: (202) 514-0097
Email: Josh.Van.Eaton@usdoj.gov

Attorneys for Plaintiff United States of America

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: VOLKSWAGEN "CLEAN DIESEL" MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION	Case No: MDL No. 2672 CRB (JSC) **PARTIAL CONSENT DECREE** Hon. Charles R. Breyer

TABLE OF CONTENTS

I. JURISDICTION AND VENUE 6
II. APPLICABILITY 6
III. DEFINITIONS 8
IV. PARTIAL INJUNCTIVE RELIEF 12
V. APPROVAL OF SUBMISSIONS AND EPA/CARB DECISIONS 18
VI. REPORTING AND CERTIFICATION REQUIREMENTS 20
VII. STIPULATED PENALTIES AND OTHER MITIGATION TRUST PAYMENTS 23
VIII. FORCE MAJEURE 30
IX. DISPUTE RESOLUTION 32
X. INFORMATION COLLECTION AND RETENTION 35
XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS 38
XII. COSTS 43
XIII. NOTICES 43
XIV. EFFECTIVE DATE 48
XV. RETENTION OF JURISDICTION 48
XVI. MODIFICATION 48
XVII. TERMINATION 49
XVIII. PUBLIC PARTICIPATION 49
XIX. SIGNATORIES/SERVICE 50
XX. INTEGRATION 50
XXI. FINAL JUDGMENT 51
XXII. APPENDICES 51

WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency, filed a complaint in this action on January 4, 2016, against Volkswagen AG, Volkswagen Group of America, Inc., Volkswagen Group of America Chattanooga Operations, LLC, Audi AG, Dr. Ing. h.c. F. Porsche AG, and Porsche Cars North America, Inc. alleging that Defendants violated Sections 203(a)(1), (2), (3)(A), and (3)(B) of the Clean Air Act, 42 U.S.C. §§ 7522(a)(1), (2), (3)(A), and (3)(B), with regard to approximately 500,000 model year 2009 to 2015 motor vehicles containing 2.0 liter diesel engines (more specifically defined elsewhere as "2.0 Liter Subject Vehicles") and approximately 80,000 model year 2009 to 2016 motor vehicles containing 3.0 liter diesel engines (more specifically defined elsewhere as "3.0 Liter Subject Vehicles"), for a total of approximately 580,000 motor vehicles (collectively, "Subject Vehicles");

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

WHEREAS, the People of the State of California, by and through the California Air Resources Board and Kamala D. Harris, Attorney General of the State of California, filed a complaint on June 28, 2016, against Defendants alleging that Defendants violated Cal. Health & Safety Code §§ 43106, 43107, 43151, 43152, 43153, 43205, 43211, and 43212; Cal. Code Regs.

tit. 13, §§ 1903, 1961, 1961.2, 1965, 1968.2, and 2037, and 40 C.F.R. Sections incorporated by reference in those California regulations; Cal. Bus. & Prof. Code §§ 17200 *et seq.*, 17500 *et seq.*, and 17580.5; Cal. Civ. Code § 3494; and 12 U.S.C. § 5531 *et seq.,* with regard to approximately 71,000 model year 2009 to 2015 motor vehicles containing 2.0 liter diesel engines and approximately 16,000 model year 2009 to 2016 motor vehicles containing 3.0 liter diesel engines, for a total of approximately 87,000 motor vehicles. The California Complaint alleges, in relevant part, that the motor vehicles contain prohibited defeat devices and have resulted in, and continue to result in, increased NOx emissions from each such vehicle significantly in excess of CARB requirements, that these vehicles have resulted in the creation of a public nuisance, and that Defendants engaged in related conduct that violated unfair competition, false advertising, and consumer protection laws;

WHEREAS, the United States and California enter into this Partial Consent Decree with Volkswagen AG, Audi AG, Volkswagen Group of America, Inc., and Volkswagen Group of America Chattanooga Operations, LLC ("Settling Defendants") (collectively, the "Parties") to address the 2.0 Liter Subject Vehicles on the road and the associated environmental consequences resulting from the past and future excess emissions from the 2.0 Liter Subject Vehicles;

WHEREAS, Settling Defendants admit that software in the 2.0 Liter Subject Vehicles enables the vehicles' ECMs to detect when the vehicles are being driven on the road, rather than undergoing Federal Test Procedures, and that this software renders certain emission control systems in the vehicles inoperative when the ECM detects the vehicles are not undergoing Federal Test Procedures, resulting in emissions that exceed EPA-compliant and CARB-compliant levels when the vehicles are driven on the road;

WHEREAS, Settling Defendants admit that this software was not disclosed in the Certificate of Conformity and Executive Order applications for the 2.0 Liter Subject Vehicles, and, as a result, the design specifications of the 2.0 Liter Subject Vehicles, as manufactured, differ materially from the design specifications described in the Certificate of Conformity and Executive Order applications;

WHEREAS, except as expressly provided in this Consent Decree, nothing in this Consent Decree shall constitute an admission of any fact or law by any Party except for the purpose of enforcing the terms or conditions set forth herein;

WHEREAS, the Parties agree that:

1. The 2.0 Liter Subject Vehicles on the road emit NOx at levels above the standards to which they were certified to EPA and CARB pursuant to the Clean Air Act and the California Health and Safety Code, and a prompt remedy to address the noncompliance is needed;

2. At the present time, there are no practical engineering solutions that would, without negative impact to vehicle functions and unacceptable delay, bring the 2.0 Liter Subject Vehicles into compliance with the exhaust emission standards and the on-board diagnostics requirements to which VW certified the vehicles to EPA and CARB;

3. Accordingly, as one element of the remedy to address the Clean Air Act and California Health and Safety Code violations, Settling Defendants are required to remove from commerce in the United States and/or perform an Approved Emissions Modification on at least 85% of the 2.0 Liter Subject Vehicles ("Recall Rate"). To this end, Settling Defendants must offer each and every Eligible Owner and Eligible Lessee of an Eligible Vehicle the option of the Buyback of the Eligible Vehicle or the Lease Termination, in accordance with the terms specified in Appendix A (Buyback, Lease Termination, and Vehicle Modification Recall

Program). In addition, Settling Defendants shall offer Eligible Owners and Eligible Lessees the option of an emissions modification in accordance with the technical specifications of Appendix B (Vehicle Recall and Emissions Modification Program), if Settling Defendants propose such a modification and EPA/CARB approve it. Settling Defendants estimate that the total cost of injunctive relief pursuant to the requirements of Appendix A and the related Class Action Settlement and FTC Order may be up to $10,033,000,000. In the event Settling Defendants do not achieve an 85% Recall Rate, Settling Defendants must pay additional funds into the Mitigation Trust;

4. The practical engineering solutions provided by Appendix B (Vehicle Recall and Emissions Modification Program), should Settling Defendants propose such emissions modifications consistent with the provisions of Appendix B, would substantially reduce NOx emissions from the 2.0 Liter Subject Vehicles and improve their on-board diagnostics, would avoid undue waste and potential environmental harm that would be associated with removing the 2.0 Liter Subject Vehicles from service, and would allow Eligible Owners and Eligible Lessees to retain their Eligible Vehicles if they want to do so;

5. Members of the public who are Eligible Owners or Eligible Lessees of Eligible Vehicles will benefit from the relief provided by this Consent Decree;

6. As described in Appendix C (ZEV Investment Commitment), Settling Defendants will direct $2,000,000,000 of investments over a 10-year period to support increased use of technology for Zero Emission Vehicles ("ZEV") in California and the United States and may include investments related to ZEV infrastructure, access to ZEVs, and ZEV education. The ZEV investments required by this Consent Decree are intended to address the adverse environmental impacts arising from consumers' purchases of the 2.0 Liter Subject Vehicles,

which the United States and California contend were purchased with the mistaken belief that they were lower-emitting vehicles;

7. As described below and in Appendix D (Form of Environmental Mitigation Trust Agreement), Settling Defendants will pay a total of $2,700,000,000 to fund Eligible Mitigation Actions that will reduce emissions of NOx where the 2.0 Liter Subject Vehicles were, are, or will be operated. The funding for the Eligible Mitigation Actions required by this Consent Decree is intended to fully mitigate the total, lifetime excess NOx emissions from the 2.0 Liter Subject Vehicles; and

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties regarding certain relief with respect to the 2.0 Liter Subject Vehicles for the claims alleged in the Complaints, and that this Consent Decree is fair, reasonable, and in the public interest;

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that the United States and California are not enforcing the laws of other countries, including the emissions laws or regulations of any jurisdiction outside the United States. Nothing in this Consent Decree is intended to apply to, or affect, Settling Defendants' obligations under the laws or regulations of any jurisdiction outside the United States. At the same time, the laws and regulations of other countries shall not affect the Settling Defendants' obligations under this Consent Decree.

NOW, THEREFORE, before the taking of any testimony, without the adjudication of any issue of fact or law, and with the consent of the Parties, **IT IS HEREBY ADJUDGED, ORDERED, AND DECREED** as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Sections 203, 204, and 205 of the Act, 42 U.S.C. §§ 7522, 7523, and 7524, and over the Parties. Venue lies in this District pursuant to 28 U.S.C. § 1407 and the MDL Panel's Transfer Order, dated December 8, 2015, and filed in this MDL action as Dkt. # 1. The Court has supplemental jurisdiction over the California State law claims pursuant to 28 U.S.C. § 1367. For purposes of this Decree, Settling Defendants consent to the Court's jurisdiction over this Consent Decree, over any action to enforce this Consent Decree, and over Settling Defendants, and consent to venue in this judicial district. Settling Defendants reserve the right to challenge and oppose any claims to jurisdiction that do not arise from the Court's jurisdiction over this Consent Decree or an action to enforce this Consent Decree.

2. For purposes of this Consent Decree, Settling Defendants agree that the U.S. Complaint states claims upon which relief may be granted pursuant to Sections 203, 204, and 205 of the Act, 42 U.S.C. §§ 7522, 7523, and 7524, and that the California Complaint states claims upon which relief may be granted pursuant to Cal. Health & Safety Code §§ 43106, 43107, 43151, 43152, 43153, 43205, 43211, and 43212; Cal. Code Regs., tit. 13, §§ 1903, 1961, 1961.2, 1965, 1968.2, and 2037, and 40 C.F.R. Sections incorporated by reference in those California regulations; Cal. Bus. & Prof. Code §§ 17200 *et seq*., 17500 *et seq*., and 17580.5; Cal. Civ. Code § 3494; and 12 U.S.C. § 5531 *et seq*.

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States and California, and upon Settling Defendants and any of Settling Defendants' successors, assigns, or other entities or persons otherwise bound by law.

4. Settling Defendants' obligations to comply with the requirements of this Consent Decree are joint and several. In the event of the insolvency of any Settling Defendant or the failure by any Settling Defendant to implement any requirement of this Consent Decree, the remaining Settling Defendants shall complete all such requirements.

5. Any legal successor or assign of any Settling Defendant shall remain jointly and severally liable for the payment and other performance obligations hereunder. Settling Defendants shall include an agreement to so remain liable in the terms of any sale, acquisition, merger, or other transaction changing the ownership or control of any of the Settling Defendants, and no change in the ownership or control of any Settling Defendant shall affect the obligations hereunder of any Settling Defendant without modification of the Decree in accordance with Section XVI.

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

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

III. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Terms that are defined in an Appendix to this Consent Decree have the meaning assigned to them in that Appendix. Whenever the terms set forth below are used in this Consent Decree, the following definitions apply:

"2.0 Liter Subject Vehicles" means each and every light duty diesel vehicle equipped with a 2.0 liter TDI engine that Settling Defendants sold or offered for sale in, or introduced or delivered for introduction into commerce in the United States or its Territories, or imported into the United States or its Territories, and that is or was purported to have been covered by the following EPA Test Groups:

Model Year	EPA Test Group	Vehicle Make and Model(s)
2009	9VWXV02.035N	VW Jetta, VW Jetta Sportwagen
2009	9VWXV02.0U5N	VW Jetta, VW Jetta Sportwagen
2010	AVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2011	BVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2012	CVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2012	CVWXV02.0U4S	VW Passat
2013	DVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2013	DVWXV02.0U4S	VW Passat
2014	EVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen
2014	EVWXV02.0U4S	VW Passat

2015	FVGAV02.0VAL	VW Beetle, VW Beetle Convertible, VW Golf, VW Golf Sportwagen, VW Jetta, VW Passat, Audi A3

"3.0 Liter Subject Vehicles" means each and every model year 2009 to 2016 light duty diesel vehicle equipped with a 3.0 liter TDI engine that Settling Defendants sold or offered for sale in, or introduced or delivered for introduction into, commerce in the United States or its Territories, or imported into the United States or its Territories, and that is or was purported to have been covered by the EPA test groups set forth in Appendix B to the U.S. Complaint;

"Approved Emissions Modification" has the meaning set forth in Appendix B;

"Buyback" has the meaning set forth in Appendix A;

"CA AG" means the California Attorney General's Office and any of its successor departments or agencies;

"California" means the People of the State of California, acting by and through the California Attorney General and the California Air Resources Board;

"California Complaint" means the complaint filed by California in this action;

"CARB" means the California Air Resources Board and any of its successor departments or agencies;

"Class Action Settlement" has the meaning set forth in Appendix A;

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

"Complaints" means the U.S. Complaint and the California Complaint;

"Consent Decree" or "Decree" or "Partial Consent Decree" means this partial consent decree and all appendices attached hereto (listed in Section XXII);

"Day" means a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday,

Sunday, or federal or California holiday, the period shall run until the close of business of the next business day;

"Defendants" means the persons or entities named in the U.S. Complaint and California Complaint, specifically, Volkswagen AG, Volkswagen Group of America, Inc., Volkswagen Group of America Chattanooga Operations, LLC, Audi AG, Dr. Ing. h.c. F. Porsche AG, and Porsche Cars North America, Inc.;

"Effective Date" has the meaning set forth in Section XIV;

"Eligible Lessee" has the meaning set forth in Appendix A;

"Eligible Mitigation Actions" has the meaning set forth in Appendix D;

"Eligible Owner" has the meaning set forth in Appendix A;

"Eligible Vehicle" has the meaning set forth in Appendix A;

"EPA" means the United States Environmental Protection Agency and any of its successor departments or agencies;

"FTC Order" has the meaning set forth in Appendix A;

"Indian tribe" means any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe. The list of federally recognized Indian entities is maintained and updated by the Department of the Interior and published in the Federal Register pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a-1;

"Lease Termination" has the meaning set forth in Appendix A;

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

"Mitigation Trust" or "Trust" means the trust to be established pursuant to Paragraph 16 and governed by a trust agreement in the form set forth in Appendix D;

"Mitigation Trust Payment" means any payment required to be paid into the Trust Account;

"Paragraph" means a portion of this Decree identified by an Arabic numeral;

"Parties" means the United States, California, and Settling Defendants;

"Retail Replacement Value" has the meaning set forth in Appendix A;

"Section" means a portion of this Decree identified by a Roman numeral;

"Settling Defendants" means Volkswagen AG, Audi AG, Volkswagen Group of America, Inc., and Volkswagen Group of America Chattanooga Operations, LLC;

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

"Trust Account" has the meaning set forth in the Trust Agreement;

"Trust Agreement" means a trust agreement in the form set forth in Appendix D to be entered into by the Settling Defendants and the trustee selected pursuant to Paragraph 15;

"Trust Effective Date" means the date upon which a fully executed version of the Trust Agreement is filed with the Court pursuant to Paragraph 17;

"United States" means the United States of America, acting on behalf of EPA, except when used in Paragraph 75.h, when it shall mean the United States of America;

"U.S. Complaint" means the complaint filed by the United States in this action on January 4, 2016; and

"ZEV Investments" has the meaning set forth in Appendix C.

IV. PARTIAL INJUNCTIVE RELIEF

A. Buyback, Lease Termination, and Vehicle Modification Recall Program (Appendix A)

9. Settling Defendants shall implement the Buyback, Lease Termination, and Vehicle Modification Recall Program in accordance with the requirements set forth in Appendix A as one element of the remedy to address the Clean Air Act and California Health and Safety Code violations.

10. Settling Defendants shall remove from commerce in the United States and/or perform an Approved Emissions Modification (as described in Section IV.B) on at least 85% of the 2.0 Liter Subject Vehicles as set forth in Appendix A. Settling Defendants must offer each and every Eligible Owner and Eligible Lessee of an Eligible Vehicle the option of the Buyback of the Eligible Vehicle at a price no less than Retail Replacement Value, or the Lease Termination in accordance with the terms specified in Appendix A.

11. In the event Settling Defendants do not achieve an 85% Recall Rate, Settling Defendants shall pay additional funds into the Mitigation Trust as set forth in Appendix A.

B. Vehicle Recall and Emissions Modification Program (Appendices A & B)

12. Settling Defendants shall not sell or cause to be sold, or lease or cause to be leased, any 2.0 Liter Subject Vehicle, except as provided in Appendices A and B. Settling Defendants shall not modify or cause to be modified any emission control system or emissions aftertreatment or any other software or hardware that affects the emission control system on any 2.0 Liter Subject Vehicle except in compliance with Appendices A and B. If the Settling Defendants elect to propose a vehicle recall and Emissions Modification for any 2.0 Liter Subject Vehicle, approval and implementation of that modification shall be governed by Appendices A and B. As specified in Appendices A and B, Settling Defendants may export from

the United States to another country any 2.0 Liter Subject Vehicle, provided that such vehicle has received the applicable Approved Emissions Modification, and that no vehicle may be exported if the applicable Approved Emissions Modification has been suspended as set forth in Appendix B, Paragraph 7.3.

C. ZEV Investment Commitment (Appendix C)

13. Settling Defendants shall make $2,000,000,000 in ZEV Investments in accordance with the requirements set forth in Appendix C.

D. Mitigation of Excess Emissions and Mitigation Trust (Appendix D)

14. Payment of Mitigation Funds. In addition to any Mitigation Trust Payments required by Appendices A and B, Settling Defendants shall make $2,700,000,000 in Mitigation Trust Payments to the Trust to be used to fund Eligible Mitigation Actions to achieve reductions of NOx emissions in accordance with requirements to be set forth in a Trust Agreement, the form of which is attached as Appendix D. Settling Defendants shall notify the Trustee and the United States and CARB by mail and email in accordance with the requirements of Section XIII (Notices) on the Day any such payments are made. Settling Defendants shall make the payments as follows:

a. Initial Deposit by Settling Defendants. Not later than 30 Days after the Effective Date, Settling Defendants shall deposit $900,000,000 into the Trust Account ("Initial Deposit").

b. Subsequent Deposits by Settling Defendants. Settling Defendants shall make two subsequent deposits into the Trust Account, each in the amount of $900,000,000, the first no later than the first anniversary of the date of the Initial Deposit, and the second no later than the second anniversary of the date of the Initial Deposit (each a

"Subsequent Deposit").

c. Additional Mitigation Trust Payments. All Mitigation Trust Payments required by Appendices A and B shall be deposited into the Trust Account.

d. Court Registry. If any payments required under this Paragraph 14 become due before the Trust Account is established, Settling Defendants shall deposit such payments with the Court in accordance with Fed. R. Civ. P. 67. The Settling Defendants shall execute such documents and support such actions as necessary to facilitate the deposit of payments with the Court. For purposes of Fed. R. Civ. P. 67, this Consent Decree constitutes an order permitting such deposits. For purposes of 28 U.S.C. § 2042, this Consent Decree constitutes an order permitting the Trustee, upon filing a designation and identification of Trust Account as required by Appendix D, to withdraw all such funds, including all accrued interest, for immediate and concurrent deposit into the Trust Account. In the event that the United States determines that the funds cannot be deposited in accordance with Fed. R. Civ. P. 67, and unless otherwise agreed in writing by the Parties, the Settling Defendants shall hold the funds in an interest-bearing escrow account, for deposit (together with all accrued interest) into the Trust Account when established.

15. Selection of Trustee Procedure

a. Recommendation of Trustee Candidates. Not later than 30 Days after the Effective Date, the following parties (the "Recommending Parties") may submit to the United States a list of between three and five recommended trustee candidates:

i. California;

ii. the entities (other than Indian tribes) listed in Appendix D-1 (which, if

they submit a list, must submit one consolidated list); and

iii. Indian tribes (which, if they submit a list, must submit one consolidated list).

b. The United States may also consider additional trustee candidates in its discretion.

c. The Recommending Parties shall confer among each other, and with the United States, in a good faith effort to agree on one list of between three and five recommended trustee candidates.

d. Trustee Nomination Criteria. Each Recommending Party shall, for each trustee candidate, and in a form that can be filed with the Court, submit to the United States:

i. A resume, biographical information, and any other relevant material concerning the candidate and his or her competence and qualifications to serve as trustee;

ii. A description of any past, present, or future business or financial relationship that the candidate has with the Settling Defendants, EPA, any entity listed in Appendix D-1, or any Indian tribe;

iii. A verification that, to the knowledge of the Recommending Party, the candidate has no conflicts of interest with regard to this matter, or that any actual or apparent conflict has been waived by the Recommending Parties and the United States;

iv. A verification that, to the knowledge of the Recommending Party, the candidate is willing to agree not to be employed by any Recommending Party

during the course of the Trust and for a minimum of two years after termination of his or her term as trustee; and

v. A summary, after conferring with the other Recommending Parties and the United States, of whether any other Recommending Parties or the United States consents or objects to the candidate.

e. Selection of Trustee. After receiving candidate lists, and supporting information (including for such additional candidates that the United States considers), the United States will file a motion with the Court requesting that the Court select and appoint a trustee from among the candidates. If no candidate is selected by the Court in accordance with this subparagraph e, the process under this Paragraph 15 shall be repeated until a trustee is selected and approved.

16. Finalization of Trust Agreement. Upon selection of the trustee under Paragraph 15, the United States will notify the selected trustee of his or her selection, and provide a copy of this Consent Decree. The United States will provide the selected trustee with an opportunity promptly to provide to the United States any requested changes to Appendix D, and the United States will confer with the selected trustee, California, the entities (other than Indian tribes) listed in Appendix D-1, and the Settling Defendants, to finalize the Trust Agreement. Any changes made to Appendix D shall be made in accordance with Section XVI of this Decree (Modification). After conferring pursuant to the preceding sentence, the United States will present the final Trust Agreement to Settling Defendants for execution, and Settling Defendants shall execute the final Trust Agreement and send it to the U.S. Department of Justice ("DOJ") by overnight mail within 15 Days after receipt. The United States reserves the right to disqualify the selected trustee if he or she unreasonably impedes finalization of the Trust Agreement. Any

dispute regarding finalization of the terms of the Trust Agreement shall be resolved in accordance with the dispute resolution provisions set forth in Paragraph 6.2 of Appendix D. In resolving any such dispute, deference shall be given to the terms of Appendix D, and such terms shall be altered only as necessary to enhance the ability of the Trust to fund Eligible Mitigation Actions in order to achieve reductions of NOx emissions in the United States. Without the express written consent of the Settling Defendants, the final Trust Agreement shall not: (i) require the Settling Defendants to make any payments to the Trust other than the Mitigation Trust Payments required by the Consent Decree; or (ii) impose any greater obligation on Settling Defendants than those set forth in Appendix D.

17. Establishment of Trust. The Trust shall come into being upon the United States' filing with the Court of a finalized Trust Agreement, approved by the United States, and executed by the Settling Defendants and the Trustee.

18. Selection of Substitute Trustee. Unless otherwise ordered by the Court, substitute trustees shall be selected in accordance with the provisions of Paragraph 15 of this Consent Decree.

19. Modification of Trust Agreement and Appendices. After the Trust is established pursuant to Paragraph 17, it may only be modified in accordance with the Modification provision set forth in Paragraph 6.4 of Appendix D. In the event that the final Trust Agreement does not contain a Modification provision, it may only be Modified in accordance with the procedures set forth in Section XVI (Modification) of this Consent Decree. Without the express written consent of the Settling Defendants, no modification of the Trust Agreement shall: (i) require the Settling Defendants to make any payments to the Trust other than the Mitigation Trust Payments required by the Consent Decree; or (ii) impose any greater obligation on Settling Defendants than those

set forth in Appendix D. To the extent the consent of the Settling Defendants is required to effectuate a modification of the Trust Agreement, such consent shall not be unreasonably withheld.

V. APPROVAL OF SUBMISSIONS AND EPA/CARB DECISIONS

20. For purposes of this Consent Decree, unless otherwise specified in this Consent Decree:

a. with respect to any Submission, other obligation, or force majeure claim of Settling Defendants concerning Appendix B, EPA and CARB, or the United States and California as applicable, will issue a joint decision concerning the Submission, other obligation, or force majeure claim;

b. with respect to any Submission, other obligation, or force majeure claim of Settling Defendants under the Consent Decree that relates to National ZEV Investments or California ZEV Investments, EPA in the case of National ZEV Investment requirements and CARB in the case of California ZEV Investment requirements will have sole authority for making decisions concerning the National ZEV Investments or California ZEV Investment requirements, respectively; and

c. with respect to any other Submission, obligation, or force majeure claim of Settling Defendants under the Consent Decree, the position of EPA or the United States, after consultation with CARB or California, as applicable, shall control.

21. For purposes of this Section, Section VII (Stipulated Penalties and Other Mitigation Trust Payments), Section VIII (Force Majeure), and Section IX (Dispute Resolution), in accordance with the decision-making authorities set forth in Paragraph 20, references to "EPA/CARB" mean EPA and CARB jointly, or EPA or CARB, as applicable; references to "the

United States/California" mean the United States and California jointly, or the United States or California, as applicable; and references to the United States/CARB mean the United States/CARB jointly, or the United States or CARB, as applicable.

22. Any specific procedures or specifications for the review of Submissions set forth in the Appendices shall govern, as applicable, the review of any Submission submitted pursuant to such Appendix. Except as otherwise specified in the Appendices, after review of any Submission, EPA/CARB shall in writing: (a) approve the Submission; (b) approve the Submission upon specified conditions; (c) approve part of the Submission and disapprove the remainder; or (d) disapprove the Submission. In the event of disapproval, in full or in part, of any portion of the Submission, if not already provided with the disapproval, upon the request of Settling Defendants, EPA/CARB will provide in writing the reasons for such disapproval.

23. If the Submission is approved pursuant to Paragraph 22, Settling Defendants shall take all actions required by the Submission in accordance with the schedules and requirements of the Submission, as approved. If the Submission is conditionally approved or approved only in part pursuant to Paragraph 22(b) or (c), Settling Defendants shall, upon written direction from EPA/CARB, take all actions required by the Submission that EPA/CARB determine(s) are technically severable from any disapproved portions.

24. If the Submission is disapproved in whole or in part pursuant to Paragraph 22(c) or (d), Settling Defendants shall, within 30 Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the Submission, or disapproved portion thereof, for approval, in accordance with Paragraphs 22 to 23. If the resubmission is approved in whole or in part, Settling Defendants shall proceed in accordance with Paragraph 23.

25. If a resubmitted Submission, or portion thereof, is disapproved in whole or in part,

EPA/CARB may again require Settling Defendants to correct any deficiencies, in accordance with Paragraphs 23 and 24, or EPA/CARB may itself/themselves correct any deficiencies.

26. Settling Defendants may elect to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution) concerning any decision of EPA/CARB to disapprove, approve on specified conditions, or modify a Submission. If Settling Defendants elect to invoke dispute resolution, they shall do so within 30 Days (or such other time as the Parties agree to in writing) after receipt of the applicable decision.

27. Any stipulated penalties applicable to the original Submission, as provided in Section VII(Stipulated Penalties and Other Mitigation Trust Payments), shall accrue during the 30-Day period or other specified period pursuant to Paragraph 24. Such stipulated penalties shall not be payable unless the resubmission of the Submission is untimely or is disapproved in whole or in part; provided that, if the original Submission was so deficient as to constitute a material breach of Settling Defendants' obligations under this Decree in making that Submission, the stipulated penalties applicable to the original Submission shall be due and payable notwithstanding any subsequent resubmission.

VI. REPORTING AND CERTIFICATION REQUIREMENTS

28. Timing of Reports. Unless otherwise specified in this Consent Decree, or the Parties otherwise agree in writing:

a. To the extent quarterly reporting is required by this Decree, Settling Defendants shall submit each report one month after the end of the calendar quarter, and the report shall cover the prior calendar quarter. That is, reports shall be submitted on April 30, July 31, October 31, and January 31 for the prior respective calendar quarter (*i.e.,* the report submitted on April 30 covers January 1 through March 31), as

further specified, and covering the items specified, elsewhere in the Consent Decree.

b. To the extent semi-annual or annual reporting is required, Settling Defendants shall submit each report one month after the end of the applicable prior 6-month or annual calendar period, *i.e.,* April 30, July 31, October 31, or January 31, as applicable, and as further specified, and covering the items specified, elsewhere in the Consent Decree.

29. Settling Defendants may assert that information submitted under this Consent Decree is protected as Confidential Business Information ("CBI") as set out in 40 C.F.R. Part 2 or Cal. Code of Regs. tit. 17, §§ 91000 to 91022.

30. Reporting of Violations

a. Except to the extent the Appendices specify different timeframes or notice recipients, if Settling Defendants reasonably believe they have violated, or that they may violate, any requirement of this Consent Decree, Settling Defendants shall notify EPA, CARB, and CA AG of such violation and its likely duration, in a written report submitted within 10 business days after the Day Settling Defendants first reasonably believe that a violation has occurred or may occur, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If Settling Defendants believe the cause of a violation cannot be fully explained at the time the report is due, Settling Defendants shall so state in the report. Settling Defendants shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days after the Day on which Settling Defendants reasonably believe they have determined the cause of the violation. Nothing in this Paragraph or

the following Paragraph relieves Settling Defendants of their obligation to provide the notice required by Section VIII (Force Majeure).

b. Semi-Annual Report of Violations. On January 31 and July 31 of each year, Settling Defendants shall submit a summary to the United States and California of any violations of the Decree that occurred during the preceding six months (or potentially shorter period for the first semi-annual report), and that are required to be reported pursuant to subparagraph 30.a, including the date of the violation, the date the notice of violation was sent, and a brief description of the violation.

31. Whenever Settling Defendants reasonably believe that any violation of this Consent Decree or any other event affecting Settling Defendants' performance under this Decree may pose an immediate threat to the public health or welfare or the environment, Settling Defendants shall notify EPA and California by email as soon as practicable, but no later than 24 hours after Settling Defendants first reasonably believe the violation or event has occurred. This procedure is in addition to the requirements set forth in Paragraph 30.

32. All plans, reports, and other information required to be posted to a public website by this Consent Decree shall be accessible on the website www.VWCourtSettlement.com, and a link to such website shall be displayed on www.vw.com and www.audiusa.com.

33. Each report or other item that is required by an Appendix to be certified pursuant to this Paragraph shall be signed by an officer or director of Settling Defendants and shall include the following sworn certification, which may instead be certified as provided in 28 U.S.C. § 1746:

> I certify under penalty of perjury under the laws of the United States and California that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of

> the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my 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.

34. Settling Defendants agree that the certification required by Paragraph 33 is subject to 18 U.S.C. §§ 1001(a) and 1621, and California Penal Code §§ 115, 118, and 132.

35. The certification requirement in Paragraph 33 does not apply to emergency or similar notifications where compliance would be impractical.

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

37. Any information provided pursuant to this Consent Decree may be used by the United States or California in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VII. STIPULATED PENALTIES AND OTHER MITIGATION TRUST PAYMENTS

38. Settling Defendants shall be liable for stipulated penalties and additional Mitigation Trust Payments (collectively, "stipulated payments") to the United States and California for violations of this Consent Decree as specified in this Section and the Appendices, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

39. Partial Injunctive Relief Requirements: Appendices A, B, and C. The stipulated

payments and other remedies for violations of requirements of Appendices A, B, and C are set forth in those Appendices.

40. Partial Injunctive Relief Requirements: Section IV.D. The following additional Mitigation Trust Payments shall accrue for each violation of Section IV.D., as follows:

a. For the Initial Deposit of $900,000,000 required by subparagraph 14.a, and for each Subsequent Deposit (collectively, "Deposit") of $900,000,000 required by subparagraph 14.b:

i. For each Day that any such Deposit is late, Settling Defendants shall pay into the Trust Account an additional Mitigation Trust Payment of interest, as provided in Paragraph 43, on the Deposit for the first four days, and then as follows:

$50,000	5th through 30th Day
$100,000	31st through 45th Day
$200,000	46th Day and beyond

ii. The additional Mitigation Trust Payments required by subparagraph 40.a.i are in addition to the Deposits required by subparagraphs 14.a and 14.b, and those Deposits shall not be reduced on account of the payment of additional Mitigation Trust Payments.

iii. For failure to execute and deliver the final Trust Agreement pursuant to Paragraph 16, Settling Defendants shall pay the following payments per Day into the Trust Account as additional Mitigation Trust Payments, plus interest on the additional Mitigation Trust Payments as provided for in Paragraph 43.

$100,000	1st through 14th Day
$250,000	15th Day and beyond

b. In the event that no Trust Account has been established as of the date that any additional Mitigation Trust Payment required pursuant to subparagraphs 40.a.i or 40.a.iii become due, such payments shall be made into the Court Registry account in accordance with subparagraph 14.d.

41. Reporting and Certification Requirements: Section VI

a. Reporting of Violations. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements of Paragraph 30 (Reporting of Violations):

$2,000	1st through 14th Day
$5,000	15th through 30th Day
$10,000	31st Day and beyond

b. Certification Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the certification requirements of Paragraph 33, except for false statements as described in subparagraph 41.c, below, in which case the stipulated penalty shall be the higher of the penalty provided for here in subparagraph 41.b or in subparagraph 41.c:

$10,000	1st through 14th Day
$25,000	15th through 30th Day
$50,000	31st Day and beyond

c. False Statements. Settling Defendants shall pay $1,000,000 for each report or Submission required to be submitted pursuant to this Consent Decree that contains a knowingly false, fictitious, or fraudulent statement or representation of material fact.

42. Stipulated payments under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue

to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated payments shall accrue simultaneously for separate violations of this Consent Decree.

43. If Settling Defendants fail to pay stipulated penalties or the Mitigation Trust Payments required by subparagraphs 14.a and 14.b according to the terms of this Consent Decree, Settling Defendants shall be liable for interest on such payments at the rate provided for in 28 U.S.C. § 1961, accruing as of the date payment became due and continuing until payment has been made in full. Nothing in this Paragraph shall be construed to limit the United States or California from seeking any remedy otherwise provided by law for Settling Defendants' failure to pay any stipulated payments.

44. Stipulated Penalty Demands and Payments

a. Except as provided in Paragraph 46, the United States, in consultation with CARB, will issue any demand for stipulated penalties.

b. Settling Defendants shall pay stipulated penalties to the United States/CARB within 30 Days after a written demand by the United States and/or CARB, as applicable, in accordance with Paragraphs 44.a or 46, unless Settling Defendants invoke the dispute resolution procedures under Section IX (Dispute Resolution) within the 30-Day period. Except as provided in Paragraph 46 and Appendix B, Settling Defendants shall pay 75% percent of the total stipulated penalty amount due to the United States and 25% percent to CARB.

45. Except as provided in Paragraph 46, either the United States or CARB may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree. However, no action by either the United States or CARB may reduce or waive stipulated penalties due to the other.

46. With respect to stipulated penalties for violations of the National ZEV Investment requirements and the California ZEV Investment requirements (both as defined in Appendix C) only the United States may demand, collect, reduce, or waive stipulated penalties with respect to the National ZEV Investment requirements, and only CARB may demand, collect, reduce, or waive stipulated penalties with respect to the California ZEV Investment requirements.

47. Stipulated payments shall continue to accrue as provided in Paragraph 42, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement of the Parties or by a decision of EPA/CARB that is not appealed to the Court, Settling Defendants shall pay accrued stipulated payments determined to be owing, together with interest as provided in Paragraph 43, to the United States/CARB within 30 Days after the effective date of the agreement or the receipt of EPA's/CARB's decision or order.

b. If the dispute is appealed to the Court and the United States/California prevail(s) in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owing, together with interest as provided in Paragraph 43, to the United States/CARB within 60 Days after receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Settling Defendants shall pay to the United States/CARB all accrued penalties determined to be owing, together with interest as provided in Paragraph 43, within 15 Days after receiving the final appellate court decision.

48. Settling Defendants shall pay stipulated penalties owing to the United States by FedWire Electronic Funds Transfer ("EFT") to the DOJ account, in accordance with instructions

provided to Settling Defendants by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Northern District of California after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which Settling Defendants shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

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

on behalf of Settling Defendants. Settling Defendants may change the individual to receive payment instructions on their behalf by providing written notice of such change to the United States and CARB in accordance with Section XIII (Notices).

49. Settling Defendants shall pay stipulated penalties owing to CARB by check, accompanied by a Payment Transmittal Form (which CARB will provide to the addressee listed in Paragraph 48 after the Effective Date), with each check mailed to:

Air Resources Board, Accounting Branch
P.O. Box 1436
Sacramento, CA 95812-1436;

or by wire transfer, in which case Settling Defendants shall use the following wire transfer information and send the Payment Transmittal Form to the above address prior to each wire transfer:

State of California Air Resources Board
c/o Bank of America, Inter Branch to 0148
Routing No. 0260-0959-3 Account No. 01482-80005
Notice of Transfer: Yogeeta Sharma Fax: (916) 322-9612
Reference: ARB Case # MSES-15-085

Settling Defendants are responsible for any bank charges incurred for processing wire transfers. Except as otherwise provided by this Consent Decree, stipulated penalties paid to CARB shall be

deposited into the Air Pollution Control Fund and used by CARB to carry out its duties and functions.

50. At the time of payment, Settling Defendants shall send notice that a stipulated payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the DOJ via email or regular mail in accordance with Section XIII; and/or (iii) to CARB via email or regular mail in accordance with Section XIII. Such notice shall state that the payment is for stipulated penalties or Mitigation Trust Payments, as applicable, owed pursuant to the Consent Decree in *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, and shall state for which violation(s) the penalties are being paid. Such notice shall also reference MDL No. 2672 CRB (JSC), CDCS Number and DOJ # 90-5-2-1-11386.

51. Settling Defendants shall not deduct any stipulated penalties paid under this Decree pursuant to this Section in calculating their income taxes due to federal, state, or local taxing authorities in the United States.

52. The payment of stipulated payments and interest, if any, shall not alter in any way Settling Defendants' obligation to complete the performance of the requirements of this Consent Decree.

53. Non-Exclusivity of Remedy. Stipulated payments and other remedies provided for in the Consent Decree are not the United States' or California's exclusive remedy for violations of this Consent Decree, including violations of the Consent Decree that are also violations of law. Subject to the provisions in Section XI (Effect of Settlement/Reservation of Rights), the United States and California reserve all legal and equitable remedies available to

enforce the provisions of this Consent Decree. In addition to the remedies specifically reserved and those specifically agreed to elsewhere in this Consent Decree, the United States and California expressly reserve the right to seek any other relief they deem appropriate for Settling Defendants' violation of this Consent Decree, including but not limited to an action against Settling Defendants for statutory penalties where applicable, additional injunctive relief, mitigation or offset measures, contempt, and/or criminal sanctions. However, the amount of any statutory penalty assessed for a violation of this Consent Decree (and payable to the United States or to California, respectively) shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree (to the United States or to California, respectively) for the same violation.

VIII. FORCE MAJEURE

54. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Settling Defendants, of any entity controlled by Settling Defendants, or of Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring, and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. "Force majeure" does not include Settling Defendants' financial inability to perform any obligation under this Consent Decree.

55. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, for which Settling Defendants intend or may intend to

assert a claim of force majeure, whether or not caused by a force majeure event, Settling Defendants shall provide notice by email to EPA and CARB, within 7 Days of when Settling Defendants first knew that the event might cause a delay. Within 14 Days thereafter, Settling Defendants shall provide in writing to EPA and CARB an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay or the effect of the delay; a schedule for implementation of any such measures; Settling Defendants' rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. Settling Defendants shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendants shall be deemed to know of any circumstance of which Settling Defendants, any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known.

56. If EPA/CARB agree(s) that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA/CARB for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA/CARB will notify Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force

majeure event.

57. If EPA/CARB do(es) not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA/CARB will notify Settling Defendants in writing of its/their decision.

58. If Settling Defendants elect to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA's/CARB's notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 54 and 55. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA/CARB and the Court.

IX. DISPUTE RESOLUTION

59. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Failure by the Settling Defendants to seek resolution of a dispute under this Section shall preclude Settling Defendants from raising any such issue as a defense to an action by the United States or California to enforce any obligation of Settling Defendants arising under this Decree.

60. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be

considered to have arisen when Settling Defendants send the United States and California by mail a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute, including, where applicable, whether the dispute arises from a decision made by EPA and CARB jointly, or EPA or CARB individually. The period of informal negotiations shall not exceed 30 Days after the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States/California shall be considered binding unless, within 30 Days after the conclusion of the informal negotiation period, Settling Defendants invoke formal dispute resolution procedures as set forth below.

61. Formal Dispute Resolution. Settling Defendants shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States/California a written Statement of Position regarding the matter in dispute, except that disputes concerning the National ZEV Investment or California ZEV Investment need only be served on the United States or California, as applicable. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Settling Defendants' position and any supporting documentation relied upon by Settling Defendants.

62. The United States/California will serve its/their Statement of Position within 45 Days after receipt of Settling Defendants' Statement of Position. The United States'/California's Statement of Position will include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States/California. The United States'/California's Statement of Position shall be binding on Settling Defendants, unless Settling Defendants file a motion for judicial review of the dispute in accordance with Paragraph 63.

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

64. The United States/California will respond to Settling Defendants' motion within the time period allowed by the Local Rules of the Court. Settling Defendants may file a reply memorandum, to the extent permitted by the Local Rules.

65. Standard of Review for Judicial Disputes

a. Disputes Concerning Matters Accorded Record Review. In any dispute arising under (1) Appendix B, or (2) Appendix C relating to agency approval of ZEV Investment Plans, and brought pursuant to Paragraph 63, Settling Defendants shall have the burden of demonstrating that EPA's/CARB's action or determination or position is arbitrary and capricious or otherwise not in accordance with law based on the administrative record. For purposes of this subparagraph, EPA/CARB will maintain an administrative record of the dispute, which will contain all statements of position, including supporting documentation, submitted pursuant to this Section. Prior to the filing of any motion, the Parties may submit additional materials to be part of the administrative record pursuant to applicable principles of administrative law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any

other dispute brought pursuant to Paragraph 63, Settling Defendants shall bear the burden of demonstrating by a preponderance of the evidence that their actions were in compliance with this Consent Decree.

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

67. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Settling Defendants under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 47. If Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties and Other Mitigation Trust Payments).

X. INFORMATION COLLECTION AND RETENTION

68. The United States, California, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry, upon presentation of credentials, at all reasonable times into any of Settling Defendants' offices, plants, or facilities:

a. to monitor the progress of activities required under this Consent Decree;

b. to verify any data or information submitted to the United States or California in accordance with the terms of this Consent Decree;

c. to inspect records related to this Consent Decree;

d. to conduct testing related to this Consent Decree;

e. to obtain documentary evidence, including photographs and similar data, related to this Consent Decree;

f. to assess Settling Defendants' compliance with this Consent Decree; and

g. for other purposes as set forth in 42 U.S.C. § 7542(b) and Cal. Gov't Code § 11180.

69. Upon request, and for purposes of evaluating compliance with the Consent Decree, Settling Defendants shall promptly provide to EPA and California or their authorized representatives at locations to be designated by EPA and California:

a. vehicles, in specified configurations, for emissions testing;

b. engine control units for vehicles of specified configurations;

c. specified software and related documentation for vehicles of specified configurations;

d. reasonable requests for English translations of software documents; or

e. other items or information that could be requested pursuant to 42 U.S.C. § 7542(a) or Cal. Gov't Code § 11180.

70. Until three years after the termination of this Consent Decree, Settling Defendants shall retain, and shall instruct their contractors and agents to preserve, all non-identical copies of all documents, records, reports, or other information (including documents, records, or other information in electronic form) (hereinafter referred to as "Records") in their or their contractors' or agents' possession or control, or that come into their or their contractors' or agents' possession or control, relating to Settling Defendants' performance of their obligations under this Consent

Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or California, Settling Defendants shall provide copies of any Records required to be maintained under this Paragraph, notwithstanding any limitation or requirement imposed by foreign laws. Nothing in this Paragraph shall apply to any documents in the possession, custody, or control of any outside legal counsel retained by Settling Defendants in connection with this Consent Decree or of any contractors or agents retained by such outside legal counsel solely to assist in the legal representation of Settling Defendants. Settling Defendants may assert that certain Records are privileged or protected as provided under federal or California law. If Settling Defendants assert such a privilege or protection, they shall provide the following: (a) the title of the Record; (b) the date of the Record; (c) the name and title of each author of the Record; (d) the name and title of each addressee and recipient; (e) a description of the subject of the Record; and (f) the privilege or protection asserted by Settling Defendants. However, Settling Defendants may make no claim of privilege or protection regarding: (1) any data regarding the Subject Vehicles or compliance with this Consent Decree; or (2) the portion of any Record that Settling Defendants are required to create or generate pursuant to this Consent Decree.

71. At the conclusion of the information-retention period provided in the preceding Paragraph, Settling Defendants shall notify the United States and California at least 90 Days prior to the destruction of any Records subject to the requirements of the preceding Paragraph and, upon request by the United States or California, Settling Defendants shall deliver any such Records to EPA or California. Settling Defendants may assert that certain Records are privileged or protected as provided under federal or California law. If Settling Defendants assert

such a privilege or protection, they shall provide the following: (a) the title of the Record; (b) the date of the Record; (c) the name and title of each author of the Record; (d) the name and title of each addressee and recipient; (e) a description of the subject of the Record; and (f) the privilege or protection asserted by Settling Defendants. However, Settling Defendants may make no claim of privilege or protection regarding: (1) any data regarding the Subject Vehicles or compliance with this Consent Decree; or (2) the portion of any Record that Settling Defendants are required to create or generate pursuant to this Consent Decree.

72. Settling Defendants may also assert that information required to be provided under this Section is protected as CBI as defined in Paragraph VI.29. As to any information that Settling Defendants seek to protect as CBI, Settling Defendants shall follow the procedures set forth in 40 C.F.R. Part 2 or equivalent California law.

73. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or California pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Settling Defendants to maintain Records imposed by applicable federal or state laws, regulations, or permits.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

74. Satisfaction of all the requirements of this Partial Consent Decree shall resolve and settle all of the United States' and California's civil claims in the Complaints for injunctive relief, based on facts that were disclosed by Settling Defendants to EPA and CARB prior to April 18, 2016 relating to any defeat devices or auxiliary emission control devices ("AECDs") in the 2.0 Liter Subject Vehicles, that they made or could have made against Settling Defendants:

a. requiring Settling Defendants to take action to buy back, recall, or modify the

2.0 Liter Subject Vehicles in order to remedy the violations alleged in the Complaints concerning the 2.0 Liter Subject Vehicles;

b. requiring Settling Defendants to make payments to owners and lessees of the 2.0 Liter Subject Vehicles in order to remedy the violations alleged in the Complaints concerning the 2.0 Liter Subject Vehicles; and

c. requiring Settling Defendants to mitigate the environmental harm associated with the violations alleged in the Complaints concerning the 2.0 Liter Subject Vehicles.

75. The United States reserves, and this Partial Consent Decree is without prejudice to, all claims, rights, and remedies against Settling Defendants with respect to all matters not expressly resolved in Paragraph 74. Notwithstanding any other provision of this Decree, the United States reserves all claims, rights, and remedies against Settling Defendants with respect to:

a. Further injunctive relief, including prohibitory and mandatory injunctive provisions intended to enjoin, prevent, and deter future violations of the Act of the types alleged in the U.S. Complaint related to the 2.0 Liter Subject Vehicles;

b. All rights to address noncompliance with Appendix B as set forth in Paragraph 8.1 of Appendix B;

c. All rights reserved by Paragraph 53;

d. Civil penalties with respect to the 2.0 Liter Subject Vehicles;

e. Any and all civil claims related to any 3.0 Liter Subject Vehicle or to any other vehicle other than the 2.0 Liter Subject Vehicles;

f. Any and all civil claims and administrative authorities for injunctive relief: (i)

based on facts that were not disclosed by Settling Defendants to EPA and CARB prior to April 18, 2016, related to any defeat devices or AECDs installed on or in the 2.0 Liter Subject Vehicles; or (ii) related to any other failures by the 2.0 Liter Subject Vehicles to conform with the Act or its implementing regulations;

g. Any criminal liability; and

h. Any claim(s) of any agency of the United States, other than EPA, including but not limited to claims by the Federal Trade Commission.

76. California reserves, and this Partial Consent Decree is without prejudice to, all claims, rights, and remedies against Settling Defendants with respect to all matters not expressly resolved in Paragraph 74. Notwithstanding any other provision of this Decree, California reserves all claims, rights, and remedies against Settling Defendants with respect to:

a. An order requiring Settling Defendants to take all actions necessary to enjoin, prevent, and deter future violations of the Health and Safety Code and related regulations of the types alleged in the California Complaint related to the 2.0 Liter Subject Vehicles;

b. Further injunctive relief, including prohibitory and mandatory injunctive provisions intended to enjoin, prevent, and deter future misconduct, and/or incentivize its detection, disclosure, and/or prosecution; or to enjoin false advertising, violation of environmental laws, the making of false statements, or the use or employment of any practice that constitutes unfair competition;

c. All rights to address noncompliance with Appendix B as set forth in Appendix B, Paragraph 8.1;

d. All rights reserved by Paragraph 53;

e. Civil penalties with respect to the 2.0 Liter Subject Vehicles;

f. Any and all civil claims related to any 3.0 Liter Subject Vehicle, or to any vehicle other than the 2.0 Liter Subject Vehicles;

g. Any and all civil claims and administrative authorities for injunctive relief (i) based on facts that were not disclosed by Settling Defendants to EPA and CARB prior to April 18, 2016, related to any defeat devices or AECDs installed on or in the 2.0 Liter Subject Vehicles; or (ii) related to any other failures by the 2.0 Liter Subject Vehicles to conform with the California Health and Safety Code or its implementing regulations;

h. Any criminal liability;

i. Any part of any claims for the violation of securities or false claims laws;

j. Costs and attorneys' fees, including investigative costs, incurred after the Effective Date; and

k. Any other claim(s) of any officer or agency of the State of California, other than CARB or CA AG.

77. CA AG releases its claims against Settling Defendants and VW Credit, Inc. for relief to consumers, including claims for restitution, refunds, rescission, damages, and disgorgement, arising from the conduct alleged in the California Complaint related to the 2.0 Liter Subject Vehicles. In exchange for this release of claims for relief to consumers, Settling Defendants shall provide the relief to consumers provided for in this Consent Decree, as well as the relief to consumers provided for in the related FTC Order and Class Action Settlement concerning the 2.0 Liter Subject Vehicles. The requirements of this paragraph are enforceable by the CA AG. This paragraph does not release any claims of individual consumers.

78. By entering into this Consent Decree, the United States and California are not enforcing the laws of other countries, including the emissions laws or regulations of any jurisdiction outside the United States. Nothing in this Consent Decree is intended to apply to, or affect, Settling Defendants' obligations under the laws or regulations of any jurisdiction outside the United States. At the same time, the laws and regulations of other countries shall not affect the Settling Defendants' obligations under this Consent Decree.

79. This Consent Decree shall not be construed to limit the rights of the United States or California to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as specifically provided in Paragraph 74. The United States and California further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at any of Settling Defendants' facilities, or posed by Settling Defendants' 2.0 Liter Subject Vehicles, whether related to the violations addressed in this Consent Decree or otherwise.

80. In any subsequent administrative or judicial proceeding initiated by the United States or California for injunctive relief, civil penalties, other appropriate relief relating to Settling Defendants' violations, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or California in the subsequent proceeding were or should have been brought in the instant case, except with respect to the claims that have been specifically resolved pursuant to Paragraph 74.

81. This Consent Decree is not a permit, or a modification of any permit, under any

federal, State, or local laws or regulations. Settling Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Settling Defendants' compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and California do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Settling Defendants' compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, or with any other provisions of United States, State, or local laws, regulations, or permits.

82. This Consent Decree does not limit or affect the rights of Settling Defendants or of the United States or California against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Settling Defendants, except as otherwise provided by law.

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

XII. COSTS

84. The Parties shall bear their own costs of this Consent Decree, including attorneys' fees, except that the United States and California shall be entitled to collect the costs and reasonable attorneys' fees incurred in any action necessary to collect any portion of the stipulated penalties due under this Consent Decree but not paid by Settling Defendants.

XIII. NOTICES

85. Except as specified elsewhere in this Decree, whenever any Materials are required to be submitted pursuant to this Consent Decree, or whenever any communication is required in any action or proceeding related to or bearing upon this Consent Decree or the rights or

obligations thereunder, they shall be submitted with a cover letter or otherwise be made in writing (except that if any attachment is voluminous, it shall be provided on a disk, hard drive, or other equivalent successor technology), and shall be addressed as follows:

As to the United States:	DOJ and EPA at the email or mail addresses below, as applicable
As to DOJ by mail:	EES Case Management Unit Environment and Natural Resources Division U.S. Department of Justice P.O. Box 7611 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 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:	Director Air Enforcement Division Office of Civil Enforcement U.S. Environmental Protection Agency 1200 Pennsylvania Avenue NW 3142 William Jefferson Clinton South Mail Code 2242A Washington, D.C. 20460
As to EPA by email (including for Paragraphs 31, 55):	Kaul.Meetu@epa.gov Kakade.Seema@epa.gov Iddings.Brianna@epa.gov

As to California:	CARB and CA AG at the email or mail addresses below, as applicable
As to CARB by email (including for Paragraphs 31, 55):	Alexandra.Kamel@arb.ca.gov
As to CARB by mail:	Chief Counsel California Air Resources Board Legal Office 1001 I Street Sacramento, California 95814
As to CA AG by email:	nicklas.akers@doj.ca.gov judith.fiorentini@doj.ca.gov david.zonana@doj.ca.gov
As to CA AG by mail:	Senior Assistant Attorney General Consumer Law Section California Department of Justice 455 Golden Gate Ave., Suite 11000 San Francisco, CA 94102-7004 Senior Assistant Attorney General Environment Section Office of the Attorney General P.O. Box 944255 Sacramento, CA 94244-2550
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

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

	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 one or more of the Settling Defendants by email:	Robert J. Giuffra, Jr. Sharon L. Nelles giuffrar@sullcrom.com nelless@sullcrom.com
As to one or more of the Settling Defendants by mail:	Robert J. Giuffra, Jr. Sharon L. Nelles Sullivan & Cromwell LLP 125 Broad Street New York, New York 10004

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

87. Communications submitted pursuant to this Section shall be deemed submitted upon mailing (or emailing if that is an option), except as provided elsewhere in this Consent Decree or by mutual agreement of the Parties in writing.

88. 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 91-92.

XIV. EFFECTIVE DATE

89. 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.

XV. RETENTION OF JURISDICTION

90. 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 IX and XVI, or effectuating or enforcing compliance with the terms of this Decree.

XVI. MODIFICATION

91. Except as otherwise provided herein or in the attached Appendices, the terms of this Consent Decree, including any attached Appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

92. The United States or California, as applicable, will file any non-material modifications with the Court. Once the non-material modification has been filed, Settling Defendants shall post the filed version (with ECF stamp) on the website required by Paragraph 32.

93. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX (Dispute Resolution), provided, however, that instead of the burden of proof provided by Paragraph 65, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Fed. R. Civ. P. 60(b).

XVII. TERMINATION

94. After Settling Defendants have completed the requirements of Section IV (Partial Injunctive Relief), except for Appendix A, Paragraph 5.2 (No End Date for Emissions Modification Recall) and associated requirements, have complied with all other requirements of this Consent Decree, and have paid any accrued stipulated penalties as required by this Consent Decree, Settling Defendants may serve upon the United States and California a Request for Termination, stating that Settling Defendants have satisfied those requirements, together with all necessary supporting documentation.

95. Following receipt by the United States and California of Settling Defendants' Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Settling Defendants have satisfactorily complied with the requirements for termination of this Consent Decree. If the United States, after consultation with California, agrees that the Decree may be terminated, the United States will file a motion to terminate the Decree, provided, however, that the provisions associated with effectuating and enforcing Appendix A, Paragraph 5.2 (No End Date for Emissions Modification Recall) shall continue in full force and effect indefinitely.

96. If the United States, after consultation with California, does not agree that the Decree may be terminated, Settling Defendants may invoke Dispute Resolution under Section IX. However, Settling Defendants shall not seek Dispute Resolution of any dispute regarding termination until 45 Days after service of their Request for Termination.

XVIII. PUBLIC PARTICIPATION

97. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States

reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. California reserves the right to withdraw or withhold its consent if the United States does so. Settling Defendants consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Decree.

XIX. SIGNATORIES/SERVICE

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

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

XX. INTEGRATION

100. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, the Parties acknowledge that there are no documents, representations, inducements, agreements, understandings, or promises that constitute any part of

this Decree or the settlement it represents other than those expressly contained in this Consent Decree.

XXI. FINAL JUDGMENT

101. 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, California, and Settling 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.

XXII. APPENDICES

102. The following Appendices (and any attachments thereto) are attached to and part of this Consent Decree:

"Appendix A" is the Buyback, Lease Termination, and Vehicle Modification Recall Program.

"Appendix B" is the Vehicle Recall and Emissions Modification Program.

"Appendix C" is the ZEV Investment Commitment.

"Appendix D" is the Form of Environmental Mitigation Trust Agreement.

Dated and entered this 25 day of October, 2016,

CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES OF AMERICA:

27 June 2016
Date

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

JOSHUA H. VAN EATON
BETHANY ENGEL
GABRIEL ALLEN
LESLIE ALLEN
PATRICK BRYAN
NIGEL COONEY
KAREN DWORKIN
DANICA GLASER
ANNA GRACE
SHEILA McANANEY
MARCELLO MOLLO
ROBERT MULLANEY
ERIKA ZIMMERMAN
IVA ZIZA
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
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

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

6/24/16
Date

CYNTHIA GILES
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

SUSAN SHINKMAN
Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

PHILLIP A. BROOKS
Director, Air Enforcement Division, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

EVAN BELSER
MEETU KAUL
SEEMA KAKADE
BRIANNA IDDINGS
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

FOR THE PEOPLE OF THE STATE OF CALIFORNIA BY AND THROUGH THE CALIFORNIA AIR RESOURCES BOARD AND KAMALA D. HARRIS, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA:

6/27/16
Date

NICKLAS A. AKERS (CA-211222)
Senior Assistant Attorney General
California Department of Justice
455 Golden Gate Ave, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5500
E-mail: nicklas.akers@doj.ca.gov

KAMALA D. HARRIS
Attorney General of California
NICKLAS A. AKERS
ROBERT W. BYRNE
SALLY MAGNANI
Senior Assistant Attorneys General
JUDITH A. FIORENTINI
GAVIN G. McCABE
DAVID A. ZONANA
Supervising Deputy Attorneys General
AMOS E. HARTSTON
WILLIAM R. PLETCHER
ELIZABETH B. RUMSEY
JOHN S. SASAKI
JON F. WORM
Deputy Attorneys General

Attorneys for the People of the State of California

FOR THE CALIFORNIA AIR RESOURCES BOARD:

6/26/16

Date

MARY D. NICHOLS
Chair
California Air Resources Board
1001 I Street
Sacramento CA 95814

RICHARD W. COREY
Executive Officer
California Air Resources Board
1001 I Street
Sacramento CA 95814

ELLEN M. PETER
Chief Counsel
D. ARON LIVINGSTON
Assistant Chief Counsel
DIANE KIYOTA
ALEXANDRA KAMEL
Attorneys, Legal Office
California Air Resources Board
1001 I Street
Sacramento CA 95814

FOR VOLKSWAGEN AG:

Date: June 24, 2016

/s/ Francisco Javier Garcia Sanz
FRANCISCO JAVIER GARCIA SANZ
VOLKSWAGEN AG
P.O. Box 1849
D-38436 Wolfsburg, Germany

Date: June 24, 2016

MANFRED DOESS
VOLKSWAGEN AG
P.O. Box 1849
D-38436 Wolfsburg, Germany

FOR AUDI AG:

Date: June 24, 2016

/s/ Francisco Javier Garcia Sanz
FRANCISCO JAVIER GARCIA SANZ
VOLKSWAGEN AG
P.O. Box 1849
D-38436 Wolfsburg, Germany

Date: June 24, 2016

MANFRED DOESS
VOLKSWAGEN AG
P.O. Box 1849
D-38436 Wolfsburg, Germany

FOR VOLKSWAGEN GROUP OF AMERICA, INC.:

Date: June 24, 2016

DAVID DETWEILER
VOLKSWAGEN GROUP OF AMERICA, INC.
2200 Ferdinand Porsche Drive
Herndon, Virginia 20171

FOR VOLKSWAGEN GROUP OF AMERICA CHATTANOOGA OPERATIONS, LLC:

Date: June 24, 2016

DAVID DETWEILER
VOLKSWAGEN GROUP OF AMERICA, INC.
2200 Ferdinand Porsche Drive
Herndon, Virginia 20171

COUNSEL FOR VOLKSWAGEN AG, AUDI AG, VOLKSWAGEN GROUP OF AMERICA, INC., AND VOLKSWAGEN GROUP OF AMERICA CHATTANOOGA OPERATIONS, LLC

Date: June 24, 2016

ROBERT J. GIUFFRA, JR.
SHARON L. NELLES
STEVEN L. HOLLEY
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004
Telephone: (212) 558-4000
Facsimile: (212) 558-3358
giuffrar@sullcrom.com
nelless@sullcrom.com

APPENDIX A
BUYBACK LEASE TERMINATION AND VEHICLE MODIFICATION RECALL PROGRAM

APPENDIX A

BUYBACK, LEASE TERMINATION, AND VEHICLE MODIFICATION RECALL PROGRAM

I. PURPOSE

The purpose of this Buyback, Lease Termination, and Vehicle Modification Recall Program ("Recall Program") is to remove 2.0 Liter Subject Vehicles that emit nitrogen oxides ("NOx") in excess of applicable standards from the roads and highways of the United States pursuant to EPA's and CARB's respective authorities under the Clean Air Act ("CAA") and the California Health and Safety Code ("CHSC"). In order to achieve this CAA and CHSC remedy, EPA/CARB require Settling Defendants to offer the Buyback or the Lease Termination, as defined below, for 100% of the non-compliant vehicles under terms described herein. In addition, if approved by EPA/CARB, Settling Defendants may, consistent with the provisions in Appendix B of this Consent Decree, modify such vehicles to substantially reduce their NO_x emissions in accordance with standards established by the agencies.

This Recall Program establishes the enforceable rules by which Settling Defendants shall make offers to Eligible Owners and Eligible Lessees of Eligible Vehicles to repurchase, cancel leases for, or modify such vehicles. Under this Recall Program and subject to the requirements contained in Section VI of this Appendix A, Settling Defendants shall remove from commerce and/or perform an Approved Emissions Modification on at least 85% of all 2.0 Liter Subject Vehicles no later than June 30, 2019 ("Recall Rate"). If Settling Defendants fail to achieve the required 85% Recall Rate, Settling Defendants shall pay additional funds to the Environmental Mitigation Trust established pursuant to Appendix D to this Consent Decree, as described more fully below.

II. DEFINITIONS

2.1 Terms used in this Appendix A shall have the meanings set forth below. Terms that are not defined below but are defined in Section III (Definitions) of the Consent Decree including any of its Appendices shall have the meanings set forth therein.

2.2 "2.0 Liter Subject Vehicle" shall have the same meaning as is used in the Consent Decree. The term "Eligible Vehicles" used in this Appendix A refers only to a subset of 2.0 Liter Subject Vehicles.

2.3 "Approved Emissions Modification" shall have the same meaning as is used in Appendix B of this Consent Decree.

2.4 "Buyback" shall mean the return of an Eligible Vehicle by an Eligible Owner to Settling Defendants, under terms and in accordance with a process to be established by Settling Defendants consistent with this Appendix A, in exchange for a payment that equals or exceeds the Retail Replacement Value.

2.5 "Class Action Settlement" shall mean the Consumer Class Action Settlement Agreement and Release filed in this action, *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 (N.D. Cal.), by the attorneys representing owners and lessees of Eligible Vehicles on June 28, 2016. If the Court approves the proposed Consumer Class Action Settlement Agreement and Release, "Class Action Settlement" shall refer to that agreement as and in the form it is ultimately approved and entered by the Court.

2.6 "Eligible Lessee" shall mean the current lessee or lessees of an Eligible Vehicle with a lease issued by VW Credit, Inc. No person shall be considered an Eligible Lessee by virtue of holding a lease issued by a lessor other than VW Credit, Inc.

2.7 "Eligible Owner" means the registered owner or owners of an Eligible Vehicle on the day the Eligible Vehicle is sold to Settling Defendants for the Buyback or receives an Approved Emissions Modification, except that the owner of an Eligible Vehicle who had an active lease issued by VW Credit, Inc. as of September 18, 2015, and purchased the previously leased Eligible Vehicle after June 28, 2016, shall not be an Eligible Owner. For avoidance of doubt, an Eligible Owner ceases to be an Eligible Owner if he or she transfers ownership of the Eligible Vehicle to a third party on or after June 28, 2016; and a third party who acquires ownership of an Eligible Vehicle on or after June 28, 2016, thereby becomes an Eligible Owner if that third party otherwise meets the definition of an Eligible Owner. Subject to the definition of Eligible Owner in the FTC Order, an owner of an Eligible Vehicle will not qualify as an Eligible Owner while the Eligible Vehicle is under lease to any third party, although any such owner, including any leasing company other than VW Credit, Inc., who otherwise meets the definition of an Eligible Owner would become an Eligible Owner if such lease has been canceled or terminated and the owner has taken possession of the vehicle.

2.8 "Eligible Vehicle" means any 2.0 Liter Subject Vehicle that is: (1) listed in the table immediately below this Paragraph; (2) registered with a state Department of Motor Vehicles or equivalent agency or held by a dealer not affiliated with Settling Defendants and located in the United States as of June 28, 2016; and (3) Operable as of the date the vehicle is brought in for the Buyback, the Lease Termination, or Approved Emissions Modification.

Model Year	**EPA Test Group**	**Make and Model(s)**
2009	9VWXV02.035N	VW Jetta, VW Jetta SportWagen
2009	9VWXV02.0U5N	VW Jetta, VW Jetta SportWagen
2010	AVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta SportWagen, Audi A3
2011	BVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta SportWagen, Audi A3
2012	CVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta SportWagen, Audi A3
2012	CVWXV02.0U4S	VW Passat
2013	DVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta SportWagen, Audi A3
2013	DVWXV02.0U4S	VW Passat

2014	EVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta SportWagen
2014	EVWXV02.0U4S	VW Passat
2015	FVGAV02.0VAL	VW Beetle, VW Beetle Convertible, VW Golf, VW Golf SportWagen, VW Jetta, VW Passat, Audi A3

2.9 "FTC Order" shall mean the Proposed Partial Stipulated Order for Permanent Injunction and Monetary Judgment filed in this action, *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 (N.D. Cal.), by the Federal Trade Commission on June 28, 2016. If the Court approves the Proposed Partial Stipulated Order for Permanent Injunction and Monetary Judgment, "FTC Order" shall refer to that Order as and in the form it is ultimately approved and entered by the Court.

2.10 "Operable" means that a vehicle so described can be driven under its own 2.0-liter TDI engine power. A vehicle is not Operable if it had a branded title of "Assembled," "Dismantled," "Flood," "Junk," "Rebuilt," "Reconstructed," or "Salvaged" as of September 18, 2015, and was acquired by any person or entity from a junkyard or salvaged after September 18, 2015.

2.11 "Lease Termination" shall mean the return of an Eligible Vehicle by an Eligible Lessee to Settling Defendants, under terms and in accordance with a process to be established by Settling Defendants consistent with this Appendix A.

2.12 "Modified Vehicle" shall mean a 2.0 Liter Subject Vehicle that has received an Approved Emissions Modification.

2.13 "Retail Replacement Value" shall mean, for a given Eligible Vehicle, the cost of retail purchase of a comparable replacement vehicle of similar value, condition, and mileage as of September 17, 2015.

2.14 "Recall Program" shall mean the Buyback, Lease Termination, and Vehicle Modification Recall Program established pursuant to this Appendix A.

III. NOTICES

3.1 Notice Regarding the Recall Program: No later than ten (10) Days after the Effective Date, Settling Defendants shall send or cause to be sent by First-Class, postage paid U.S. mail to all Eligible Owners and Eligible Lessees known to Settling Defendants notice of the Recall Program and a complete description of Eligible Owners and Eligible Lessees' rights thereunder. Such notice must satisfy the requirements of either subparagraph 3.1.1 or 3.1.2 below.

3.1.1 Class Action Settlement Notice. Settling Defendants may satisfy their obligation under Paragraph 3.1 by sending to Eligible Owners and Eligible Lessees a Court-approved Class Action Settlement Notice as part of the Class Action Settlement if such notice is approved by the Court before the Effective Date of this Consent Decree and if EPA/CARB do not require Settling Defendants to distribute an alternative notice pursuant to subparagraph 3.1.2 below.

3.1.2 Review and Approval of Alternative Notice. If Settling Defendants do not send to Eligible Owners and Eligible Lessees a Court-approved Class Action Settlement Notice in accordance with subparagraph 3.1.1 above, or if Settling Defendants are advised by EPA/CARB at any time before July 15, 2016, that Settling Defendants must submit to the agencies a proposed Recall Program notice different from the Class Action Settlement Notice, Settling Defendants shall, no later than August 15, 2016, submit to the United States and California a proposed notice together with a proposed plan for disseminating such notice to owners and lessees for review and approval in accordance with Section V of the Consent Decree.

3.1.3 Publication Notice. In addition to any notice that is mailed to Eligible Owners and Eligible Lessees under the requirements of this Section III of this Appendix A, Settling Defendants shall, no later than ten (10) Days after the Effective Date, also provide notice of the Recall Program to Eligible Owners and Eligible Lessees via a publication notice that is published in national newspapers and periodicals. Settling Defendants may satisfy this obligation by publishing a Class Action Settlement publication notice if such notice is approved by the Court before the Effective Date of this Consent Decree and if EPA/CARB do not require Settling Defendants to publish an alternative publication notice pursuant to subparagraph 3.1.4 below.

3.1.4 Review and Approval of Alternative Publication Notice. If Settling Defendants do not publish a Court-approved Class Action Settlement publication notice in accordance with subparagraph 3.1.3 above, or if Settling Defendants are advised by EPA/CARB at any time before July 15, 2016, that Settling Defendants must submit to EPA/CARB a proposed publication notice different from the Class Action Settlement publication notice, Settling Defendants shall, no later than August 15, 2016, submit to the United States and California a proposed publication notice together with a proposed plan for publishing such notice in national newspapers and periodicals for review and approval in accordance with Section V of the Consent Decree.

3.2 Future Emissions Modification Notice: If, with respect to any Test Group or combination of Test Groups, EPA/CARB issue a notice of Approved Emissions Modification in accordance with Appendix B of this Consent Decree, Settling Defendants shall provide by First-Class, postage paid U.S. mail to all affected Eligible Owners and Eligible Lessees known to Settling Defendants, notice of the availability of the Approved Emissions Modification within ten (10) Days of receiving the EPA/CARB notice. The notice sent to affected Eligible Owners and Eligible Lessees ("Approved Emissions Modification Disclosure") shall be in a form and include the disclosures approved by EPA/CARB at the time EPA/CARB approve the Proposed Emissions Modification pursuant to the terms of Appendix B to this Consent Decree. Settling Defendants shall also include in the mailing the applicable Extended Emissions Warranty for the Eligible Vehicle, as approved by EPA/CARB.

3.2.1 Contents of the Emissions Modification Notice and Extended Emissions Warranty. The Approved Emissions Modification Disclosure and approved Extended Emissions Warranty shall contain all disclosures required in Section 4.3.8 of Appendix B to this Consent Decree and any other disclosures required by law. EPA/CARB may reject any proposed notice and require changes to any proposed notice that does not contain a clear and accurate written disclosure regarding all impacts of the Approved Emissions Modification on the vehicle. Any notice issued in connection with an Approved Emissions Modification shall also make clear that

the affected Eligible Owner or Eligible Lessee alternatively has a right to participate in the Buyback or Lease Termination options described in Section IV of this Appendix A.

3.2.2 Online Access to the Emissions Modification Notice. The Approved Emissions Modification Disclosure shall also be made available online on a public website by Settling Defendants within two (2) business days of EPA/CARB approval of the Proposed Emissions Modification. The website shall display the Approved Emissions Modification Disclosure and approved Extended Emissions Warranty applicable to a specific vehicle when a user inputs the vehicle VIN. This online access to the Approved Emissions Modification Disclosure and approved Extended Emissions Warranty shall continue for a minimum of ten (10) years after the Consent Decree is entered.

3.2.3 Notice of Non-Availability of an Emissions Modification. If Settling Defendants (a) receive from EPA/CARB a Final Notice of Disapproval of Proposed Emissions Modification; (b) withdraw any application for an Approved Emissions Modification; or (c) decline to submit any such application, Settling Defendants shall, within ten (10) Days of receiving the notice of disapproval or withdrawing or declining to submit the relevant application, notify affected Eligible Owners and Eligible Lessees by First-Class, postage paid U.S. mail that the Proposed Emissions Modification for the affected Eligible Vehicles is not available. Settling Defendants shall also, within two (2) business days of receiving the notice of disapproval or withdrawing or declining to submit the relevant application, post a notice of the non-availability online at the public website Settling Defendants use to administer the Recall Program. Any such notice issued to affected Eligible Owners and Eligible Lessees as well as any such notice published online shall also make clear that the affected Eligible Owners and Eligible Lessees have a right to accept the Buyback or the Lease Termination offers described in Section IV of this Appendix.

3.3 Subsequent Notices: Nothing in this Consent Decree or its Appendices shall prevent Settling Defendants from issuing subsequent notices or taking additional measures to inform Eligible Owners or Eligible Lessees of the Recall Program, provided, however, that Settling Defendants may not provide any notice or additional information regarding the Recall Program that is inconsistent with or contradictory to the notices required by Paragraph 3.1, and any notice or additional information must conform to the disclosures that are approved by EPA/CARB in connection with an Approved Emissions Modification. Settling Defendants shall provide a copy of any subsequent consumer notices regarding the Recall Program that they provide to Eligible Owners or Eligible Lessees to the Court-appointed Claims Supervisor described in Paragraph 7.3 of this Appendix, and to EPA, CARB, and CA AG in accordance with Section XIII of the Consent Decree (Notices) as part of Settling Defendants' reports required by Paragraph 7.4 of this Appendix and shall provide any such subsequent consumer notices regarding the Recall Program to CA AG at the time such notices are distributed to affected Eligible Owners or Eligible Lessees.

3.4 Dealer Notice: No later than ten (10) Days after the Effective Date, Settling Defendants shall provide to authorized Volkswagen and Audi dealerships in the United States a notice describing dealers' obligations under the Recall Program. Settling Defendants shall also provide notice of the Recall Program to independent Volkswagen or Audi dealerships in the United States with which Settling Defendants have a business relationship. Settling Defendants may satisfy their obligation under this Paragraph by sending or causing to be sent to authorized Volkswagen and Audi dealerships in the United States the FTC Dealer Notice pursuant to the FTC Order. If Settling Defendants do not satisfy

their obligation under this Paragraph by sending or causing to be sent the FTC Dealer Notice, Settling Defendants shall, no later than ten (10) Days after the Effective Date, submit to EPA/CARB a proposed Dealer Notice for review and approval in accordance with Section V of this Consent Decree.

3.5 Notice Regarding Termination of the Recall Program: Settling Defendants may not withdraw any Buyback or Lease Termination offer associated with the Recall Program or terminate the Recall Program with regard to any vehicle model or engine Test Group unless notice of the Recall Program termination date with regard to the particular vehicle(s) has been submitted to the United States in accordance with Section XIII of the Consent Decree (Notices) at least six (6) months in advance. Settling Defendants shall also give notice of Recall Program termination to all affected Eligible Owners and Eligible Lessees who have not participated in the Buyback, Lease Termination, or Approved Emissions Modification at least 180 Days before Program termination. Settling Defendants may satisfy their obligation to notify Eligible Owners and Eligible Lessees under this Paragraph 3.5 by complying with Paragraph VI.H. of the FTC Order ("Reminder Notice").

IV. BUYBACK AND LEASE TERMINATION

4.1 Buyback Recall: Beginning no later than fifteen (15) Days after the Effective Date of the Consent Decree, Settling Defendants shall offer, and if accepted provide, each Eligible Owner of an Eligible Vehicle the Buyback, as defined in Paragraph 2.4, of the Eligible Vehicle at no less than the Retail Replacement Value. For purposes of the Buyback, the consumer payments required by the FTC Order and the Class Action Settlement are equal to or in excess of the Retail Replacement Value, and Settling Defendants' offer of buybacks and fulfilment of their buyback obligations under the FTC Order and Class Action Settlement satisfies the requirements of this Paragraph 4.1. Settling Defendants agree and acknowledge that their obligations under this EPA/CARB Consent Decree are independent of the FTC Order and Class Action Settlement. Thus, if for any reason the Settling Defendants do not perform their buyback obligations under the FTC Order and Class Action Settlement, or if the Court does not enter those agreements, Settling Defendants must still offer and provide the Buyback as required by this Paragraph.

4.2 Early Termination of Leases Recall: Beginning no later than fifteen (15) Days after Effective Date of the Consent Decree, Settling Defendants shall offer the Lease Termination to each Eligible Lessee of an Eligible Vehicle, upon return of the Eligible Vehicle. Any Lease Termination offer shall include full cancellation of the remaining terms of the lease with no financial or other penalty or cost. Settling Defendants shall pay any amounts necessary to accomplish the return of the vehicle without penalty to the Eligible Lessee, including, without limitation, early termination fees owed to third parties, except for fees for excess wear and use and excess mileage at the point of vehicle surrender, and other amounts due such as late payment fees, tickets, tolls, etc.

4.3 Duration of Buyback and Lease Termination Recall Offers: The Buyback and the Lease Termination recall offers required by Paragraphs 4.1 and 4.2 of this Appendix shall be available to Eligible Owners and Eligible Lessees beginning no later than fifteen (15) Days after the Effective Date of the Consent Decree, and the Buyback and the Lease Termination portions of the Recall Program shall remain open until at least two years after the Effective Date.

V. EMISSIONS MODIFICATION

5.1 Emissions Modification Recall: No later than fifteen (15) Days after Settling Defendants receive from EPA/CARB notice of the Approved Emissions Modification for one or more Test Groups pursuant to the terms of Appendix B of this Consent Decree, Settling Defendants shall offer to Eligible Owners and Eligible Lessees of the applicable Eligible Vehicles an Approved Emissions Modification in accordance with the terms approved by EPA/CARB.

5.1.1. No Incurred Costs. Settling Defendants, their agents, contractors, dealers, successors, or assigns shall provide the Approved Emissions Modification free of charge to all Eligible Owners and Eligible Lessees. Although Settling Defendants need not provide any consumer payment to any person eligible to participate in the Class Action Settlement who elects not to do so, Settling Defendants must provide an Approved Emissions Modification to any Eligible Owner or Eligible Lessee regardless of such participation.

5.1.2. No Release of Private Party Claim Solely for Approved Emissions Modification. Settling Defendants may not require any release of liability for any legal claims or arbitration of any claim that an Eligible Owner or Eligible Lessee may have against Settling Defendants or any other person solely in exchange for receiving an Approved Emissions Modification.

5.2 No End Date for Emissions Modification Recall: Once an emissions modification is approved by EPA/CARB pursuant to Appendix B and is offered to Eligible Owners or Eligible Lessees in accordance with Paragraph 5.1, such modification offer shall remain available to all Eligible Owners or Eligible Lessees of an Eligible Vehicle within the applicable Test Group or Test Groups indefinitely and shall remain subject to the conditions in subparagraphs 5.1.1, 5.1.2, 5.3.1, and the label requirements in subparagraph 5.3.5 of this Appendix A. In accordance with Paragraph 95 of the Consent Decree, the requirements contained in this Paragraph 5.2 shall continue in full force and effect after Termination of the Decree. Settling Defendants may move for Termination of the Decree pursuant to the requirements of Consent Decree Section XVII even though the obligations of this Paragraph 5.2 shall remain in place.

5.3 Additional Requirements for Emissions Modification.

5.3.1 Warranty. 2.0 Liter Subject Vehicles receiving the Approved Emissions Modification shall qualify for a warranty as described in Appendix B (the "Warranty").

5.3.2 Warranty Remedies. In addition to any protections provided by law (including those referenced in subparagraph 5.3.3 below), Settling Defendants must reoffer and provide a Buyback or Lease Termination to any Eligible Owner or Eligible Lessee of a Modified Vehicle in the event that, during the 18 months or 18,000 miles following the completion of the Approved Emissions Modification (the "Reoffer Period"), Settling Defendants fail to repair or remedy a confirmed mechanical failure or malfunction covered by the Warranty and associated with the Approved Emissions Modification (a "Warrantable Failure") after the Eligible Owner or Eligible Lessee physically presents the Modified Vehicle to a dealer for repair of the Warrantable Failure; and (1) the Warrantable Failure is unable to be remedied after making four separate service visits for the same Warrantable Failure during the Reoffer Period; or (2) the Modified Vehicle with the Warrantable Failure is out of service due to the Warrantable Failure for a cumulative total of 30 Days during the Reoffer Period. (For avoidance of doubt, a Modified

Vehicle shall not be deemed "out of service" when, after diagnosing the Warrantable Failure, the dealer returns or tenders the Modified Vehicle to the customer while the dealer awaits necessary parts for the Warrantable Failure, and the Modified Vehicle remains Operable.) In such a case, the Eligible Owner or Eligible Lessee shall receive the payments that he or she would have received under the Buyback or the Lease Termination at the time the Eligible Owner or Eligible Lessee first requested the Approved Emissions Modification less any payment amounts already received. No Eligible Owner or Eligible Lessee shall receive double-recovery of any portion of any payment. Settling Defendants shall, as part of their reporting obligations in Paragraph 7.4 below, notify EPA/CARB and CA AG when any Eligible Owner or Eligible Lessee participates in the Buyback or the Lease Termination under this subparagraph 5.3.2.

5.3.3 Preservation of Remedies. The Warranty shall be subject to any remedies provided by state or federal laws, such as the Magnuson-Moss Warranty Act, that provide consumers with protections, including without limitation "Lemon Law" protections, with respect to warranties.

5.3.4 No Defense. Except in an action alleging noncompliance with the terms of the Consent Decree, nothing in this Consent Decree or its Appendices may be cited as a defense to liability arising out of the Approved Emissions Modification.

5.3.5 Disclosure to Subsequent Purchasers. For each Modified Vehicle that receives the Approved Emissions Modification, Settling Defendants shall affix to the vehicle the applicable label approved by EPA/CARB in accordance with Appendix B. Settling Defendants shall also provide subsequent purchasers of Modified Vehicles the applicable Monroney fuel economy label for the vehicle as specified in Appendix B of this Consent Decree. In addition, Settling Defendants shall make available online a searchable Emissions Modification Database by which users, including potential purchasers, may conduct a free-of-charge search by vehicle VIN to determine whether the Approved Emissions Modification has been applied to a specific vehicle. This online access to the searchable Emissions Modification Database shall continue for a minimum of ten (10) years after the Effective Date of the Consent Decree.

VI. RECALL RATE

6.1 Recall Rate Target: By no later than June 30, 2019, Settling Defendants shall remove from commerce in the United States and/or perform an Approved Emissions Modification on at least 85% of those 2.0 Liter Subject Vehicles that existed as of September 17, 2015, as defined below ("National Recall Target" for the "National Recall Rate"). Additionally, by June 30, 2019, Settling Defendants shall remove from commerce in California and/or perform an Approved Emissions Modification on at least 85% of those 2.0 Liter Subject Vehicles registered in California that existed as of September 17, 2015, as defined below ("California Recall Target" for the "California Recall Rate"). Settling Defendants shall receive credit toward the National Recall Target (and for California vehicles, the California Recall Target) for every Buyback, Lease Termination, or Approved Emissions Modification of a 2.0 Liter Subject Vehicle that Settling Defendants execute prior to June 30, 2019, as well as any 2.0 Liter Subject Vehicle that is scrapped or otherwise permanently removed from commerce between September 17, 2015 and June 30, 2019, provided that no 2.0 Liter Subject Vehicle may be counted more than once. For purposes of this Paragraph, the total number of 2.0 Liter Subject Vehicles is 487,532 (499,406 vehicles less scrapped vehicles as of October 1, 2015 of 11,874). For

purposes of this Paragraph, the total number of all 2.0 Liter Subject Vehicles registered in California is 70,814.

6.2 Approved Emissions Modification for Generation 3: With respect to Generation 3 vehicles as that term is defined in Appendix B, Settling Defendants shall only receive credit toward the National Recall Target and the California Recall Target for vehicles that receive, prior to June 30, 2019, a required Subsequent Service Action, as that term is defined in Appendix B.

6.3 Consequences of Failing to Meet Recall Target: If, by June 30, 2019, Settling Defendants fail to achieve the 85% Recall Rate Targets required by Paragraph 6.1, Settling Defendants shall make additional contributions ("Mitigation Trust Payments") to the Environmental Mitigation Trust established pursuant to Appendix D of this Consent Decree. Such additional Mitigation Trust Payments shall be as follows:

6.3.1. National Mitigation Trust Payment. For failure to reach the National Recall Target, Settling Defendant shall contribute to the Environmental Mitigation Trust $85,000,000 for each 1% that the National Recall Rate falls short of the National Recall Target. In calculating any payment required under this subparagraph, the National Recall Rate shall be rounded to the nearest half percentage point. Any payments to the Environmental Mitigation Trust made pursuant to this subparagraph shall be used pursuant to the terms of Appendix D exclusively to fund environmental mitigation projects outside California.

6.3.2. California Mitigation Trust Payment. For failure to reach the California Recall Target, Settling Defendant shall contribute to the Environmental Mitigation Trust $13,500,000 for each 1% that the California Recall Rate falls short of the California Recall Rate Target. In calculating any payment required under this subparagraph, the California Recall Rate shall be rounded to the nearest half percentage point. Any payments to the Environmental Mitigation Trust made pursuant to this subparagraph shall be used pursuant to the terms of Appendix D exclusively to fund environmental mitigation projects in California.

6.4 Payment Schedule for Additional Mitigation Payments: All Mitigation Trust Payments made pursuant to this section shall be made to the Trust Account in the manner set forth in Appendix D and shall be made no later than July 31, 2019, together with interest as provided for in 28 U.S.C. § 1961.

VII. OTHER PROVISIONS

7.1 No Prohibition on Other Incentives: Nothing in this Appendix A is intended to prohibit Settling Defendants from offering an Eligible Owner or Eligible Lessee any further incentives or trade-in options in addition to those provided herein; however, Settling Defendants may not offer Eligible Owners or Eligible Lessees other incentives or trade-in options *in lieu* of the options contained herein, in whole or in part, or any incentive not to participate in those options.

7.2 Disposition of Vehicles.

7.2.1. Vehicles Rendered Inoperable. All Eligible Vehicles returned to Settling Defendants through the Recall Program shall be rendered inoperable by removing the vehicle's

Engine Control Unit ("ECU") and may be, to the extent possible, recycled to the extent permitted by law. No Eligible Vehicle that is rendered inoperable may subsequently be rendered operable except as allowed by and in compliance with subparagraph 7.2.3 below and Appendix B of this Consent Decree.

7.2.2. Limitation on Scrapping of Vehicles. Returned Eligible Vehicles and 2.0 Liter Subject Vehicles may be salvaged for parts, and such parts may be sold in the United States or exported, provided, however, that in no event may the ECU, diesel oxidation catalyst, or diesel particulate filter be salvaged, resold, or exported.

7.2.3. Sale and Export of Returned Vehicles. Notwithstanding the requirements of subparagraphs 7.2.1 and 7.2.2 above, Settling Defendants may elect to resell or sell any returned Eligible Vehicle or any 2.0 Liter Subject Vehicle in the United States, provided, however, that Settling Defendants first modify the particular vehicle in accordance with the applicable Approved Emissions Modification, label such vehicle, and provide the Approved Emissions Modification Disclosure, Warranty, and Warranty Remedies as provided in Paragraph 5.3 above to prospective purchasers, and meet the other requirements for resale of returned vehicles set forth in Appendix B. Settling Defendants may not export or arrange for the export of 2.0 Liter Subject Vehicles, unless such vehicle has been modified in accordance with the applicable Approved Emissions Modification pursuant to the terms of Appendix B of this Consent Decree.

7.2.4. Disposition of Vehicles without an Approved Emissions Modification. In the event that there is no Approved Emissions Modification for a particular class of 2.0 Liter Subject Vehicles (either because a Proposed Emissions Modification was disapproved by EPA/CARB, or because Settling Defendants withdrew or failed to submit an application for an Approved Emissions Modification), such vehicles may only be disposed of consistent with the requirements of subparagraphs 7.2.1 and 7.2.2 above.

7.3 Claims Supervisor: The Recall Program is subject to oversight by a Court-appointed Claims Supervisor as required by the FTC Order. As noted and required in the FTC Order, the Claims Supervisor shall submit regular reports to EPA/CARB.

7.4 Reporting: Settling Defendants shall provide EPA, CARB, and the CA AG with status reports on the Buyback, Lease Termination, and Vehicle Modification Recall Program. Such status reports shall be certified in accordance with the requirements of Paragraph 33 of the Consent Decree and shall include, at a minimum, the following elements:

7.4.1. A review of Settling Defendants' progress toward reaching the Recall Rate targets required by Section VI of this Appendix A;

7.4.2. Each Eligible Vehicle, listed by VIN, model and year, reacquired by Settling Defendants and the date of such reacquisition;

7.4.3. Each Eligible Vehicle, listed by VIN, model and year, that has been resold, exported, rendered inoperable, or destroyed and the date of such resale, export, rendering, or destruction;

7.4.4. Each Eligible Vehicle, listed by VIN, model and year, that has received an Approved Emissions Modification and the date of such modification;

7.4.5. A compilation of all notices widely distributed to Eligible Owners or Eligible Lessees since the last report submitted by Settling Defendants under this Paragraph including email notices and any updates to the claims administration website;

7.4.6. Each 2.0 Liter Subject Vehicle, listed by VIN, model and year, that is not an Eligible Vehicle and that has been removed from commerce and/or has received an Approved Emissions Modification;

7.4.7. A summary or copy of all bulletins, notices, or other similar communications sent to authorized Volkswagen and Audi dealerships regarding the Recall Program, including information regarding Warranties and Warranty Remedies provided to dealerships.

7.4.8. The first report shall be due by the end of the month following the end of the quarter in which the Consent Decree is entered by the Court (i.e., January 31st, April 30th, July 31st, and October 31st, as applicable). Thereafter each subsequent report shall be due at the end of the month following the end of each quarter, with the final report due July 31, 2019. After one year following the beginning of the Recall Program, Settling Defendants may submit such reports on a semi-annual basis together with any other reports required by this Consent Decree. Additionally, Settling Defendants shall provide the EPA, CARB, and the CA AG with any documents, accounting, or other information related to Volkswagen's compliance within 30 Days of the request by the agencies, or longer with the requesting party's agreement.

7.4.9. Settling Defendants' obligation to submit reports under this Paragraph 7.4 and its subparagraphs shall not continue beyond July 31, 2019, provided however, that nothing in this subparagraph 7.4.9 alters or affects Settling Defendants' obligation to submit reports pursuant to subparagraph 7.2.8 of Appendix B for five (5) years following the Effective Date of the Consent Decree.

7.5 No Attorneys' Fees or Costs: To the extent Settling Defendants elect to pay private attorneys' fees or costs, Settling Defendants will not receive credit for such payments against obligations to Eligible Owners or Eligible Lessees required under this Consent Decree or its Appendices.

7.6 Total Available Recall Program Funds: Settling Defendants' total funding pool available to satisfy the requirements of the Buyback, Lease Termination, and Vehicle Modification Recall Program, as well as any consumer payments made in connection with the FTC Order or the Class Action Settlement, shall be $10,033,000,000, based on an assumed 100% consumer participation rate, and an assumed 100% Buyback of purchased Eligible Vehicles, and an assumed 100% Lease Termination of leased Eligible Vehicles. Any unspent funds will revert to Settling Defendants upon the completion of the Class Action Settlement program.

VIII. DISPUTE RESOLUTION AND STIPULATED PENALTIES

8.1 Dispute Resolution: All disputes between a) Settling Defendants; and b) the United States and/or CARB and/or the California Attorney General's Office shall be addressed in the manner

set forth in Section IX (Dispute Resolution) of the Consent Decree. With respect to any dispute under this Appendix A, in any judicial proceeding conducted pursuant to the dispute resolution procedures set forth in the Consent Decree, Settling Defendants shall bear the burden of demonstrating by a preponderance of the evidence that their actions were in compliance with this Appendix A.

8.2 Stipulated Penalties: The following Stipulated Penalties shall be applicable in connection with this Appendix A. All Stipulated Penalties required by this Paragraph 8.2 shall be paid in accordance with the requirements of Section VII (Stipulated Penalties and Other Mitigation Trust Payments) of the Consent Decree.

8.2.1. Failure to Make Required Payments. If Settling Defendants fail to transmit the full amount of any Buyback payment within fifteen (15) Days following the later of: (1) the Day an Eligible Vehicle is surrendered by an Eligible Owner or Eligible Lessee; or (2) the Day that the Claims Review Committee described in the Class Action Settlement determines that payment is owing and due, Settling Defendants shall pay the following Stipulated Penalty: $8,000 per affected Eligible Vehicle.

8.2.2. Failure to Timely Initiate Recall Program Offer. If Settling Defendants fail to timely initiate any offer of the Buyback, Lease Termination, or Approved Emissions Modification to all applicable Eligible Owners and applicable Eligible Lessees as required by Paragraphs 4.1, 4.2, or 5.1 (that is, if Settling Defendants fail to initiate offers of the Buyback or the Lease Termination within 15 Days of the Effective Date, or fail to initiate offers of Approved Emissions Modification within 15 Days of modification approval), unless such time is extended in writing by EPA/CARB, Settling Defendants shall pay the following Stipulated Penalty for each Day the offer is delayed:

$10,000	1st through 14th Day
$25,000	15th through 30th Day
$50,000	31st Day and beyond

8.2.3. Failure to Submit Reports or Notices. If Settling Defendants fail to timely submit any report required by Paragraph 7.4 or any notice required by Paragraphs 3.1, 3.2, 3.4 or 3.5 of this Appendix A, the following Stipulated Penalties shall apply for each Day that such Report or Notice is not submitted:

$2,000	1st through 14th Day
$5,000	15th through 30th Day
$10,000	31st Day and beyond

In no event shall Settling Defendants be required to pay stipulated penalties for the same conduct under this subparagraph 8.2.3 and Paragraph 41 of the Consent Decree.

8.2.4. Early Termination of Recall Program. If Settling Defendants prematurely terminate the Recall Program with respect to any class of Eligible Vehicle or Vehicles, Settling Defendants shall pay the following Stipulated Penalty per Day.

$50,000	1st through 14th Day
$100,000	15th through 30th Day
$200,000	31st Day and beyond

8.2.5. Unauthorized Waiver or Release. If Settling Defendants require any release of liability for any legal claims that an Eligible Owner or Eligible Lessee may have against Settling Defendants or any other person solely in exchange for receiving an Approved Emissions Modification, Settling Defendants shall pay the following Stipulated Penalty: $10,000 per affected Eligible Vehicle.

8.2.6. Failure to Make Mitigation Payments. If Settling Defendants fail to timely make any Mitigation Trust Payments required by Paragraph 6.3 to be paid no later than July 31, 2019, the following Stipulated Penalties shall apply for each Day the required payment is not submitted:

$50,000	1st through 14th Day
$100,000	15th through 30th Day
$200,000	31st Day and beyond

8.2.7. Misleading Notices or Advertisements. If Settling Defendants provide any materially misleading or inaccurate notice to any Eligible Owner or Eligible Lessee regarding the individual owner or lessee's rights, right to payment, or available remedies under the Recall Program, Settling Defendants shall have 30 Days to correct such notice after EPA, CARB, or the CA AG advise Settling Defendants that the notice is materially misleading or inaccurate. If Settling Defendants fail to correct the notice within 30 Days, the following stipulated penalty shall apply per Day the notice is not corrected:

$10,000	1st through 14th Day
$25,000	15th through 30th Day
$50,000	31st Day and beyond

8.2.8. Failure to Properly Dispose of Returned Vehicle. If Settling Defendants improperly dispose of or export any returned vehicle in violation of the requirements of Paragraph 7.2 or sell, re-sell or cause to be sold or re-sold any 2.0 Liter Subject Vehicle that has not received an Approved Emissions Modification, Settling Defendants shall pay the following Stipulated Penalty: $10,000 per affected 2.0 Liter Subject Vehicle. In no event shall Settling Defendants be required to pay stipulated penalties under subparagraph 8.2.3 of Appendix B of this Consent Decree if a stipulated penalty under this subparagraph 8.2.8 is demanded for the same conduct.

APPENDIX B
VEHICLE RECALL AND EMISSIONS MODIFICATION PROGRAM

APPENDIX B

VEHICLE RECALL AND EMISSIONS MODIFICATION PROGRAM

I. PURPOSE

This Appendix B establishes how Settling Defendants shall submit Proposed Emissions Modifications, and how the United States Environmental Protection Agency ("EPA") and the California Air Resources Board ("CARB") (collectively, "EPA and CARB" or "EPA/CARB") will approve or disapprove any such proposal, should Settling Defendants choose, at their election, to submit a Proposed Emissions Modification. Settling Defendants must comply with the requirements of this Appendix B. No Emissions Modification may be performed by, or on behalf of, Settling Defendants unless and until EPA/CARB approve the applicable Proposed Emissions Modification. Following approval, any Emissions Modification performed by, or on behalf of, Settling Defendants must conform to the applicable Approved Emissions Modification and the requirements set forth herein.

If Settling Defendants submit a Proposed Emissions Modification according to the terms of this Appendix B, and EPA/CARB determine the proposal satisfies the requirements set forth herein, then EPA/CARB will approve that Proposed Emissions Modification. EPA/CARB will issue decisions, including decisions concerning the approval or disapproval of Proposed Emissions Modifications, in accordance with the definitions and decision-making authorities set forth in Section V of the Consent Decree (Approval of Submissions and EPA/CARB Decisions). EPA/CARB will review any proposal according to this Appendix B, rather than according to the regulatory processes for reviewing applications for Certificates of Conformity, Executive Orders, or administrative recalls; provided, however, except as otherwise expressly stated herein, the applicable regulatory calculation methods, test procedures, protocols, processes, or procedures shall apply unless an alternative approach is approved by the agencies.

II. DEFINITIONS

2.1 Terms used in this Appendix B shall have the meanings set forth below. Terms that are not defined below but are defined in Section IV (Definitions) of the Consent Decree shall have the meaning set forth therein.

2.2 "20º F FTP" means the FTP conducted at 20º Fahrenheit, as specified in 40 C.F.R. Part 1066 Subpart H.

2.3 "2014 Reflash" means the modification of Generation 1 and Generation 2 2.0 Liter Subject Vehicles in 2014 and 2015.

2.4 "Approved Emissions Modification" means an Emissions Modification submitted by Settling Defendants and approved by EPA/CARB.

2.5 "Auxiliary Emission Control Device" or "AECD" has the meaning set forth in 40 C.F.R. § 86.1803-01.

2.6 "AT" means automatic transmission.

2.7 "Calibration" means a specific parameterization of the ECU software that determines how various processes in engine and exhaust aftertreatment are controlled under many different operating conditions. A common example of a process is fuel injection (timing and quantity) under different engine loads and ambient conditions. The term "Calibration" can also be used synonymously for the act of setting the parameters of the ECU software.

2.8 "Critical OBD Demonstration" means the minimum set of OBD emission demonstration tests, pursuant to Cal. Code. Regs. tit. 13, § 1968.2(h) (2013), that must be completed and included in Part B of the Proposed Emissions Modification. For Generation 1, the minimum set of tests includes: PM filter efficiency, NOx trap, EGR low flow, and injection quantity minimum for automatic transmission vehicles only. For Generation 2, the minimum set of tests includes: PM filter efficiency, SCR catalyst efficiency, EGR low flow, and injection quantity minimum for automatic transmission vehicles only. For Generation 3, the minimum set of tests includes: PM filter efficiency, SCR efficiency, EGR low flow, injection quantity minimum, injection quantity maximum, and DOC for automatic transmission vehicles only.

2.9 "Combined Uphill/Downhill and Highway Route" means the driving route shown and described in Appendix B-3 to this Consent Decree.

2.10 "DEF System" means the combination of vehicle components used to store, filter, measure the level and quality of, thaw, and inject the DEF into the exhaust.

2.11 "Defeat Device" has the meaning provided under 42 U.S.C. § 7522(a)(3)(B) and 40 C.F.R. § 86.1803-01.

2.12 "DeNOx Strategies" means an AECD that acts to convert NOx that accumulates on the NOx trap to N2.

2.13 "DeSOx Strategy" means an AECD that acts to remove sulfur that accumulates on the NOx trap.

2.14 "DeSOx Escalation Strategies" means an AECD that acts in stages to improve the removal of sulfur that accumulates on the NOx trap.

2.15 "Deterioration Factor" or "DF" means the number, determined pursuant to 40 C.F.R. § 86.1823-08, that represents the change in emissions performance during a vehicle's Full Useful Life. The DF is applied to emission results from the required test cycles, as provided in 40 C.F.R. § 86.1841-01. DFs are used to estimate increases in emissions caused by deterioration of the emission control system as a vehicle ages over its Full Useful Life.

2.16 "Diesel Exhaust Fluid" or "DEF" means a liquid reducing agent (other than engine fuel) used in conjunction with selective catalytic reduction to reduce NO_X emissions. DEF is generally understood to be an aqueous solution of urea conforming to the specification of ISO 22241. DEF is used in Generation 2 and Generation 3 vehicles and is sometimes referred to by the trademarked name, "AdBlue."

2.17 "Drivability" means the smooth delivery of power, as demanded by the driver or operator. Typical elements of Drivability degradation are rough idling, misfiring, surging, hesitation, or insufficient power. Conversion from conventional fuels to alternative fuels may entail losses of volumetric efficiency, resulting in some power loss. Such power loss is not considered to be Drivability degradation.

2.18 "Durability Demonstration Vehicle" or "DDV" means a vehicle with the final emission calibration that is run on the Standard Road Cycle ("SRC") to Full Useful Life. Periodically (at approximately 4,000 miles, 30,000 miles, and every 30,000 miles thereafter) emission testing in the FTP75 is performed and the Deterioration Factor is calculated. After completion of emission testing at Full Useful Life, the vehicle is reflashed with the final engine Calibration, which includes the final emission Calibration (used during mileage accumulation to Full Useful Life) and final OBD Calibration, and the reflashed vehicle is used for Full Useful Life emission compliance and OBD testing required to be reported post-submission according to subparagraph 4.3.4 in this Appendix B. Subject to EPA/CARB approval, a representative Generation 3 vehicle may be used as the DDV for purposes of complying with subparagraph 4.3.4.

2.19 "ECU" or "Engine Control Unit" means the computer, including associated software, which controls various engine functions, including emission control system functions.

2.20 "EGR" or "Exhaust Gas Recirculation" means a device that directs a portion of the exhaust gas into the intake air stream for the purpose of controlling emissions.

2.21 "Eligible Vehicle" has the meaning provided in Appendix A of the Consent Decree.

2.22 "Eligible Lessee" has the meaning provided in Appendix A of the Consent Decree.

2.23 "Eligible Owner" has the meaning provided in Appendix A of the Consent Decree.

2.24 "Emission Control System" means a unique group of emission control devices, auxiliary emission control devices, engine modifications and strategies, and other elements of design designated by EPA/CARB and used to control exhaust emissions of a vehicle.

2.25 "Emission Control System Data Parameters" means the data parameters that Settling Defendants must record while conducting the Required Emissions Test Procedures, including the preconditioning cycles, as set forth in Appendix B-2 to this Consent Decree.

2.26 "Emissions Increasing Auxiliary Emissions Control Device" or "EI-AECD" means any AECD, as defined in Cal. Code. Regs. tit. 13, § 1968.2(c), that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use, provided that the need for such AECD is justified by the protection it provides against vehicle damage or accident. EI-AECDs do not include AECDs that do not sense, measure, or calculate any parameter or command or trigger any action, algorithm, or alternate strategy; or AECDs that are activated solely due to any of the following conditions: (1) operation of the vehicle above 8,000 feet in elevation; (2) ambient temperature; (3) when the engine is warming up and is not reactivated once the engine has warmed up in the same driving cycle; (4) failure detection (storage of a fault code) by the OBD system; (5) execution of an OBD monitor; or (6) execution of an infrequent regeneration event.

2.27 "Emissions Levels" means the emissions levels that represent the best achievable emissions performance, as specified in Appendix B-1 to this Consent Decree (Prior Test Results).

2.28 "Emissions Modification" means the alterations to 2.0 Liter Subject Vehicles including software recalibration and replacement of parts related to the Emissions Control System, that are designed to reduce emissions, remove all Defeat Devices and bring the vehicles into compliance with the Maximum Emissions Modification Limits and the other requirements specified in this Appendix B.

2.29 "Emissions Modification Database" means a searchable database that Settling Defendants make available online, by which users, including Eligible Owners, Eligible Lessees, and potential purchasers, may conduct a free-of-charge search by vehicle VIN to determine whether the Emissions Modification is available for, or has been applied to, a specific vehicle.

2.30 "Emissions Modification Proposal" means the required materials Settling Defendants provide in a Submission or multiple Submissions for EPA/CARB review and approval or disapproval of any Proposed Emissions Modification, if Settling Defendants elect to submit such a proposal.

2.31 "Engine Bench-aged" means aging that is conducted on an internal combustion engine test bench using a procedure that is subject to EPA/CARB approval and using a fuel type (diesel or gasoline) as provided herein.

2.32 "Engineering Durability Data" means data which is used to estimate the Official Durability Data. It may be based on a preliminary design of the Emission Modification. It may also be determined from an extrapolation of incomplete Official Durability Data or by simulating the mileage accumulation required under 40 C.F.R. § 86.1823-08.

2.33 "Engineering Durability Testing" means testing to obtain Engineering Durability Data.

2.34 "EPA/CARB" means EPA and CARB when the agencies evaluate Settling Defendants' Submissions and issue decisions, including decisions concerning the approval or

disapproval of Proposed Emissions Modifications, in accordance with the definitions and decision-making authorities set forth in Section V of this Consent Decree (Approval of Submissions and EPA/CARB Decisions).

2.35 "Federal Test Procedure" or "FTP" means the driving schedule in 40 C.F.R. Part 86, Appendix I, Section (a) (EPA Urban Dynamometer Driving Schedule for Light-Duty Vehicles and Light-Duty Trucks).

2.36 "Final OBD Demonstration" means:

2.36.1 For automatic transmission vehicles: all OBD emission demonstration testing required under Cal. Code. Regs. tit.13, § 1968.2(h) (2013), except, if Settling Defendants assert that only a functional check is required because no failure or deterioration of the specific tested system could result in an engine's emissions exceeding the emission malfunction criteria, Settling Defendants must still complete the OBD demonstration and submit with the proposal all emission and fault detection data from vehicles equipped with the Proposed Emissions Modification used to determine that only a functional test of the system(s) is required.

2.36.2 For manual transmission vehicles: all OBD emission demonstration testing required under Cal. Code. Regs. tit. 13, § 1968.2(h) (2013), including the requirements concerning functional check data noted above, except limited to the following monitors:

i. For Gen 1: PM filter efficiency, NOx Trap efficiency, EGR low flow, injection quantity minimum, charge air undercooling, EGR slow response, oxygen sensor upstream LNT slow response, oxygen sensor upstream of NOx Trap positive amplification, oxygen sensor upstream of NOx Trap negative amplification, misfire detection, underboost, and DOC efficiency.

ii. For Gen 2: PM filter efficiency, SCR efficiency, EGR low flow, injection quantity minimum, SCR delivery performance, misfire detection, EGR slow response, underboost, overboost, boost system slow response, charge air undercooling, DEF delivery performance, and DOC efficiency.

iii. For Gen 3: PM filter efficiency, SCR efficiency, EGR low flow, injection quantity minimum, injection quantity maximum, DEF delivery performance, and DOC efficiency.

2.37 "FTP@1620m" means FTP testing at high-altitude conditions, i.e., a test altitude of 1,620 meters (5,315 feet), plus or minus 100 meters (328 feet), or equivalent observed barometric test conditions of 83.3±1 kilopascals.

2.38 "Full Useful Life" or "FUL" means the regulatory period in years or miles for which vehicles must meet emission standards. Full Useful Life is 10 years or 120,000 miles, whichever occurs first, for Model Year 2009-2014 2.0 Liter Subject Vehicles and 15 years or 150,000 miles, whichever occurs first, for Model Year 2015 2.0 Liter Subject Vehicles.

2.39 "Generation" means the different versions of emission control technology installed in various configurations of 2.0 Liter Subject Vehicles.

2.40 "Generation 1" or "GEN 1" means the following 2.0 Liter Subject Vehicles: Volkswagen Jetta (Model Years 2009-2014), Jetta SportWagen (2009-2014), Golf (2010-2014), Beetle (2013-2014), Beetle Convertible (2013-2014), and Audi A3 (2010-2013), containing a lean NOx trap system, within the test groups specified in the Consent Decree.

2.41 "Generation 2" or "GEN 2" means the following 2.0 Liter Subject Vehicles: Volkswagen Passat (Model Year 2012-2014) containing a selective catalytic reduction system with SCR catalyst in under floor position, within the test groups specified in the Consent Decree.

2.42 "Generation 3" or "GEN 3" means the following 2.0 Liter Subject Vehicles: Volkswagen Jetta, Golf, Golf SportWagen, Beetle, Beetle Convertible, Passat and Audi A3 (Model Year 2015), containing an SCR system with the upstream SCR catalyst close-coupled to the engine and an SCR catalyst in the underfloor position, within the test groups specified in the Consent Decree.

2.43 "Highway Fuel Economy Test," "HWFET," or "HWY FE" mean the test cycle that represents highway driving as described in 40 C.F.R. Part 600 Appendix I.

2.44 "Include" and "Including," as used in this Appendix B, are not limiting terms.

2.45 "Infrequent Regeneration Adjustment Factor" or "IRAF" mean the adjustment factor for each pollutant used to account for increased emissions caused by periodic regeneration of certain control devices, such as DPFs, performed by burning particulates that have accumulated in the control device. The increased emissions caused by such regeneration are accounted for over the emission test cycles by adjustment factors, or IRAFs, applicable to the pollutants NMOG, NOx, CO, and PM.

2.46 "Maximum Emissions Modification Limits" means the emissions levels, specified in Tables 1-3, that the Modified Vehicles may not exceed.

2.47 "Modified Vehicle" means a 2.0 Liter Subject Vehicle that Settling Defendants, or an entity acting on behalf of Settling Defendants, have modified in accordance with an Approved Emissions Modification.

2.48 "MT" means manual transmission.

2.49 "Noise Vibration and Harshness" or "NVH," means a measure of the noise level heard during driving, the vibrations felt during driving, and the harshness of the ride of the vehicle.

2.50 "Non-Methane Organic Gases" or "NMOG" means the sum of oxygenated and non-oxygenated hydrocarbons contained in a gas sample as measured using the procedures described in 40 C.F.R. § 1066.635.

2.51 "NOx + NMOG Limit" means an emissions limit concerning the sum of NOx plus Non-Methane Organic Gases (NMOG) and required by this Appendix B.

2.52 "NOx" means oxides of nitrogen, i.e., the sum of the nitric oxide and nitrogen dioxide contained in a gas sample as if the nitric oxide were in the form of nitrogen dioxide.

2.53 "NOx Reduction System" means, for the Generation 1 vehicles, all components in the exhaust system which enable NOx reduction in conjunction with the NOx trap.

2.54 "NOx Sensor" means a sensor located in a vehicle's exhaust system which measures NOx. The reading from the sensor provides feedback to the emission control system.

2.55 "NOx Trap" means an exhaust emission control device which traps (adsorbs or stores) NOx under lean combustion conditions. Periodically, by design, the trapped NOx is reduced to N2 by reaction with hydrocarbons under rich combustion conditions. This type of emission control device is sometimes referred to as a lean NOx trap, NOx adsorber, or NOx storage catalyst and is used on Generation 1 vehicles.

2.56 "Official Durability Data" means emissions data obtained by periodic testing during the accumulation of 100% of Full Useful Life mileage on test vehicles, as described in 40 C.F.R. § 1823-08 and as required under this Appendix B. Official Durability Data is used to determine DFs.

2.57 "Oven-aged Parts" means parts that are exposed to high temperatures to simulate the aging achieved through mileage accumulation on a vehicle.

2.58 "Particulate Matter" or "PM" mean particulates formed during the diesel combustion process and measured by the procedures specified in 40 C.F.R. Part 86 Subpart B.

2.59 "Portable Emissions Measurement System" or "PEMS" mean an emissions measurement system which measures emissions of NOx, CO, CO_2, and THC (Total Hydrocarbons) while a vehicle is driven on the road.

2.60 "Proposed Emissions Modification" means the alterations to 2.0 Liter Subject Vehicles, including software recalibration and replacement of parts related to the Emissions Control System, that Settling Defendants may propose for EPA/CARB approval, and that are designed to reduce emissions, remove all Defeat Devices, and bring the vehicles into compliance with the requirements specified in this Appendix B.

2.61 "Required Emissions Test Procedures" shall have the meaning specified in subparagraph 4.3.2.

2.62 "Road Mode Calibration" means the Calibration installed on Subject 2.0 Liter Vehicles when certified, and not reflecting any modification conducted as part of the 2014 Reflash or an Approved Emissions Modification, that controls Emission Control Systems in the vehicle when driven on the road, as opposed to during tests for emissions compliance.

2.63 "SC03" means the test cycle, described in 40 C.F.R. § 86.160–00 and listed in 40 C.F.R. Part 86, Appendix I, paragraph (h), which is designed to represent driving under urban conditions at elevated temperatures and high solar loading with the air conditioner on.

2.64 "SCR Guidelines" means the EPA guidance document, *Certification Procedure for Light-Duty and Heavy-Duty Diesel Vehicles and Heavy-Duty Diesel Engines Using Selective Catalyst Reduction (SCR) Technologies*, CISD 07-07, March 27, 2007, and the SCR presentation by EPA and CARB, *Selective Catalytic Reduction Workshop* (July 20, 2010), http://www.arb.ca.gov/msprog/onroadhd/documents/epa-arb_scr_workshop_7-20-10.pdf.

2.65 "SCR Inducements" or "Inducements" means the limitations imposed on vehicle operation that occur when a vehicle runs out of DEF, has poor quality DEF, or when tampering occurs to the SCR system. Inducements might include limitations on vehicle speed or rendering inoperable the restart function of the vehicle.

2.66 "SCR System" means the combination of components necessary for NOx to be reduced by selective catalytic reduction. These components include the DEF tank, DEF injection system, SCR catalyst(s), and associated sensors.

2.67 "Sea Level" means common altitudes at which Settling Defendants conduct certain tests (0-500 meters height).

2.68 "Second NOx Sensor" means an additional NOx sensor which will be added to Generation 3 vehicles during a Subsequent Service Action.

2.69 "SFTP Composite" means emissions result weighted over three test cycles according to the following formula: SFTP Composite = 0.35 × (FTP) + 0.28 × (US06) + 0.37 × (SC03).

2.70 "Subsequent Service Action" means a removal, addition, installation, replacement, repair, or other modification of an emission related component on a Modified Vehicle that is required to bring the vehicle into compliance with this Appendix B.

2.71 "Supplemental FTP" or "SFTP" mean the additional test procedures designed to measure emissions during aggressive and microtransient driving, as described in 40 C.F.R. § 86.159–00 over the US06 cycle, and also the test procedure designed to measure urban driving emissions while the vehicle's air conditioning system is operating, as described in 40 C.F.R. § 86.160–00 over the SC03 cycle.

2.72 "Switch Calibration" means the computerized program utilized by a Subject 2.0 Liter Vehicle's ECU, prior to receiving an Approved Emissions Modification, to determine if the vehicle is being tested for emissions or driven on the road. The Switch Calibration program changes the operation of the vehicle's Emission Control Systems depending on the driving mode detected by the program.

2.73 "Unified Drive Cycle" means the "Unified Cycle Driving Schedule" defined in Part II of the "California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light Duty Trucks, and Medium Duty Vehicles," incorporated by reference in Cal. Code Regs. tit 13, § 1961.2.

2.74 "Test Group" means the basic classification unit within a durability group used for the purpose of demonstrating compliance with exhaust emission standards in accordance with 40 C.F.R. § 86.1841-01.

2.75 "US06" means the driving schedule described in 40 C.F.R. § 86.159–08 and listed in 40 C.F.R. 86, Appendix I, section (g), as amended July 13, 2005, entitled, "EPA US06 Driving Schedule for Light-Duty Vehicles and Light-Duty Trucks" (e.g., hard acceleration, more power requirement, high speed, high load).

III. EMISSIONS MODIFICATION CRITERIA

3.1 Each Proposed Emissions Modification for any 2.0 Liter Subject Vehicle must:

3.1.1 Specify the emissions levels (the "Emissions Levels") concerning the corresponding vehicles, as demonstrated by the Required Emissions Test Procedure results, and require that the emissions of Modified Vehicles must not exceed the Maximum Emissions Modification Limits set forth in subparagraph 3.1.2, Tables 1 – 3.

i. The demonstrated Emissions Levels must represent the best achievable performance, as demonstrated through Settling Defendants' emissions testing results that Settling Defendants previously submitted to EPA and CARB, set forth in Appendix B-1 to this Consent Decree (Prior Test Results). For each Proposed Emissions Modification, Settling Defendants must conduct the Required Emissions Test Procedures, and, for each such test procedure, including for the preconditioning cycles, record the Emission Control System Data Parameters set forth in Appendix B-2. Settling Defendants may conduct the Required Emissions Test Procedures in regular default mode only, provided that the worst-case configuration is selected (e.g., 4WD-capable vehicles must be tested with the vehicle in 4WD mode), and provided that any compliance tests conducted by EPA/CARB may be conducted in any user-selected mode, as allowed under EPA or CARB regulations. Settling Defendants must submit all results of the Required Emissions Test Procedures, together with all Emission Control System Data Parameters, to EPA and CARB with each Proposed Emissions Modification. For purposes of this Paragraph, "best achievable performance" means that the Emissions Levels for each corresponding Proposed Emissions Modification are consistent with or better than the Prior Test Results. Settling Defendants may make this demonstration on the basis of averaged results for up to 10 test vehicles,

provided, however, Settling Defendants must submit all test results for all test vehicles to EPA and CARB, and all test results must be used in averaging. EPA and CARB intend to compare the emissions calibrations for the vehicles used in this demonstration to the emissions calibrations for the vehicles that have been modified pursuant to each applicable Approved Emissions Modification to confirm the calibrations are unchanged. Modified Vehicles must have the same Calibration as the test vehicles used to make this demonstration. Settling Defendants must make all vehicles used for this testing available to EPA and CARB for inspection and confirmatory testing at a reasonable time and place designated by the agencies within twelve months after submission of the test data. Settling Defendants must submit to EPA and CARB, with the corresponding Emissions Modification Proposal, the compiled software files (i.e., the .HEX Files), ROM checksum values, and CVN numbers for the software calibrations that were installed in the vehicles when Settling Defendants conducted the testing required under this Paragraph;

ii. Settling Defendants must also demonstrate, based on the results of the Required Emissions Test Procedures, in A-to-B comparisons that compare (A) vehicles without the 2014 Reflash and with the Road Mode Calibration active via a purposefully modified ECU and operative during the batch of test cycles with (B) vehicles to which Settling Defendants have applied the Proposed Emissions Modification, that the Proposed Emissions Modification results in a quantifiable reduction in NOx emissions, or that the average of testing results for each Proposed Emissions Modification are within Tier 2 Bin 5, 120,000 miles, NOx standards over the Required Emissions Test Procedures; and

iii. The Emissions Levels must not exceed the values over the applicable test cycles set forth in Tables 1 – 3 (the Maximum Emissions Modification Limits). The Maximum Emissions Modification Limits apply until the vehicle accumulates 120,000 miles for Model Years 2009-2014 vehicles, and 150,000 miles for Model Year 2015 vehicles. For manual transmission models, the Maximum Emissions Modification Limits for NOx + NMOG are calculated by adding 0.030 g/mile to the FTP 75 and High Altitude FTP ("FTP@1620m") values, and by adding 0.010 g/mile to the SFTP Composite values shown in Tables 1 – 3; all other limits remain the same. No Proposed Emissions Modification will be approved if the Emissions Levels exceed the Maximum Emissions Modification Limits.

3.1.2 Maximum Emissions Modification Limits

TABLE 1 – GENERATION 1

MAXIMUM EMISSIONS MODIFICATION LIMITS FOR AUTOMATIC TRANSMISSION VEHICLES GENERATION 1 (G/MILE)				
Test Procedure	NOx + NMOG	CO	Formaldehyde	PM
FTP 75	0.160[1]	4.2	0.018	0.01
Hwy FE Test	0.160	4.2	0.018	0.01
SFTP Composite	0.250[2]	4.2	0.018	0.01
FTP@1620m	0.360	4.2	0.018	0.01

[1] In-Use Level = Table value + 0.030 g/mile
[2] In-Use Level = Table value + 0.050 g/mile

TABLE 2 – GENERATION 2

MAXIMUM EMISSIONS MODIFICATION LIMITS FOR AUTOMATIC TRANSMISSION VEHICLES GENERATION 2 (G/MILE)				
Test Procedure	NOx + NMOG	CO	Formaldehyde	PM
FTP 75	0.160	4.2	0.018	0.01
Hwy FE Test	0.100	4.2	0.018	0.01
SFTP Composite	0.200[1]	4.2	0.018	0.01
FTP@1620m	0.190[1]	4.2	0.018	0.01

[1] In-Use Level = Table value + .050 g/mile

TABLE 3 – GENERATION 3

MAXIMUM EMISSIONS MODIFICATION LIMITS FOR AUTOMATIC TRANSMISSION VEHICLES GENERATION 3 (G/MILE)				
Test Procedure	NOx + NMOG	CO	Formaldehyde	PM
FTP 75	0.160	4.2	0.018	0.01
Hwy FE Test	0.100	4.2	0.018	0.01
SFTP Composite	0.180	4.2	0.018	0.01

FTP@1620m	0.160[1]	4.2	0.018	0.01

[1] In-Use Level = Table value + .050 g/mile

3.1.3 Require Settling Defendants to remove all Defeat Devices, including the Switch and Road Mode Calibrations, from each and every Modified Vehicle. Settling Defendants must also provide evidence, as described in subparagraphs 4.3.5, 4.3.12, and 4.3.14, to EPA and CARB that demonstrates that the Modified Vehicles do not have Defeat Devices.

3.1.4 Require that the Modified Vehicles conform to the OBD regulatory protocol and process requirements set forth in Cal. Code Regs. tit. 13, § 1968.2 (2013), except that (1) the emissions threshold malfunction criteria set forth in this Appendix B shall apply instead of the emission threshold malfunction criteria specified in Cal. Code. Regs. tit. 13, § 1968.2(f) (2013); (2) allowances for OBD noncompliances set forth in this Appendix B shall apply instead of the deficiency provisions for OBD noncompliances in Cal. Code Regs. tit 13, § 1968.2(k) (2013); (3) test vehicle aging for monitoring system demonstration testing shall be conducted based on the provisions set forth in this Appendix B instead of Cal. Code Regs. tit. 13, § 1968.2(h)(2.3) (2013); and (4) the required demonstration tests shall be conducted based on this Appendix B instead of Cal. Code Regs. tit. 13, § 1968.2(h)(4) (2013). With respect to the requirements under Cal. Code Regs. tit. 13, § 1968.2 (2013), for all Generation 1 and 2 vehicles, the provisions for Model Year 2014 vehicles apply, and for all Generation 3 vehicles, the provisions for Model Year 2015 apply. In order to meet such demonstration testing requirements for approval of a Proposed Emissions Modification, Critical OBD Demonstration testing for Generations 1, 2, and 3 vehicles may be conducted using Oven-Aged or Bench-Aged Parts, using diesel and/or gasoline fuel to represent Full Useful Life aging, and for the Critical OBD Demonstration for Generation 3, subject to EPA/CARB approval, representative vehicles may be used; provided, however, that after approval of a Proposed Emissions Modification, and for each Generation, Settling Defendants must also complete Final OBD Demonstration testing using the Durability Demonstration Vehicle aged to Full Useful Life. Except as otherwise provided in this Appendix B, (1) Engineering Durability Data vehicles may not be used for Final OBD Demonstration testing and (2) to obtain EPA/CARB approval to sell or lease vehicles, Settling Defendants must conduct Critical OBD Demonstration testing as specified in subparagraph 7.2.2. With respect to the test vehicle for Final OBD Demonstration testing, Settling Defendants must:

i. Conduct Final OBD Demonstration testing on vehicles aged to Full Useful Life. For Generation 3 OBD Demonstration test vehicles, Settling Defendants must conduct Full Useful Life aging on Model Year 2015 vehicle(s). For Generation 1 and Generation 2 OBD Demonstration test vehicles, Settling Defendants must conduct Full Useful Life aging on representative vehicles;

ii. Exercise best efforts to procure vehicles for aging with the lowest initial mileage possible, and in no event may the initial mileage exceed 10,000 miles for the Generation 3 vehicle(s) or 30,000 miles for the Generation 1 and Generation 2 vehicles. Alternatively, upon EPA/CARB approval, vehicles with higher mileage may be used if the vehicle is retrofitted with a new engine, gearbox, and exhaust gas system and the vehicle is aged for an additional 150,000 miles for Generation 3 or an additional 120,000 miles for Generation 1 and Generation 2; and

iii. Test vehicles that meet the additional requirements described in subparagraph 3.6.

Settling Defendants may not use Oven-aged Parts to represent Full Useful Life aging during Final OBD Demonstration testing. Settling Defendants must complete Final OBD Demonstration testing no later than November 30, 2017, for Approved Emissions Modifications concerning Generation 1 vehicles; February 28, 2018, for Approved Emissions Modifications concerning Generation 2 vehicles; and March 31, 2018, for Approved Emissions Modifications concerning Generation 3 vehicles. Settling Defendants must supply all results of the Final OBD Demonstration tests for each Generation to EPA and CARB upon completion of such tests. Settling Defendants must certify the Final OBD Demonstration test results in accordance with the certification requirements of Paragraphs 33 and 34 of this Consent Decree. If, when submitting any Emissions Modification Proposal, Settling Defendants cannot demonstrate that the corresponding vehicles will meet the OBD regulatory requirements, Settling Defendants must specify in such proposal each and every requested OBD noncompliance, in accordance with subparagraphs 3.2.5, 3.3.2, 3.4.4, and Paragraphs 3.5 and 3.6, and within the limitations set forth therein. Mandatory recall requirements, pursuant to Cal. Code Regs. tit. 13, § 1968.5, concerning Settling Defendants' noncompliance with the requirements described in this Appendix B shall apply.

3.1.5 Specify the fuel economy and emissions impacts of the Proposed Emissions Modification. Settling Defendants must measure, and provide to EPA and CARB, the fuel economy and emissions impacts of the Proposed Emissions Modification by using the FTP, US06, SC03, HWFET, and 20°F FTP test cycles, based on A-to-B testing that compares (A) vehicles without the 2014 Reflash and with the Road Mode Calibration active and operative during the batch of test cycles with (B) vehicles to which Settling Defendants have applied the Proposed Emissions Modification. The comparison testing must be conducted on the same vehicle, and using the same testing parameters that could affect emissions, including but not limited to fuel. Settling Defendants must conduct such test cycles on Generation 1 Model Years 2011 and 2014 Jetta automatic transmission vehicles; Generation 2 Model Years 2012 and 2014 Passat automatic transmission vehicles; and Generation 3 Jetta automatic transmission and Golf manual transmission vehicles, at a minimum. For automatic transmission vehicles, the comparisons may be conducted in "D" mode. Settling Defendants must provide all emissions and fuel consumption data for all cycles for the tests described in this

subparagraph. Fuel economy must be calculated according to the vehicle specific five-cycle methodology described in 40 C.F.R. Part 600. The same percentage difference calculated for the fuel economy of the sample vehicles will be applied to all vehicles in that Generation, unless Settling Defendants choose to provide specific measurements for specific vehicle types.

3.1.6 Require Settling Defendants to permanently affix the labels described in this subparagraph 3.1.6, and in the form approved by EPA/CARB, to each and every Modified Vehicle. Such labels must (1) not cover any previously affixed labels, except in the case of recall labels concerning Subsequent Service Actions where the recall label may be affixed on top of the Emissions Modification recall label(s), provided the subsequent recall label contains all information in the prior recall label; (2) inform potential vehicle purchasers and potential Lessees that the vehicle has received the applicable Approved Emissions Modification, in accordance with this Appendix B; (3) clearly specify, in the form and manner required for the applicable labels, the applicable Maximum Emissions Modification Limits, and the fuel economy rating of the Modified Vehicle; and (4) identify all emission control components installed in accordance with the applicable Approved Emissions Modification. The form of, information contained in, and application of the labels must conform with the Vehicle Emissions Compliance Information ("VECI") label required under 40 C.F.R. § 86.1807-01, the recall label required under 40 C.F.R. Part 85, Subpart S, and the current EPA fuel economy label. Settling Defendants may provide the required fuel economy information to Eligible Owners and Eligible Lessees that elect the Emissions Modification in a notice printed on paper, provided that the Settling Defendants provide such notice upon returning the Modified Vehicle to such Owners and Lessees. For each Modified Vehicle offered for sale or lease, Settling Defendants must affix a temporary Monroney fuel economy label on the window of such Modified Vehicle.

3.1.7 Settling Defendants must, within 10 Days of submitting a Proposed Emissions Modification, provide EPA and CARB with four test vehicles from each Generation (twelve vehicles, total) that have been modified pursuant to the Proposed Emissions Modification for the purpose of (1) evaluating the Proposed Emissions Modification to determine whether such vehicles meet the requirements of this Appendix B, and (2) conducting in-use compliance testing. If Settling Defendants deliver such test vehicles after 10 Days following submission of any proposal, the EPA/CARB expected response dates shall be extended by the length of delay in delivery, beginning from the date the proposal was submitted. Settling Defendants must certify, in accordance with the certification requirements of Paragraphs 33 and 34 of this Consent Decree, that each test vehicle provided to EPA and CARB has the same Calibration as vehicles that receive the applicable Proposed Emissions Modification.

3.1.8 Require the following specifications for test vehicles: For durability demonstrations and emissions testing required for Emissions Modification Proposals concerning Generation 3 vehicles, subject to EPA/CARB approval, Settling Defendants may use Generation 3 vehicles other than the Model Year 2015 vehicles, provided such

vehicles are appropriately representative of the Proposed Emissions Modification for Generation 3. With respect to the vehicle used for Official Durability Demonstration, in the event parts break down, subject to EPA/CARB approval, Settling Defendants may replace such failed parts with parts from an Engineering Durability Vehicle, in accordance with the requirements of 40 C.F.R. § 86.1834-01. Vehicles selected for all compliance testing, including all testing required for submission with a Proposed Emissions Modification, all in-use compliance testing, and any testing conducted by EPA and CARB, must be reasonably operated and maintained, and may not be rejected on the basis of such criteria as mileage accumulation beyond 75% Full Useful Life, lack of maintenance records, or repairs due to the Emissions Modification.

3.1.9 Require Settling Defendants to make available online a searchable database (the Emissions Modification Database) that includes all Subject 2.0 Liter Vehicles, by which users, including Eligible Owners, Eligible Lessees, and prospective purchasers, may conduct a free-of-charge search by vehicle VIN to determine if an Emissions Modification is available for such vehicle. The website must display the Approved Emissions Modification disclosure and Approved Extended Emissions Warranty applicable to a specific vehicle when a user inputs the vehicle VIN, as described in subparagraph 3.2.2 of Appendix A to this Consent Decree.

3.1.10 Require Settling Defendants to disseminate the approved Emissions Modification Disclosure (1) within 10 Days of approval of each Proposed Emissions Modification, by mailing the Disclosure to each Eligible Owner and each Eligible Lessee and (2) within 2 business days of approval of each Proposed Emissions Modification, by posting and maintaining the applicable Disclosure on the webpage for each 2.0 Liter Subject Vehicle within the Emissions Modification Database.

3.2 Additional Requirements for Generation 1 2.0 Liter Subject Vehicles: In addition to the requirements of Paragraph 3.1, each Proposed Emissions Modification for any Generation 1 2.0 Liter Subject Vehicle must also:

3.2.1 Require the installation of a new exhaust flap, EGR filter, and NOx Trap that meets the specifications of BASF TEX2064, as proposed by Settling Defendants to EPA and CARB on January 28, 2016, or, subject to EPA/CARB approval, such other functionally and effectively equivalent hardware or software, provided that Settling Defendants propose such other hardware or software in the applicable Proposed Emissions Modification.

3.2.2 Require that PM filter efficiency monitoring shall be accomplished using the pressure differential across the low pressure EGR filter and the pressure differential across the DPF as a secondary backstop monitor. The backstop monitor shall detect malfunctions before FTP PM emissions exceed 0.040 grams per mile and is not subject to the 0.035 gram/mile limitations specified in subparagraph 3.2.5. The backstop monitor demonstration must be completed no later than the respective time period allowed for the Final OBD Demonstration.

3.2.3 Require the installation of a NOx Trap with a functional monitor for the entire NOx reduction system for the Full Useful Life of the Modified Vehicle.

3.2.4 Describe any and all DeNOx strategies and DeSOx strategies to periodically remove NOx and sulfur from the NOx Trap for the purpose of ensuring proper functioning, including a description of the impacts of such strategies on emissions, infrequent emissions, and durability, and require the installation of such strategies.

3.2.5 Comply with the OBD requirements under Cal. Code Regs. tit. 13, § 1968.2 (2013), except that the emission threshold malfunction criteria set forth in this Appendix B, as described in this subparagraph and in Tables 4 and 5, for automatic and manual transmission vehicles, respectively, shall apply to all monitoring requirements in Cal. Code Regs. tit. 13, § 1968.2(f) (2013) that have emission threshold malfunction criteria.

i. Automatic transmission vehicles. Threshold monitors must detect a malfunction before NMOG + NOx emissions exceed 0.240 g/mile and before PM emissions exceed 0.0175 g/mile. Threshold monitors that fail to detect a malfunction before these limits are exceeded shall be considered OBD Emissions Threshold Noncompliances. Upon a Final OBD Demonstration, the Approved Emissions Modification may not show more than 12 OBD Emissions Threshold Noncompliances. Of these 12 OBD Emissions Threshold Noncompliances, no more than 2 monitors that fail to demonstrate malfunction detection before emissions exceed 0.480 g/mile NMOG + NOx will be approved; provided, however, no monitors that fail to demonstrate malfunction detection before emissions exceed 0.720 g/mile NMOG + NOx will be approved. In all cases, no monitors that fail to demonstrate malfunction detection before emissions exceed 0.035 g/mile PM will be approved. The OBD Emissions Threshold Noncompliances are summarized in Table 4 for Generation 1 automatic transmission vehicles.

TABLE 4. OBD EMISSION THRESHOLD NONCOMPLIANCES FOR GENERATION 1 AUTOMATIC TRANSMISSION VEHICLES.

EMISSIONS LEVELS	NUMBER OF APPROVABLE NONCOMPLIANCES
≤ 0.240 g/mile NMOG + NOx and ≤ 0.0175 g/mile PM	N/A; compliant
0.240 g/mile < x** ≤ 0.480 g/mile NMOG + NOx or 0.0175 g/mile < x**≤ 0.035 g/mile PM	12
0.480 g/mile < x** ≤ 0.720 g/mile NMOG + NOx	2 *
>0.720 g/mile NMOG + NOx	0
> 0.035 g/mile PM	0
Total Number of OBD Emissions Threshold Noncompliances	12

* This is a subset of the 12 total OBD threshold noncompliances, so if for example 12 noncompliances are used for the range 0.240 < x ≤ 0.480 NMOG + NOx, then 0 noncompliances will be approved for the range 0.480 < x ≤ 0.720 g/mile NMOG + NOx.

** "x" is the emission level when the malfunction is first detected.

ii. Manual Transmission Vehicles. Threshold monitors must detect a malfunction before NMOG + NOx emissions exceed 0.285 g/mile and before PM emissions exceed 0.0175 g/mile. Threshold monitors that fail to detect a malfunction before these limits are exceeded shall be considered OBD Emissions Threshold Noncompliances. Upon a Final OBD Demonstration, the Approved Emissions Modification may not show more than 12 OBD Emissions Threshold Noncompliances. Of these 12 OBD Emissions Threshold Noncompliances, no more than 2 monitors that fail to demonstrate malfunction detection before emissions exceed 0.570 g/mile NMOG + NOx will be approved; provided, however, no monitors that fail to demonstrate malfunction detection before emissions exceed 0.855 g/mile NMOG + NOx will be approved. In all cases, no monitors that fail to demonstrate malfunction detection before emissions exceed 0.035 g/mile PM will be approved. The OBD Emissions Threshold Noncompliances are summarized in Table 5 for Generation 1 manual transmission vehicles.

TABLE 5. OBD EMISSION THRESHOLD NONCOMPLIANCES FOR GENERATION 1 MANUAL TRANSMISSION VEHICLES.

EMISSIONS LEVELS	NUMBER OF APPROVABLE NONCOMPLIANCES
≤ 0.285 g/mile NMOG + NOx and ≤ 0.0175 g/mile PM	N/A; compliant
0.285 g/mile < x** ≤ 0.570 g/mile NMOG + NOx g/mile or 0.0175 < x** ≤ 0.035 g/mile PM	12
0.570 g/mile < x** ≤ 0.855 g/mile NMOG + NOx	2 *
> 0.855 g/mile NMOG + NOx	0
> 0.035 g/mile PM	0
Total Number of OBD Emissions Threshold Noncompliances	12

* This is a subset of the 12 total OBD threshold noncompliances, so if for example 12 noncompliances are used for the range 0.285 < x ≤ 0.570 NMOG + NOx, then 0 noncompliances will be approved for the range 0.570 < x ≤ 0.855 g/mile NMOG + NOx.

**"x" is the emission level when the malfunction is first detected.

iii. In the event of a discrepancy between the text herein and the tables, the tables shall govern. No more than 6 noncompliances, plus unused OBD Emissions Threshold Noncompliances, for issues other than OBD Emissions Threshold Noncompliances (e.g., failure to meet In-Use

Monitor Performance Ratio requirements, failure to track and report EI-AECDs, failure to report all required data to a scan tool) that would typically be issued during annual new vehicle OBD certification review will be approved.

3.2.6 Include all results from Critical OBD Demonstration testing for PM filter efficiency, NOx Trap, EGR low flow, and injection quantity minimum for automatic transmission vehicles. Critical OBD Demonstration test results must demonstrate compliance with the OBD requirements under subparagraph 3.2.5.

3.3 Additional Requirements for Generation 2 2.0 Liter Subject Vehicles: In addition to the requirements of Paragraph 3.1, each Proposed Emissions Modification for a Generation 2 2.0 Liter Subject Vehicle must also:

3.3.1 Require that the SCR system is capable of detecting the presence of mostly to entirely water (less than 1% DEF) in the DEF tank and initiating Inducements based on such detection. Settling Defendants must describe all Inducement strategies and such Inducement strategies must be consistent with the SCR Guidelines and the original certification applications submitted by Settling Defendants.

3.3.2 Comply with the OBD requirements under Cal. Code Regs. tit. 13, § 1968.2 (2013) except that the Emission Threshold Malfunction Criteria set forth in this Appendix B, as described in this subparagraph and in Table 6, shall apply to all monitoring requirements in Cal. Code Regs. tit. 13, § 1968.2(f) (2013) that have emission threshold malfunction criteria. Specifically, for automatic and manual transmission vehicles, threshold monitors must detect a malfunction before NMOG + NOx emissions exceed 0.240 g/mile and before PM emissions exceed 0.0175 g/mile. Threshold monitors that fail to detect a malfunction before these limits are exceeded shall be considered OBD Emissions Threshold Noncompliances. Upon a Final OBD Demonstration, the Approved Emissions Modification may not show more than 9 OBD Emissions Threshold Noncompliances. Of these 9 OBD Emissions Threshold Noncompliances, no more than 2 monitors that fail to demonstrate malfunction detection before emissions exceed 0.480 g/mile NMOG + NOx will be approved; provided, however, no monitors that fail to demonstrate malfunction detection before NMOG + NOx emissions exceed 0.720 g/mile and before PM emissions exceed 0.035 g/mile will be approved. The OBD Emissions Threshold Noncompliances are summarized in Table 6 for Generation 2 automatic and manual transmission vehicles.

TABLE 6. OBD EMISSIONS THRESHOLD NONCOMPLIANCES FOR GENERATION 2 AUTOMATIC AND MANUAL TRANSMISSION VEHICLES.

EMISSIONS LEVELS	NUMBER OF APPROVABLE NONCOMPLIANCES
≤ 0.240 g/mile NMOG + NOx and ≤ 0.0175 g/mile PM	N/A; compliant

0.240 g/mile < x** ≤ 0.480 g/mile NMOG + NOx or 0.0175 g/mile < x** ≤ 0.035 g/mile PM	9
0.480 g/mile < x** ≤ 0.720 g/mile NMOG + NOx	2 *
>0.720 g/mile NMOG + NOx	0
> 0.035 g/mile PM	0
Total Number of OBD Emissions Threshold Noncompliances	9

* This is a subset of the 9 total OBD emissions threshold noncompliances, so if for example 9 noncompliances are used for the range 240 < x ≤ 480 NMOG + NOx, then 0 noncompliances will be approved for the range 480 < x ≤ 720 g/mile NMOG + NOx.

"x" is the emission level when the malfunction is first detected.

i. In the event of a discrepancy between the text herein and the table, the table shall govern. In addition, no more than 7 noncompliances, plus unused emission threshold noncompliances, for issues other than OBD Emission Threshold Noncompliances (e.g., failure to meet In-Use Monitor Performance Ratio requirements, failure to track and report EI-AECDs, failure to report all required data to a scan tool) that would typically be issued during annual new vehicle OBD certification review will be approved.

3.3.3 Include the results from Critical OBD Demonstration testing for PM filter efficiency, SCR catalyst efficiency, EGR low flow, and injection quantity minimum for automatic transmission vehicles. Critical OBD Demonstration test results must demonstrate compliance with the OBD requirements in subparagraph 3.3.2.

3.4 Additional Requirements for Generation 3 2.0 Liter Subject Vehicles: In addition to the requirements of Paragraph 3.1, each Proposed Emissions Modification for a Generation 3 2.0 Liter Subject Vehicle must also:

3.4.1 Require the future installation of OBD hardware and software to achieve compliant SCR monitoring, including the addition of a Second NOx Sensor in a Subsequent Service Action according to the mileage intervals and schedule described in subparagraph 3.4.3 (i.e., full volume SCR system monitoring with a downstream NOx sensor).

3.4.2 Describe the NOx sensor or DEF system capable of detecting poor reductant quality, including emission and dilution detection levels, and how the vehicles

will detect poor quality DEF and initiate Inducements, and require the installation of such strategies.

3.4.3 Require the installation of the Second NOx Sensor and a new DOC or DOCs (if necessary to ensure compliant emissions performance for 150,000 miles) according to the following mileage intervals and schedule:

i. If, in the Proposed Emissions Modification, Settling Defendants demonstrate durability of the current DOC for 90,000 miles, then Settling Defendants must install the Second NOx Sensor and the new DOC at 90,000 miles or by January 1, 2020, whichever comes first, in a single Subsequent Service Action.

ii. If, in the Proposed Emissions Modification, Settling Defendants demonstrate durability of the current DOC for 120,000 miles, then Settling Defendants must install the Second NOx Sensor and the new DOC at 120,000 miles or by January 1, 2020 whichever comes first, in a single Subsequent Service Action.

iii. If, in the Proposed Emissions Modification, Settling Defendants demonstrate durability of the current DOC for 150,000 miles, then Settling Defendants are not required to replace the DOC and must install the Second NOx Sensor in a single Subsequent Service Action beginning in the 4th quarter of 2017, to be completed by January 1, 2020.

3.4.4 Comply with the OBD requirements under Cal. Code Regs. tit. 13, § 1968.2 (2013), except that the emission threshold malfunction criteria set forth in this Appendix B, as described in this subparagraph and in Tables 7 and 8, for Generation 3 automatic and manual transmission vehicles, respectively, shall apply to all monitoring requirements in Cal. Code Regs. tit. 13, § 1968.2(f) (2013) that have emission threshold malfunction criteria.

i. Automatic Transmission Vehicles. Threshold monitors must detect a malfunction before NMOG + NOx emissions exceed 0.240 g/mile and before PM emissions exceed 0.0175 g/mile. Threshold monitors that fail to detect a malfunction before these limits are exceeded shall be considered OBD Emissions Threshold Noncompliances. Upon Final OBD Demonstration, the Approved Emissions Modification for Generation 3 automatic vehicles may not show more than 3 OBD Emissions Threshold Noncompliances. Of these 3 OBD Emissions Threshold Noncompliances, no more than 1 monitor that fails to demonstrate malfunction detection before emissions exceed 0.480 g/mile NMOG + NOx will be approved; provided, however, that no monitors that fail to demonstrate malfunction detection before emissions exceed 0.720 NMOG + NOx will be approved.

In all cases, no monitors that fail to demonstrate malfunction detection before emissions exceed 0.035 g/mile PM will be approved. The OBD Emissions Threshold Noncompliances are summarized in Table 7 for Generation 3 automatic transmission vehicles. Notwithstanding the foregoing, SCR Catalyst efficiency monitoring devices installed during a Subsequent Service Action must detect a malfunction before NMOG + NOx emissions exceed 0.280 g/mile and before PM emissions exceed 0.0175 g/mile.

TABLE 7. OBD NONCOMPLIANCES FOR GENERATION 3 AUTOMATIC TRANSMISSION VEHICLES.

EMISSIONS LEVELS	NUMBER OF APPROVABLE NONCOMPLIANCES
≤ 0.240 g/mile NMOG + NOx and ≤ 0.0175 g/mile PM	N/A; compliant
0.240 g/mile < x** ≤ 0.480 g/mile NMOG + NOx or 0.0175 g/mile < x** ≤ 0.035 g/mile PM	3
0.480 g/mile < x ≤ 0.720 g/mile NMOG + NOx	1 *
>0.720 g/mile NMOG + NOx	0
> 0.035 g/mile PM	0
Total Number of OBD Emissions Threshold Noncompliances	3

* This is a subset of the 3 total OBD emissions threshold noncompliances, so if for example 3 noncompliances are used for the range 0.240 < x ≤ 0.480 NMOG + NOx or 0.0175 < x ≤ 0.035 g/mile PM, then 0 noncompliances will be approved for the range 0.480 < x ≤ 0.720 g/mile NMOG + NOx.

** "x" is the emission level when the malfunction is first detected.

ii. Manual Transmission Vehicles. For Generation 3 manual transmission vehicles, threshold monitors must detect a malfunction before NMOG + NOx emissions exceed 0.285 g/mile, and before PM emissions exceed 0.0175 g/mile. Threshold monitors that fail to detect a malfunction before these limits are exceeded shall be considered OBD Emissions Threshold Noncompliances. Upon a Final OBD Demonstration, the Proposed Emissions Modification for manual transmission vehicles may not show more than 7 OBD Emissions Threshold Noncompliances. Of these 7 OBD Emissions Threshold Noncompliances, for manual transmission vehicles, no more than 1 monitor that fails to demonstrate malfunction detection before emissions exceed 0.570 g/mile NMOG + NOx, will be approved; provided, however, no monitors that fail to demonstrate malfunction detection before emissions exceed 0.855 g/mile NMOG + NOx will be approved. In all cases, no monitors that fail to demonstrate malfunction detection before emissions exceed 0.035 g/mile PM will be approved. The

OBD Emissions Threshold Noncompliances are summarized in Table 8 for manual transmission vehicles.

TABLE 8. OBD EMISSION THRESHOLD NONCOMPLIANCES FOR GENERATION 3 MANUAL TRANSMISSION VEHICLES.

EMISSIONS LEVELS	APPROVABLE NUMBER OF NONCOMPLIANCES
≤ 0.285 g/mile NMOG + NOx and ≤ 0.0175 g/mile PM	N/A; compliant
0.285 g/mile < x** ≤ 0.570 g/mile NMOG + NOx or 0.0175 g/mile < x** ≤ 0.035 g/mile PM	7
0.570 g/mile < x** ≤ 0.855 g/mile NMOG + NOx	1 *
> 0.855 g/mile NMOG + NOx	0
> 0.035 g/mile PM	0
Total # OBD Emissions Threshold Noncompliances	7

* This is a subset of the 7 total OBD threshold noncompliances, so if for example 7 noncompliances are used for the range 0.285 < x ≤ 0.570 NMOG + NOx, then 0 noncompliances will be approved for the range 0.570 < x ≤ 0.855 g/mile NMOG + NOx.

** "x" is the emission level when the malfunction is first detected.

iii. In the event of a discrepancy between the text herein and the tables, the tables shall govern. No more than 8 noncompliances, plus unused OBD Emissions Threshold Noncompliances, for issues other than OBD Emissions Threshold Noncompliances (e.g., failure to meet In-Use Monitor Performance Ratio requirements, failure to track and report EI-AECDs, failure to report all required data to a scan tool) that would typically be issued during annual new vehicle OBD certification review will be approved.

3.4.5 Include the results from Critical OBD Demonstration testing for PM filter efficiency, SCR catalyst efficiency, EGR low flow, injection quantity minimum, injection quantity maximum, and DOC for automatic transmission vehicles. Critical OBD Demonstration tests must demonstrate compliance with the OBD requirements in subparagraph 3.4.4.

3.5 Alternate OBD Criteria: If Settling Defendants are unable to comply with any of the limitations concerning OBD noncompliances described in subparagraphs 3.2.5, 3.3.2, or 3.4.4, and no later than 5 Days after completing the Final OBD Demonstration testing, Settling Defendants must provide EPA/CARB with formal notice of such noncompliance. Subsequently, and no later than 30 Days after such formal notice, Settling Defendants may submit to EPA/CARB a proposal requesting approval of additional OBD noncompliances, as described below. Settling Defendants must certify any such proposal in accordance with the certification requirements of Paragraphs 33 and 34 of the Consent Decree.

3.5.1 If Settling Defendants elect to submit a proposal requesting additional OBD Emission Threshold Noncompliances, and if in such proposal Settling Defendants demonstrate the following, EPA/CARB will approve the requested additional OBD Emissions Threshold Noncompliances:

i. Settling Defendants have used good engineering judgment in determining the malfunction criteria;

ii. The malfunction criteria will result in a monitor that meets the in-use monitor performance ratio requirements specified in Cal. Code Regs. tit. 13, § 1968.2 (2013);

iii. The malfunction criteria are set as stringently as technologically feasible with respect to detecting a malfunction at the lowest possible tailpipe emission levels using the existing monitoring strategies and existing series production hardware on the vehicle, except for hardware changes that are the result of the Emissions Modification being demonstrated (i.e., for Generation 1, NOx Trap, exhaust flap and EGR filter; for Generation 3, DOC and Second NOx Sensor, in a Subsequent Service Action);

iv. The malfunction criteria will minimize false detection of a malfunction when the monitored component is within the performance specifications required under this Appendix B (i.e., vehicle emissions are less than the Maximum Emissions Modification Limits) for components aged to the end of the Full Useful Life;

v. Settling Defendants have provided all emission data concerning the emission levels at which the malfunctions are detected; and

vi. All malfunctions are detected before NMOG + NOx emissions exceed 0.720 g/mile and before PM emissions exceed 0.035 g/mile PM (for manual transmission vehicles, 0.855 g/mile NMOG + NOx, and 0.035 g/mile PM).

3.5.2 Additional OBD Noncompliance Allowances: If Settling Defendants submit a proposal requesting additional OBD Emission Threshold Noncompliances, and EPA/CARB determine that Settling Defendants have failed to make the demonstration described above, no additional OBD Emission Threshold Noncompliances will be allowed. However, Settling Defendants may use any unused noncompliances in the following manner: 2 unused OBD Emission Threshold Noncompliances for monitors that fail to demonstrate malfunction detection before emissions exceed 0.240 g/mile of NMOG + NOx but demonstrate malfunction detection before emissions exceed 0.480 g/mile of NMOG + NOx (for manual transmission vehicles, between 0.285 and 0.570 g/mile, respectively) may be transferred within the same Generation to satisfy 1 OBD Emissions Threshold Noncompliance for monitors that fail to demonstrate malfunction detection before emissions exceed 0.480 g/mile of NMOG + NOx but demonstrate

malfunction detection before emissions exceed 0.720 of NMOG + NOx (for manual transmissions, between 0.570 and 0.855 g/mile, respectively). Alternatively, 1 unused OBD Emissions Threshold Noncompliance for monitors that fail to demonstrate malfunction detection before emissions exceed 0.480 of NMOG + NOx but demonstrate malfunction detection before emissions exceed 0.720 g/mile of NMOG + NOx may be transferred within the same Generation to satisfy 2 OBD noncompliances for monitors that fail to demonstrate malfunction detection before emissions exceed 0.240 of NMOG + NOx but demonstrate malfunction detection before emissions exceed 0.480 g/mile of NMOG + NOx (for manual transmissions, between 0.285 and 0.570 g/mile, respectively). No unused OBD Emissions Threshold Noncompliances may be transferred to other Generations or between automatic or manual transmission groups. No more than 2 OBD Emissions Threshold Noncompliances for monitors that fail to demonstrate malfunction detection before emissions exceed 0.480 but demonstrate malfunction detection before emissions exceed 0.720 g/mile of NMOG + NOx (for manual transmissions, between 0.570 and 0.855 g/mile, respectively) and no more than 4 OBD Emissions Threshold Noncompliances for monitors that fail to demonstrate malfunction detection before emissions exceed 0.240 g/mile of NMOG + NOx but demonstrate malfunction detection before emissions exceed 0.480 g/mile of NMOG + NOx (for manual transmissions, between 0.285 and 0.570 g/mile, respectively) may be transferred.

3.5.3 Notwithstanding the prohibition against additional OBD Emission Threshold Noncompliances described in subparagraph 3.5.2, if Settling Defendants are unable to comply with the limitations therein, Settling Defendants may obtain a further increase in the number of available OBD Emissions Threshold Noncompliances, provided that (1) no monitors that fail to demonstrate malfunction detection before NMOG + NOx emissions exceed 0.720 g/mile (0.855 g/mile for manual transmission vehicles) shall be permitted, and (2) Settling Defendants must provide the following additional increments to the Extended Emissions Warranty periods specified in subparagraphs 3.9.4 (i) – (ii) (Additional Warranty Extensions):

i. For each additional OBD Emissions Threshold Noncompliance concerning a monitor that fails to demonstrate malfunction detection before NMOG + NOx emissions exceed 0.240 g/mile but that demonstrate malfunction detection before NMOG + NOx emissions exceed 0.480 g/mile (for manual transmission vehicles, 0.285 g/mile and 0.570 g/mile, respectively), the Extended Emissions Warranty period must be extended by 3 months and 3,000 miles; and

ii. For each additional OBD Emissions Threshold Noncompliance concerning a monitor that fails to demonstrate malfunction detection before NMOG + NOx emissions exceed 0.480 g/mile (for manual transmission vehicles, 0.570 g/mile), the Extended Emissions Warranty period must be extended by 6 months and 6,000 miles.

3.5.4 If Settling Defendants seek to increase the OBD noncompliances pursuant to subparagraph 3.5.3, Settling Defendants must submit to EPA/CARB a proposal describing the additional OBD noncompliances and any corresponding Additional Warranty Extensions for EPA/CARB approval. If the proposal meets the requirements of subparagraphs 3.5.3 and 3.5.4, EPA/CARB will approve the proposal. Together with any such proposal, Settling Defendants must submit for EPA/CARB approval a draft Additional Warranty Extension Statement describing the additional OBD noncompliances and any Additional Warranty Extensions required by subparagraph 3.5.3. The Additional Warranty Extension Statement must state the warranty period as the sum of the warranty period for the Extended Emissions Warranty described in Paragraph 3.9 and any Additional Warranty Extensions under subparagraph 3.5.3.

3.5.5 Upon EPA and CARB approval, Settling Defendants must disseminate the Additional Warranty Extension Statement by (1) mailing the approved Additional Warranty Extension Statement to the relevant Eligible Owners and Eligible Lessees and (2) by posting and maintaining the approved notice on a VIN-searchable website, in the form and manner described in subparagraph 3.9.6.

3.6 OBD Demonstration Requirements applicable to automatic and manual transmission vehicles:

3.6.1 Settling Defendants shall not use Oven-aged Parts to represent parts aged to Full Useful Life over the official durability run on the SRC cycle.

3.6.2 For NOx Trap, DOC, and SCR, Settling Defendants shall use catalysts deteriorated to the malfunction criteria using methods established to represent real world catalyst deterioration under normal and malfunctioning engine operating conditions. Oven aging and Engine Bench aging using diesel and/or gasoline fuel may be used to age the threshold catalysts provided such aging is representative of real world deterioration.

3.6.3 Automatic Transmission Vehicles. For each generation, Settling Defendants shall use a complete FUL AT vehicle aged over the official durability run on the SRC cycle for the AT Final OBD Demonstration test vehicle. For each generation, Settling Defendants shall adhere to the following for the required Final OBD Demonstration:

i. Unless specified otherwise below, Settling Defendants shall use a complete FUL AT vehicle aged over the official durability run on the SRC cycle, except for the OBD threshold part being demonstrated. For DOC, DPF, and SCR demonstrations, Settling Defendants may deteriorate according to the requirements of subparagraph 3.6.3(ii), below. If Settling Defendants elect not to conduct aging according to the requirements of subparagraph 3.6.3 (ii), Settling Defendants must conduct FUL aging over the official durability run on the SRC cycle on the unmonitored components for each demonstration test.

ii. Settling Defendants shall deteriorate the OBD Threshold parts for DOC, DPF and SCR demonstrations and provide information as follows:

a. Generation 1

1. DOC: Engine Bench-aged DPF (using diesel fuel) equivalent to Full Useful Life over the official durability run on the SRC cycle with DOC deteriorated to malfunction threshold using procedures representative of real world catalyst system component deterioration under normal and malfunctioning engine operating conditions.

2. DPF: Engine Bench-aged DOC (using diesel fuel) equivalent to Full Useful Life over the official durability run on the SRC cycle with DPF deteriorated to malfunction threshold (e.g., drilled out, removed end caps).

3. Supply engineering data to demonstrate equivalence between engine bench aging (using diesel fuel) and aging over the official durability run on the SRC cycle.

b. Generation 2

1. DOC: Engine Bench-aged DPF (using diesel fuel) equivalent to Full Useful Life over the official durability run on the SRC cycle with DOC deteriorated to malfunction threshold using procedures representative of real world catalyst system component deterioration under normal and malfunctioning engine operating conditions.

2. DPF: Engine Bench-aged DOC (using diesel fuel) equivalent to Full Useful Life over the official durability run on the SRC cycle with DPF deteriorated to malfunction threshold (e.g., drilled out, removed end caps).

3. Supply engineering data to demonstrate equivalence between engine bench aging (using diesel fuel) and aging over the official durability run on the SRC cycle.

c. Generation 3

1. DOC: Engine Bench-aged DPF/SCR (using diesel fuel) equivalent to Full Useful Life over the official durability run on the SRC cycle with DOC deteriorated to

malfunction threshold using procedures representative of real world catalyst system component deterioration under normal and malfunctioning engine operating conditions. The underfloor SCR catalyst shall be the part from the FUL AT vehicle aged over the official durability run on the SRC cycle.

2. DPF: Engine Bench-aged DOC and DPF/SCR (using diesel fuel for both) equivalent to Full Useful Life over the official durability run on the SRC cycle with DPF/SCR deteriorated (e.g., drilled out, removed end caps) to DPF malfunction threshold. The underfloor SCR catalyst shall be the part from the FUL AT vehicle aged over the official durability run on the SRC cycle.

3. SCR: Engine Bench-aged DOC (using diesel fuel) equivalent to Full Useful Life over the official durability run on the SRC cycle with DPF/SCR and underfloor SCR simultaneously deteriorated to SCR malfunction threshold using procedures representative of real world catalyst system component deterioration under normal and malfunctioning engine operating conditions.

4. Supply engineering data to demonstrate equivalence between engine bench aging (using diesel fuel) and aging over the official durability run on the SRC cycle.

iii. For each generation, Settling Defendants shall complete Final OBD Demonstration testing.

3.6.4 Manual Transmission Vehicles. For each Generation for the MT Final OBD Demonstration test vehicle, Settling Defendants may use complete FUL aged engine from the AT vehicle, which was aged over the official durability run on the SRC cycle. If Settling Defendants elect not to use the FUL aged engine from the AT vehicle, Settling Defendants must age the MT vehicle to FUL over the official durability run on the SRC cycle. The FUL aged engine from the AT vehicle includes:

i. The complete FUL aged exhaust system from AT vehicle aged over the official durability run on the SRC cycle; and

ii. The complete FUL aged aftertreatment system from AT vehicle aged over the official durability run on the SRC cycle.

iii. For each Generation, Settling Defendants shall adhere to the following for the required Final OBD Demonstration:

iv. Unless specified otherwise below, Settling Defendants shall use complete FUL vehicle described in subparagraph 3.6.4 above, except for the OBD threshold part being demonstrated. For DOC, DPF, and SCR demonstrations, Settling Defendants may deteriorate according to subparagraph 3.6.4 (v), below. If Settling Defendants elect not to deteriorate according to the requirements of subparagraph 3.6.4 (v), Settling Defendants must conduct FUL vehicle aging over the official durability run on the SRC cycle on the unmonitored components for each demonstration test.

v. Settling Defendants shall deteriorate the OBD Threshold parts for DOC, DPF and SCR demonstrations and provide information as follows:

a. Generation 1:

1. DOC: Engine Bench-aged DPF (using diesel fuel) equivalent to Full Useful Life over the official durability run on the SRC cycle with DOC deteriorated to malfunction threshold using procedures representative of real world catalyst system component deterioration under normal and malfunctioning engine operating conditions.

2. DPF: Engine Bench-aged DOC (using diesel fuel) equivalent to Full Useful Life over the official durability run on the SRC cycle with DPF deteriorated to malfunction threshold (e.g., drilled out, removed end caps).

3. Supply engineering data to demonstrate equivalence between engine bench aging (using diesel fuel) and aging over the official durability run on the SRC cycle.

b. Generation 2:

1. DOC: Engine Bench-aged DPF (using diesel fuel) equivalent to Full Useful Life over the official durability run on the SRC cycle with DOC deteriorated to malfunction threshold using procedures representative of real world catalyst system component deterioration under normal and malfunctioning engine operating conditions.

2. DPF: Engine Bench-aged DOC (using diesel fuel) equivalent to Full Useful Life over the official durability run on the SRC cycle with DPF deteriorated to malfunction threshold (e.g., drilled out, removed end caps).

3. Supply engineering data to demonstrate equivalence between engine bench aging (using diesel fuel) and aging over the official durability run on the SRC cycle.

c. Generation 3:

1. DOC: Engine Bench-aged DPF/SCR (using diesel fuel) equivalent to Full Useful Life over the official durability run on the SRC cycle with DOC deteriorated to malfunction threshold using procedures representative of real world catalyst system component deterioration under normal and malfunctioning engine operating conditions. The underfloor SCR catalyst shall be the part from the FUL AT vehicle aged over the official durability run on the SRC cycle.

2. DPF: Engine Bench-aged DOC and DPF/SCR (both using diesel fuel) equivalent to Full Useful Life over the official durability run on the SRC cycle with DPF/SCR deteriorated (e.g., drilled out, removed end caps) to DPF malfunction threshold. The underfloor SCR catalyst shall be the part from the FUL AT vehicle aged over the official durability run on the SRC cycle.

3. SCR: Engine Bench-aged DOC (using diesel fuel) equivalent to Full Useful Life over the official durability run on the SRC cycle with DPF/SCR and underfloor SCR simultaneously deteriorated to SCR malfunction threshold using procedures representative of real world catalyst system component deterioration under normal and malfunctioning engine operating conditions.

4. Supply engineering data to demonstrate equivalence between engine bench aging (using diesel fuel) and aging over the official durability run on the SRC cycle.

vi. For each Generation, Settling Defendants shall complete Final OBD demonstration testing.

3.7 Continued Compliance: Except as otherwise stated in this Appendix B, and as if the vehicles were originally certified to the Maximum Emissions Modification Limits required under any Approved Emissions Modification, during the regulatory useful life of the vehicles, Modified Vehicle test groups remain subject to, and Settling Defendants must comply with: (1) all EPA and CARB requirements for in-use testing under 40 C.F.R. Part 86, Subpart S, and Cal. Code Regs. tit. 13, § 2110-2140; (2) OBD enforcement pursuant to Cal. Code Regs. tit. 13, § 1968.5, provided that noncompliance determinations shall be based on the emissions threshold

malfunction criteria set forth in this Appendix B; (3) federal defect reporting requirements under 40 C.F.R. Part 85, Subpart T; and (4) California Emissions Warranty and Information Reporting requirements under Cal. Code Regs. tit. 13, §§ 2141-2146. As stated in Section VIII of this Appendix B (Stipulated Penalties and Other Stipulated Remedies for Noncompliance), EPA and CARB reserve all rights and authorities to impose consequences if Settling Defendants fail to comply with these testing and reporting requirements, including if such testing demonstrates that the Modified Vehicles exceed the Maximum Emissions Modification Limits or the OBD emission threshold malfunction criteria set forth in this Appendix B. For OBD in-use compliance measurements, no add-ons are granted; for OBD in-use testing, Settling Defendants may precondition the test vehicle through two HWFET cycles to allow DeSOx events to occur. For purposes of emissions compliance determinations subsequent to EPA/CARB's Notice of Approved Emissions Modification, the Maximum Emissions Modification Limits set forth in Tables 1 – 3 shall be adjusted as described in subparagraphs 3.7.1 – 3.7.3 below. Settling Defendants may not apply the following in-use add-ons to any of the demonstrations that must be included in an Emissions Modification Proposal, and such add-ons apply only to in-use vehicles that have been modified in accordance with the applicable Approved Emissions Modification.

3.7.1 The applicable in-use NOx + NMOG Maximum Emissions Modification Limits for Generation 1 shall be determined by adding 0.030 g/mile to the FTP levels and 0.050 g/mile to the SFTP levels specified in Table 1;

3.7.2 The applicable in-use high altitude NOx + NMOG Maximum Emissions Modification Limits for Generations 2 and 3 shall be determined by adding 0.050 g/mile to the FTP@1620m levels shown in Tables 2 and 3 respectively; and

3.7.3 The applicable in-use SFTP NOx + NMOG Maximum Emissions Modification Limits for Generation 2 shall be determined by adding to 0.050 g/mile to the levels shown in Table 2.

3.8 Costs: Settling Defendants must incur and satisfy costs associated with each Approved Emissions Modification, including any Subsequent Service Actions, as required under Appendix A.

3.9 Warranty: Settling Defendants must provide an Emission Control System and an Engine Long Block warranty (collectively, the "Extended Emissions Warranty"). The Extended Emissions Warranty shall cover all parts and labor, as well as the cost or provision of a loaner vehicle for warranty service lasting longer than 3 hours. Settling Defendants must not impose on consumers any fees or charges, and must pay any fees or charges imposed by its dealers related to the warranty service.

3.9.1 The Emissions Control System warranty must cover all components which are replaced as part of the Approved Emissions Modification and any component which can reasonably be impacted by effects of the Approved Emissions Modification, such as increased thermal load or cycling, increased soot load, increased use of EGR, increased DPF regeneration, and increased fuel injection pressure. The Emission Control System

Warranty shall cover the following parts, as further specified in the applicable Extended Emissions Warranty Parts Coverage List submitted by Settling Defendants with each Emissions Modification Proposal, as further described in subparagraph 4.3.10:

i. The entire exhaust after treatment system including the DOC, the SCR catalyst (if applicable), the dosing injector and other DEF system components (if applicable), the NOx Trap (if applicable), all sensors and actuators, and the exhaust flap;

ii. The entire fuel system, including the fuel pumps, high pressure common rail, fuel injectors, and all sensors and actuators;

iii. EGR system including the EGR valve, EGR cooler, EGR filter, all related hoses and pipes, and all sensors and actuators;

iv. The turbocharger;

v. The OBD System and any malfunctions detected by the OBD systems other than those related to the transmission; and

vi. The DPF.

3.9.2 The Extended Emissions Warranty shall cover each and every DPF that has failed as a result of implementing any Approved Emissions Modification. If Settling Defendants can demonstrate to the satisfaction of EPA/CARB in a Proposed Emissions Modification that Settling Defendants' dealers can adequately distinguish between a DPF that has reached the maximum ash load and needs to be replaced as part of normal maintenance and a DPF that has failed as a result of implementing such Approved Emissions Modification, then the Extended Emissions Warranty applicable to such Approved Emissions Modification does not need to cover DPFs that need replacement as part of normal maintenance. If Settling Defendants fail to make this demonstration then the Extended Emissions Warranty must cover each and every DPF.

3.9.3 The Engine Long Block warranty must cover the engine sub-assembly that consists of the assembled block, crankshaft, cylinder head, camshaft, and valve train.

3.9.4 The warranty period for the Extended Emissions Warranty shall be both:

i. For Generation 1 and 2, 10 years or 120,000 actual miles whichever comes first; for Generation 3, 10 years or 150,000 actual miles whichever comes first; and

ii. 4 years or 48,000 miles, whichever comes first, from date and mileage of implementing the Emissions Modification, except for vehicles offered for resale, in which case, from the date and mileage of the first resale

transaction after the modification to the first person who in good faith purchases the vehicle for purposes other than resale.

3.9.5 If Settling Defendants are required to provide Additional Warranty Extensions pursuant to subparagraph 3.5.3, the Additional Warranty Extensions shall extend the warranty periods specified in subparagraphs 3.9.4 (i) – (ii).

3.9.6 Settling Defendants must make available online a searchable database that includes all 2.0 Liter Subject Vehicles, by which users, including Eligible Owners, Eligible Lessees, and prospective purchasers, may conduct a free-of-charge search by vehicle VIN to determine whether the Extended Emissions Warranty and any Additional Warranty Extensions apply to a specific vehicle. To satisfy this requirement, Settling Defendants may include a webpage that meets these specifications on the Emissions Modification Database, pursuant to subparagraph 3.1.9. Upon the modification of each and every Modified Vehicle, Settling Defendants must identify within the database that such vehicle is covered by the Extended Emissions Warranty and Additional Warranty Extensions, as applicable, by displaying the applicable warranty disclosure statements when a user enters the VIN. Settling Defendants must provide the VINs for all such vehicles to EPA/CARB within 15 Days of EPA/CARB's request.

3.9.7 Settling Defendants must also maintain a database that includes all 2.0 Liter Subject Vehicles, by which Volkswagen and Audi authorized dealers and Volkswagen and Audi authorized service facilities (collectively, "Dealers") shall search by vehicle VIN to determine whether the Extended Emissions Warranty and any Additional Warranty Extensions apply to a specific 2.0 Liter Subject Vehicle. Settling Defendants shall establish procedures such that the vehicle VIN shall dictate component or system coverage described in the approved Extended Emissions Warranty Component List. Such procedures shall include a feature on the database by which Dealers shall enter the identification number for any part pertaining to a Modified Vehicle and the database shall inform all Dealers whether such part is covered by the Extended Emissions Warranty, in accordance with the approved Extended Emissions Warranty Component List. Settling Defendants must maintain the Extended Emissions Warranty Component List and the Dealer database to ensure current part identification numbers are listed. In no event shall warranty coverage be subject to service writers' discretion.

3.9.8 The Extended Emissions Warranty is associated with the car, and remains available to any and all subsequent owners and operators.

3.9.9 The Extended Emissions Warranty shall not supersede or void any outstanding warranty. To the extent there is a conflict in any provision(s) of this warranty and any outstanding warranty, that conflict shall be resolved to the benefit of the consumer.

3.9.10 The Extended Emissions Warranty shall not modify, limit, or affect any state, local or federal legal rights available to the owners.

3.9.11 Any waiver of any provision of the Extended Emissions Warranty by an owner is null and void.

IV. EMISSIONS MODIFICATION PROPOSAL REQUIREMENTS

4.1 Settling Defendants may submit to EPA and CARB, for any test group or combination of test groups of the 2.0 Liter Subject Vehicles, an Emissions Modification Proposal according to the schedule and requirements specified in this Section IV. EPA/CARB will not approve an Emissions Modification Proposal unless and until Settling Defendants have provided in a Submission or Submissions all materials required under Section IV of this Appendix B to EPA/CARB.

4.2 Each Emissions Modification Proposal must be submitted by Settling Defendants to EPA and CARB on or before the dates and as specified in the chart below. EPA/CARB will use the agencies' best efforts to either approve or disapprove each complete proposal (as detailed herein) within 45 Days of the actual Submission. To facilitate an expeditious review and approval process, Settling Defendants may submit data and Emissions Modifications Proposals at any time before the deadlines below. Regardless of the time of Submission, no Approval can be made until after entry of the Consent Decree. If any of the Final Submittal Deadlines below expire prior to the Date of Entry, such deadlines will be extended to 14 Days beyond the Date of Entry.

Generation	Emissions Modification Proposal	Settling Defendants' Expected Submittal Date	Settling Defendants' Final Submittal Deadline
1	Parts A, B, & C	November 11, 2016	January 27, 2017
2	Parts A, B, & C	December 16, 2016	March 3, 2017
3	Parts A, B, & C	July 29, 2016	October 14, 2016
3	Part D	August 15, 2017	October 30, 2017

4.3 Emissions Modification Proposal, Part A: For any Emissions Modification Proposal, Settling Defendants must submit the following information in a submission clearly marked as "Proposed Emissions Modification, Part A: [corresponding test group or combination of test groups of 2.0 Liter Subject Vehicles]." Except as specified herein, the Emissions

Modification Proposal must contain all the elements of an Ordered Recall Plan/Remedial Plan, pursuant to 40 C.F.R. Part 85, Subpart S and Cal. Code Regs., tit. 13, § 2125.

4.3.1 Statement of the Emissions Levels demonstrated by the Required Emissions Test Procedure results concerning the corresponding vehicles, in accordance with Paragraph 3.1, above.

4.3.2 All emissions data from a vehicle that has been modified pursuant to the Proposed Emissions Modification that demonstrates each of the following:

i. Compliance to the Maximum Emissions Modification Limits, demonstrated with all data from emissions tests conducted according to the FTP, US06, SC03, and Hwy FE, 20° F FTP (no specific compliance limits), and 50° F FTP (no specific compliance limits) test procedures specified in 40 C.F.R. Parts 86 and 600, and the applicable California regulations (the "Required Emissions Test Procedures"), including the Emission Control System Data Parameters, set forth in Appendix B-2, for all tests, and including the preconditioning tests. The FTP test must be performed at Sea Level and at a high altitude of 1,620 meters. For automatic transmissions all tests are conducted in driving mode "D." Such demonstration must account for emissions deterioration described in subparagraph 4.3.4 and infrequent regeneration adjustment factors. The most recent available DFs from the Engineering or the Official Durability vehicles at the time of testing, and IRAFs from FTP75 measurement of a test vehicle at Sea Level, are to be used. For Generation 1, to ensure the determination of a valid IRAF for the infrequent desulfurization of the NOx Trap, the HWFET cycle may be used for measurement of DeSOx regeneration emissions and the Unified Drive Cycle (UDC or "LA-92") for sulfur and soot accumulation. For Generation 2 and 3, the Unified Drive Cycle (UDC or "LA-92") may be used for soot accumulation. Settling Defendants may conduct emissions demonstrations using only the official durability vehicle;

ii. Fuel economy measured by using the FTP, US06, SC03, HWFET, and 20°F FTP test procedures, based on A-to-B testing using the same basic testing conditions, including but not limited to fuel, on the same vehicle that compares (A) vehicles without the 2014 Reflash and with the Road Mode Calibration active and operative during the batch of test cycles and (B) vehicles to which Settling Defendants have applied the Proposed Emissions Modification; and

iii. All emissions results at 50 degrees Fahrenheit and 20 degrees Fahrenheit over the FTP test cycle.

4.3.3 For formaldehyde emissions, in lieu of test results, Settling Defendants may provide a statement in the Proposed Emissions Modification that the Modified

Vehicles comply with the Maximum Emissions Modification Limits for formaldehyde specified in Tables 1 – 3, in accordance with 40 C.F.R. § 86.1829-01(b)(iii)(E).

4.3.4 EPA/CARB may provide approval for Generations 1 and 2 based on Official Durability Data at 60,000 miles and Engineering Durability Data to 90,000 miles. EPA/CARB may provide approval for Generation 3 based on Official Durability Data obtained by testing a representative Generation 3 vehicle with mileage of at least 60,000 miles. Settling Defendants must continue testing through Full Useful Life and provide Official Durability Data within 3 weeks of reaching 90,000 miles, within 3 weeks of reaching each 30,000 mile interval, and within 3 weeks of completing Full Useful Life, to EPA and CARB (new IRAF calculations to be reported only at 4,000 miles and Full Useful Life; intermediate points will be based on original 4,000 mile projection). Settling Defendants must complete Official Durability Data testing for all Generations no later than July 31, 2017. Such data must include without limitation:

i. For Generation 1 and 2, Settling Defendants must provide all engineering durability testing that Settling Defendants conducted using preliminary software and Calibration data. Settling Defendants must also provide to EPA and CARB all software and Calibration data changes made during the course of durability testing.

ii. For Generation 3, Settling Defendants must provide the DOC replacement interval, if replacement is necessary, as soon as intermediate emission testing within durability shows exceedance of the Maximum Emissions Modification Limits.

iii. Settling Defendants must provide EPA and CARB with all Full Useful Life emissions durability testing results at a minimum of 75% of Full Useful Life mileage for each Generation, within 3 weeks of completing such testing, and include any adjustments to DFs observed concerning vehicles that have been modified pursuant to the Approved Emissions Modification. Subsequently, Settling Defendants must complete 100% Full Useful Life emissions durability testing and provide EPA and CARB with all testing results within 3 weeks of completing such testing, including such data demonstrating that the Modified Vehicles remain compliant as follows: 150,000 miles for Model Year 2015 vehicles, and 120,000 miles for Model Year 2014 and earlier vehicles.

4.3.5 A complete and extensively detailed list of each and every AECD and EI-AECD, including descriptions of SCR Inducements, that the Modified Vehicles will have after receiving the applicable Proposed Emissions Modification. For any AECD that results in a reduction in effectiveness of the Emission Control System, the list must include the rationale for why the AECD is not a Defeat Device. EPA/CARB will approve only those AECDs that are not Defeat Devices (and that are consistent with EPA and CARB policies and guidelines for approval of AECDs). Non-existent EI-AECD counters, as that term is defined in Cal. Code Regs. tit. 13, § 1968.2, will constitute only one

noncompliance. No further EI-AECD counters will be requested by EPA/CARB. Settling Defendants must provide a list of all EI-AECD counters existing at the time the Proposed Emissions Modification is submitted.

4.3.6 A description of any and all reasonably predictable changes, adverse or otherwise, on vehicle attributes which may reasonably be important to vehicle owners, including: fuel economy, reliability, durability, Noise Vibration and Harshness, vehicle performance (for example, 0-60 mph time, top speed, etc.), and drivability.

4.3.7 A description of any and all reasonably predictable changes, adverse or otherwise, on aspects of vehicle maintenance which may reasonably be important to vehicle owners, including but not limited to oil changes, EGR cleaning, DEF refill, and DPF replacement.

4.3.8 A draft Emissions Modification Disclosure for EPA/CARB Approval regarding the Proposed Emissions Modification, designed for dissemination to Eligible Owners, Eligible Lessees and, as applicable, prospective purchasers, as required under subparagraph 3.1.10, that describes in plain language:

i. The Proposed Emissions Modification generally, including but not limited to the increased emissions resulting from the Proposed Emissions Modification relative to the levels contained in the previously issued certificates of conformity for the vehicles;

ii. All software changes;

iii. All hardware changes, including but not limited to any and all future recalls associated with the Proposed Emissions Modification, such as any modifications of the OBD system;

iv. For Generation 3, a clear explanation of each Subsequent Service Action required under the applicable Proposed Emissions Modification, to include at least (1) a software Reflash and (2) installation of the Second NOx Sensor and a replacement DOC (if needed), and the expected schedule and/or maintenance intervals for such replacements;

v. Any and all reasonably predictable changes, resulting from the Proposed Emissions Modification, including the following:

a. Reliability, durability, fuel economy, Noise Vibration and Harshness, vehicle performance (for example, 0-60 mph time, top speed, etc.), drivability, and any other vehicle attributes that may reasonably be important to vehicle owners; and

b. Oil changes, EGR cleaning, DEF refill, DPF replacement, and any other aspects of vehicle maintenance that may reasonably be important to vehicle owners;

vi. A basic summary of how Eligible Owners and Eligible Lessees can obtain the Proposed Emissions Modification and the logistics involved in doing so;

vii. OBD system limitations that make identification and repair of any components difficult or even impossible, compromise warranty coverage, or may reduce the effectiveness of inspection and maintenance program vehicle inspections; and

viii. Any other disclosures required under Appendix A, including the Buyback option.

4.3.9 A draft Extended Emissions Warranty statement in plain language intended for dissemination to Eligible Owners, Eligible Lessees, and, as applicable, prospective purchasers. If Settling Defendants attempt to make the demonstration concerning DPF warranty-coverage described under subparagraph 3.9.2, Settling Defendants must also include a draft statement in plain language concerning conditions under which the DPF is, or is not, covered by the warranty.

4.3.10 A proposal for the list of parts, including part identification numbers, covered by the Extended Emissions Warranty (the "Extended Emissions Warranty Parts Coverage List"). Settling Defendants must include in this proposal:

i. A complete list of any and all parts included in and related to the Emissions Control System, including any parts or components which can reasonably be impacted by effects of the Approved Emissions Modification;

ii. A complete list of any parts Settling Defendants propose to exclude from coverage by the Extended Emissions Warranty; and

iii. Settling Defendants' justification for excluding such parts from the Extended Emissions Warranty.

4.3.11 Draft labels for EPA/CARB approval, with correct label values for each model type corresponding to the Emissions Modification Proposal, designed to be permanently affixed to each and every Modified Vehicle, as required under subparagraph 3.1.6 of this Appendix B.

4.3.12 The complete software functional description document in the German language, and the table of contents of the functional description document in the English language, the compiled software files (i.e., .HEX Files), and the complete memory map

(i.e., .A2L File), including all such data applicable to the vehicles eligible for modification under the Proposed Emissions Modification before and after application of the Proposed Emissions Modification, as well as a description of any changes to the ECU code functionality, including a description of all Defeat Devices in the original software and how such Defeat Devices were removed and any calibration changes resulting from the Proposed Emissions Modification. Settling Defendants must provide English language translations of excerpts of the functional description document in response to reasonable requests by EPA/CARB.

4.3.13 Repair instructions concerning the Modified Vehicles that Settling Defendants must, upon receiving EPA/CARB's Notice of Approved Emissions Modification, distribute to Dealers, in accordance with Cal. Code Regs. tit. 13, § 1969. Settling Defendants must also provide contemporaneously to EPA and CARB a copy of each communication concerning the Approved Emissions Modification directed at Dealers.

4.3.14 An affidavit from a United States Volkswagen Group of America corporate official and from a German Volkswagen AG corporate official certifying, in accordance with Paragraphs 33 and 34 of this Consent Decree, that once the Emissions Modification is applied, the resulting Modified Vehicle contains no Defeat Devices.

4.3.15 Certification, in accordance with Paragraphs 33 and 34 of this Consent Decree, with respect to all information contained in the Emissions Modification Proposal.

4.4 Emissions Modification Proposal, Part B: For any Emissions Modification Proposal, Settling Defendants must submit the following information in a submission clearly marked as "Proposed Emissions Modification, Part B: [corresponding test group or combination of test groups of 2.0 Liter Subject Vehicles]."

4.4.1 Statement of OBD Compliance: A statement, based on the OBD demonstrations to date, that Settling Defendants believe the OBD system fully complies with the OBD requirements set forth in Paragraphs 3.1 – 3.6. The requirements of Cal. Code Regs. tit. 13, § 1968.2 apply in full, provided, however, that for monitoring requirements that specify threshold-based emissions malfunction criteria, Settling Defendants must use the malfunction criteria set out in Paragraphs 3.1 – 3.4 of this Appendix B.

4.4.2 Statement of OBD Noncompliances Pursuant to Paragraphs 3.1 – 3.6: If the OBD system does not fully comply with Paragraphs 3.1 – 3.6, Settling Defendants must specify, and provide a description of, all known and expected OBD Emission Threshold Noncompliances and all other OBD noncompliances, and all requested OBD noncompliance allowances, pursuant to the Alternate OBD Criteria under Paragraph 3.5.

4.4.3 For Critical OBD Demonstrations defined in this Appendix B, all data necessary for EPA and CARB to evaluate Settling Defendants' demonstrations of the

OBD levels as provided in Paragraphs 3.1 – 3.6 of this Appendix, using the protocols and processes required under Cal. Code Regs. tit. 13, § 1968.2(h).

4.4.4 A summary table for the Proposed Emissions Modification Calibration, monitoring checklist, descriptions of monitoring strategies that were changed between the original Calibration and the Proposed Emissions Modification Calibration, and testing and reporting as required by Cal. Code Regs. tit. 13, § 1968.2(j)(1) (i.e., verification of standardized requirements on production vehicles). The summary table for automatic and manual transmission vehicles for each Generation may utilize automatic transmission data and must note where manual transmission data are different.

4.5 Emissions Modification Proposal, Part C: For any Emissions Modification Proposal, Settling Defendants must submit the following information in a submission clearly marked as "Proposed Emissions Modification, Part C: [corresponding test group or combination of test groups of 2.0 Liter Subject Vehicles]."

4.5.1 All emission data from PEMS testing on two vehicles that have received the Proposed Emissions Modification. Settling Defendants must generate these data by testing over the ICCT Urban/Downtown Los Angeles Route and the Combined Uphill/Downhill and Highway Route, each attached hereto as Appendix B-3. Both vehicles must be tested at the same time and "chase" each other to experience the same driving ambient conditions. Settling Defendants must submit all raw data generated by the PEMS testing, including speed, load, and second-by-second emissions data, etc., in a CSV format that can be imported into a spreadsheet or database. From these data, Settling Defendants must calculate average emissions results for NOx, THC, CO, and CO2.

4.5.2 All emissions data from in-use vehicles that have received the applicable Proposed Emissions Modification, including data demonstrating compliance to the Maximum Emissions Modification Limits, over the Required Emissions Test Procedures (FTP, US06, SC03, and HWFET), accounting for infrequent regeneration adjustment factors as measured in the durability runs. For each Generation, two in-use vehicles with automatic transmission and one in-use vehicle with manual transmission are required (i.e., a total of nine vehicles). For all Proposed Emissions Modifications for Model Year 2012 and prior years, each in-use vehicle must have between 80,000 – 100,000 miles, accumulated before the vehicle received the applicable Approved Emissions Modification. At a minimum, one of the three in-use vehicles must have accumulated at least 90,000 miles. For all Proposed Emissions Modifications for Model Year 2013 and newer, each Model Year must have accumulated at least 15,000 miles on average per year in use.

4.6 Emissions Modification Proposal, Part D: For any Generation 3 Proposed Emissions Modification that requires a Subsequent Service Action, Settling Defendants must submit a proposal clearly marked as "Proposed Emissions Modification, Part D: [corresponding test group or combination of test groups of 2.0 Liter Subject Vehicles]." Settling Defendants

must not implement any such Proposed Emissions Modification, Part D unless and until EPA/CARB Approve such proposal. Any such Proposed Emissions Modification, Part D must:

4.6.1 Provided that Settling Defendants are not proposing any change to the emissions and OBD Calibrations in the Modified Vehicles, make an OBD demonstration for the SCR system monitor and DOC monitor. If Settling Defendants are proposing any changes to the emissions or OBD Calibrations other than the SCR system monitor and the DOC monitor, Settling Defendants must conduct new OBD demonstrations for any OBD monitors corresponding to, or affected by, any such changes.

4.6.2 Require the installation of a Second NOx Sensor and associated monitors, a compliant SCR system monitor, and a new DOC, if necessary.

4.6.3 Describe any updates to Parts A, B, and C that the installation of a new DOC, Second NOx Sensor and associated monitors, and compliant SCR system monitors may require, including but not limited to, emissions, durability, and OBD demonstrations for the affected monitors.

4.6.4 Require the installation of any updates identified in the description required under subparagraph 4.6.3.

V. APPROVAL OR DISAPPROVAL OF PROPOSED EMISSIONS MODIFICATIONS

5.1 EPA/CARB will approve or disapprove each Proposed Emissions Modification according to the schedule and criteria in this Appendix B.

5.1.1 Approve: If EPA/CARB determine that a Proposed Emissions Modification satisfies all requirements herein, then EPA/CARB will timely notify Settling Defendants by letter clearly titled: "Approved Emissions Modification: [corresponding test group or combination of test groups of 2.0 Liter Subject Vehicles]," after which Settling Defendants must implement the Approved Emissions Modification in accordance with the schedules and procedures set forth in Appendices A and B to this Consent Decree.

5.1.2 Disapprove:

i. If EPA/CARB determine that a Proposed Emissions Modification fails to satisfy any requirement herein, then EPA/CARB will timely notify Settling Defendants by letter clearly titled: "Notice of Disapproval of Proposed Emissions Modification: [corresponding test group or combination of test groups of 2.0 Liter Subject Vehicles]" that identifies the bases for the disapproval. Within 30 Days of EPA/CARB's letter(s), Settling Defendants may provide a proposed remedy, and within 90 Days of EPA/CARB's letter(s), Settling Defendants may submit one revised Proposed Emissions Modification that must resolve all of EPA/CARB's

bases for disapproval. EPA/CARB will then issue either a "Final Notice(s) of Disapproval of Proposed Emissions Modification: [corresponding test group or combination of test groups of 2.0 Liter Subject Vehicles]" or an "Approved Emissions Modification: [corresponding test group or combination of test groups of 2.0 Liter Subject Vehicles]"

ii. Settling Defendants may dispute EPA/CARB's Final Notice(s) of Disapproval of a Proposed Emissions Modification in accordance with the dispute resolution procedures set forth in the Consent Decree.

5.1.3 If, in their review, EPA/CARB identify any off-cycle increase or increases in emissions that could potentially be the result of a Defeat Device, then, within 30 Days of notice of the increase or increases by EPA/CARB, Settling Defendants must supplement its Proposed Emissions Modification with a detailed technical explanation of the cause of the increase or increases. EPA/CARB will provide available information to Settling Defendants concerning the increase or increases in emissions. EPA/CARB's response time to approve or disapprove the Proposed Emissions Modification shall be extended to no less than 20 Days from its receipt of Settling Defendants' supplement.

5.1.4 As stated in Section VIII (Stipulated Penalties and Other Stipulated Remedies for Noncompliance), EPA/CARB reserve all rights and authorities to impose consequences in the event the agencies discover a Defeat Device in any Modified Vehicle after either agency approved the corresponding Emissions Modification for that Modified Vehicle.

VI. IN-USE COMPLIANCE ASSURANCE FOR MODIFIED VEHICLES

6.1 In each of the five calendar years following lodging of the Consent Decree, for two vehicles from each Generation of the 2.0 Liter Subject Vehicles for which Settling Defendants have performed an Approved Emissions Modification, Settling Defendants must, no later than October 1 of each year (except as otherwise provided herein):

6.1.1. Notify EPA and CARB 30 Days prior to conducting all in-use testing so that the agencies can arrange to observe the testing.

6.1.2. Use the regulatory in-use compliance vehicle selection process to select vehicles to be tested, as required under 40 C.F.R. § 86.1845-04 and Cal. Code Regs. tit. 13, §2137, except that vehicles tested may include those that are up to the Full Useful Life in terms of mileage and age, shall be reasonably maintained and may not be excluded solely for lack of maintenance records, multiple owners and/or repairs due to the Emissions Modification. EPA/CARB reserve the right to specify to Settling Defendants the test group, model, and mileage targets for the two vehicles to be tested, provided that EPA/CARB provide such specifications to Settling Defendants by December 1 of the year preceding the year in which testing will be conducted. Settling Defendants must then randomly select the vehicles within such specifications. Vehicles

used for the Final OBD demonstration may not be used to satisfy the requirements of this Section VI (In-Use Compliance Assurance for Modified Vehicles).

6.1.3. Provide EPA and CARB all downloads of all standardized OBD data, in accordance with Cal. Code Regs. tit. 13, § 1968.2, of the tested vehicles. This data shall be collected both pre- and post-testing, on the as-received vehicles.

6.1.4. Generate all emissions data from two in-use Modified Vehicles in each Generation within the regulatory useful life mileage (i.e., Generation 1 and Generation 2 = 120,000 miles; Generation 3 = 150,000 miles) over all required test cycles (FTP, US06, SC03, and HWFET) accounting for Infrequent Regeneration Adjustment Factors, and provide all these data to EPA and CARB. Settling Defendants must complete the tests and provide to EPA and CARB the results, no later than October 1 of each year.

6.1.5. If the test results of any one in-use Modified Vehicle fails the Maximum Emissions Modification Limits for Full Useful Life (after accounting for any applicable in-use factors as described in Paragraph 3.7), Settling Defendants must formally notify the agencies within 72 hours of the failure. In the event of such failure, Settling Defendants must conduct an In-Use Confirmatory Program. Prior to conducting the In-Use Confirmatory Program, the Settling Defendants must submit a test plan for EPA/CARB review and approval. The criteria used for such additional in-use vehicle testing and any additional reporting requirements must be identical to the official regulatory in-use testing and reporting program under 40 C.F.R. 86.1846-01, except that vehicles selected for additional testing may include vehicles up to the applicable Full Useful Life in terms of mileage and age, shall be reasonably maintained and shall not be excluded solely for such things as lack of maintenance records, multiple owners and/or repairs as a result of the Emissions Modification. As stated in Section VIII (Stipulated Penalties and Other Stipulated Remedies for Noncompliance), EPA and CARB reserve all rights and authorities to impose consequences if a Modified Vehicle fails an applicable Maximum Emissions Modification Limit during the Full Useful Life period.

6.1.6. For each Approved Emission Modification, Settling Defendants must perform OBD testing and reporting as required by Cal. Code Regs. tit. 13, §§ 1968.2 (j)(2) and (3) (i.e., verification of monitoring requirements on production vehicles, and verification and reporting of in-use monitoring performance on production vehicles, respectively). Pursuant to these regulations, Settling Defendants must complete reporting under Cal. Code Regs. tit. 13, § 1968.2(j)(2) within 180 calendar Days after the first 2.0 Liter Subject Vehicle is modified in accordance with an Approved Emissions Modification, and must complete data collection and reporting required under Cal. Code Regs. tit. 13, § 1968.2(j)(3) within 360 calendar Days after the first 2.0 Liter Subject Vehicle is modified in accordance with the applicable Approved Emissions Modification. In the event this testing demonstrates that any Modified Vehicles do not comply with the applicable OBD requirements, Settling Defendants must submit a remedial plan to EPA and CARB for any such noncompliant Modified Vehicles.

6.1.7. Starting on April 30, 2018, and annually for the following 5 years, Settling Defendants must provide EPA and CARB with a "Report on In-Use Compliance Assurance for Modified Vehicles" that summarizes the testing performed pursuant to this Section in the preceding year. The two vehicles tested under this section shall be two of the vehicles procured by the Settling Defendants during the Settling Defendants compliance with the in-use reporting and compliance requirements in 40 C.F.R. § 86.1845-04 04 and Cal. Code Regs. tit. 13, § 2137.

6.1.8. Settling Defendants must certify all In-Use Compliance test results required under this Section VI, and submitted to EPA and CARB, in accordance with the certification requirements of Paragraphs 33 and 34 of this Consent Decree.

VII. ADDITIONAL REQUIREMENTS

7.1 In implementing any Approved Emissions Modification, Settling Defendants must comply with the following additional requirements.

7.2 For all Generations, Settling Defendants may not sell or cause to be sold, resell or cause to be resold, or lease or cause to be leased, any 2.0 Liter Subject Vehicle in Settling Defendants' possession, or obtained by Settling Defendants as a trade-in or through the Buyback or Lease Termination Program under Appendix A until:

7.2.1. Settling Defendants complete at least 75% Full Useful Life durability testing on an official emissions durability vehicle aged on the SRC cycle (a representative vehicle, as approved by EPA/CARB, is acceptable for this purpose) and Settling Defendants provide all data to EPA and CARB.

7.2.2. Settling Defendants complete the Critical OBD Demonstration Testing on a vehicle aged to at least 75% Full Useful Life on the SRC cycle executed with an Engineering Durability Vehicle and Settling Defendants provide all data to EPA/CARB;

7.2.3. Settling Defendants remedy any and all OBD noncompliances that are not provided for under this Appendix B and that are known at the time the OBD demonstration required under subparagraph 7.2.2 is completed;

7.2.4. Settling Defendants perform an applicable Approved Emissions Modification on any such vehicle and comply with all other requirements applicable to such vehicle under Appendix B;

7.2.5. Settling Defendants execute all emission-related service actions and repairs required to bring the vehicle into compliance with Appendix B, apply any and all other recalls concerning the vehicle, and execute any other required service actions, provided that, to fulfill this requirement for Generation 3 vehicles, Settling Defendants need not execute the Subsequent Service Action described in subparagraph 3.4.3;

7.2.6. Settling Defendants submit a Proposed Plan for Sale and Lease of Modified Vehicles, including the materials set forth below.

i. A statement that the Modified Vehicles comply with the requirements in Appendix B;

ii. If the Modified Vehicles do not comply with Appendix B, a statement of all actions to be undertaken to alter the Emissions Modification to ensure compliance with Appendix B;

iii. As necessary, an updated list of OBD noncompliances that were identified during the testing required under subparagraph 7.2.2; and

iv. Settling Defendants certify the Proposed Plan for Sale and Lease of Modified Vehicles in accordance with the certification requirements set forth in Paragraphs 33 and 34 of this Consent Decree.

7.2.7. EPA/CARB approve the Proposed Plan for Sale and Lease of Modified Vehicles. EPA/CARB will respond to the proposal within 14 Days of submittal.

7.2.8. For five years following entry of this Consent Decree, Settling Defendants must submit quarterly reports, certified in accordance with the certification requirements under Paragraphs 33 and 34 of this Consent Decree, to EPA/CARB to include the following information:

i. Each vehicle, by VIN, that has been acquired by Settling Defendants, modified with an Approved Emissions Modification (including Modified Vehicles that have been returned to Eligible Owners and Lessors), sold, exported, or destroyed, including the dates of each occurrence;

ii. By VIN, the repairs and alterations to each 2.0 Liter Subject Vehicle conducted to remedy OBD noncompliances and other defects in the relevant Approved Emissions Modification.

7.3 If the Final OBD Demonstration or the Full Useful Life Durability testing show that Modified Vehicles do not meet the OBD System or durability requirements of this Appendix B, or if a substantial number of Modified Vehicles exceed the Maximum Emissions Modification Limits in-use, the Approved Emissions Modification shall be suspended, during which time no relevant Emissions Modifications may be applied, and no sales, leases, or exports, of relevant Modified Vehicles will be permitted, until such time Settling Defendants correct the defects in the Approved Emissions Modification.

7.4 Settling Defendants must make all disclosures to vehicle owners as required by the Consent Decree and the FTC Order, and consistent with Appendix A. These requirements are meant to ensure owners are able to make an informed decision about participation in the Emissions Modification and the availability of the Extended Emissions Warranty.

7.5 Settling Defendants must also comply with any additional labeling, disclosure, and warranty requirements set forth in Appendix A.

7.6 As more fully described in Appendix A, Settling Defendants may not terminate the Emissions Modification Program.

VIII. STIPULATED PENALTIES AND OTHER STIPULATED REMEDIES FOR NONCOMPLIANCE

8.1 With respect to Settling Defendants' noncompliance with the provisions of this Appendix B, EPA and CARB reserve all rights to address such noncompliance under applicable laws and regulations, including without limitation, civil, criminal, and administrative enforcement authorities, such as the imposition of penalties and equitable remedies.

8.2 Settling Defendants must pay stipulated penalties to the United States and CARB, and be liable for the following remedies, for each violation of Appendix B, in accordance with the following paragraphs. Except as otherwise provided herein, 75% of any stipulated penalties due under these subparagraphs shall be paid to the United States, and 25% shall be paid to CARB.

8.2.1. Failure to Disclose AECDs. If, after issuing a Notice of Approved Emissions Modification, EPA/CARB determine that Settling Defendants failed to provide a complete list of each AECD and EI-AECD in the Emissions Modification Proposal that EPA/CARB approved, Settling Defendants must pay to the United States and CARB a stipulated penalty of $150,000 for each AECD and $2,000,000 for each EI-AECD not included in the list.

8.2.2. Failure to Comply with Labeling Requirements. If Settling Defendants fail to permanently affix a label to any 2.0 Liter Subject Vehicle, as required under subparagraph 3.1.6 before such vehicle is sold, leased, offered for sale or lease, otherwise introduced into commerce, or returned to the Eligible Owner or Eligible Lessee, or if the information included in any label is incorrect, Settling Defendants must pay to the United States and CARB a stipulated penalty of $15 per label, per vehicle, and for each Day that Settling Defendants fail to apply the required label, provided that if Settling Defendants affix the label within 30 Days of selling or leasing the vehicle or returning the vehicle to the Eligible Owner or Lessee, no stipulated penalty shall be required for that vehicle.

8.2.3. Failure to Perform Emissions Modification. If Settling Defendants sell or lease, offer for sale or lease, or otherwise introduce into commerce, or return to an Eligible Owner or Lessee who requested an Emissions Modification, any 2.0 Liter Subject Vehicle that has not received the applicable Approved Emissions Modification, Settling Defendants must (1) make a Mitigation Trust Payment to the Trust Account in accordance with the Consent Decree in the amount of $50,000 per vehicle; and (2) offer to buy back and terminate the leases for each and every such vehicle, in accordance with the terms and requirements of Appendix A. For each such vehicle that Settling Defendants fail to buy back or execute a lease termination, as applicable, within 18

months following EPA/CARB's demand for the stipulated remedy under this subparagraph, Settling Defendants must pay a Mitigation Trust Payment to the Trust Account in accordance with the Consent Decree in the amount of $25,000 per vehicle. In no event shall Settling Defendants be required to pay stipulated penalties under subparagraph 8.2.8 of Appendix A of this Consent Decree if a stipulated penalty under this subparagraph 8.2.3 of this Appendix B is demanded for the same conduct.

8.2.4. Failure to Comply with the Maximum Emissions Modification Limits. If any test required under this Appendix B, or such other compliance test, as specified in this Appendix B and conducted by EPA/CARB, demonstrates that any Modified Vehicle Test Group exceeds the applicable Maximum Emissions Modification Limit, the following stipulated remedies apply.

i. Settling Defendants must pay a Mitigation Trust Payment to the Trust Account in accordance with the Consent Decree, an amount based on Formula 1. The Mitigation Trust Payment amount shall be calculated based on the emissions exceedance demonstrated by testing conducted during the 1 year period preceding the EPA/CARB demand for payment. EPA/CARB may issue a separate demand for an additional Mitigation Trust Payment for each year in which the Modified Vehicle exceeds the applicable emissions limit. For Modified Vehicles that exceed more than one emission limit, the amount of exceedance will be based on the greatest amount by which any emissions limit is exceeded.

Formula 1

[Vehicles not removed from service (number of vehicles in the applicable Generation less the number of vehicles Settling Defendants demonstrate are bought back and destroyed)] x [g/mile (amount of exceedance)] x [15,000 miles] x [grams to tons conversion factor] x [70,000] = [Mitigation Trust Payment in dollars]

8.2.5. Failure to Provide EPA or CARB with Test Vehicles. If Settling Defendants fail to provide any test vehicle within 45 Days of a request by EPA/CARB, as provided in subparagraph 3.1.1, and as otherwise provided in the Consent Decree and Appendices, Settling Defendants must pay to the United States and CARB the following stipulated penalties for each test vehicle and for each Day the vehicles are not provided:

$5,000	1st through 14th Day
$20,000	15th through 30th Day
$50,000	31st Day and beyond

8.2.6. Failure to Remove Defeat Devices. If, after EPA/CARB approve the applicable Emissions Modification, Settling Defendants install software, or a Dealer installs software provided by Settling Defendants, for purposes of modifying the vehicle

as provided under this Appendix B, and subsequent to such installation, the vehicle contains a Defeat Device, Settling Defendants must offer to buy back, and terminate the leases for, each and every such vehicle that has been purchased or leased, or that has been returned to an Eligible Owner or Lessee who requested an Emissions Modification, in accordance with the terms and requirements of Appendix A, and Settling Defendants must also pay to the United States and CARB a stipulated penalty of $25,000,000 for each Defeat Device (but not for each vehicle that contains such Defeat Device).

8.2.7. Failure to Complete Final OBD Demonstration Testing. If Settling Defendants fail to complete the Final OBD Demonstration testing by the dates required under subparagraph 3.1.4, Settling Defendants must pay to the United States and CARB (at a 50/50 split) the following stipulated penalty for each Day that Settling Defendants fail to complete such testing:

$5,000	1st through 14th Day
$20,000	15th through 30st Day
$75,000	31st and beyond

8.2.8. Failure to Comply with OBD System Requirements. If the Final OBD Demonstration testing, or such other test, as described herein, conducted by EPA/CARB, demonstrate that the Modified Vehicles do not meet the OBD System Requirements set forth in this Appendix B (other than those allowed by the Alternate OBD Criteria), Settling Defendants must pay to the United States and CARB (at a 50/50 split) a stipulated penalty of $15,000,000 for each monitor (but not for each vehicle that contains such monitor) that the test(s) demonstrate is noncompliant, and Settling Defendants must also continue to conduct the in-use compliance testing required under Section VI of this Appendix B for an additional 3 year period. If such additional in-use compliance testing demonstrates that the Modified Vehicles exceed any of the Maximum Emissions Modification Limits, then the stipulated remedies under subparagraph 8.2.4 apply.

8.2.9. Failure to Install Hardware Required for Generation 1 Vehicles. If Settling Defendants fail to install on any Generation 1 2.0 Liter Subject Vehicle the exhaust flap, EGR filter, or the NOx Trap that meets the specifications of BASF TEX2064, as required under subparagraph 3.2.1, Settling Defendants must recall each and every such vehicle and install the required hardware, and must pay to the United States and CARB a stipulated penalty of $500 per vehicle per device that Settling Defendants fail to install.

8.2.10. Failure to Install DOC as Required for Generation 3 Vehicles. If Settling Defendants fail to install on any Generation 3 2.0 Liter Subject Vehicle the DOC necessary to maintain emissions compliance to at least 150,000 miles, as required under subparagraph 3.4.3, Settling Defendants must recall each and every such vehicle and install the required hardware and must pay to the United States and CARB a stipulated penalty of $500 per vehicle per device that Settling Defendants fail to install.

8.2.11. Failure to Install Other Hardware Required for Generation 3 Vehicles. If Settling Defendants fail to install on any Generation 3 2.0 Liter Subject Vehicle the

Second NOx Sensor or associated monitors, or compliant SCR monitor, required under subparagraph 3.4.1, Settling Defendants must recall each and every such vehicle and install the required hardware and must pay to the United States and CARB (at a 50/50 split) a stipulated penalty of $500 per vehicle per device that Settling Defendants fail to install.

8.2.12. Failure to Honor Warranty. If Settling Defendants fail to honor the Extended Emissions Warranty or the additional warranty extension provisions under Paragraph 3.9 and subparagraph 3.5.3, respectively, including by failing to cover all costs of parts and labor, or by failing to pay for or provide a loaner car for repairs of more than 3 hours, Settling Defendants must pay to the United States and CARB (at a 50/50 split) a stipulated penalty of $40,000, except for failing to pay for or provide a loaner car, for which Settling Defendants must pay a stipulated penalty of $1,000.

8.2.13. Failure to Disseminate the Emissions Modification Disclosure and the Additional Emissions Warranty Extensions. If Settling Defendants fail to timely execute the disclosures required under subparagraphs 3.1.10 or 3.9.6, or the notice requirements for any Additional Emissions Warranty Extensions required under 3.5.5, Settling Defendants must pay to the United States and CARB (at a 50/50 split) the following stipulated penalties for each Day such notice is not provided:

$2,000	1st through 14th Day
$10,000	15th through 30th Day
$50,000	31st and beyond

8.2.14. Failure to Maintain a VIN-Searchable Database with the required Emissions Modifications Disclosures and Specifying Warranty Coverage. If Settling Defendants fail to maintain an accurate and complete database specifying the warranty coverage for each 2.0 Liter Subject Vehicle, the Settling Defendants must pay to the United States and CARB (at a 50/50 split) the following stipulated penalties for each Day the database is not maintained, and for each covered part omitted:

$2,000	1st through 14th Day
$10,000	15th through 30th Day
$50,000	31st and beyond

8.2.15. Failure to Comply with In-Use Compliance Testing, Notice, or Reporting Requirements. If Settling Defendants fail to conduct the tests or fail to comply with the reporting or notice requirements under Section VI of this Appendix B (In-Use Compliance Assurance), Settling Defendants must make Mitigation Trust Payments to the Trust Account in accordance with the Consent Decree in the following amounts for each requirement Settling Defendants fail to meet, and for each Day of such failure:

$50,000	1st through 14th Day
$100,000	15th through 30th Day
$500,000	31st Day and beyond

8.2.16. Failure to Comply with Other Testing Requirements. If Settling Defendants fail to conduct any other test or timely submit the results as required under this Appendix B, including any test Settling Defendants are required to conduct after EPA and CARB issue a Notice of Approved Emissions Modification, but excluding tests required under Section VI of this Appendix B, Settling Defendants must pay to the United States and CARB (in a 50/50 split) the following stipulated penalties for each requirement Settling Defendants failed to meet, and for each Day of such failure:

$5,000	1st through 14th Day
$20,000	15th through 30st Day
$50,000	31st Day and beyond

8.2.17. Failure to Comply with Other Notice or Reporting Requirements. If Settling Defendants fail to meet any of the other notice or reporting requirements under Appendix B, Settling Defendants must pay to the United States and CARB (at a 50/50 split) the following stipulated penalty for each requirement and for each Day Settling Defendants fail to meet such requirements:

$2,000	1st through 14th Day
$5,000	15th through 30th Day
$25,000	31st Day and beyond

8.2.18. Failure to Comply with an Approved Emissions Modification. Except as otherwise provided herein, if an Emissions Modification performed by or on behalf of Settling Defendants fails to conform to any of the requirements of the applicable Approved Emissions Modification, Settling Defendants must pay to the United States and CARB (at a 50/50 split) a stipulated penalty of $5,000 for each nonconformance with the Approved Emissions Modification and for each Modified Vehicle that contains a nonconformance.

8.3 These stipulated penalties in Appendix B shall not apply if, at any time prior to instituting an Emission Modification Program, the Settling Defendants decide not to pursue an Emission Modification Program.

IX. DISPUTE RESOLUTION

9.1 Disputes under this Appendix B shall be governed by the dispute resolution procedures set forth in the Consent Decree.

9.2 With respect to any dispute under this Appendix B, in any judicial proceeding conducted pursuant to the dispute resolution procedures set forth in the Consent Decree, Settling Defendants shall have the burden of demonstrating that EPA/CARB's determination or action was arbitrary and capricious or otherwise not in accordance with law based on the administrative record.

X. SUBMISSIONS

10.1 Except as otherwise provided herein, Settling Defendants must provide EPA and CARB with all correspondence required hereunder concurrently, by the method and in the form specified in Section XIII (Notices) of the Consent Decree.

10.2 EPA and CARB will provide Settling Defendants with all correspondence required hereunder by the method and in the form specified in Section XIII (Notices) of the Consent Decree.

XI. CONFIDENTIAL BUSINESS INFORMATION.

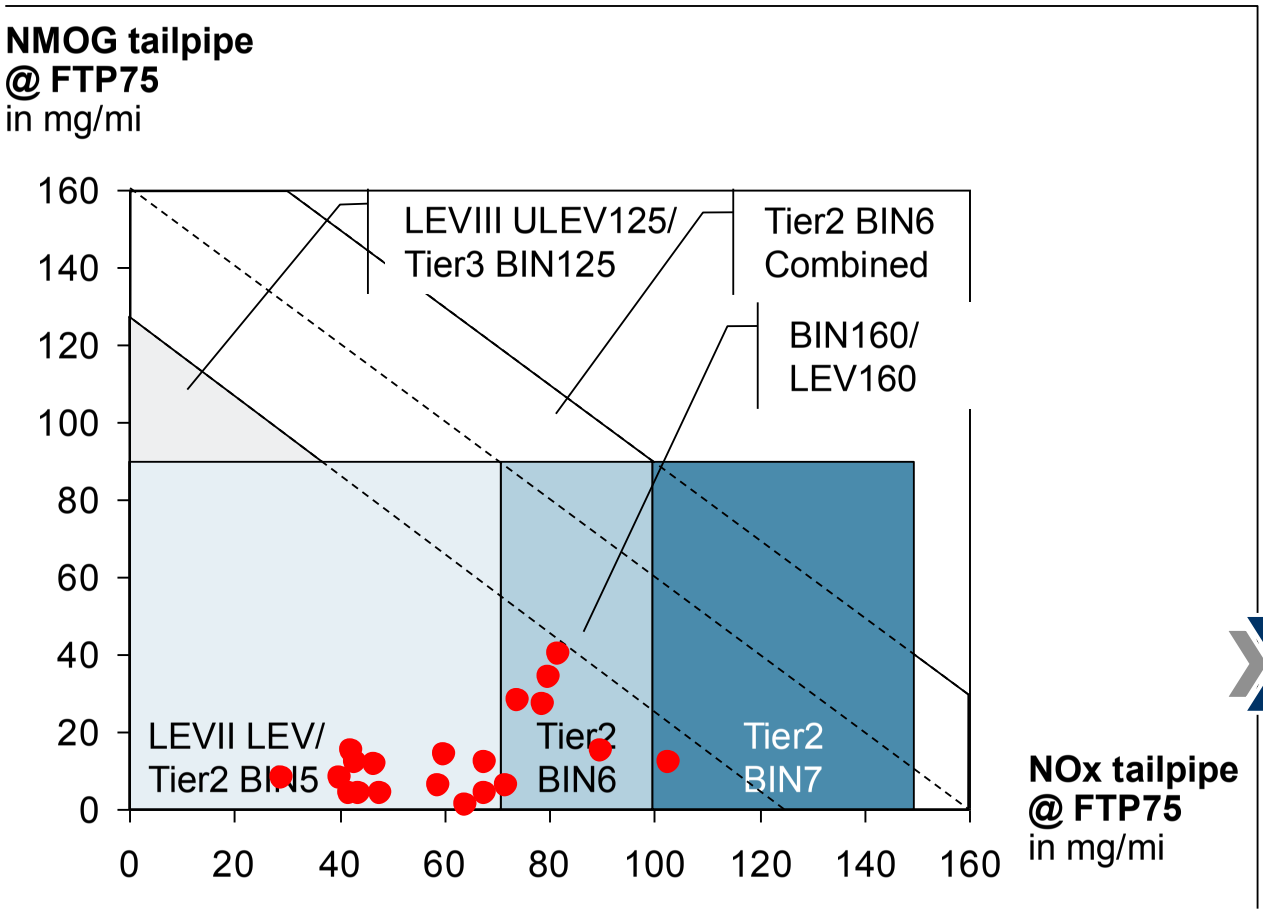
11.1 Settling Defendants may assert claims that their Submissions contain Confidential Business Information, as specified in the Consent Decree.

APPENDIX B-1
Prior Test Results

VOLKSWAGEN
AKTIENGESELLSCHAFT

EA288 Gen3 – Automatic Transmissions – Previous Emission Results

NMOG and NOx emissions results (new calibration)



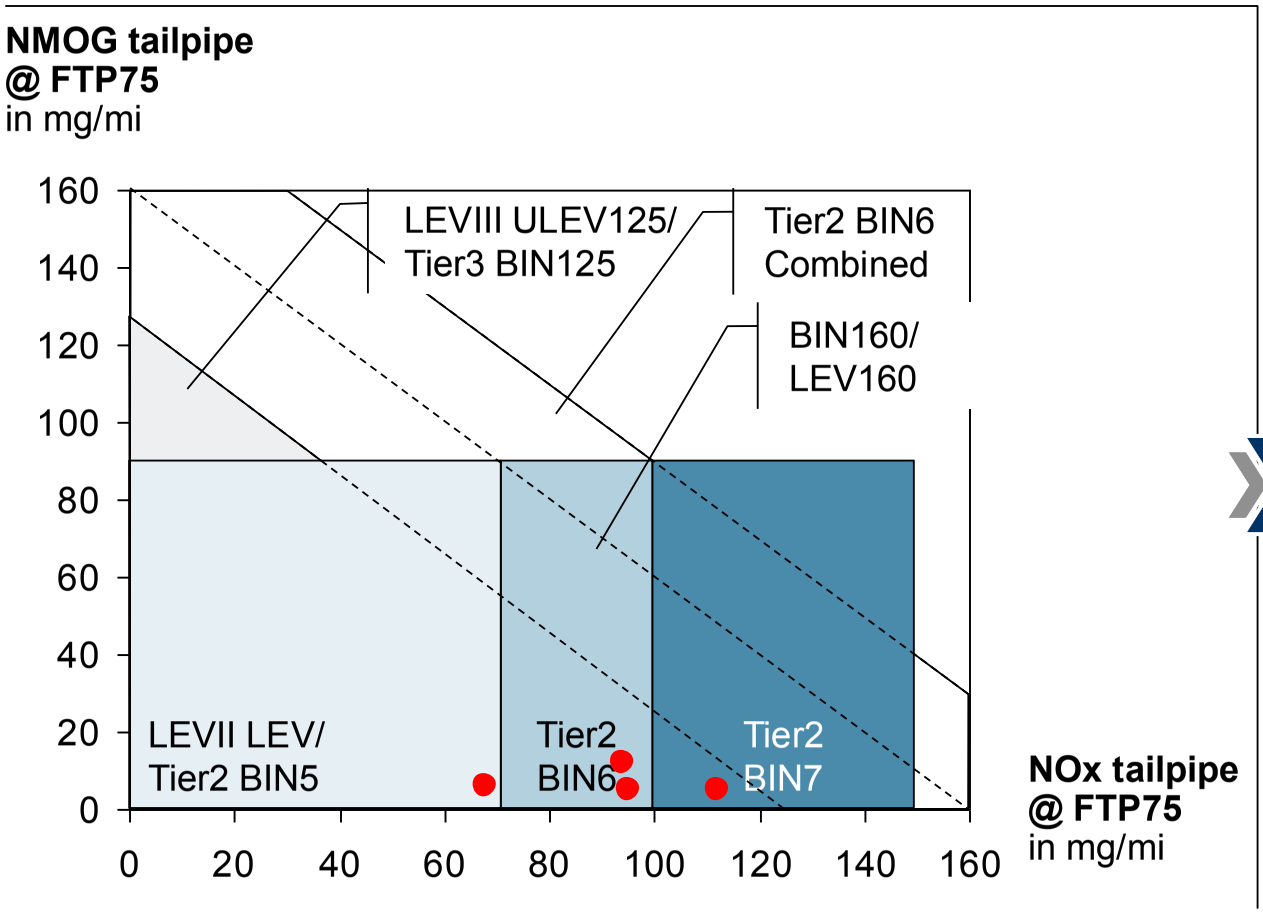
All measurements within Tier2 BIN6 combined or Tier3 BIN160/LEVIII LEV160 limits

Note: Without IRAF

VOLKSWAGEN
AKTIENGESELLSCHAFT

EA189 Gen2 – Automatic Transmissions – Previous Emission Results

NMOG and NOx emissions results (new calibration)



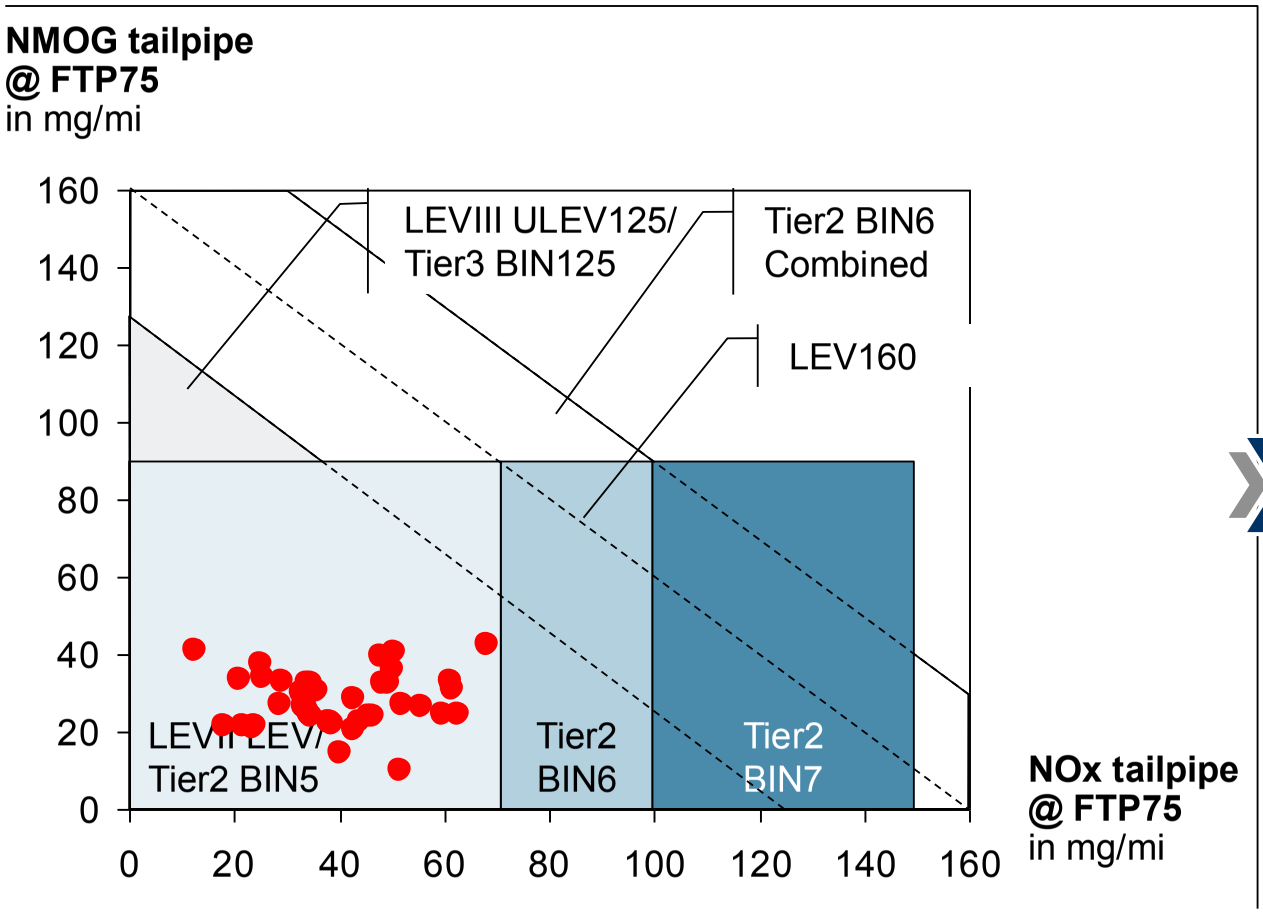
All measurements within Tier2 BIN6 combined or Tier3 BIN160/LEVIII LEV160 limits

Note: Without IRAF

VOLKSWAGEN
AKTIENGESELLSCHAFT

EA189 Gen1 – Automatic Transmissions – Previous Emission Results

NMOG and NOx emissions results (new calibration)



All measurements within Tier2 BIN6 or Tier3 BIN160/LEVIII LEV160 limits

Note: Without IRAF

APPENDIX B-2
Emission Control System Data Parameters

EMISSION CONTROL SYSTEM DATA PARAMETERS

Parameters A	Parameters B	English description	nicht verstanden	Alternativvorschlag/Korrektur	Intake Gas System (air and EGR)	Engine mode control	Engine temperatures	Engine dyn-amics	OBD	Fuel Injection system	Exhaust gas temp-eratures	Exhaust system incl. SCR	Vehicle dynamics and drivetrain	Other
AFS_dm	AFS_dm	air -mass flow total			X									
AFS_mAirPerCyl	AFS_mAirPerCyl	air-mass per cylinder and cycle			X									
ASMod_dmEG	ASMod_dmEG	Exhaust gas mass flow from engine		Exhaust gas mass flow from engine	X									
ASMod_dmNOxBasLM_mp	ASMod_dmNOxBasLM_mp	NOx mass flow engine out in 'lean-combustion operation Mode'	X	Base NOx mass flow value after combustion in 'lean-combustion operation Mode'	X									
ASMod_dmNOxEG	ASMod_dmNOxEG	NOx mass flow in the exhaust gas engine out			X									
ASMod_dmPFltUs		exhaust gas mass flow DPF upstream (Diesel particle filter)			X									
ASMod_dvolPFltEG		calculated exhaust gas volumetric flow in the particle filter			X									
ASMod_rNOxEG	ASMod_rNOxEG	Relative Amount of NOx emission in exhaust gas engine out		Amount of Nox emission in exhaust gas after combustion	X									
ASMod_tIntMnfDs	ASMod_tIntMnfDs	Temperature of the air mass flow after intake cooler	X	Exhaust gas?	X									
BR1_Rad_kmh	BR1_Rad_kmh	average wheel speed of driven wheels											X	
BR3_Fahrtr_HR	BR3_Fahrtr_HR	driving direction of right frontwheel											X	
BR3_Fahrtr_VR	BR3_Fahrtr_VR	driving direction of right rear wheel											X	
BR5_Bremsdruck	BR5_Bremsdruck	unfiltered brake pressure in the master brake cylinder											X	
	BattU_u	Batterie Voltage												X
CACPmp_r	CACPmp_r	PWM setpoint value for control of the charge-air cooler pump		Reference value of charge-air cooler pump	X									
CACPmp_rAct	CACPmp_rAct	actual PWM value for control of the charge-air cooler pump		Actual position of charge-air cooler pump actuator	X									
CEEgt_stLockScrHeat_VW	CEEgt_stLockScrHeat_VW	Global lock status: SCR heat	X			X								
CEngDsT_t	CEngDsT_t	Coolant temperature engine out		Coolant temperature exiting motor			X							
CEngUsT_t	CEngUsT_t	Coolant temperature engine in		Coolant temperature entering motor			X							

EMISSION CONTROL SYSTEM DATA PARAMETERS

CEScr_stHeatDem_VW	CEScr_stHeatDem_VW	Status of heating request from SCR coordinator	X									X		
CEScr_tDes_VW	CEScr_tDes_VW	Desired temperature of the SCR catalysator for SCR heating request	X	Desired temperature of the SCR catalyst for SCR heating request								X		
CESys_stOpm_VW_[0]	CESys_stOpm_VW_[0]	Priorized operation modes of system coordinator	X	Priorized operation modes of system coordinator		X								
CL1_Druck	CL1_Druck	refrigerant pressure		coolant pressure										X
CL1_Gebl_last	CL1_Gebl_last	load info of fan control												X
CL1_Kompr_Last	CL1_Kompr_Last	torque loss of the air conditioning system												X
Cpp_trqInrCor_[1]	Cpp_trqInrCor_[0]	Inner torque cylinder 1		adjusted internal torque				X						
	Cpp_trqInrCor_[2]	Inner torque cylinder 3						X						
DFES_ctEntry	DFES_ctEntry	number of allocated fault memory entries							X					
DI1_km_Stand	DI1_km_Stand	mileage						X					X	
DStgy_stNoxCnvPrf_MP	DStgy_stNoxCnvPrf_MP	status word for actual NOx reduction potential of the SCR system	X									X		
	Eng_pAmb_VW	Ambient pressure												X
ETCtl_qPoI1	ETCtl_qPoI1	correction of injection quantity of Postinjection 1 due to the exhaust gas temperature control	X							X				
ETCtl_qPoI2	ETCtl_qPoI2	correction of injection quantity of Postinjection 1 due to the exhaust gas temperature control	X							X				
ETCtl_tInrDes	ETCtl_tInrDes	Setpoint value of exhaust gas temperature before turbine of the turbocharger									X			
ETCtl_tOutrDes	ETCtl_tOutrDes	Setpoint value of the exhaust gas temperature DPF upstream									X			
	Exh_dmNOxNSCDs	NOx concentration SCR catalytic converter upstream										X		
Exh_pAdapPPFltDiff	Exh_pAdapPPFltDiff	adjusted differential pressure above particulate filter										X		
Exh_pDiffOfsValAct		actual offset value of the differential pressure above particulate filter										X		
Exh_pDynOfsValPPFltDiff		dynamic differential pressure offset value above the particulate filter										X		

EMISSION CONTROL SYSTEM DATA PARAMETERS

Exh_pSensPPFltDiffRel	Exh_pSensPPFltDiffRel	Exhaust gas pressure upstream Particulate Filter relative to ambient pressure	X	correction value delta for fast downstream pressure of the particle filter, which is subtracted from the measured value (Exh_pSensPPFltDiffRelFast) of the relative pressure over particle filter								X		
Exh_rNOxNSCDs	Exh_rNOxNSCDs	NOx concentration after SCR catalytic converter (downstream)										X		
Exh_tSensCelDs_VW	Exh_tSensCelDs_VW	Exhaust gas temperature after Low pressure EGR-cooler									X			
Exh_tSensOxiCatUs_VW	Exh_tSensOxiCatUs_VW	Exhaust gas temperature before oxidation catalyst									X			
Exh_tSensTOxiCatDs	Exh_tSensTOxiCatDs	Exhaust gas temperature after the oxidizing catalyst									X			
Exh_tSensTPFltDs	Exh_tSensTPFltDs	Exhaust gas temperature after the particulate filter									X			
Exh_tSensTTrbnUs	Exh_tSensTTrbnUs	Exhaust gas temperature before turbine of the turbocharger									X			
ExhFlpLP_rAct	ExhFlpLP_rAct	actual actuator position of the exhaust-gas flap		actuator position of exhaust-gas flap	X									
FlSys_dvolFlCons	FlSys_dvolFlCons	Fuel consumption [l/h] from torque-generated injection mass		Fuel consumption [l/h] from torque-generated injection rate						X				
FlSys_dvolFlConsAllTot	FlSys_dvolFlConsAllTot	actual total fuel consumption (incl. supplementary heating)[l/h]								X				
FlSys_volFlConsAllTot	FlSys_volFlConsAllTot	total fuel consumption per driving cycle[ul]								X				
FuelT_t	FuelT_t	fuel temperature								X				
GE_Fahrprogramm	GE_Fahrprogramm	driving program											X	
GE_Sumpftemperatur	GE_Sumpftemperatur	actual temperature of the ATF		actual temperature of the hydraulic oil in the gearbox sump									X	
GE1_WK	GE1_WK	condition of torque converter clutch	X										X	
GE2_akt_Gang	GE2_akt_Gang	actual engaged gear											X	
GE5_Sta_Fahrstufe	GE5_Sta_Fahrstufe	validity of the engaged gear	X	validity of the Gear Selection									X	
GEC_mChDesLim_VW	GEC_mChDesLim_VW	limit value of combustion-chamber-charge		limit value of combustion-chamber-charge	X									

EMISSION CONTROL SYSTEM DATA PARAMETERS

GEC_posnVtg_VW	GEC_posnVtg_VW	desired value for the position of the VTG actuator		desired value for the position of the VTG actuator	X									
GEC_rEgrDesLim_VW	GEC_rEgrDesLim_VW	desired value limit of EGR rate			X									
	GEC_rEgrHpDes_VW	Desired EGR rate high pressure			X									
	GEC_rEgrLpDes_VW	Desired EGR rate low pressure			X									
GEC_rFrcDesLim_VW	GEC_rFrcDesLim_VW	desired value limit of the EGR fraction			X									
GEC_rTvhDesLim_VW	GEC_rTvhDesLim_VW	limited setpoint value for pressure ratio throttle valve	X		X									
GEDC_stRlsOpmReqOxiMonAcv_MP_VW		status word containing release conditions for the operation mode request of active oxicat monitor				X								
GEDFel_rMonPasFil_VW		filtered ratio between modelled and simulated differential pressure above low pressure EGR filter		filtered ratio between modelled and simulated differencial pressures across low pressure EGR filter	X									
GEDFel_rMonPasOfs_VW		actual adaption value for the filtered ratio of the passive monitor	X	actual adaption value for the filtered ratio of the passive monitor					X					
GEDFel_stRls_VW		status word of release conditions for the low pressure EGR filter monitor		status word of release conditions for the low pressure EGR filter diagnosis					X					
GEM_mCh_VW	GEM_mCh_VW	virtual overall mass in cylinder			X									
GEM_mCylAirMfsAdp_VW	GEM_mCylAirMfsAdp_VW	adapted cylinder fresh air mass			X									
GEM_mfBrchHpDs_VW		massflow behind high pressure EGR-branch	X	massflow behind high pressure EGR-branch	X									
GEM_mfBrchLpDs_VW		mass flow behind low pressure EGR-branch			X									
GEM_mfDeMfsAdp_VW	GEM_mfDeMfsAdp_VW	mass flow deviation for calculating adaptation of mass flow sensor			X									
GEM_mfEvh_VW	GEM_mfEvh_VW	massflow through high pressure EGR-valve			X									
GEM_mfEvl_VW	GEM_mfEvl_VW	massflow through low pressure EGR-valve			X									
GEM_mfFuCmbOxi0_VW		maximum convertible fuel mass flow in exhaust gas			X									
GEM_mfMfsAdp_VW	GEM_mfMfsAdp_VW	adapted cylinder fresh air mass flow			X									
GEM_mFuPostInj1_VW		fuel mass for postinjection 1								X				
GEM_posnEvh_VW	GEM_posnEvh_VW	relative position of High Pressure EGR valve			X									

EMISSION CONTROL SYSTEM DATA PARAMETERS

GEM_posnEvl_VW	GEM_posnEvl_VW	relative position of Low Pressure EGR valve			X									
GEM_posnTvh_VW	GEM_posnTvh_VW	relative position of throttle valve			X									
GEM_posnVtg_VW	GEM_posnVtg_VW	relative position of variable turbine geometry actuator			X									
GEM_rEgr_VW	GEM_rEgr_VW	total EGR ratio			X									
GEM_tCacDs_VW	GEM_tCacDs_VW	temperature downstream of the charge air cooler	X	temperature downstream of the charge air cooler			X							
GEM_tCacUs_VW	GEM_tCacUs_VW	temperature upstream of the charge air cooler		temperature upstream of the charge air cooler			X							
GEM_tPfilSrfc_VW	GEM_tPfilSrfc_VW	temperature of particulate filter surface										X		
GK2_BEM_P_Generator	GK2_BEM_P_Generator	generator power												X
GlbDa_lTotDst	GlbDa_lTotDst	Distance travelled since first start		Distance travelled since first start									X	
GM3_MoSoMom	GM3_MoSoMom	from gearbox requested engine torque											X	
InjCrv_phiMI1CSCCor	InjCrv_phiMI1CSCCor	angle correction of start of main injection	X	start of override control of MI1						X				
	InjCrv_phiPil1Des	Desired injection timing (in angle) for Pilot Injection 1								X				
	InjCrv_phiPil2Des	Desired injection timing (in angle) for Pilot Injection 2								X				
	InjCrv_phiPoI1Des	Desired injection timing (in angle) for Post Injection 1								X				
	InjCrv_phiPoI2Des	Desired injection timing (in angle) for Post Injection 2								X				
	InjCrv_phiPoI3Des	Desired injection timing (in angle) for Post Injection 3								X				
	InjCrv_qPil1Des_mp	setpoint value for injection quantity of Pilot injection 1								X				
	InjCrv_qPil2Des_mp	setpoint value for injection quantity of Pilot injection 2								X				
InjCrv_qPoI1Des_mp	InjCrv_qPoI1Des_mp	setpoint value for injection quantity of postinjection 1								X				
InjCrv_qPoI2Des_mp	InjCrv_qPoI2Des_mp	setpoint value for injection quantity of postinjection 2								X				

EMISSION CONTROL SYSTEM DATA PARAMETERS

	InjCrv_qPol3Des_mp	setpoint value for injection quantity of postinjection 3								X				
InjCrv_stInjCharSetVal	InjCrv_stInjCharSetVal	setpoint value for injection pattern	X	desired behavior of injection value (simultaneous rotational speed)						X				
InjCtl_qSetUnBal		injection quantity mass without quantity compensation control	X	desired behavior of injection value without amount compensation control						X				
InjSys_qTot	InjSys_qTot	total injection quantity								X				
KO1_Tankinhalt	KO1_Tankinhalt	Remaining fuel quantity in tank	X	Remaining fuel quantity in tank						X				
KO3_Radumfang	KO3_Radumfang	mean wheel circumference in millimeters												X
MO_Heizstrom_SCR	MO_Heizstrom_SCR	Total electric current used for heating SCR system		Total current used for heating SCR system								X		
MO_Istgang	MO_Istgang	actual gear for display in gear shift recommendation											X	
MO_Sollgang	MO_Sollgang	recommended gear for display in gear shift recommendation											X	
MO1_Drehzahl	MO1_Drehzahl	engine speed						X						
MO1_Kup_schalt	MO1_Kup_schalt	clutch switch, only manual transmission.		clutch switch, only manual transmission.									X	
MO1_Pedalwert	MO1_Pedalwert	actual value of accelaerator pedal position		Pedal input value for E-gas cars									X	
MO2_Kuehlm_T	MO2_Kuehlm_T	engine coolant temperature		engine coolant temperature			X							
MO3_Aussentemp	MO3_Aussentemp	ambient air temperature												X
MO5_DPF_reg	MO5_DPF_reg	Bit: DPF-Regeneration active										X		
MO5_Luefter	MO5_Luefter	actual state of radiator fan control via PWM interface												X
MO5_Verbrauch	MO5_Verbrauch	actual Fuel consumption	X							X				
MO6_Ist_Moment	MO6_Ist_Moment	actual torque						X						

EMISSION CONTROL SYSTEM DATA PARAMETERS

MO7_Ladedruckneu	MO7_Ladedruckneu	Boost pressure		Boost signal for dashboard (Porsche Colorado, PQ35 Bi-Turbo, Audi RS6, TT-R)	X									
MO7_Oeltemp	MO7_Oeltemp	oil temperature					X							
MO7_StaGluehk	MO7_StaGluehk	switch-on state of glow-plug heating in percent												X
PCR_pActVal_VW	PCR_pActVal_VW	Charge air pressure actual value			X									
PCR_pDesVal_VW	PCR_pDesVal_VW	setpoint value for Charge air pressure			X									
PEGRLPDiff_pAdap	PEGRLPDiff_pAdap	adapted value of Low-Pressure EGR differential pressure sensor			X									
PFlt_dmPFltMonEG_mp		monitored exhaust gas mass flow through particulate filter		monitored exhaust gas mass flow through particle filter								X		
PFlt_dvolPFltMonEG_mp		monitored exhaust gas volumetric flow through particulate filter		monitored exhaust gas mass flow through particle filter								X		
PFlt_pAdapPPFltDiffFlt_mp	PFlt_pAdapPPFltDiffFlt_mp	filtered differential pressure above particulate filter		filtered differential pressure at particle filter after PT1								X		
PFlt_pDiffCharMonMinFullL_mp		threshold for minimum differential pressure at loaded particulate filter		measuring point of threshold for minimum differential pressure of fully loaded particle filter characteristic								X		
PFlt_stCondMonChar		release condition for monitoring of particulate filter										X		
PFlt_tiSumRgnMaxTmr		regeneration time of uncomplete regeneration of Particulate filter										X		
PFltLd_mSotMeas	PFltLd_mSotMeas	soot mass of particulate filter calculated from differential pressure above Particulte filter										X		
PFltLd_mSotSim	PFltLd_mSotSim	simulated soot mass of particle filter		simulated soot mass of particle filter								X		
PFltRgn_lSnceRgn	PFltRgn_lSnceRgn	driven distance since last successful regeneration										X		
PFltRgn_numEngPOp	PFltRgn_numEngPOp	state of regeneration after consideration of engine operating state	X									X		
PFltRgn_stIntr	PFltRgn_stIntr	status word for reason of regeneration interruption										X		
PthSet_trqInrSet	PthSet_trqInrSet	setpoint value for internal torque						X						

EMISSION CONTROL SYSTEM DATA PARAMETERS

	Rail_pSetPoint	setpoint value for rail pressure								X				
RailP_pFlt	RailP_pFlt	actual rail pressure (maximum rail pressure from the past 10ms)								X				
SCRChk_rNOxSensAvrgQlyDetn	SCRChk_rNOxSensAvrgQlyDetn	averaged measured value of NOx-concentration at end of diagnosis							X					
SCRChk_rNOxThdAvrgQlyDetn	SCRChk_rNOxThdAvrgQlyDetn	avaraged threshold value for NOx-concentration at end of diagnosis							X					
SCRCtl_tAvrg	SCRCtl_tAvrg	average temperature in Urea (DEF)-Tank	X	filtered temperature SCR								X		
SCRFFC_dmNOxUs	SCRFFC_dmNOxUs	NOx mass flow upstream of SCR-System	X	Untreated NOx emmission								X		
SCRFFC_rPPMNOxUs	SCRFFC_rPPMNOxUs	Untreated NOx emission upstream of SCR-catalytic-converter	X	Untreated NOx emmission								X		
SCRFFC_rPPMNOxUsCat2	SCRFFC_rPPMNOxUsCat2	Untreated NOx emission upstream of underfloor NH3 slip catalyst	X	Untreated NOx emmission								X		
SCRLdG_dmNH3Limit_mp	SCRLdG_dmNH3Limit_mp	maximum actual NH3 dosing quantity		NH3 dosage limit in SCRCat								X		
SCRLdG_dmNH3MetAdap	SCRLdG_dmNH3MetAdap	adapted NH3 dosing quantity										X		
SCRLdG_dmRdcAgtLimitVehVNox_MP	SCRLdG_dmRdcAgtLimitVehVNox_MP	NH3 dosing quantity limitation dependent on vehicle speed and NOx mass flow										X		
SCRLdG_mNH3LdNom	SCRLdG_mNH3LdNom	setpoint value for NH3 level inSCR catalytic converter	X	NH3 tank fluid level full								X		
SCRLdG_mNH3LimBuf	SCRLdG_mNH3LimBuf	NH3 level of reserve storage		mNH3 reserve tank fluid level								X		
SCRMod_mEstNH3Ld	SCRMod_mEstNH3Ld	current value of NH3-level in SCR catalytic converter		actual mNH3 tank fluid level								X		
SCRMod_rPPMNH3Slip	SCRMod_rPPMNH3Slip	NH3 slip										X		
SCRMod_tAvrg	SCRMod_tAvrg	mean temperature of SCR catalytic converter		average temperature of SCR catalyst								X		
SCRMon_stRelsPCtrl	SCRMon_stRelsPCtrl	status of release-conditions for transition to the condition PRESSURECONTROL		status of release for transition to the NOPRRESSURECONTROL condition								X		
UDC_dmRdcAgAct	UDC_dmRdcAgAct	actual mass flow of reducting agent	X	actual dosed mass flow of reductant								X		
UDC_dmRdcAgDesCoPr	UDC_dmRdcAgDesCoPr	mass flow setpoint of reducting agent for component protection function		desired dosage of component protection function								X		
UDC_mRdcAgDosQnt	UDC_mRdcAgDosQnt	longtime dosing quantity										X		

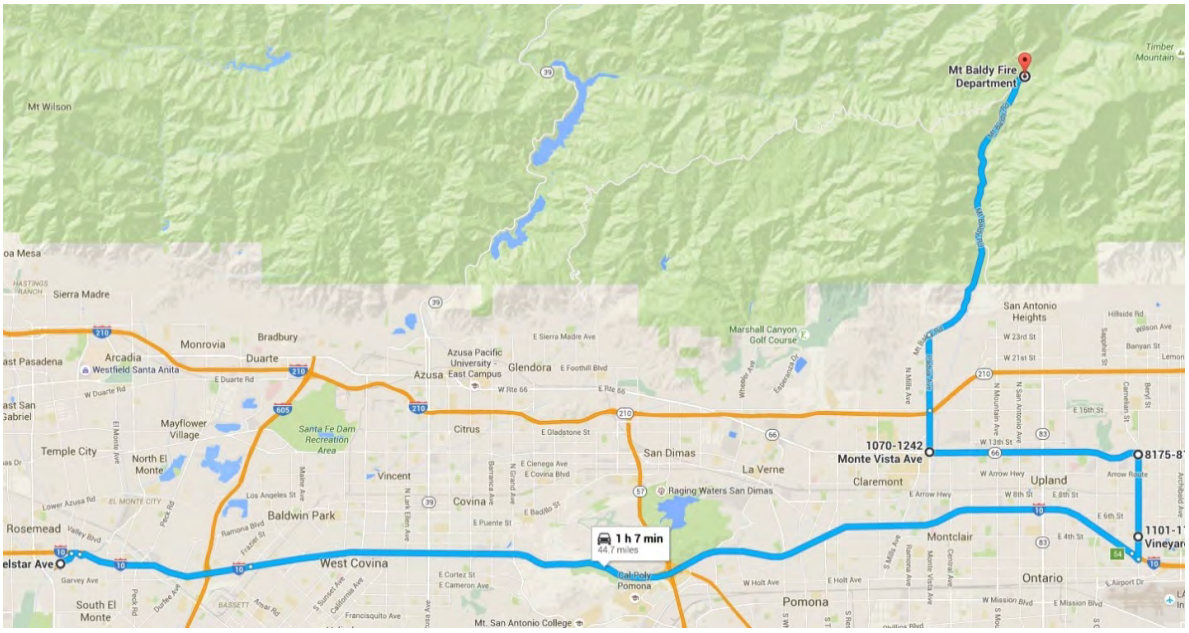
EMISSION CONTROL SYSTEM DATA PARAMETERS

UDC_mRdcAgDosQntTmp_mp	UDC_mRdcAgDosQntTmp_mp	temporary dosing quantity										X		
UDosVlv_rPs	UDosVlv_rPs	duty cycle of output signal of dosing valve output stage	X									X		
	UEGO_rLamS1B1	Current value of Lambda Sensor										X		
UEGO_stLamQlyS1B1	UEGO_stLamQlyS1B1	signal quality of lambda sensor		lambda signal quality sensor 1 Bank 1					X					
UTnkCLS_stSens	UTnkCLS_stSens	status signal of the combined level- and temperature sensor in Urea Tank										X		
	Veh_v_VW	Vehicle speed											X	

APPENDIX B-3
PEMS Routes

COMBINED TEST ROUTE
(Freeway and Uphill/Downhill)

OUT-bound



Summary: 44.7 mi (1 hour, 7 min)

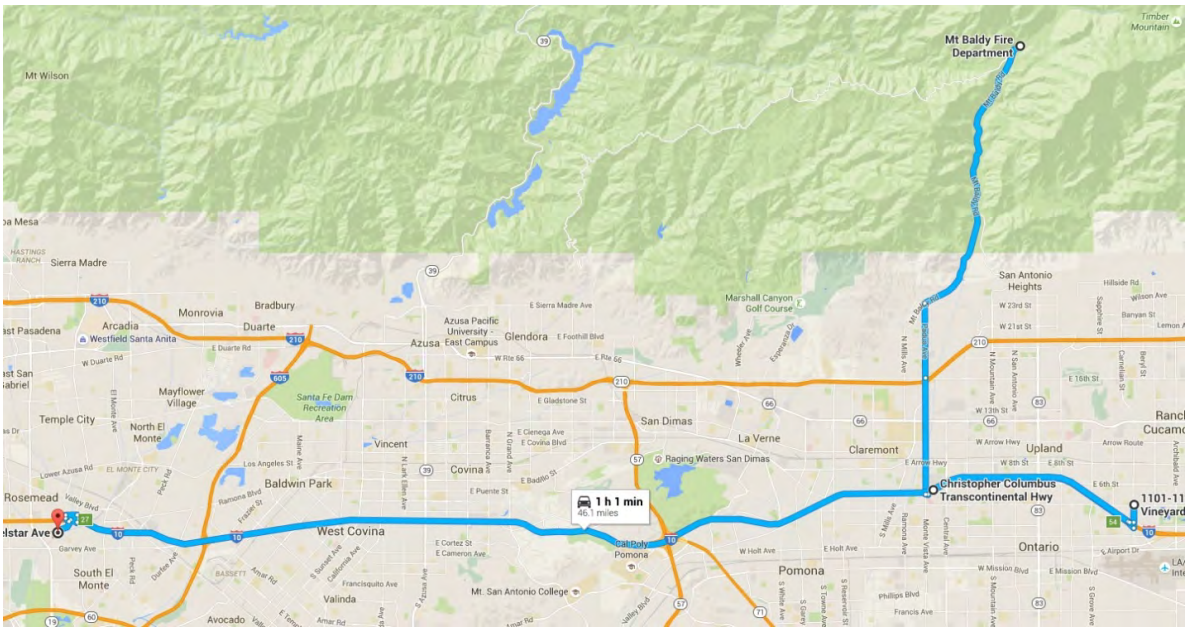
Route Parsing

A1, Freeway, ARB to Ontario intersection of East 4 th and Vineyard Avenue(~27.7 miles)
A2, Uphill, East 4 th and Vineyard Avenue to Mount Baldy, Fire Department) (~17 miles)
B1, Downhill, Mount Baldy, Fire Department to East 4th and Vineyard Avenue(~17.9miles)
B2, Freeway, East 4th and Vineyard Avenue to ARB (~28.5 miles)

Depart 9528 Telstar Ave, El Monte CA 91731
Head east on Telstar Ave toward Fletcher Ave
0.4 mi Turn right onto Flair Dr
0.2 mi Turn right to merge onto I-10 E
26.2 mi Take exit 54 for Vineyard Ave
Use the left 2 lanes to turn left onto N Vineyard Ave
Head north on N Vineyard Ave toward E Harvard Privado
4.2 mi Use the left 2 lanes to turn left onto E Foothill Blvd
5.1 mi Turn right onto Monte Vista Ave
2.8 mi Continue onto Padua Ave
7.2 mi Turn right onto Mt Baldy Rd
Total Distance 44.7 mi

COMBINED TEST ROUTE (CONTINUED)

IN-Bound

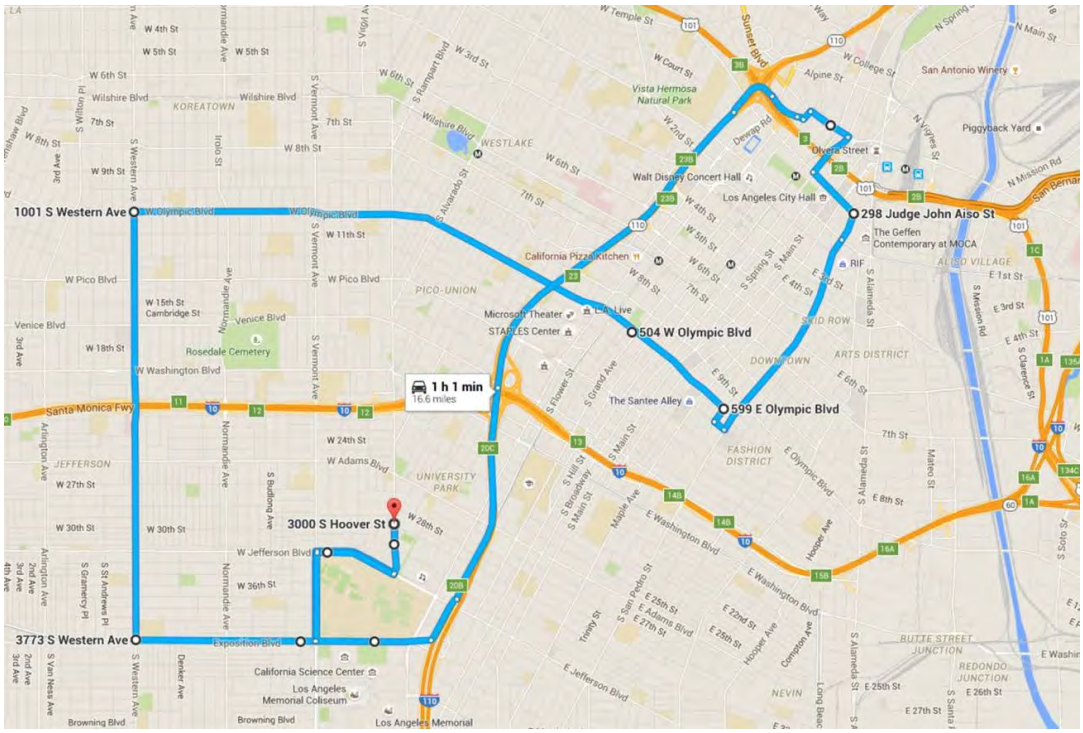


Summary: 46.1 mi (61 min)

Depart 6736 Mount Baldy Road, Mount Baldy, CA 91759
Head west on Mt Baldy Rd toward Central Ave
7.2 mi Turn left onto Padua Ave
1.8 mi Continue onto Monte Vista Ave
2.8 mi Turn left onto Palo Verde St
344 ft Use the left 2 lanes to turn left to merge onto I-10 E toward San Bernardino
Head northeast on I-10 E
5.0 mi Take exit 54 for Vineyard Ave
0.2 mi Use the left 2 lanes to turn left onto N Vineyard Ave
Destination will be on the left
1101-1119 N Vineyard Ave, Ontario CA 91764
0.5 mi Get on I-10 W
26.5 mi Follow I-10 W to Temple City Blvd in Rosemead. Take exit 27 from I-10 W
1.2 mi Take Loftus Dr to Telstar Ave in El Monte

Total Distance
46.1 mi

URBAN/DOWNTOWN LOS ANGELES ROUTE



Summary: 16.6 miles (61 minutes)

Depart 3000 S Hoover St, Los Angeles, CA 90007
Head south on S Hoover St

0.5mi	Turn RIGHT on W Jefferson Blvd	**0.3mi**	Use the second turn lane from the left to turn **LEFT** onto N. Grand Ave.
0.4mi	Turn **LEFT** on S. Vermont Ave.	**276ft**	Turn **RIGHT** onto the CA-110/I-110 fwy ramp
0.5mi	Turn **RIGHT** on W. Exposition Blvd.	**82ft**	Keep **RIGHT** at the fork and follow the signs for CA-110/I-110
1.0mi	Turn **RIGHT** on S. Western Ave.	**0.2mi**	Keep **LEFT** at the second fork and follow the sign for I-110 South - San Pedro
2.4mi	Turn **RIGHT** onto W. Olympic Blvd.	**0.3mi**	Merge **LEFT** onto the I-110 South - San Pedro
3.6mi	Turn **RIGHT** onto San Julian St.	**1.5mi**	Continue on the CA-110 South/I-110 South towards Exposition Blvd.Take Exit 20 B from I-110 S
446ft	Turn **LEFT** onto E. 11th St.	**1.8mi**	Take the Exposition Blvd. Exit (20B)
361ft	Turn **LEFT** onto S. San Pedro St.	**0.3mi**	Use the right two lanes to slightly turn and continue **STRAIGHT** on W. Exposition Blvd.

1.2mi	Continue **STRAIGHT** as S. San Pedro St. becomes Judge John Aiso St.
0.2mi	Turn **LEFT** on E. Temple St.
0.3mi	Turn **RIGHT** onto N. Broadway
0.3mi	Turn **LEFT** onto W. Cesar E. Chavez Ave.
0.6mi	Turn **RIGHT** onto S. Vermont Ave.
0.5mi	Turn **RIGHT** onto W. Jefferson Blvd.
0.4mi	**850 W Jefferson Blvd, Los Angeles, CA 90007**

APPENDIX C
THE ZEV INVESTMENT COMMITMENT

APPENDIX C

THE ZEV INVESTMENT COMMITMENT

This Appendix sets forth the requirements for Settling Defendants to direct $2 billion of investments over a period of up to 10 years into actions that will support increased use of zero emission vehicle ("ZEV") technology in the United States, including, but not limited to, the development, construction, and maintenance of zero emission vehicle-related infrastructure. These efforts will be directed pursuant to two separate investment planning processes, one for the State of California and the other for the rest of the United States. The State of California Air Resources Board ("CARB") will manage the process relating to California and the United States Environmental Protection Agency ("EPA") will manage the process for the rest of the United States.

I. DEFINITIONS

Terms used in this Appendix C that are defined in Section III (Definitions) of the Consent Decree shall have the meaning set forth in Section III (Definitions) of the Consent Decree. In addition, and unless otherwise provided, the following terms when used in this Appendix C shall have the following meanings:

1.1. "Appendix C" shall mean this Appendix, and any modifications, revisions, or amendments to it.

1.2. "California ZEV Investment Plan" shall mean the CARB-approved plan developed by the Settling Defendants and implemented in four 30-month cycles, with $200 million invested in each such cycle, for implementation in the State of California, resulting in the investment of $800 million over a period of up to 10 years, pursuant to Section III of this Appendix C, and any CARB-approved revisions, modifications, or amendments to it.

1.3. "California Creditable Cost Guidance" shall mean a guidance document prepared by Settling Defendants, for review and approval by CARB, which establishes the requirements regarding the Settling Defendants' accounting for, and documentation of, costs incurred in the implementation of the California ZEV Investment Plan. The requirements for the California Creditable Cost Guidance are set forth in Appendix C-1 to this Appendix.

1.4. "Creditable Costs" shall mean costs incurred by Settling Defendants for the planning, installation, operation, and maintenance of a ZEV Investment identified in an approved National ZEV Investment Plan or California ZEV Investment Plan that satisfies the criteria set forth in the National Creditable Cost Guidance or California Creditable Cost Guidance, as applicable. Creditable Costs shall include costs incurred by the Settling Defendants after the date of lodging of the Consent Decree to the extent those costs fall within the definition of Creditable Costs. Creditable Costs shall not include any expenditure that: (i) was approved by a Board of Management of any Settling Defendant prior to September 18, 2015; (ii) was required by a contract entered into by any of the Settling Defendants prior to the date of lodging of the

Consent Decree; or (iii) is part of a joint effort by Settling Defendants and other automobile manufacturers to create ZEV infrastructure.

1.5. "National Creditable Cost Guidance" shall mean a guidance document prepared by Settling Defendants that establishes the requirements regarding the Settling Defendants' accounting for, and documentation of, costs incurred in the implementation of the National ZEV Investment Plan. The requirements for the National Creditable Cost Guidance are set forth in Appendix C-1 to this Appendix.

1.6. "National ZEV Investment Plan" shall mean the EPA-approved plan developed by the Settling Defendants for the investment of $1.2 billion in 30-month investment cycles in areas of the United States other than the State of California pursuant to Section II of this Appendix C, and any revisions, modifications, or amendments to the EPA-approved National ZEV Investment Plan.

1.7. "Paragraph," unless otherwise specified, shall mean a paragraph or a subparagraph of this Appendix C designated by a number.

1.8. "Section," unless otherwise specified, shall mean a section of this Appendix C designated by an upper case Roman numeral.

1.9. "ZEV" or "zero emission vehicle" shall mean any:

1.9.1. on-road passenger car or light duty vehicle, light duty truck, medium duty vehicle, or heavy duty vehicle that produces zero exhaust emissions of all of the following pollutants: non-methane organic gases, carbon monoxide, particulate matter, carbon dioxide, methane, formaldehyde, oxides of nitrogen, or nitrous oxide, including, but not limited to, battery electric vehicles ("BEV") and fuel cell vehicles ("FEV");

1.9.2. on-road plug-in hybrid electric vehicle ("PHEV") with zero emission range greater than 35 miles as measured on the federal Urban Dynamometer Driving Schedule ("UDDS") in the case of passenger cars, light duty vehicles and light duty trucks, and 10 miles as measured on the federal UDDS in the case of medium- and heavy-duty vehicles; or

1.9.3. on-road heavy-duty vehicle with an electric powered takeoff.

ZEVs shall not include: zero emission off-road equipment and vehicles; zero emission light rail; additions to transit bus fleets utilizing existing catenary electric power; or any vehicle not capable of being licensed for use on public roads.

1.10. "ZEV Investment" shall mean an investment of money by the Settling Defendants that promotes and advances the use and availability of ZEVs within the categories of actions set forth below. The specific types of ZEV investments that may be implemented under the National ZEV Investment Plans are to be determined by reference to the provisions of this Appendix C relating to those Plans. ZEV Investments may include:

1.10.1. Design/planning, construction/installation, operation, and maintenance of ZEV infrastructure. That infrastructure should support and advance the use of ZEVs in the United States by addressing an existing need or supporting a reasonably anticipated need. Such expenditures may include the installation of: (i) Level 2 charging at multi-unit dwellings, workplaces, and public sites, (ii) DC fast charging facilities accessible to all vehicles utilizing non-proprietary connectors, (iii) new heavy-duty ZEV fueling infrastructure (in California); (iv) later generations of the types of charging infrastructure listed in i, ii, and iii; and (v) ZEV fueling stations;

1.10.2. Brand-neutral education or public outreach that builds or increases public awareness of ZEVs. As used here, "brand-neutral" means that the educational or outreach efforts, materials or activities do not feature or favor Settling Defendants' vehicles or services. Such educational or outreach efforts, materials or activities may contain a statement that they are "sponsored by Volkswagen," but that statement shall not be prominently displayed, and the efforts, materials or activities shall not feature, favor, or advertise Settling Defendants' services or vehicles;

1.10.3. Programs or actions to increase public exposure and/or access to ZEVs without requiring the consumer to purchase or lease a ZEV at full market value, *e.g.*, the operation of ZEV car sharing services, or ZEV ride hailing services, including, but not limited to, ZEV autonomous vehicles, and, in California, scrap and replace with ZEV vehicles;

1.10.4. The "Green City" initiative in California, including, but not limited to: the operation of ZEV car sharing services, zero emission transit applications, and zero emission freight transport projects. The selection of the city (*e.g.*, Los Angeles) will be made by the Settling Defendants in consultation with appropriate local authorities in California.

ZEV Investments shall exclude any investments that are related to projects or activities that the Settling Defendants are or will be required to perform pursuant to any federal, state, or local laws. The excluded projects include, but are not limited to, any aspects of injunctive relief required by this Consent Decree and any of its Appendices other than this Appendix C, any ongoing or potential legal enforcement action, any part of an existing settlement or order in any legal action, or any current or future federal, state, or local legal requirement. Provided, however, a federal, state or local requirement that becomes effective after the approval of a National ZEV Investment Plan or a California ZEV Investment Plan will not preclude a cost from qualifying as a Creditable Cost unless such requirement was reasonably anticipated to become effective during the period covered by such approved Plan.

II. NATIONAL ZEV INVESTMENT PLAN

2.1. National ZEV Investments: Within 10 years after the Effective Date, or such additional time as may be approved by EPA in writing, Settling Defendants shall spend $1.2 billion in Creditable Costs on ZEV Investments in areas of the United States other than the State of California ("National ZEV Investments"). These expenditures shall be structured so that Settling Defendants shall spend $300 million in Creditable Costs every 30 months unless otherwise agreed to in writing by EPA. National ZEV Investments to be made during the first 30-month period following the Effective Date shall be made in accordance with this Section and the timelines set forth in this Section. National ZEV Investments to be made during the remaining three 30-month periods shall be made in accordance with the National ZEV Investment Plan requirements set forth herein and the specific plans that shall be submitted by the Settling Defendants 30 months, 60 months, and 90 months from the Effective Date, respectively. Settling Defendants may incur Creditable Costs under the National ZEV Investment Plan only for the types of ZEV Investments described in Paragraphs 1.10.1., 1.10.2., and 1.10.3., except for new heavy-duty ZEV fueling infrastructure and scrap and replace with ZEV vehicles. Settling Defendants are solely responsible for every aspect of selecting the National ZEV Investments, including, but not limited to, the category or combination of the three categories of investments listed above, as well as the timing and locations of any National ZEV Investment. Notwithstanding the preceding, costs incurred in connection with ZEV charging infrastructure installed at or adjacent to Settling Defendants' dealerships shall not constitute Creditable Costs. Costs incurred for programs or actions to increase public exposure and access to ZEVs may only qualify as Creditable Costs if the program or action is specifically agreed to in writing by EPA in advance of its implementation, and any necessary amendments to the National Creditable Cost Guidance for determining the specific costs allowable have been agreed to by Settling Defendants and EPA.

2.2. National Creditable Cost Guidance: Within 30 Days after the Effective Date, Settling Defendants shall submit to EPA for review and approval in accordance with Section V (Approval of Submissions and EPA/CARB Decisions) of the Consent Decree a proposed National Creditable Cost Guidance developed in accordance with the requirements set forth in Appendix C-1. EPA and the Settling Defendants shall meet and confer as soon as practicable after that submission to discuss the proposed National Creditable Cost Guidance. The final National Creditable Cost Guidance shall be developed by the Settling Defendants in accordance with the requirements set forth in Appendix C-1, taking into account feedback received from EPA during the meet-and-confer session. Unless otherwise agreed in writing with EPA, Settling Defendants shall submit the final National Creditable Cost Guidance within 60 days after the Effective Date.

2.3. National ZEV Outreach Plan: Within 15 days after the Effective Date, Settling Defendants shall submit to EPA for review and approval in accordance with Section V (Approval of Submissions and EPA/CARB Decisions) of the Consent Decree a detailed plan that addresses how Settling Defendants will solicit input from interested States, municipal

governments, federally-recognized Indian tribes ("Tribes"), and federal agencies relevant to Settling Defendants' development of each 30-month phase of the National ZEV Investment Plan (the "National ZEV Outreach Plan"). The National ZEV Outreach Plan shall include a description of how Settling Defendants will provide information sufficient to allow States, municipal governments, Tribes, and federal agencies to offer meaningful input on the development of the National ZEV Investment Plan, or an update thereto, including the identification of opportunities within States, municipal governments, Tribes, and federal agencies to make National ZEV Investments where most needed. Although this Consent Decree does not impose upon Settling Defendants any obligation to act upon or respond to any suggestions received, Settling Defendants shall provide a reasonable opportunity for suggestions on the development of the National ZEV Investment Plan. Upon approval of the National ZEV Outreach Plan, the Settling Defendants shall implement it. To this end, at a minimum, the National ZEV Outreach Plan shall:

2.3.1. Describe how Settling Defendants will provide States, municipal governments, Tribes, and federal agencies with notice and opportunities to provide suggestions, observations, and offers of assistance or support for actions that the Settling Defendants may take under the National ZEV Investment Plan. At a minimum, Settling Defendants shall provide reasonable notice of these opportunities on a website established by the Settling Defendants in accordance with Paragraph 32 of the Consent Decree. Settling Defendants shall accept for consideration comments by States, municipal governments, Tribes, and federal agencies in advance of submitting a Draft National ZEV Investment Plan to EPA;

2.3.2. Describe the manner in which States, municipal governments, Tribes, and federal agencies will be given an opportunity to offer input on the development of the National ZEV Investment Plan or an update thereto, including specifying the lead time provided for such input and any relevant guidance to facilitate transmission and receipt of such input (*e.g.*, web-based submission, transmittal of hard copy document, preferred document and data formats, etc.); and

2.3.3. Provide a timeline for the implementation of the National ZEV Outreach Plan, including the proposed begin and end dates for the acceptance of comments.

2.4. Submission of Draft National ZEV Investment Plan: Within 120 Days after the Effective Date or 30 Days after the end of the comment acceptance period under the National ZEV Outreach Plan in Paragraph 2.3., whichever occurs later, Settling Defendants shall submit a Draft National ZEV Investment Plan to EPA that describes proposed National ZEV Investments that will be implemented for at least the next 30 months. Settling Defendants shall provide an Executive Summary of the Draft National ZEV Investment Plan that does not contain confidential business information ("CBI"), that could be made public upon request, and that would include all key elements of the Draft National ZEV Investment Plan, as well as a general summary of comments received and how the Settling Defendants considered such

comments. EPA and the Settling Defendants shall meet and confer as soon as practical after the submission in order to discuss the Draft National ZEV Investment Plan. The purpose of the meet and confer is for EPA to provide Settling Defendants with preliminary views on the Draft National ZEV Investment Plan in advance of Settling Defendants' submission of the National ZEV Investment Plan.

2.5. Submission and Content of National ZEV Investment Plan: Within 30 Days after the meet and confer on a Draft National ZEV Investment Plan, Settling Defendants shall submit a National ZEV Investment Plan to EPA for EPA's review and approval as consistent with the requirements of this Appendix C in accordance with Section V (Approval of Submissions and EPA/CARB Decisions) of the Consent Decree. To the extent that the Plan contains any CBI, Settling Defendants shall provide a version of it that contains all the key elements and that can be posted on a website established by the Settling Defendants in accordance with Paragraph 32 of the Consent Decree. Following EPA's approval, Settling Defendants shall publish a link to the National ZEV Investment Plan on the website specified above. The National ZEV Investment Plan shall include at the minimum:

2.5.1. Both types of ZEV Investments described in Paragraphs 1.10.1. and 1.10.2., except for new heavy-duty ZEV fueling infrastructure;

2.5.2. A specific description of the National ZEV Investments, and the associated timelines (with interim milestones), to be implemented within the 30 months covered by the National ZEV Investment Plan that shall result in the expenditure of $300 million in Creditable Costs during that period;

2.5.3. A projection of anticipated Creditable Costs associated with each National ZEV Investment, on an itemized basis, with items of cost broken down into at least the following categories: (1) personnel costs (including salaries and fringe benefits); (2) travel expenses; (3) office rent; (4) company vehicles; (5) office fixtures and equipment; (6) insurance; (7) office supplies; (8) taxes and governmental fees (excluding corporate income taxes); (9) information technology expenses (including infrastructure, hardware, and software); (10) utilities; (11) services - - such as accounting, human resources, legal, and procurement - - obtained from affiliated companies pursuant to service level agreements; and (12) goods and services obtained via contracts with third parties. Settling Defendants shall not obtain services from affiliated companies pursuant to service level agreements if services of equal quality that meet Settling Defendants' specifications and requirements are available from a third party at a materially lower cost. The approval of any National ZEV Investment Plan by EPA does not constitute approval of any anticipated costs set forth therein, and a good faith failure of Settling Defendants to include a cost does not preclude such cost from qualifying as a Creditable Cost;

2.5.4. The location(s) and type(s) (*e.g.*, Level 2 or DC fast charging) of any infrastructure that Settling Defendants will construct or cause to be constructed under a

National ZEV Investment Plan; the quantities of sites that will be constructed, chargers or ZEV fueling stations per site, costs per site, and the type and number of connectors per charger or site; dates by which each specific construction will commence; specific or estimated dates of completion of such construction; a plan to provide for maintenance of ZEV charging infrastructure for a period of not less than 10 years after the Effective Date, which includes a requirement of periodic maintenance and provides that the charging equipment be marked with a toll-free number for maintenance issues that will be answered by a live operator who is subject to Settling Defendants' control; peer-reviewed research reports or summaries of such reports, to the extent applicable, that provide supporting evidence that such infrastructure type and location can be reasonably expected to advance the use of ZEVs; and an explanation of how such infrastructure meets a reasonable need and advances the use of ZEVs. Any charging infrastructure proposed by the Settling Defendants shall have the ability to service all plug-in ZEVs using non-proprietary connectors as the field evolves by: (i) if necessary, using multiple connectors; and/or (ii) using charging protocols and approaches that anticipate and address the evolving field of vehicle charging. Settling Defendants are free to support evolving standards in the field of non-proprietary connectors, and are not obligated to provide equal support for different types of non-proprietary connectors;

2.5.5. With the exception of the first 30-month National ZEV Investment Plan, any programs or actions to increase public exposure or access to ZEVs, including measures to increase access in underserved areas. Such programs or actions may include, but will not be limited to: partnering with rental fleet and car-share providers to make ZEVs available at no incremental cost to customers; creating new ZEV car-share programs; hosting "ride and drive" events or donating ZEVs to such events; or facilitating other opportunities for members of the public to drive a ZEV other than through purchase or planned purchase. Provided, however, that any such program or action must be specifically approved in writing by EPA, and EPA and the Settling Defendants must agree to any necessary amendments to the National Creditable Cost Guidance prior to incurrence of any costs for such program or action for the costs to qualify as Creditable Costs;

2.5.6. A description of the brand-neutral media activities that Settling Defendants will initiate to provide education and raise awareness regarding ZEVs and ZEV technology, such as: identities of Settling Defendants' third party partners; the media, platforms or fora in which information will be provided (*i.e.*, television, smartphones, print, websites, etc.); geographic placement of any physical advertisements; and quantity and length of placement of any television, radio, or online advertisements. Unless otherwise agreed to in writing by EPA, Settling Defendants shall spend no less than $25 million and no more than $50 million on such activities during each 30-month investment cycle;

2.5.7. An explanation, taking into account relevant literature from academia, industry, and government, if available, that each National ZEV Investment, to the extent applicable: increases the use of ZEVs in the United States; addresses a clearly existing need or supports a reasonably anticipated need; has a high likelihood of utilization and provides accessibility/availability where most needed and most likely to be regularly used; supports and/or advances the market penetration of ZEVs in the United States; helps build positive awareness of ZEVs; is intended for, and compatible with, ZEV technology brands that are not limited to the Settling Defendants and/or their subsidiaries; and uses non-proprietary or multiple connectors or charging protocols that anticipate technological changes; and

2.5.8. A certification, in accordance with Paragraph 33 of the Consent Decree, that none of the proposed projects or activities: (1) was approved by the Board of Management of any Settling Defendant prior to September 18, 2015, was required by a contract entered into by the Settling Defendants prior to the date of lodging of the Consent Decree, or is part of a joint effort by Settling Defendants and other automobile manufacturers to create ZEV infrastructure; or (2) is one that the Settling Defendants either are required to perform by any federal, state, or local law, or anticipate will be required to perform during the planned 30-month period.

2.6. Settling Defendants shall start implementing the National ZEV Investment Plan upon its approval and shall maintain or provide for maintenance of any ZEV charging infrastructure for a period of not less than ten (10) years from the Effective Date.

2.7. Independent Third Party Review of Creditable Costs and Attestation for National and California ZEV Investment Plans: Settling Defendants shall retain, upon approval by the United States, after consultation with CARB, a person or entity to serve as the independent third-party certified public accounting firm ("Third-Party Reviewer") to: (i) audit and review costs asserted by Settling Defendants to be Creditable Costs in the Annual National ZEV Investment Reports or the Annual California ZEV Investment Reports; (ii) perform duties as required by Paragraphs 2.7.4. and 3.4.2.; and (iii) provide an attestation as provided in Paragraphs 2.9.3. and 3.4.1. and the Attestation Requirements listed in Appendix C-1. Settling Defendants or the Third-Party Reviewer shall develop the proposed attestation agreement consistent with the National Creditable Cost Guidance and the California Creditable Cost Guidance, as applicable, developed pursuant to Appendix C-1 and this Appendix. EPA or CARB, as applicable, will approve or disapprove the attestation agreement in accordance with Section V (Approval of Submissions and EPA/CARB Decisions) of the Consent Decree.

2.7.1. Recommendation of Candidates for the Third-Party Reviewer. Within 30 days of the Effective Date, Settling Defendants shall submit to the United States and CARB a list of three candidates for the position of the Third-Party Reviewer. Settling Defendants shall:

2.7.1.1. Submit a resume, biographical information, and any relevant material concerning each of the candidate firms and its competence and qualifications to serve as Third-Party Reviewer; the selected staff assigned to perform the review in California must be licensed in California and the selected firm must maintain an office in California;

2.7.1.2. Describe any past, present, or future business or financial relationship that the candidate has with the Settling Defendants, EPA, or CARB. A candidate may not be an employee or an agent of the Settling Defendants, Settling Defendants' subsidiaries, the United States, or California, nor may the candidate be currently engaged in any work for, or in representation of, Settling Defendants;

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

2.7.1.4. Verify that the candidate has agreed not to be employed by any Settling Defendant, or its subsidiary, for a minimum of two years after the termination of its term as the Third-Party Reviewer; and

2.7.1.5. Accompany all of the information listed above in Paragraph 2.7.1.1 through Paragraph 2.7.1.4. with a certification in accordance with Paragraph 33 of the Consent Decree.

2.7.2. Selection of the Third-Party Reviewer. After receiving the list of candidates from the Settling Defendants, the United States, after consultation with CARB, shall select a Third-Party Reviewer from among the candidates, and notify the Settling Defendants of such selection. If the United States does not select any of the candidates submitted by the Settling Defendants, the process under Paragraph 2.7.1. shall be repeated until the Third-Party Reviewer is selected.

2.7.3. Vacancy in the Position of the Third-Party Reviewer. In the event that the Third-Party Reviewer, once selected, is unable or unwilling to fulfill its duties as the Third-Party Reviewer, the processes under Paragraphs 2.7.1. and 2.7.2. shall be used to select a new Third-Party Reviewer.

2.7.4. Duties of the Third-Party Reviewer. Within 30 days of selection, the Third-Party Reviewer shall develop a plan that will establish a checklist of relevant compliance requirements, procedures for the exchange of any documents and information that the Third-Party Reviewer needs to perform its duties, and any other terms that the Third-Party Reviewer may deem necessary to effectuate its duties.

2.7.5. Information and Access Rights Accorded to Third-Party Reviewer. Settling Defendants shall provide the Third-Party Reviewer with any information that the Reviewer requests or may reasonably need to fulfill the duties listed in Paragraph 2.7.4. and Paragraph 3.4.2., including, but not limited to: any information regarding the National ZEV Investments or the California ZEV Investments; any costs associated with any National ZEV Investment or any California ZEV Investment; and access to any employees of the Settling Defendants that the Third-Party Reviewer may need to gain to gather further information in the fulfillment of its duties.

2.7.6. Compensation of the Third-Party Reviewer. Settling Defendants shall be responsible for compensating the Third-Party Reviewer for the performance of its duties in accordance with the terms agreed upon by the Settling Defendants and the selected Third-Party Reviewer. Such terms of agreement shall clarify that the Third-Party Reviewer is not an employee or an agent of the Settling Defendants. Upon EPA's or CARB's request, any agreements between the Settling Defendants and the Third-Party Reviewer shall be made available for EPA's or CARB's review. None of the costs incurred by the Settling Defendants in connection with the selection, retention, or compensation of the Third-Party Reviewer are Creditable Costs within the meaning of Appendix C.

2.8. EPA's Approval of Costs: Settling Defendants shall include in their Annual National ZEV Investment Reports submitted in accordance with Paragraph 2.9. a request for a determination of Creditable Costs expended for approved ZEV Investments during the period covered by the applicable Report. EPA will approve or disapprove such claimed costs as Creditable Costs as soon as practicable in accordance with the National Creditable Cost Guidance after the receipt of the applicable Annual National ZEV Investment Report and all information listed in Paragraph 2.9.3.

2.9. Annual National ZEV Investment Reports: No later than April 30 of each year following EPA's approval of the first National ZEV Investment Plan, Settling Defendants shall submit an annual report regarding the status of each National ZEV Investment. Annual National ZEV Investment Reports shall be submitted in addition to any other reporting obligations under the Decree or any other federal, state, or local law, regulation, permit, or other requirement. Annual National ZEV Investment Reports may be submitted as a part of the Settling Defendants' reports under Section VI (Reporting and Certification Requirements) of the Consent Decree. Each annual report shall include at the minimum:

2.9.1. A description of completed activities/projects and a comparison of the completed activities/projects with the activities/projects described in the approved National ZEV Investment Plan;

2.9.2. Utilization rates of the new ZEV infrastructure, including the percentage of time that each connector is attached to a vehicle, energy dispensed per charger per day,

and any other metrics that indicate the maximum, minimum, and average utilization of a charging station, including trends in usage over time;

2.9.3. For the costs incurred for activities completed in the period covered by the applicable Report that the Settling Defendants claim as Creditable Costs: (i) a description of actual costs incurred in connection with implementation of a specific completed action identified in an approved National ZEV Investment Plan; (ii) supporting documentation required by and listed in the approved National Creditable Costs Guidance; and (iii) an attestation report by the Third-Party Reviewer that contains an attestation that the costs claimed to be Creditable Costs are consistent with the requirements of this Appendix C and the National Creditable Cost Guidance. The supporting documentation shall include a list of completed activities or projects, locations and descriptions of any charging elements placed into service, and copies of any advertisements or other materials disseminated as a part of the activities, and a description of any programs or actions to increase public access and exposure to ZEVs;

2.9.4. Descriptions of any issues or problems encountered in implementing the projects, including issues with maintenance of infrastructure, working with project partners, acquiring necessary property or equipment, and technical aspects of projects;

2.9.5. Each Annual National ZEV Investment Report shall be certified in accordance with Paragraph 33 of the Consent Decree.

Settling Defendants shall make each Annual National ZEV Investment Report available on a website established in accordance with Paragraph 32 of the Consent Decree. To the extent that any Annual National ZEV Investment Report contains CBI, Settling Defendants shall submit to EPA for its review a summary version that can be made publicly available.

2.10. Remaining Costs: If EPA concludes, based on the review of information submitted in the Annual National ZEV Investment Reports pursuant to Paragraph 2.9., that Settling Defendants did not spend $300 million in Creditable Costs on ZEV Investments during any 30-month phase of the National ZEV Investment Plan, any remaining money shall be invested in the implementation of the next 30-month investment cycle of the National ZEV Investment Plan. EPA and the Settling Defendants shall meet and confer in the event that the Settling Defendants do not spend or anticipate not spending $1.2 billion at the end of the final, fourth 30-month phase of the National ZEV Investment Plan.

2.11. Dispute Resolution: Any dispute regarding obligations established in this Section II of Appendix C shall be resolved in accordance with Dispute Resolution provisions set forth in Section IX of the Consent Decree. Any dispute arising under Paragraph 2.5. of Appendix C regarding EPA's approval of the National ZEV Investment Plan and brought pursuant to Paragraph 63 of the Consent Decree shall be subject to the standard of review set forth in Paragraph 65.a of the Consent Decree. Any other dispute arising under Section II of

Appendix C and brought pursuant to Paragraph 63 of the Consent Decree shall be subject to the standard of review set forth in Paragraph 65.b of the Consent Decree.

2.12. Stipulated Penalties: The following stipulated penalties shall apply to failures to comply with the requirements of this Section II of this Appendix C. All stipulated penalties listed below shall be payable to the United States in accordance with Section VII (Stipulated Penalties and Other Mitigation Trust Payments) of the Consent Decree.

2.12.1. If the Settling Defendants fail to invest a total of $600 million in EPA-approved Creditable Costs during the first two 30-month investment cycles as provided in Paragraph 2.1. of Appendix C, as reported in the first five Annual National ZEV Investment Reports submitted under Paragraph 2.9., the Settling Defendants shall pay a stipulated penalty amounting to the difference between $600 million and the cumulative total amount that EPA approved as Creditable Costs after reviewing the first five Annual National ZEV Investment Reports. The Settling Defendants shall pay this stipulated penalty in addition to investing any amounts of money that were unspent or remaining from one 30-month cycle during the next 30-month investment cycle as required by Paragraph 2.10.

2.12.2. If the Settling Defendants fail to invest a total of $1.2 billion in EPA-approved Creditable Costs within 10 years of the Effective Date as provided in Paragraph 2.1. of Appendix C, Settling Defendants shall pay a stipulated penalty amounting to the difference between $1.2 billion and the cumulative total amount that EPA approved as Creditable Costs after reviewing the Settling Defendants' final Annual National ZEV Investment Report.

2.12.3. If the Settling Defendants fail to submit the National Creditable Cost Guidance in accordance with Paragraph 2.2. and Appendix C-1, Settling Defendants shall pay stipulated penalties per each day on which the National Creditable Cost Guidance is overdue or submitted not in accordance with the requirements set forth in Paragraph 2.2. or Appendix C-1:

Duration of compliance failure	Stipulated penalty
1st through 14th Day	$1,000
15th through 30th Day	$5,000
31st Day and beyond	$20,000

2.12.4. If the Settling Defendants fail to submit the National ZEV Outreach Plan in accordance with Paragraph 2.3., Settling Defendants shall pay stipulated penalties per each day on which the National ZEV Outreach Plan is overdue or submitted not in accordance with requirements set forth in Paragraph 2.3.:

Duration of compliance failure	Stipulated penalty
1st through 14th Day	$1,000
15th through 30th Day	$2,500
31st Day and beyond	$10,000

2.12.5. If the Settling Defendants fail to implement the EPA-approved National ZEV Outreach Plan in accordance with Paragraph 2.3., Settling Defendants shall pay stipulated penalties per each day on which the National ZEV Outreach Plan is not implemented in accordance with the EPA-approved timelines as provided in Paragraph 2.3.3. and other requirements of the EPA-approved National ZEV Outreach Plan:

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

2.12.6. If the Settling Defendants fail to submit the Draft National ZEV Investment Plan in accordance with Paragraph 2.4., Settling Defendants shall pay stipulated penalties per each day on which the Draft National ZEV Investment Plan is overdue:

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

2.12.7. If the Settling Defendants fail to submit the first National ZEV Investment Plan in accordance with Paragraph 2.5., Settling Defendants shall pay stipulated penalties per each day on which the first National ZEV Investment Plan is overdue or submitted not in accordance with the requirements of Paragraph 2.5., including without limitation each requirement set forth in Paragraph 2.5.1. through Paragraph 2.5.8.:

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

2.12.8. If the Settling Defendants fail to submit the remaining three National ZEV Investment Plans: (i) in accordance with the deadlines set forth in Paragraph 2.1., (ii) containing all the required elements set forth in Paragraph 2.5. and, if applicable, expenditures of remaining costs under Paragraph 2.10., and (iii) having undergone all other procedures applicable to the preparation of National ZEV Investment Plans set forth

in Section II, including without limitation Paragraphs 2.2., 2.3., 2.4. and 2.5., Settling Defendants shall pay stipulated penalties per each day on which each National ZEV Investment Plan is overdue or submitted not in accordance with the above-listed requirements:

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

2.12.9. If the Settling Defendants fail to maintain or provide for maintenance of installed ZEV charging infrastructure as required by Paragraph 2.6. and the maintenance plan of their approved National ZEV Investment Plan, Settling Defendants shall pay stipulated penalties per each day for each failure to implement the approved maintenance plan:

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

2.12.10. If the Settling Defendants fail to submit a list of candidates for the Third-Party Reviewer in accordance with Paragraph 2.7.1., and if applicable Paragraphs 2.7.2. and 2.7.3., Settling Defendants shall pay stipulated penalties per each day on which the list of candidates is overdue or submitted not in accordance with the requirements set forth in Paragraph 2.7.1.:

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

2.12.11. If the Settling Defendants fail to submit Annual National ZEV Investment Reports in accordance with Paragraph 2.9., Settling Defendants shall pay stipulated penalties per each day on which the Annual National ZEV Investment Reports are overdue or submitted not in accordance with the requirements set forth in Paragraph 2.9.:

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

2.13. Modifications: This Section II of Appendix C may be modified in accordance with Section XVI (Modification) of the Consent Decree. The following modifications shall be considered non-material for the purpose of Paragraph 91 of the Consent Decree:
(a) modifications of any schedules established under this Section II by less than one year;
(b) modification of a requirement that the Settling Defendants spend $300 million dollars in each 30-month investment cycle of the National ZEV Investment Plan; and (c) modifications, revisions, or amendments to the Appendix C-1 to this Appendix C and/or National Creditable Cost Guidance.

2.14. Enforcement: EPA, represented by the U.S. Department of Justice, is responsible for the enforcement of any requirements under this Section II.

III. CALIFORNIA ZEV INVESTMENT PLAN

3.1. California ZEV Investments: Settling Defendants shall spend $800 million in Creditable Costs within 10 years of the Effective Date on ZEV Investments to be implemented in the State of California ("California ZEV Investments"). Unless otherwise approved by CARB in writing, Settling Defendants shall spend $200 million in Creditable Costs on ZEV Investments in California during each 30-month period covered by each California ZEV Investment Plan.

3.2. California Creditable Cost Guidance: Within 30 Days after the Effective Date, Settling Defendants shall submit to CARB for review and approval in accordance with Section V (Approval of Submissions and EPA/CARB Decisions) of the Consent Decree a proposed California Creditable Cost Guidance developed in accordance with the requirements set forth in Appendix C-1. CARB and the Settling Defendants shall meet and confer as soon as practicable after that submission to discuss the proposed California Creditable Cost Guidance. The final California Creditable Cost Guidance shall be developed by the Settling Defendants in accordance with the requirements set forth in Appendix C-1, taking into account feedback received from CARB during the meet-and-confer session. Unless otherwise agreed in writing with CARB, Settling Defendants shall submit the final California Creditable Cost Guidance within 60 days after the Effective Date. In addition to costs specifically excluded in Appendix C-1, Settling Defendants agree not to propose, as California Creditable Costs, costs incurred in connection with ZEV charging infrastructure installed at or adjacent to Settling Defendants' dealerships.

3.3. California ZEV Investment Plan Submission and Approval Process.

3.3.1. California ZEV Investment Plans Submission Timing. Within 120 Days of the Effective Date, Settling Defendants shall submit to CARB, for CARB's review and approval, the first $200 million California ZEV Investment Plan covering a period not to exceed 30 months that is consistent with the terms of this Appendix C. Settling Defendants shall submit subsequent California ZEV Investment Plans 29 months after submission of the then-current plan. Settling Defendants shall prepare a public version of each Draft and Approved 30-month California ZEV Investment Plan, that includes all

key elements of the Plan; each version will be posted by the Settling Defendants on a website established by the Settling Defendants in accordance with Paragraph 32 of the Consent Decree. Unless otherwise authorized by CARB in writing, each 30-month California ZEV Investment Plan must include the elements listed in Paragraph 3.3.2.

3.3.2. Draft California ZEV Investment Plan Contents and Draft Submittal Process. At least 20 days before submitting any Draft California ZEV Investment Plan for approval, Settling Defendants shall meet and confer with CARB to determine what additional information, other than listed below, to include in the California ZEV Investment Plan submission. As part of this process, CARB may provide the Settling Defendants with information regarding ZEV Investment opportunities that are consistent with the objectives and criteria set forth in Appendix C. Unless otherwise authorized by CARB in writing, this Draft California ZEV Investment Plan must be consistent with this Appendix C and must include, at a minimum, all of the following:

3.3.2.1. A description of all California ZEV Investments that the Settling Defendants will make, including infrastructure, access, and education, as well as including measures to increase access in underserved areas, though each California ZEV Investment need not contain all four components;

3.3.2.2. An explanation of how each California ZEV Investment makes progress toward and/or meets one or more of the goals identified;

3.3.2.3. An estimated schedule for implementing each California ZEV Investment and milestones in 6-month intervals applicable to each specific California ZEV Investment;

3.3.2.4. A projection of anticipated Creditable Costs associated with each California ZEV Investment, on an itemized basis, with items of cost broken down into at least the following categories: (1) personnel costs (including salaries and fringe benefits); (2) travel expenses; (3) office rent; (4) company vehicles; (5) office fixtures and equipment; (6) insurance; (7) office supplies; (8) taxes and governmental fees (excluding corporate income taxes); (9) information technology expenses (including infrastructure, hardware, and software); (10) utilities; (11) services -- such as accounting, human resources, legal, and procurement -- obtained from affiliated companies pursuant to service level agreements; and (12) goods and services obtained via contracts with third parties. Settling Defendants shall not obtain services from affiliated companies pursuant to service level agreements if services of equal quality that meet Settling Defendants' specifications and requirements are available from a third party at a materially lower cost. The approval of any California ZEV Investment Plan by CARB does not constitute approval of any anticipated costs set forth therein and a good faith

failure of Settling Defendants to include a cost does not preclude such cost from qualifying as a Creditable Cost;

3.3.2.5. For infrastructure, an estimation of the following, to the extent possible: the geographic regions and type(s) (*e.g.*, Level 2 AC charging or DC fast charging) of any infrastructure that Settling Defendants will construct, or cause to be constructed under a California ZEV Investment Plan, which must include a variety of cities, metro areas, types of locations (workplace, multi-family, etc.); the quantities of sites that will be constructed, chargers or ZEV fueling stations per site, costs per site, and the type and number of connectors per charger or site; specific or estimated dates of completion of such construction; operating model and utilization statistics to be collected; a plan to provide for maintenance of ZEV charging infrastructure for a period of not less than 10 years after the Effective Date, which includes a requirement of periodic maintenance and provides that the charging equipment be marked with a toll-free number for maintenance issues that will be answered by a live operator who is subject to Settling Defendants' control; and an explanation of how such infrastructure meets a reasonable need and advances the use of ZEVs. Any charging infrastructure proposed by the Settling Defendants shall have the ability to service all plug-in ZEVs using non-proprietary connectors as the field evolves by: (i) if necessary, using multiple connectors; and/or (ii) using charging protocols and approaches that anticipate and address the evolving field of vehicle charging. Settling Defendants are free to support evolving standards in the field of non-proprietary connectors, and are not obligated to provide equal support for different types of non-proprietary connectors. Settling Defendants shall maintain or provide for maintenance of any ZEV charging infrastructure for a period of not less than ten (10) years from the Effective Date;

3.3.2.6. For any brand-neutral media activities the Settling Defendants will initiate in California, in addition to the requirements set forth in this Section III, Settling Defendants must address the requirements in the National ZEV Investment Plan in Paragraph 2.5.6., except for the spending requirements, and describe how the proposed National and California activities are related and/or differ;

3.3.2.7. A certification, in accordance with Paragraph 33 of the Consent Decree, that none of the proposed projects or activities: (1) was approved by the Board of Management of any Settling Defendant prior to September 18, 2015, was required by a contract entered into by the Settling Defendants before the date of lodging of the Consent Decree, or is part of a joint effort by Settling Defendants and other automobile manufacturers to create ZEV infrastructure; or (2) is one that the Settling Defendants either are required to perform by any federal, state, or local law, or anticipate will be required to perform during the planned 30-month period;

3.3.2.8. An explanation that all the ZEV Investments are not concentrated in one area of California;

3.3.2.9. ZEV Investments do not include funding for research, such as university research or inductive wireless charging research;

3.3.2.10. A description of how Settling Defendants will monitor and maintain each ZEV Investment; and

3.3.2.11. Any other information that CARB may reasonably request during the meet and confer under Paragraph 3.3.2.

3.3.3. California ZEV Investment Plan Review and Determination. CARB shall review each California ZEV Investment Plan. CARB may, in its discretion, approve or disapprove each California ZEV Investment Plan, in whole or in part. CARB shall notify Settling Defendants of its approval or disapproval in writing and, if not approved in whole, of which parts were approved. Settling Defendants may begin implementing any approved portions immediately. If CARB disapproves the California ZEV Investment Plan, in whole or in part, CARB and Settling Defendants shall meet and confer within 10 days of Settling Defendants' receipt of CARB's disapproval. Settling Defendants may resubmit a new version of the disapproved portions of the California ZEV Investment Plan, in whole or in part, to CARB, for CARB's approval, within 10 days of receiving CARB's disapproval.

3.4. Independent Third-Party Review.

3.4.1. Annual Third-Party Review of California Creditable Costs and Attestation. Settling Defendants shall retain, upon approval by the United States pursuant to Paragraph 2.7., after consultation with CARB, a person or entity to serve as the independent Third-Party Reviewer to: (i) audit and review costs asserted by Settling Defendants to be Creditable Costs in the Annual California ZEV Investment Reports; (ii) perform duties as required by Paragraph 2.7.4. and Paragraph 3.4.2.; and (iii) provide an attestation as provided in this Paragraph, Paragraph 2.9.3., and the Attestation Requirements listed in Appendix C-1. Settling Defendants or the Third-Party Reviewer shall develop the proposed attestation agreement consistent with the California Creditable Cost Guidance developed pursuant to Appendix C-1 and this Appendix. CARB will approve or disapprove the attestation agreement. The Third-Party Reviewer will have access rights and information request rights as outlined in Paragraph 2.7.5. The Settling Defendants shall be responsible for the compensation of the Third-Party Reviewer as outlined in Paragraph 2.7.6.

3.4.2. Duties of the Third-Party Reviewer.

3.4.2.1. The Third-Party Reviewer shall provide results of its review and a report by April 30 of each year to CARB and Settling Defendants simultaneously, in a format to be determined by CARB, including a determination as to whether Settling Defendants are complying with Section III of Appendix C of the Consent Decree, in whole or in part, in California, and, if in part, with which parts of the Consent Decree Settling Defendants are not complying; and a recommendation as to whether Settling Defendants' expenditures in California qualify as Creditable Costs; and

3.4.2.2. Perform any other duties which are reasonably necessary to ensure compliance with Appendix C.

3.4.3. Review of Third-Party Reviewer Reports and/or Results. CARB and Settling Defendants shall review the Third-Party Reviewer results and/or reports. If the Third-Party Reviewer determines that Settling Defendants are not complying with the Consent Decree, in whole or in part, Settling Defendants shall meet and confer with CARB within 10 days of receiving the Third-Party Reviewer's results to discuss what Settling Defendants shall do to comply.

3.5. California Creditable Costs

3.5.1. CARB Approval of California's Creditable Costs. Settling Defendants shall include in their Annual California ZEV Investment Reports submitted in accordance with Paragraph 3.6. a request for a determination of Creditable Costs expended for approved ZEV Investments during the period covered by the applicable Report. CARB will approve or disapprove such claimed costs as Creditable Costs as soon as practicable in accordance with the California Creditable Cost Guidance after the receipt of the applicable Annual California ZEV Investment Report, receipt of all information listed in Paragraph 3.6., and receipt of the Third-Party Reviewer's Report and Attestation as provided in Appendix C-1 and Paragraph 3.4.

3.5.2. Remaining Costs. If CARB concludes, based on the review of information submitted in the Annual California ZEV Investment Reports pursuant to Paragraph 3.6., California Creditable Cost Guidance, or Third-Party Reviewer information, that Settling Defendants did not spend $200 million in Creditable Costs on ZEV Investments during any 30-month phase of the California ZEV Investment Plan, any remaining money shall be invested in the implementation of the next 30-month investment cycle of the California ZEV Investment Plan. CARB and the Settling Defendants shall meet and confer in the event that the Settling Defendants do not spend or anticipate not spending $800 million at the end of the final, fourth 30-month phase of the California ZEV Investment Plan.

3.6. California ZEV Investment Plan Reports and Meetings

3.6.1. Semi-annual Meetings. An official of Settling Defendants shall meet with a California official no later than May 1 and November 1 of each year to provide information on the approved California ZEV Investment Plan and its implementation. Settling Defendants shall also designate an official who will serve as the point of contact for California related to any matter concerning the California ZEV Investments.

3.6.2. Annual and Final Reporting Dates. No later than April 30 of each year following CARB's approval of the California ZEV Investment Plan, Settling Defendants shall submit an annual report regarding the status of each ZEV Investment included in the approved California ZEV Investment Plan. No later than 120 days after 10 years from the Effective Date, Settling Defendants shall submit a final report to CARB regarding the status of each ZEV Investment included in the approved California ZEV Investment Plan. Settling Defendants shall make each Annual California ZEV Investment Report and the final report available on a website established by the Settling Defendants in accordance with Paragraph 32 of the Consent Decree. To the extent that any annual or final report for the California ZEV Investment Plans contains confidential business information, Settling Defendants shall submit to CARB for its review and approval a version that can be made publicly available. Reports under this Section shall be in addition to any other reporting obligations under the Decree, or any other federal, California, or local law, regulation, permit, or other requirement.

3.6.3. Report Contents. Each annual report and the final report shall include, at a minimum:

3.6.3.1. The status of each ZEV Investment identified in the California ZEV Investment Plan, including a description of project activities/actions and completed activities/projects, and a comparison of the completed activities/projects with the activities/projects described in the approved California ZEV Investment Plan;

3.6.3.2. Utilization rates of the new ZEV infrastructure, including the percentage of time that each connector is attached to a vehicle, energy dispensed per charger per day, and any other metrics that indicate the maximum, minimum, and average utilization of a charging station, including trends in usage over time;

3.6.3.3. Descriptions of any issues or problems encountered in implementing the projects, including issues with maintenance of infrastructure, working with project partners, acquiring necessary property or equipment, and technical aspects of projects;

3.6.3.4. Any other information pertaining to the California ZEV Investment Plan that CARB reasonably requests at least 30 days prior to the due date of any report;

3.6.3.5. A certification in accordance with Paragraph 33 of the Consent Decree;

3.6.3.6. For the costs incurred for activities completed in the period covered by the applicable Report that the Settling Defendants claim as Creditable Costs: (i) a description of actual costs incurred in connection with implementation of a specific completed action identified in an approved California ZEV Investment Plan; (ii) supporting documentation required by and listed in the approved California Creditable Costs Guidance; and (iii) an attestation report by the Third-Party Reviewer that contains an attestation that the costs claimed to be Creditable Costs are consistent with the requirements of this Appendix C, Appendix C-1, and the California Creditable Cost Guidance. The supporting documentation shall include a list of completed activities or projects, locations, and descriptions of any charging elements placed into service, copies of advertisements or other materials disseminated as a part of the activities, a description of any programs or actions to increase public access and exposure to ZEVs, supporting documentation for all programs or actions encompassed in the "Green City" initiative, as well as any other documentation requested by CARB at least 10 days prior to the due date of any report.

3.6.4. Reporting Costs. Settling Defendants shall bear the expense of all reporting, and said expenses shall not be included in the calculation of Settling Defendants' eight hundred million dollar ($800,000,000) commitment.

3.7. Dispute Resolution: Any dispute regarding obligations established in this Section III of Appendix C shall be resolved in accordance with Dispute Resolution provisions set forth in Section IX of the Consent Decree. Any dispute arising under Paragraph 3.3. of Appendix C regarding CARB's approval of the California ZEV Investment Plan and brought pursuant to Paragraph 63 of the Consent Decree shall be subject to the standard of review set forth in Paragraph 65.a of the Consent Decree. Any other dispute arising under Section III of Appendix C and brought pursuant to Paragraph 63 of the Consent Decree shall be subject to the standard of review set forth in Paragraph 65.b of the Consent Decree.

3.8. Stipulated Penalties: The following stipulated penalties shall apply to failures to comply with the requirements of Section III of this Appendix C. All stipulated penalties listed below shall be payable to CARB and deposited in the Air Pollution Control Fund in accordance with Section VII (Stipulated Penalties and Other Mitigation Trust Payments) of the Consent Decree.

3.8.1. If the Settling Defendants fail to invest a total of $400 million in CARB-approved Creditable Costs during the first two 30-month investment cycles as provided in Paragraph 3.1. of Appendix C, as reported in the first five Annual California ZEV Investment Reports submitted under Paragraph 3.6., the Settling Defendants shall pay a stipulated penalty amounting to the difference between $400 million and the cumulative total amount that CARB approved as California Creditable Costs after reviewing the first five Annual California ZEV Investment Reports. The Settling Defendants shall pay this stipulated penalty in addition to investing any amounts of money that were unspent or remaining from one 30-month cycle during the next 30-month investment cycle as required by Paragraph 3.5.2.

3.8.2. If the Settling Defendants fail to invest a total of $800 million in CARB-approved Creditable Costs within 10 years of the Effective Date as provided in Paragraph 3.1. of Appendix C, Settling Defendants shall pay a stipulated penalty amounting to the difference between $800 million and the cumulative total amount that CARB approved as Creditable Costs after reviewing the Settling Defendants' final Annual and Final California ZEV Investment Reports.

3.8.3. If the Settling Defendants fail to submit the California Creditable Cost Guidance in accordance with Paragraph 3.2. and Appendix C-1, Settling Defendants shall pay stipulated penalties per each day on which the California Creditable Cost Guidance is overdue or submitted not in accordance with the requirements set forth in Paragraph 3.2. or Appendix C-1:

Duration of compliance failure	Stipulated penalty
1st through 14th Day	$1,000
15th through 30th Day	$5,000
31st Day and beyond	$20,000

3.8.4. If the Settling Defendants fail to submit any of the four California ZEV Investment Plans in accordance with Paragraph 3.3.1. or Paragraph 3.3.2., Settling Defendants shall pay stipulated penalties per each day on which any of the California ZEV Investment Plans is overdue or submitted not in accordance with the requirements of Paragraph 3.3.1. or Paragraph 3.3.2., including without limitation each requirement set forth in Paragraph 3.3.2.1 through Paragraph 3.3.2.11.:

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

3.8.5. If the Settling Defendants fail to submit a list of candidates for the Third-Party Reviewer in accordance with Paragraph 3.4.1., Paragraph 2.7.1, and if applicable

Paragraphs 2.7.2. and 2.7.3., Settling Defendants shall pay stipulated penalties per each day on which the list of candidates is overdue or submitted not in accordance with the requirements set forth in Paragraph 2.7.1.:

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

3.8.6. If the Settling Defendants fail to attend any of the meetings or fail to submit any of the Annual California ZEV Investment Reports in accordance with Paragraph 3.3.3, Paragraph 3.4.3., Paragraph 3.5. or Paragraph 3.6., Settling Defendants shall pay stipulated penalties per each day on which the meetings or Annual California ZEV Investment Reports are overdue or submitted not in accordance with the requirements set forth in Paragraph 3.3.3, Paragraph 3.4.3., Paragraph 3.5. or Paragraph 3.6.:

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

3.8.7. If the Settling Defendants fail to maintain or provide for maintenance of installed ZEV charging infrastructure as required by Paragraph 3.3.2.5. and the maintenance plan of their approved California ZEV Investment Plan, Settling Defendants shall pay stipulated penalties per each day for each failure to implement the approved maintenance plan:

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

3.8.8. Aggregation of Penalties. Each penalty in each subparagraph in this Paragraph 3.8. shall be in addition to any other penalty in any other Paragraph in this or any other portion of the Consent Decree.

3.9. Modifications: This Section III of Appendix C may be modified in accordance with Section XVI (Modification) of the Consent Decree. The following modifications shall be considered non-material for the purpose of Paragraph 91 of the Consent Decree:
(a) modifications of any schedules established under this Section III by less than one year;
(b) modification of a requirement that the Settling Defendants spend $200 million dollars in each 30-month investment cycle of the California ZEV Investment Plan; and (c) modifications,

revisions, or amendments to the Appendix C-1 to this Appendix C and/or the California Creditable Cost Guidance.

3.10. Enforcement: The California Air Resources Board and California Office of the Attorney General may enforce the requirements of Section III.

APPENDIX C-1
Creditable Cost Guidance and Attestation Requirements for the National and California ZEV Investment Plan Commitments

APPENDIX C-1

CREDITABLE COST GUIDANCE AND ATTESTATION REQUIREMENTS FOR THE NATIONAL AND CALIFORNIA ZEV INVESTMENT PLAN COMMITMENTS

This Appendix C-1 further elaborates on the requirements for the National Creditable Cost Guidance ("NCCG") and the California Creditable Cost Guidance ("CCCG") (collectively, the Creditable Cost Guidances ("CCG")), and Attestation Requirements pursuant to Appendix C of the Consent Decree, and sets forth the requirements for costs incurred by Settling Defendants to qualify as Creditable Costs in connection with the National and California ZEV Investment Plans. The requirements for Creditable Costs are organized and presented in three sections, as follows:

Section I - Statement of Objectives, Definitions, and Limitations.

Section II - Accounting procedures for the accounting for, substantiation, and reporting of Creditable Costs.

Section III - Attestation Requirements to establish whether an expenditure is a Creditable Cost.

I. STATEMENT OF OBJECTIVES, DEFINITIONS, AND LIMITATIONS

Objectives - The objectives of the CCG are to ensure that the costs Settling Defendants submit as Creditable Costs are not specifically excluded below and are otherwise (a) reasonable, (b) necessary, and either (c) directly connected or directly allocable to eligible ZEV Investment projects or activities in the National and California ZEV Investment Plans approved by EPA or CARB, as applicable, pursuant to procedures set out in Appendix C of the Consent Decree. The definitions and limitations below will guide the determination of whether a cost meets this objective.

Definitions and Limitations - In order to qualify as Creditable Costs, costs must be: (1) "reasonable," "necessary," and either "directly connected" or "directly allocable," as defined in Paragraph 1 (Requirements) below; (2) not expressly excluded as a Creditable Cost in the cost categories set out in Paragraph 2 (Excluded Categories of Costs) below; and (3) within the limitations set forth in Paragraph 4 (Specific Limitations on Certain Cost Categories) and Paragraph 5 (General Limitations on All Personnel, Overhead, and Service Level Agreement Costs) below.

1. Requirements

For the purposes of the CCG and Attestation Requirements, the following definitions in Paragraphs 1.1 through 1.4 shall apply.

1.1. Reasonable - A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. What is reasonable depends upon a variety of considerations and circumstances, including: (1) whether the cost is the type of cost generally recognized as ordinary and necessary for implementation of ZEV Investment projects or activities in the Settling Defendants' approved National or California ZEV Investment Plan; (2) generally accepted sound business practices (consistent with Settling Defendants' existing procurement policies), arm's-length bargaining, and Federal, State, and local laws and regulations; (3) any significant deviations from the Settling Defendants' established practices; and (4) comparison to the costs of similar projects or project components of the same size, in the same industry, or in the same geographic area at or near the time that the expenditure was made.

1.2. Necessary - A cost is necessary if the ZEV Investment projects or activities approved as part of the National or California ZEV Investment Plan could not have been accomplished without incurrence of the cost.

1.3. Directly Connected - A cost is directly connected if it is incurred for the sole purpose of implementing approved ZEV Investment projects or activities as part of the National or California ZEV Investment Plan.

1.4. Directly Allocable - A cost is allocable if it is either directly connected or if some portion of the cost can be directly attributed to implementation of the ZEV Investment projects or activities in the Settling Defendants' approved National or California ZEV Investment Plan on an equitable basis that takes into account the causal/beneficial relationship of the attributed cost to the activities to which it is attributed.

2. Excluded Categories of Costs

Costs that are excluded from Creditable Costs in this Paragraph 2 shall not qualify as Creditable Costs under any other cost principle.

2.1. Disallowed Overhead - A cost incurred by any entity or distinct business group created by Settling Defendants to carry out a National or California ZEV Investment Plan, which is neither Directly Connected nor Directly Allocable to an approved ZEV Investment project or activity included in that National or California ZEV Investment Plan, is not a Creditable Cost.

2.2. Electricity Costs - Unless otherwise agreed to in writing by EPA or CARB, as applicable, the costs for electricity for charging ZEVs are not Creditable Costs.

2.3. Entertainment Expenses - Costs of amusement, diversion, social activities, and any directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities are not Creditable Costs. Costs of membership in social, dining, or country clubs or other organizations having the same purposes are not Creditable Costs, regardless of whether the cost is reported as taxable income to the employees.

2.4. Fines and Penalties - Costs of fines and penalties resulting from violations of, or failure of the Settling Defendants to comply with, Federal, State, local, or foreign laws and regulations, are not Creditable Costs.

2.5. General and Administrative Costs - General and Administrative costs are costs incurred by the parent of the entity or distinct business group created to implement the projects or activities in the Settling Defendants' approved National or California ZEV Investment Plan for the support of the parent's overall organization. General and Administrative costs are not Creditable Costs.

2.6. Income Taxes - All income taxes, with the exception of payroll taxes, are not Creditable Costs.

2.7. Interest and Other Financial Costs - Interest on borrowings (however represented), bond discounts, and costs of financing and refinancing capital (net worth plus long-term liabilities), are not Creditable Costs.

2.8. Legal Costs - Costs for legal services related to issues of Settling Defendants' compliance with the requirements of Appendix C or the Consent Decree are not Creditable Costs.

2.9. Pass-through Costs - Discrete items of cost -- such as surcharges imposed by electric utilities or fees imposed by local governments -- that are imposed by a third party and passed through or transferred by Settling Defendants to an end user, customer

or other third party on a clearly-stated, one-for-one basis -- or are otherwise borne by the end user, customer or other third party -- are not Creditable Costs.

2.10. Trademark - Costs incurred in connection with the establishment and defense of any trademark or other intellectual property are not Creditable Costs.

3. General Guidance on Costs

3.1. Federal Acquisition Regulations - In developing their proposed Creditable Cost Guidances, Settling Defendants may draw from provisions of the Federal Acquisition Regulations, 48 C.F.R. Chapter 1, Subchapter E, Part 31, Subpart 31.205, to the extent appropriate and not inconsistent with the definitions and limitations set forth in this Appendix C-1.

4. Specific Limitations on Certain Cost Categories.

4.1. Land or Facility Rental; Real Estate Acquisition - Subject to the expressed limitations, the following costs may qualify as Creditable Costs.

4.1.1. Rental costs under operating leases, to the extent that the rates are reasonable at the time of the lease decision, after consideration of (i) rental costs of comparable property, if any; (ii) market conditions of the area; (iii) the type, life expectancy, condition, and value of the property leased; (iv) alternatives available; and (v) other provisions of the agreement, may qualify as Creditable Costs.

4.1.2. Rental costs under a sale and leaseback arrangement may qualify as Creditable Costs only up to the amount the Settling Defendants would be allowed if the Settling Defendants had retained title.

4.1.3. Charges in the nature of rent for property between any divisions, subsidiaries, or organization under common control, to the extent that they do not exceed the normal costs of ownership, such as depreciation, taxes, insurance, facilities capital cost of money, and maintenance (excluding interest or other unallowable costs pursuant to Federal Acquisition Regulations, 48 C.F.R. Chapter 1, Subchapter E, Part 31, Subpart 31.205), provided that no part of such costs shall duplicate any other allowed cost. Rental cost of personal property leased from any division, subsidiary, or affiliate of the Settling Defendants under common control that has an established practice of leasing the same or similar property to unaffiliated

lessees may qualify as Creditable Costs in accordance with Paragraph 4.1.1. above.

4.1.4. Land and building acquisitions related to a ZEV Investment are not Creditable Costs unless: (i) such acquisition is necessary to provide Settling Defendants with assurance that they will have access to such land or building for the ten-year period after the Effective Date, or (ii) such acquisition is materially less expensive than leasing the land or building for the ten-year period after the Effective Date.

4.2. Materials - A cost for the physical goods that are required to implement projects or activities in the Settling Defendants' approved National or California ZEV Investment Plan and taxes thereon may qualify as Creditable Costs.

4.3. Marketing - Projects or activities necessary to implement brand-neutral education or public outreach programs that are designed to build or increase public awareness of ZEVs may qualify as Creditable Costs. Costs incurred with marketing of Settling Defendants' products or services are not Creditable Costs.

4.4. National or California ZEV Investment Plan Project Management - A cost for the supervision, oversight, and management of project personnel, including Settling Defendants' employee and contractor or vendor personnel, which are required to implement projects or activities in the Settling Defendants' approved National or California ZEV Investment Plan, may qualify as Creditable Costs.

4.5. Personnel/FTE - Subject to the expressed limitations, the following costs may qualify as Creditable Costs.

4.5.1. Compensation for personnel includes all remuneration paid currently or accrued, in whatever form and whether paid immediately or deferred, for services rendered by employees to the Settling Defendants during and for the implementation of the projects or activities in the Settling Defendants' approved National or California ZEV Investment Plan. This includes salaries; wages; bonuses; employee insurance; fringe benefits; contributions to pension plans; and allowances for off-site pay, incentive pay, location allowances, hardship pay, severance pay, and cost of living differential. Compensation for personnel may qualify as a Creditable Cost subject to the following general criteria.

4.5.1.1. Compensation for personnel must be for work performed by the employee in the current year and must not represent a retroactive adjustment of prior years' salaries or wages.

4.5.1.2. The compensation in total must be reasonable and necessary for the work performed.

4.5.1.3. The compensation must be based upon and conform to the terms and conditions of the Settling Defendants' established compensation plan or practice followed so consistently as to imply, in effect, an agreement to make the payment.

4.5.1.4. No presumption will exist that compensation is a Creditable Cost where the Settling Defendants introduce major revisions of existing compensation plans or new plans and the Settling Defendants have not provided to EPA or CARB, as applicable, either before initiating implementation or within a reasonable period after it, an opportunity to review the creditability of the changes.

4.5.2. Reasonableness. Compensation for personnel may be considered a Creditable Cost if the total compensation conforms generally to compensation paid by other firms of the same size, in the same industry, or in the same geographic area for similar services or work performed. This does not preclude EPA or CARB, as applicable, from challenging the reasonableness of an individual element of compensation where costs are excessive in comparison with compensation paid by other firms of the same size, same industry, or in the same geographic areas for similar services.

4.5.3. Domestic and foreign differential pay.

4.5.3.1. When personal services are performed in a foreign country, compensation may also include a differential that may properly consider all expenses associated with foreign employment such as housing, cost of living adjustments, transportation, bonuses, additional Federal, State, local or foreign income taxes resulting from foreign assignment, and other related expenses.

4.5.3.2. Although the additional taxes in Paragraph 4.5.3.1. above may be considered in establishing foreign overseas differential, any

increased compensation calculated directly on the basis of an employee's specific increase in income taxes is not a Creditable Cost. Differential allowances for additional Federal, State, or local income taxes resulting from domestic assignments are not Creditable Costs.

5. General Limitation on All Personnel, Overhead, and Service Level Agreement Costs

5.1. In addition to having to meet all of the requirements set forth above, all costs incurred by Settling Defendants and any entity or distinct business group created by Settling Defendants to carry out a National or California ZEV Investment Plan for: (i) personnel, (ii) service-level agreements, and (iii) office space and services (direct or indirect overhead) for employees of Settling Defendants or a newly created entity, shall be limited to no more than fourteen (14) percent of the Creditable Costs incurred during the period covered by the first two Annual National ZEV Investment Reports required pursuant to Paragraph 2.9 of Appendix C, or the first two Annual California ZEV Investment Reports required pursuant to Paragraph 3.6 of Appendix C, as applicable, and shall be limited to ten (10) percent thereafter unless otherwise agreed to in writing by EPA or CARB, as applicable, in advance of such cost being incurred. As used herein, a service-level agreement cost is a cost for goods or services provided by an entity that is related to or controlled by Settling Defendants, their parents or subsidiaries (i.e., not a third-party vendor).

II. ACCOUNTING PROCEDURES FOR THE ACCOUNTING FOR, SUBSTANTIATION, AND REPORTING OF CREDITABLE COSTS

In accordance with Paragraphs 2.2 and 3.2 of Appendix C of the Consent Decree, Settling Defendants shall, within thirty (30) days of the Effective Date, concurrently submit to EPA and CARB for review and approval a proposed separate Creditable Cost Guidance to assist in the determination of Creditable Costs under the National and California ZEV Investment Plans, respectively. The Creditable Cost Guidances shall provide the accounting procedures for the accounting, substantiation, and reporting of Creditable Costs under the respective ZEV Investment Plans. The Creditable Cost Guidances shall specify how Settling Defendants will segregate, describe, report, and substantiate costs in a manner that will allow for an independent certified public accountant firm ("Third-Party Reviewer") retained by the Settling Defendants to attest that costs claimed by Settling Defendant as Creditable Costs satisfy all requirements set forth in the Consent Decree, Appendix C, and any approved Creditable Cost Guidances.

In the Creditable Cost Guidances, Settling Defendants shall (a) specify any and all unique accounting cost centers and accounts to record and report Creditable Costs, and (b) identify the

level and type of documentation that are appropriate to substantiate the incurrence of any cost and to demonstrate that such cost meets the standards articulated in Appendix C (and this Appendix C-1) for qualification of costs as Creditable Costs. The level of detail and support required shall be sufficient to meet the requirements of a Compliance Attestation performed in accordance with the Statement on Standards for Attestation Engagements ("Attestation Standards" or "AT"), as issued by the American Institute of Certified Public Accountants. (*See* AT Sections 101.201 and 601.) In order to satisfy the objectives set forth in Section I above, the procedures performed by the Third-Party Reviewer retained by Settling Defendants shall be agreed upon by the Settling Defendants, EPA, and CARB prior to the Compliance Attestation engagement and shall also be sufficient to meet the requirements of the Attestation Standards. Notwithstanding the preceding, nothing shall preclude the Third-Party Reviewer charged with providing the attestation described in Section III below from utilizing additional records or information to support the attestation.

III. ATTESTATION REQUIREMENTS

In connection with Settling Defendants' reporting obligations under the Consent Decree, Settling Defendants will retain a Third-Party Reviewer to perform a Compliance Attestation. The Compliance Attestation shall be performed in compliance with the Statements on Standards for Attestation Engagements, as issued by the American Institute of Certified Public Accountants.

The Attestation Report shall be submitted to EPA and CARB in connection with Settling Defendants' Annual National and California ZEV Investment Reports. The Attestation Report shall be in a format similar to the following illustration:

Third-Party Reviewer's Attestation Report

[*Appropriate Addressee*]

We have examined Settling Defendants' management's assertion that [*identify the assertion, which includes the subject matter and the criteria; for example, the accompanying schedule of ZEV Investments and Operations of Settling Defendants for the year ended December 31, 20XX, presents the Creditable Costs of Settling Defendants for the year ended December 31, 20XX, based on criteria set forth in Appendix C and any approved Creditable Cost Guidance*]. Settling Defendants' management is responsible for its assertion. Our responsibility is to express an opinion based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. Those standards require that we plan and perform the examination to obtain reasonable assurance about whether [*identify the subject matter*] is in conformity with the criteria referenced above.

An examination includes performing procedures to obtain evidence about whether [*identify the subject matter*] is in conformity with the criteria referenced above. The nature, timing, and extent of the procedures selected depend on our professional judgment, including an assessment of the risks of material misstatement, whether due to fraud or error, and involve examining evidence about [*identify the subject matter*]. We believe that the evidence we obtained is sufficient and appropriate to provide a reasonable basis for our opinion.
[*Include a description of significant inherent limitations, if any, associated with the measurement or evaluation of the subject matter against the criteria.*]
[*Additional paragraph(s) may be added to emphasize certain matters relating to the attestation engagement or the subject matter.*]

In our opinion, the schedule referred to above presents, fairly, in all material respects, an identification of costs that meet the requirements for Creditable Costs as that term is defined by Appendix C to the Consent Decree and the applicable Creditable Cost Guidance *for the year ended December 31, 20XX*.
[*Practitioner's signature*]
[*Practitioner's city and state*]
[*Date of practitioner's report*]

APPENDIX D
FORM OF ENVIRONMENTAL MITIGATION TRUST AGREEMENT

APPENDIX D

FORM OF ENVIRONMENTAL MITIGATION TRUST AGREEMENT

The Settling Defendants and the Trustee hereby enter into this Environmental Mitigation Trust Agreement ("Trust Agreement") and establish the environmental mitigation trust herein described ("Mitigation Trust" or "Trust"). The Settling Defendants and the Trustee acknowledge that the purpose of the Mitigation Trust is to fulfill the Settling Defendants' environmental mitigation obligations under the Consent Decree. All payments to and expenditures from the Mitigation Trust shall be for the sole purpose of fulfilling the Settling Defendants' environmental mitigation obligations under the Consent Decree. The Mitigation Trust shall be funded with Mitigation Trust Payments according to the terms of the Consent Decree.

PURPOSE AND RECITALS

Whereas, the Settling Defendants are required to establish this Mitigation Trust and to fund it with funds to be used for environmental mitigation projects that reduce emissions of nitrogen oxides ("NOx") where the 2.0 Liter Subject Vehicles were, are or will be operated ("Eligible Mitigation Actions"), and to pay for Trust Administration Costs as set forth in this Agreement;

Whereas, the funding for the Eligible Mitigation Actions provided for herein is intended to fully mitigate the total, lifetime excess NOx emissions from the 2.0 Liter Subject Vehicles where the 2.0 Liter Subject Vehicles were, are or will be operated;

Whereas, the Settling Defendants hereby establish this Mitigation Trust to provide funds for Eligible Mitigation Actions and Trust Administration Costs;

Whereas, the Trustee has been selected to be the trustee under this Trust Agreement in accordance with the requirements set forth in the Consent Decree; and

Whereas, the Trustee is willing to act as trustee;

Now, therefore, the Settling Defendants and the Trustee agree as follows:

I. DEFINITIONS

1.0 Unless otherwise defined in this Agreement, all capitalized terms used herein shall have the meaning set forth in the Consent Decree.

1.1 "Beneficiary" shall mean each governmental entity determined to be a Beneficiary pursuant to Section IV (Mitigation Trust Beneficiaries).

1.2 "Court" shall mean the United States District Court for the Northern District of California.

1.3 "DERA" shall mean the Diesel Emission Reduction Act, Title VII, Subtitle G, of the Energy Policy Act of 2005 (codified at 42 U.S.C. § 16131-39).

1.4 "Eligible Mitigation Action" shall mean any of the actions listed in Appendix D-2 to this Trust Agreement.

1.5 "Eligible Mitigation Action Administrative Expenditure" shall mean those expenditures specified in Appendix D-2 to this Trust Agreement, and shall not include Trust Administration Costs.

1.6 "Federal agency" shall mean any agency of the United States government.

1.7 "Indian land" shall mean the lands of any Indian tribe or within Indian country.

1.8 "Trust Administration Costs" shall mean all expenditures of Trust Assets by the Trustee, other than for Eligible Mitigation Action Administrative Expenditures.

II. MITIGATION TRUST

2.0 Establishment of the Trust

2.0.1 Irrevocable Establishment. The Settling Defendants hereby and irrevocably establish this Mitigation Trust on behalf of the Beneficiaries. The Trustee hereby accepts and agrees to hold the assets owned by the Mitigation Trust ("Trust Assets") for the benefit of the Beneficiaries and for the purposes described herein and in the Consent Decree.

2.0.2 Trustee. In accordance with Paragraph 3.0 below, on the Trust Effective Date, the Trustee, not individually but solely in the representative capacity of trustee, shall be appointed as the Trustee in accordance with the Consent Decree to administer the Mitigation Trust in accordance with this Trust Agreement and the Consent Decree.

2.0.3 Trust Purpose. It shall be the purpose of the Mitigation Trust to fund Eligible Mitigation Actions to be proposed and administered by the Beneficiaries subject to the requirements of the Consent Decree and this Trust Agreement. The goal of each Eligible Mitigation Action shall be to achieve reductions of NOx emissions in the United States.

2.0.4 Creation and Use of Trust Account. Within 15 Days following the Trust Effective Date, the Trustee shall establish a trust account ("Trust Account"), and file with the Court a designation and identification of Trust Account. The purpose of the Trust Account shall be to receive deposits from the Settling Defendants, to receive income gains from any investment of Trust Assets (collectively, "Trust Funds"), and to make disbursements to fund Eligible Mitigation Actions and pay Trust Administration Costs, all in accordance with the Consent Decree and this Trust Agreement. Unless otherwise

agreed by the parties to the Consent Decree ("Consent Decree Parties"), the Trust Account shall be the only account that may be used for these purposes.

2.0.4.1 Trust Account Divisions. The Trust Account may be divided into such number of discrete trust subaccounts dedicated for specific purposes as may be deemed necessary in the discretion of the Trustee to comply with the terms of, and to implement, the Consent Decree and this Trust Agreement.

2.1 Funding of the Trust: The Settling Defendants shall fund the Mitigation Trust as required by the Consent Decree.

2.1.1 Funding and Use of Tribal Allocation Subaccount. As soon as practicable after the Trust Effective Date, the Trustee shall fund the Tribal Allocation Subaccount by transferring into it from the Trust Account the funds allocated to it as set forth in Appendix D-1. These funds may only be used to fund Eligible Mitigation Actions and Eligible Mitigation Action Administrative Expenditures in the United States, and for technical assistance as discussed below. After lodging the Consent Decree, the United States shall consult with interested federally-recognized Indian tribes for a 60-Day period, in order to establish a mechanism for allocating the funds in the Tribal Allocation Subaccount among those tribes that are deemed Beneficiaries hereunder, including allowing up to 5% of those funds to be directed towards technical assistance to enable tribes to prepare funding requests for Eligible Mitigation Actions. The United States may file a motion with the Court seeking approval of the allocation mechanism resulting from the consultation process ("Consultation Motion") by the later of: (i) 6 months after the date the Consent Decree is lodged; or (ii) 30 Days after the Trust Effective Date.

2.1.1.1 If no Consultation Motion is timely filed, the Trustee shall post on its public-facing website, within 30 Days of the final deadline for filing a Consultation Motion pursuant to the preceding subparagraph, a "Notice of Termination of Tribal Consultation Period," and implement the Tribal Allocation Instructions set forth at subparagraph 5.0.5.

2.1.1.2 If no Consultation Motion is timely filed that provides otherwise, any funding request submitted by an Indian tribe may include a request for an amount equaling up to 5% of the total funding request to be disbursed by the Trustee towards the reimbursement of documented costs incurred by the tribe for technical assistance in developing the funding request.

2.1.1.3 If a Consultation Motion is timely filed, the Trustee shall comply with the Court's order when issued.

2.1.1.4 In any case, prior to receiving any funds, each Indian tribe must establish Beneficiary status hereunder by filing with the Court, at the time it submits its first funding request, certifications consistent with subparagraph 4.2. Any funding request submitted by any Indian tribe

must comply with the requirements of subparagraphs 5.2.2 through 5.2.13 and 5.3, and each allocation given to any Indian tribe that is determined to be a Beneficiary shall be subject to subparagraph 5.4.

2.1.2 Funding of the Trust Administration Cost Subaccount. As soon as practicable after the Trust Effective Date, the Trustee shall fund a subaccount to pay for Trust Administration Costs ("Trust Administration Cost Subaccount") by transferring into it from the Trust Account the funds allocated to that subaccount in accordance with Appendix D-1. The Trustee may further subdivide the Trust Administration Cost Subaccount into such number of additional subaccounts as may be deemed necessary in the discretion of the Trustee to comply with the terms of, and implement, the Consent Decree and this Trust Agreement. No additional Trust Assets may be directed to the Trust Administration Cost Subaccount, or to the payment of Trust Administration Costs, absent further order of the Court.

2.1.2.1 Allocation of Trust Administration Costs. The funds in the Trust Administration Cost Subaccount shall be internally allocated in accordance with each Beneficiary's allocation rate. The Trustee shall debit those Trust Administration Costs associated with a particular Eligible Mitigation Action request against the Trust Administration Cost Subaccount allocation of the Beneficiary that requested the funds associated with that Eligible Mitigation Action. The Trustee shall debit all other Trust Administration Costs ("Shared Administration Costs") among all Beneficiaries, weighted in accordance with each Beneficiary's Trust Administration Cost Subaccount allocation.

2.1.2.2 Tribal Administration Cost Subaccount. As soon as practicable after the Trust Effective Date, the Trustee shall establish a Tribal Administration Cost Subaccount which shall be funded in accordance with the specific allocation in accordance with Appendix D-1. The funds in this subaccount shall be used exclusively to pay for the Trust's expenses relating to administering the Tribal Allocation Subaccount; provided, however, that the Trustee may also draw upon this account for a weighted portion of Shared Administration Costs in accordance with the preceding subparagraph. The funds in this subaccount shall be internally allocated and debited in the same fashion as described in subparagraph 2.1.2.1. Additionally, the consultation process required by Paragraph 2.1.1 may direct that a portion of the funds in this subaccount be used to fund a separate entity established in order to determine which Eligible Mitigation Actions to submit to the Trustee. Although the Tribal Administration Cost Subaccount shall be administered hereunder as a subaccount of the Trust Administration Cost Subaccount, it shall be funded separately in accordance with Appendix D-1. No additional Trust Assets may be directed to the Tribal Administration Cost Subaccount, or to the payment of Tribal Administration Costs, absent further order of the Court.

2.2 Trust Limitations

2.2.1 Beginning on the Trust Effective Date and for each twelve-month period thereafter, total Trust Administration Costs shall not exceed **[##]**% of the average value of Trust Assets during that period, absent further order of the Court.

2.2.2 No Consent Decree Party or Beneficiary, nor any of their components, agencies, officers, directors, agents, employees, affiliates, successors, or assigns, shall be deemed to be an owner, operator, trustee, partner, agent, shareholder, officer, or director of the Mitigation Trust.

2.2.3 All Trust Assets shall be used solely for the purposes provided in the Consent Decree and this Trust Agreement.

2.2.4 This Mitigation Trust is irrevocable. The Settling Defendants (i) shall not retain any ownership or residual interest whatsoever with respect to any Trust Assets, including but not limited to the funds transferred by the Settling Defendants to fund the Trust pursuant to the terms of the Consent Decree, and (ii) shall not have any liabilities or funding obligations with respect to the Trust (to the Trustee, the Beneficiaries or otherwise) other than the funding obligations expressly set forth in the Consent Decree. Nor shall the Settling Defendants have any rights or role with respect to the management or operation of the Trust, or the Trustee's approval of requests for Eligible Mitigation Action funding.

2.2.5 Exculpation. The Mitigation Trust shall have no liability whatsoever to any person or party for any liability of the Settling Defendants; provided, however, that the Mitigation Trust shall be liable to the Beneficiaries for funding of Eligible Mitigation Actions in accordance with the terms of this Trust Agreement and the Consent Decree.

III. TRUSTEE RESPONSIBILITIES

3.0 Appointment: The Trustee, not individually but in his/her representative capacity as Trustee, is hereby appointed to serve as the Trustee to administer the Mitigation Trust in accordance with this Trust Agreement and the Consent Decree. The Trustee hereby accepts such appointment and agrees to serve, commencing on the Trust Effective Date, in such fiduciary capacity to the Mitigation Trust and the Beneficiaries.

3.1 Powers of the Trustee

3.1.1 Except as set forth in this Trust Agreement, the Trustee shall have the power to perform those acts necessary and desirable to accomplish the purposes of the Mitigation Trust, which shall be exercised in a fiduciary capacity and in furtherance of and in a manner consistent with the purposes of this Trust Agreement and the Consent Decree.

3.1.2 Upon the Trust Effective Date, the powers of the Trustee shall include the following:

3.1.2.1 To receive, manage, invest, supervise, and protect the Trust Assets as provided in this Trust Agreement;

3.1.2.2 To establish a public-facing website onto which it will post all materials as required hereunder;

3.1.2.3 To establish bylaws or other customary and necessary governance documents to provide for transparent and orderly trust administration, provided that any such bylaws or documents must be filed with the Court when adopted and posted to the Trust's public-facing website;

3.1.2.4 To incur, and pay from the Trust Administration Cost Subaccount, any and all customary and commercially reasonable charges, taxes, and expenses upon or connected with the administration of this Mitigation Trust in the discharge of its fiduciary obligations;

3.1.2.5 To engage and compensate professionals to assist the Trustee in accordance with this Trust Agreement, including but not limited to environmental, investment, accounting, tax and third-party auditing professionals. Such third-party auditing professionals may be used by the Trustee to audit and/or review expenditures to verify that they comport with the requirements and limitations on use of Trust Funds, as set forth herein. The Trustee may initiate such an audit and/or review on its own initiative or in response to credible reports or suggestions that such review or audit is appropriate;

3.1.2.6 To purchase any insurance policies as the Trustee may determine to be prudent to protect the Mitigation Trust, the Trust Assets, and the Trustee from any claims that might be asserted against each;

3.1.2.7 To distribute Trust Assets for the purposes contemplated in this Trust Agreement and the Consent Decree, including distributions of funds to Beneficiaries for approved Eligible Mitigation Actions; and

3.1.2.8 Subject to applicable requirements of this Trust Agreement, the Consent Decree, and other applicable law, to effect all actions and execute and deliver all contracts, instruments, agreements, or other documents that may be necessary to administer the Mitigation Trust in accordance with this Trust Agreement and the Consent Decree, each in accordance with its fiduciary duties to the governmental entities identified in Appendix D-1, the Indian tribes, and the Beneficiaries.

3.2 Investment of Trust Assets: The Trustee shall invest and reinvest the principal and income of the Trust Assets in those investments that are reasonably calculated to preserve the principal value, taking into account the need for the safety and liquidity of principal as may be required to fund Eligible Mitigation Actions and Trust Administration Costs.

3.2.1 Any investment income that is not reinvested shall be deposited into the Trust Account for distribution among the Beneficiaries or Supplemental Funding Eligible Beneficiaries, weighted in accordance with the allocation in place at the time of such deposit.

3.2.2 In investing, reinvesting, exchanging, selling, and managing Trust Assets, the Trustee must perform its duties solely in the interest of the Beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which a prudent investor, acting in a like capacity and familiar with such matters, would exercise in the conduct of an enterprise of like character and with like aims; except that the right and power of the Trustee to invest and reinvest the Trust Assets shall be limited to: (i) demand and time deposits, such as certificates of deposit, in banks or other savings institutions whose deposits are federally insured; (ii) U.S. Treasury bills, bonds and notes, including, but not limited to, long-term U.S. Treasury bills, bonds and notes; (iii) repurchase agreements for U.S. Treasury bills, bonds and notes; (iv) AA or AAA corporate bonds (with the rating awarded by at least two of the three major rating agencies (Standard & Poor's, Moody's, or Fitch)); or (v) open-ended mutual funds owning only assets described in subparts (i) through (iv) of this subsection; *provided,* however, that the value of bonds of any single company and its affiliates owned by the Trust directly rather than through a mutual fund shall not exceed $10 million when purchased, but may be held, despite increase in value, so long as such amount does not exceed $16 million. Any such investments shall be made consistently with the Uniform Prudent Investor Act.

3.2.3 Nothing in this Section shall be construed as authorizing the Trustee to cause the Mitigation Trust to carry on any business or to divide the gains therefrom. The sole purpose of this Section is to authorize the investment of the Trust Assets or any portion thereof as may be reasonably prudent pending use of the proceeds for the purposes of the Mitigation Trust.

3.3 Accounting: The Trustee shall maintain the books and records relating to the Trust Assets and income and the payment of expenses of and liabilities against the Mitigation Trust. The detail of these books and records and the duration the Trustee shall keep such books and records shall be such as to allow the Trustee to make a full and accurate accounting of all Trust Assets, as well as to comply with applicable provisions of law and standard accounting practices, including Generally Accepted Accounting Principles ("GAAP"). The United States, by and through the EPA, and each Beneficiary, shall have the right upon 14 Days' prior written notice to inspect such books and records, as well as all supporting documentation. Except as otherwise provided herein, the Trustee shall not be required to file any accounting or seek approval of the Court with respect to the administration of the Mitigation Trust, or as a condition for making any payment or distribution out of the Trust Assets.

3.3.1 Semi-Annual Reporting. Within 180 Days of the Trust Effective Date in the first year, and thereafter by January 1 and July 1 of each year, and then at least 30 Days prior to the filing of a motion to terminate pursuant to subparagraph 6.7 hereof (each a "Financial Reporting Date"), the Trustee shall file with the Court and provide each Beneficiary and the Settling Defendants with:

3.3.1.1 A statement: (i) confirming the value of the Trust Assets; (ii) itemizing the investments then held by the Trust (including applicable ratings on such investments); and (iii) including a cumulative and calendar year accounting of the amount the Trustee has paid out from the Trust Account and all subaccounts to any recipient;

3.3.1.2 For each Beneficiary, cumulative and calendar year accounting, as of the Financial Reporting Date, of: (i) such Beneficiary's initial allocation of Trust Assets; (ii) any allocation adjustments pursuant to this Agreement; (iii) line item descriptions of completed disbursements on account of approved Eligible Mitigation Action; and (iv) such Beneficiary's remaining and projected allocation. Such accounting shall also include, for each Beneficiary, a balance statement and projected annual budget of disbursements taking into account those Eligible Mitigation Actions that have been approved as of the Financial Reporting Date;

3.3.1.3 For the Trust Administration Cost Subaccount, cumulative and calendar year accounting, as of the Financial Reporting Date, of: (i) line item disbursements of Total Administration Costs; (ii) balance statements; (iii) 3-year projected annual budgets of disbursements on account of Trust Administration Costs; and (iv) line by line accounting of Trust Administration Costs recorded against each Beneficiary's allocation pursuant to subparagraph 2.1.2.1;

3.3.1.4 For the Trust Account and all subaccounts, including but not limited to the Trust Administration Cost Subaccount, balance statements and 3-year projected annual budgets that itemize all assets, income, earnings, expenditures, allocations, and disbursements of Trust Assets by Trust Account and by each subaccount;

3.3.1.5 Third-party audited financial reports disclosing and certifying the disposition of all Trust Assets from the Trust Effective Date through the calendar quarter immediately preceding the Financial Reporting Date, specifically including reconciliations of prior budget projections to actual performance;

3.3.1.6 A description of any previously unreported action taken by the Trust in performance of its duties which, as determined by the Trustee,

counsel, accountants, or other professionals retained by the Trustee, affects the Trust in a materially adverse way;

3.3.1.7 A brief description of all actions taken in accordance with this Agreement and the Consent Decree during the previous year; and

3.3.1.8 On each Financial Reporting Date, the Trustee shall simultaneously publish on the Trust's public-facing website all information required to be provided under subparagraph 3.3.

3.4 Limitation of the Trustee's Authority: The Trustee is not authorized to engage in any trade or business with respect to the Trust Assets or proceeds therefrom.

3.5 Conditions of Trustee's Obligations: The Trustee accepts appointment as the Trustee subject to the following express terms and conditions:

3.5.1 No Bond. Notwithstanding any state law to the contrary, the Trustee, including any successor Trustee, shall be exempt from giving any bond or other security in any jurisdiction.

3.5.2 Limitation of Liability. In no event shall the Trustee be held personally liable for any claims asserted against the Mitigation Trust except for actions or omissions that are determined by a court order to be fraudulent, negligent, or willful misconduct by the Trustee. Except as provided herein, the Trustee may consult with legal counsel, accounting and financial professionals, environmental professionals, and other professionals, and shall not be personally liable for any action taken or omission made by it in accordance with advice given by such professionals, except in the case of a court order determining fraud, negligence, or willful misconduct by the Trustee. In the absence of willful misconduct, negligence, or fraud by the Trustee, as determined by a court, the Trustee shall not be personally liable to persons seeking payment from or asserting actions against the Mitigation Trust. For the avoidance of doubt, this subparagraph does not create for the Trustee or Mitigation Trust any express or implied right to indemnification from any Consent Decree Party for any claims asserted against the Trustee or Mitigation Trust, and no Consent Decree Party shall be liable for any claims asserted against the Trustee or Mitigation Trust.

3.5.3 Reliance on Documentation. The Trustee may rely on, and shall be protected in acting upon, any notice, requisition, request, consent, certificate, order, affidavit, letter, or other paper or document reasonably believed by it to be genuine and to have been signed or sent by the proper person or persons.

3.5.4 Right to Demand Documentation. Notwithstanding anything else in this Agreement, in the administration of the Trust Assets, the Trustee shall have the right, but shall not be required, to demand from the relevant Beneficiary before the disbursement of any cash or in respect of any action whatsoever within the purview of this Mitigation Trust, any showings, certificates, opinions, appraisals, or other information, or action or

evidence thereof, in addition to that required by the terms hereof that the Trustee reasonably believes to be necessary or desirable.

3.6 Payment of Trust Administration Costs: Subject to the limits set forth in subparagraph 2.2.1, the Mitigation Trust shall pay from the Trust Administration Cost Subaccount its own reasonable and necessary costs and expenses, and shall reimburse the Trustee for the actual reasonable out-of-pocket fees, costs, and expenses to the extent incurred by the Trustee in connection with the administration of the Trust. The Trustee also shall be entitled to receive reasonable compensation for services rendered on behalf of the Mitigation Trust, in accordance with the projected annual budgets for administration of the Mitigation Trust required under subparagraph 3.3.1.3 hereof, not to exceed ($**[___]**) per hour. Notwithstanding the foregoing, the total amount of allowable Trust Administration Costs shall not exceed the cost cap established under subparagraph 1.8. The Trustee shall include in its semi-annual reporting, and post on its public website, detailed invoices of all Trust Administration Costs (including but not limited to detailed invoices for the Trustee's services rendered on behalf of the Trust) at least 15 Days prior to the payment of any such expense. Such invoices shall remain available on the website until the Termination Date.

3.7 Termination, Resignation, and Removal of the Trustee

3.7.1 Termination of Trustee. The rights, powers, duties, and obligations of the Trustee to the Mitigation Trust and the Beneficiaries will terminate on the Termination Date.

3.7.2 Resignation of Trustee and Successor Trustee. Resignation of the Trustee shall only be effective upon: (i) selection of a successor pursuant to the procedures set forth in the Consent Decree; and (ii) order of the Court. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the appointment of a successor trustee or as otherwise ordered by the Court, the Trustee shall transfer all Trust records to the successor trustee, and shall take all actions necessary to assign, transfer, and pay over to the successor trustee control of all Trust Assets (including the public website maintained by the Trustee). In the event that the Trustee dies or becomes incapacitated, the Court may, upon motion by the United States or any Beneficiary, appoint an interim Trustee until such time as a successor trustee is appointed in accordance with the procedures set forth in the Consent Decree.

IV. MITIGATION TRUST BENEFICIARIES

4.0 Determination of Beneficiary Status: Each governmental entity identified in Appendix D-1 hereto may elect to become a Beneficiary hereunder by filing with the Court a single Certification Form (Appendix D-3), containing each of the certifications required by subparagraphs 4.2.1 through 4.2.9, not later than 60 Days after the Trust Effective Date. Each entity that timely files such certifications shall be a "Certifying Entity." Each entity that fails to timely file such certifications shall be an "Excluded Entity," and shall be permanently enjoined from asserting any rights with respect to Trust Assets or any other matter relating to the implementation of this Trust. The Trustee shall be responsible for ensuring that the form of each

certification complies with the requirements hereof prior to deeming any Certifying Entity to be a Beneficiary hereunder. For the avoidance of doubt, the determination of Beneficiary status for each Indian tribe shall be governed by subparagraphs 2.1.1 and 5.0.5.

4.0.1 Notice of Objection. If the United States or the Trustee determines that a certification filed by any Certifying Entity fails to comply with the requirements of this Section, either may file with the Court a notice of objection within 30 Days after a Certifying Entity files its certifications with the Court. Such notice shall explain the basis of objection with specificity. Any such objections shall be resolved according to the procedures set forth in subparagraph 6.2.

4.0.2 Notice of Beneficiary Designation. Not later than 120 Days after the Trust Effective Date, the Trustee shall file with the Court, publish on its public-facing website, and serve on each Consent Decree Party and Certifying Entity lists indicating:

4.0.2.1 Which Certifying Entities filed certifications as to which no notice of objection has been filed. Upon the filing of this Notice of Beneficiary Designation, each such Certifying Entity shall be deemed a "Beneficiary" hereunder;

4.0.2.2 Which governmental entity identified in Appendix D-1 did not timely file the certifications pursuant to Paragraph 4.0. Each such Certifying Entity shall be deemed an "Excluded Entity" hereunder; and

4.0.2.3 Which Certifying Entities timely filed certifications as to which a notice of objection has been filed pursuant to subparagraph 4.0.1, together with an explanation of the status of any such objection. Each such Certifying Entity shall be a "Pending Beneficiary." Upon final resolution of each objection, the Pending Beneficiary shall either be deemed a Beneficiary or an Excluded Entity hereunder.

4.1 Beneficiary Mitigation Plan: Not later than 90 Days after being deemed a Beneficiary pursuant to subparagraph 4.0.2.1 hereof, each Beneficiary shall submit and make publicly available a "Beneficiary Mitigation Plan" that summarizes how the Beneficiary plans to use the mitigation funds allocated to it under this Trust, addressing: (i) the Beneficiary's overall goal for the use of the funds; (ii) the categories of Eligible Mitigation Actions the Beneficiary anticipates will be appropriate to achieve the stated goals and the preliminary assessment of the percentages of funds anticipated to be used for each type of Eligible Mitigation Action; (iii) a description of how the Beneficiary will consider the potential beneficial impact of the selected Eligible Mitigation Actions on air quality in areas that bear a disproportionate share of the air pollution burden within its jurisdiction; and (iv) a general description of the expected ranges of emission benefits the Beneficiary estimates would be realized by implementation of the Eligible Mitigation Actions identified in the Beneficiary Mitigation Plan. The Beneficiary Mitigation Plan need only provide the level of detail reasonably ascertainable at the time of submission. This Plan is intended to provide the public with insight into a Beneficiary's high-level vision for use of the mitigation funds and information about the specific uses for which funding is expected

to be requested. Nothing in this provision is intended to make the Beneficiary Mitigation Plan binding on any Beneficiary, nor does it create any rights in any person to claim an entitlement of any kind. Beneficiaries may adjust their goals and specific spending plans at their discretion and, if they do so, shall provide the Trustee with updates to their Beneficiary Mitigation Plan. To the extent a Beneficiary intends to avail itself of the DERA Option described in Appendix D-2, that Beneficiary may use its Final Approved DERA Workplan as its Beneficiary Mitigation Plan as to those Eligible Mitigation Actions funded through the DERA Option. The Beneficiary Mitigation Plan shall explain the process by which the Beneficiary shall seek and consider public input on its Beneficiary Mitigation Plan.

4.2 Required Certifications

4.2.1 Identification of Lead Agency and Submission to Jurisdiction. Each Certification Form must include a designation of lead agency, certified by the Office of the Governor or (if not a state, the analogous chief executive) of the Appendix D-1 entity on whose behalf the Certification Form is submitted, indicating which agency, department, office, or division will have the delegated authority to act on behalf of and legally bind such Appendix D-1 entity. The Certification Form shall also include confirmation by the Certifying Entity that: (i) it has the authority to sign the Certification Form; and (ii) it agrees, without limitation, to be bound by the terms of this Agreement, including the allocations of Trust Assets provided hereunder, and to be subject to the jurisdiction of the Court for all matters concerning the interpretation or performance of, or any disputes arising under, this Trust Agreement. The Certifying Entity's agreement to federal jurisdiction for this purpose shall not be construed as consent to federal court jurisdiction for any other purpose.

4.2.2 Consent to Trustee Authority. Each Certification Form must include an agreement by the Certifying Entity that the Trustee has the authorities specified in this Agreement, including but not limited to the authority: (i) to approve, deny, request modifications, or request further information related to any request for funds hereunder; and (ii) to implement this Agreement in accordance with its terms.

4.2.3 Certification of Legal Authority. Each Certification Form must certify that: (i) the laws of the Certifying Entity do not prohibit it from being a Beneficiary hereunder; (ii) prior to requesting any funds hereunder, the Certifying Entity shall obtain full legal authority to receive and/or direct payments of such funds; and (iii) if the Certifying Entity fails to demonstrate that it has obtained such legal authority within two years of submitting its Certification Form, it shall become an Excluded Entity hereunder and its initial allocation shall be redistributed among the Beneficiaries pursuant to subparagraph 5.0.1.

4.2.4 Certification of Legal Compliance. Each Certification Form must include a certification and agreement that, in connection with all actions related to this Trust, the Certifying Entity has followed and will follow all applicable law and that such Certifying Entity will assume full responsibility for its decisions in that regard.

4.2.5 Certification of Eligible Mitigation Action Accounts. Each Certification Form shall include a certification by the Certifying Entity that all funds received on account of any Eligible Mitigation Action request that are not used for the Eligible Mitigation Action shall be returned to the Trustee for credit to the allocation of such Certifying Entity.

4.2.6 Waiver of Claims for Injunctive Relief under Environmental or Common Laws. Each Certification Form shall include an express waiver by the Certifying Entity, on behalf of itself and all of its agencies, departments, offices, and divisions, in favor of the parties to the Consent Decree (including the Settling Defendants) of all claims for injunctive relief to redress environmental injury caused by the 2.0 Liter Subject Vehicles, whether based on the environmental or common law within its jurisdiction. Such waiver shall be binding on all agencies, departments, offices, and divisions of such Beneficiary asserting, purporting to assert, or capable of asserting such claims. The waiver need not waive, and the Certifying Entities may expressly reserve, their rights, if any, to seek fines or penalties. California's entry in the Consent Decree shall satisfy its certification obligations under this subparagraph. No waiver submitted by any Indian tribe shall be effective unless and until such Indian tribe actually receives Trust Funds.

4.2.7 Publicly Available Information. Each Certification Form must include a certification by the Certifying Entity that it will maintain and make publicly available all documentation and records: (i) submitted by it in support of each funding request; and (ii) supporting all expenditures of Trust Funds by the Certifying Entity, each until the Termination Date, unless the laws of the Certifying Entity require a longer record retention period. This certification shall include an explanation of the procedures by which the records may be accessed, which procedures shall be designed to support access and limit burden for the general public, and for the Beneficiary Mitigation Plan required under Paragraph 4.1, the procedures by which public input will be solicited and considered. This certification can be made subject to applicable laws governing the publication of confidential business information and personally identifiable information.

4.2.8 Notice of Availability of Mitigation Action Funds. Each Certification Form must certify that, not later than 30 Days after being deemed a Beneficiary pursuant to subparagraph 4.0.2.1 hereof, the Certifying Entity will provide a copy of this Agreement with Attachments to the U.S. Department of the Interior, the U.S. Department of Agriculture, and any other Federal agency that has custody, control or management of land within or contiguous to the territorial boundaries of the Certifying Entity and has by then notified the Certifying Entity of its interest hereunder, explaining that the Certifying Entity may request Eligible Mitigation Action funds for use on lands within that Federal agency's custody, control or management (including but not limited to Clean Air Act Class I and II areas), and setting forth the procedures by which the Certifying Entity will review, consider, and make a written determination upon each such request.

4.2.9 Registration of 2.0 Liter Subject Vehicles. Each Certification Form must state, for the benefit of the parties to the Consent Decree (including the Settling

Defendants) and the owners from time-to-time of 2.0 Liter Subject Vehicles, that the Certifying Entity:

(a) Shall not deny registration to any Subject Vehicle based solely on:

i. The presence of a defeat device or AECD covered by the resolution of claims in the Consent Decree; or

ii. Emissions resulting from such a defeat device or AECD; or

iii. The availability of an Approved Emissions Modification or the Buyback, Lease Termination, and Owner/Lessee Payment Program.

(b) Shall not deny registration to any Subject Vehicle that has received an Approved Emissions Modification based solely on:

i. The fact that the vehicle received the Approved Emissions Modification; or

ii. Emissions resulting from the modification (including but not limited to the anticipated emissions described in Appendix B to the Consent Decree); or

iii. Other emissions-related vehicle characteristics that result from the modification; or

iv. The availability of an Approved Emissions Modification or the Buyback, Lease Termination, and Owner/Lessee Payment Program.

(c) May identify 2.0 Liter Subject Vehicles as having received, or not received, the Approved Emissions Modification on the basis of VIN-specific information provided to the Certifying Entity by the Settling Defendants.

(d) Notwithstanding the foregoing, a Certifying Entity may deny registration to any Subject Vehicle on the basis that the Subject Vehicle fails to meet EPA's or the Certifying Entity's failure criteria for the onboard diagnostic (OBD) inspection; or on other grounds authorized or required under applicable federal regulations (including an approved State Implementation Plan) or under Section 209 or 177 of the Clean Air Act and not explicitly excluded in subparagraphs 4.2.9(a)-(b).

V. DISTRIBUTION OF MITIGATION TRUST ASSETS

5.0 Initial Allocation: Each governmental entity identified in Appendix D-1 hereto shall have the right under this Trust Agreement, upon becoming a Beneficiary pursuant to Section IV (Mitigation Trust Beneficiaries), to request its share of Eligible Mitigation Action funds in accordance with the allocation rates set forth in Appendix D-1 ("Initial Allocation Rates").

5.0.1 Together with the Notice of Beneficiary Designation required to be filed pursuant to subparagraph 4.0.2, the Trustee shall also file with the Court and serve upon each Consent Decree party, Beneficiary, and Pending Beneficiary, a corresponding recalculation of the Initial Allocation Rates to reallocate each Excluded Entity's share

among the Beneficiaries and Pending Beneficiaries, weighted in accordance with the Initial Allocation Rates ("Final Allocation Rates"). If any Pending Beneficiary is deemed an Excluded Entity hereunder, its share shall be reallocated among the Beneficiaries and remaining Pending Beneficiaries, weighted in accordance with the Final Allocation Rates. The Trustee shall file with the Court and serve upon each Consent Decree party, Beneficiary, and Pending Beneficiary a notice of reallocation in the event that the Final Allocation Rates are adjusted in accordance with this Trust Agreement.

5.0.2 Upon being deemed a Beneficiary pursuant to subparagraph 4.0.2.1 hereof, each Beneficiary shall have the right under this Trust Agreement to request Eligible Mitigation Action funds up to the total dollar amount allocated to it. Provided, however, that no Beneficiary may request payout of more than (i) one-third of its allocation during the first year after the Settling Defendants make the Initial Deposit, or (ii) two-thirds of its allocation during the first two years after the Settling Defendants make the Initial Deposit.

5.0.3 Allocation of Appendix A Mitigation Trust Payments. Any "National Mitigation Trust Payment" made pursuant to Section VI (Recall Rate) of Appendix A (Buyback, Lease Termination, and Vehicle Modification Recall Program) shall be allocated among all Beneficiaries other than California, weighted in accordance with the Final Allocation Rates. Any "California Mitigation Trust Payment" made pursuant to that Section shall be allocated exclusively to California.

5.0.4 Allocation of Appendix B Payments. Any Mitigation Trust Payments made pursuant to Appendix B (Vehicle Recall and Emissions Modification Program) or any Consent Decree provisions related thereto shall be allocated among all Beneficiaries, weighted in accordance with the Final Allocation Rates.

5.0.5 Distribution of Tribal Allocation Subaccount. If no Consultation Motion is timely filed pursuant to subparagraph 2.1.1 hereof, the Trustee shall, within 30 Days after the final deadline for filing a Consultation Motion pursuant to that subparagraph, promptly post on the Trust's public-facing website:

5.0.5.1 Notice: (i) that each Indian tribe may seek to become a Beneficiary hereunder by filing with the Court, at the time it submits its first funding request, certifications consistent with subparagraph 4.2; and (ii) of the date by which the Trustee will determine and post notice of the Beneficiary status of each certifying tribe, which determination shall be made in a manner consistent with the procedures set forth in Paragraph 4.0.2.

5.0.5.2 Notice that, commencing on the first September 1 after the Trust Effective Date and for five years thereafter (for a total of six September 1 funding request deadlines), each Indian tribe may submit to the Trustee funding requests that meet the requirements of subparagraphs 5.2.2 through 5.2.13. For funding requests that seek DERA funds, the DERA notice of intent to participate may be submitted for purposes of the

September 1 deadline, with the full DERA proposal to be submitted to the Trustee when it is submitted to EPA.

5.0.5.2.1 Regardless of the total amount of funding requests received on each of these six annual submission deadlines: (i) no more than one sixth of total remaining assets in the Tribal Allocation Subaccount may be committed during the first funding cycle; (ii) no more than one fifth of total remaining assets in the Tribal Allocation Subaccount may be committed during the second funding cycle; (iii) no more than one quarter of total remaining assets in the Tribal Allocation Subaccount may be committed during the third funding cycle; (iv) no more than one third of total remaining assets in the Tribal Allocation Subaccount may be committed during the fourth funding cycle; (v) no more than one half of total remaining assets in the Tribal Allocation Subaccount may be committed during the fifth funding cycle; and (vi) the remaining funds in the Tribal Allocation Subaccount may be committed during the sixth funding cycle. In the event uncommitted funds remain in the Tribal Allocation Subaccount or the Tribal Administration Subaccount after all funding requests have been approved or rejected during the sixth funding cycle, such funds shall be returned to the Trust Account and allocated among the non-tribal Beneficiaries, weighted in accordance with their allocation.

5.0.5.2.2 In the event that the total amount of the funding requests received on any submission deadline is less than the total amount of funds available to be committed during the corresponding funding cycle, the Trustee shall make no adjustments to the funding requests before approving approvable funding requests pursuant to subparagraph 5.2.15.

5.0.5.2.3 In the event that the total amount of the funding requests received on any submission deadline is more than the amount of funds available to be committed during the corresponding funding cycle, the Trustee shall not approve any funding requests pursuant to subparagraph 5.2.15, but rather shall: (i) allocate to each tribe that has been deemed a Beneficiary hereunder and has submitted a funding request during the funding cycle a share of the funds available during that funding cycle, weighted in accordance with the total population living within each tribe's tribal area according to the American Indian and Alaska Native areas of the 2010 Census (including reservations, off-reservation trust lands, and statistical areas); and (ii) publish on its public-facing website the tribal allocation and a notice that the deadline for that funding cycle shall be pushed forward by one year. In this event: (i) the one year delay of any particular funding cycle shall not impact the deadline for subsequent funding cycles; and (ii) such tribal allocation shall only apply to the over-subscribed funding

cycle. To the extent a tribe has submitted a DERA notice of intent to participate, such notice shall be used to calculate the total amount of funds requested under this subparagraph.

5.0.5.3 Nothing herein precludes any Beneficiary from using any share of its allocation for Eligible Mitigation Projects on Indian land.

5.1 Eligible Mitigation Actions and Expenditures: The Trustee may only disburse funds for Eligible Mitigation Actions, and for the Eligible Mitigation Action Administrative Expenditures specified therein.

5.2 Funding Requests: Beneficiaries may submit requests for Eligible Mitigation Action funding at any time. Each request for Eligible Mitigation Action funding must be submitted to the Trustee in electronic and hard-copy format, and include:

5.2.1 An explanation of how the funding request fits into the Beneficiary's Mitigation Plan;

5.2.2 A detailed description of the proposed Eligible Mitigation Action, including its community and air quality benefits;

5.2.3 An estimate of the NOx reductions anticipated as a result of the proposed Eligible Mitigation Action;

5.2.4 A project management plan for the proposed Eligible Mitigation Action, including a detailed budget and an implementation and expenditure timeline;

5.2.5 A certification that all vendors were or will be selected in accordance with applicable state public contracting laws;

5.2.6 For each proposed expenditure exceeding $25,000, detailed cost estimates from selected or potential vendors;

5.2.7 A detailed description of how the Beneficiary will oversee the proposed Eligible Mitigation Action, including but not limited to:

5.2.7.1 Identification of the specific governmental entity responsible for reviewing and auditing expenditures of Eligible Mitigation Action funds to ensure compliance with applicable law; and

5.2.7.2 A commitment by the Beneficiary to maintain and make publicly available all documentation submitted in support of the funding request and all records supporting all expenditures of Eligible Mitigation Action funds, subject to applicable laws governing the publication of confidential business information and personally identifiable information, together

with an explanation of the procedures by which the Beneficiary shall make such documentation publicly available;

5.2.8 A description of any cost share requirement to be placed upon the owner of each NOx source proposed to be mitigated;

5.2.9 A description of how the Beneficiary complied with subparagraph 4.2.8;

5.2.10 A description of how the Eligible Mitigation Action mitigates the impacts of NOx emissions on communities that have historically borne a disproportionate share of the adverse impacts of such emissions; and

5.2.11 A detailed plan for reporting on Eligible Mitigation Action implementation.

5.2.12 DERA Option. To the extent a Beneficiary intends to avail itself of the DERA Option described in Appendix D-2, that Beneficiary may use its DERA proposal as its funding request for those Eligible Mitigation Actions funded through the DERA Option.

5.2.13 Joint Application. Two or more Beneficiaries may submit a joint request for Eligible Mitigation Action funds. Joint applicants shall specify the amount of requested funding that shall be debited against each requesting Beneficiary's allocation.

5.2.14 Publication of Funding Requests. The Trustee shall post each funding request on the Trust's public-facing website upon receipt.

5.2.15 Approval of Funding Requests. The Trustee shall approve any funding request that meets the requirements of this Agreement and its Attachments, and furthers the purposes of this Trust. Within 60 Days after receipt of each Eligible Mitigation Action funding request, the Trustee shall transmit to the requesting Beneficiary and post on the Trust's public-facing website a written determination either: (i) approving the request; (ii) denying the request; (iii) requesting modifications to the request; or (iv) requesting further information. A Beneficiary may use such written determination as proof of funding for any DERA project application that includes Trust Funds as a non-federal voluntary match, as described in Appendix D-2. The Trustee shall respond to any modified or supplemental submission within 30 Days of receipt. Each written determination approving or denying an Eligible Mitigation Action funding request shall include an explanation of the reasons underlying the determination, including whether the proposed Eligible Mitigation Action meets the requirements set forth in Appendix D-2 and furthers the purposes of this Trust. The Trustee's decision to approve, deny, request modifications, or request further information related to a request shall be reviewable, upon petition of the United States or the submitting Beneficiary, by the Court.

5.2.15.1 Disbursement of Funds. The Trustee shall begin disbursing funds within 15 Days of approval of an Eligible Mitigation Action funding

request according to the written instructions and schedule provided by the Beneficiary.

5.2.16 Unused Eligible Mitigation Action Funds. Upon the termination or completion of any Eligible Mitigation Action, any unused Eligible Mitigation Action funds shall be returned to the Trust and added back to the Beneficiary's allocation.

5.3 Beneficiary Reporting Obligations: For each Eligible Mitigation Action, no later than six months after receiving its first disbursement of Trust Assets, and thereafter no later than January 1 and July 1 of each year, each Beneficiary shall serve upon the Trustee, a semiannual report describing the progress implementing each Eligible Mitigation Action during the six-month period leading up to the reporting date (including a summary of all costs expended on the Eligible Mitigation Action through the reporting date). Such reports shall include a complete description of the status (including actual or projected termination date), development, implementation, and any modification of each approved Eligible Mitigation Action. Beneficiaries may group multiple Eligible Mitigation Actions and multiple sub-beneficiaries into a single report. These reports shall be signed by an official with the authority to submit the report for the Beneficiary and must contain an attestation that the information is true and correct and that the submission is made under penalty of perjury. To the extent a Beneficiary avails itself of the DERA Option described in Appendix D-2, that Beneficiary may submit its DERA Quarterly Programmatic Reports in satisfaction of its obligations under this subparagraph as to those Eligible Mitigation Actions funded through the DERA Option. The Trustee shall post each semiannual report on the Trust's public-facing website upon receipt.

5.4 Supplemental Funding for Eligible Beneficiaries and Final Disposition of Trust Assets

5.4.1 Estimate of Remainder Balance. On the tenth anniversary of the Trust Effective Date, the Trustee shall file with the Court, deliver to the United States, by and through the EPA, and to each Beneficiary, and publish on its public website, an accounting of all Trust Assets that have not by that date been expended on or obligated to approved Eligible Mitigation Actions or prior Trust Administration Costs, together with an estimate of funding reasonably needed to cover the remaining Trust Administration Costs. The difference between these two amounts shall be referred to as the "Remainder Balance."

5.4.2 Application for Supplemental Funding Eligible Beneficiary Status. On the tenth anniversary of the Trust Effective Date, each Beneficiary may seek to supplement its remaining allocation by filing with the Court and delivering to the Trustee a written report demonstrating that it has by that date obligated at least eighty percent (80%) of the funds allocated to it pursuant to the Final Allocation Rates calculated pursuant to subparagraph 5.0.1 (as determined with specific reference to the reports submitted pursuant to subparagraph 5.3).

5.4.3 Publication of Remainder Balance and Supplemental Funding Eligible Beneficiary Status. Within 90 Days after the tenth anniversary of the Trust Effective

Date, the Trustee shall file with the Court, notify the United States, by and through the EPA, and each Beneficiary, and publish on its website, a report indicating: (i) the Remainder Balance; and (ii) which of the Beneficiaries has demonstrated that it had in fact expended at least 80% of the funds allocated to it pursuant to the Final Allocation Rates calculated pursuant to subparagraph 5.0.1, each of which shall be deemed a "Supplemental Funding Eligible Beneficiary".

5.4.4 Distribution of Remainder Balance to Supplemental Funding Eligible Beneficiaries. On the later of (i) 180 Days after the tenth anniversary of the Trust Effective Date, or (ii) the resolution of any disputes arising from the Trustee's accountings or determinations pursuant to subparagraphs 5.4.1 or 5.4.3, the Remainder Balance shall be divided among the Supplemental Funding Eligible Beneficiaries in accordance with their weighted share of the Final Allocation Rates.

5.4.5 Final Disposition of Trust Assets. Not later than the fifteenth anniversary of the Trust Effective Date, any unused funds held by any Beneficiary shall be returned to the Trust. After the fifteenth anniversary of the Trust Effective Date, any Trust Assets held in the Trust Account or any subaccount (including but not limited to the Trust Administration Cost Subaccount, Tribal Allocation Subaccount, and the Tribal Administration Cost Subaccount) that are not needed for final Trust Administration Costs shall be deemed to have been donated by the Trust to fund Eligible Mitigation Actions administered by Federal agencies that have custody, control or management of land in the United States that is impacted by excess NOx emissions (including but not limited to Clean Air Act Class I and II areas) and that have the legal authority to accept such funds, in accordance with instructions to be provided by the United States. If no such agencies exist, then such funds shall be applied as otherwise directed by the Court on motion by one or more of the remaining Beneficiaries, with notice to the United States, the Settling Defendants, and the other remaining Beneficiaries.

VI. MISCELLANEOUS PROVISIONS

6.0 Correspondence with Trust: **[Insert instructions for transmitting certifications, funding requests, and other correspondence to Trustee]**

6.1 Jurisdiction: The U.S. District Court for the Northern District of California shall be the sole and exclusive forum for the purposes of enforcing this Mitigation Trust and resolving disputes hereunder, including the obligations of the Trustee to perform its obligations hereunder, and each of the Consent Decree Parties, the Mitigation Trust, the Trustee, and each Beneficiary, expressly consents to such jurisdiction.

6.2 Dispute Resolution: Unless otherwise expressly provided for herein, the dispute resolution procedures of this Paragraph shall be the exclusive mechanism to resolve any dispute between or among the entities listed in Appendix D-1 hereto, the Consent Decree Parties, and the Trustee arising under or with respect to this Agreement.

6.2.1 Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Agreement shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when the disputing party sends to the counterparty a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 Days from the date the dispute arises, unless that period is modified by written agreement. If the disputing parties cannot resolve the dispute by informal negotiations, then the disputing party may invoke formal dispute resolution procedures as set forth below.

6.2.2 Formal Dispute Resolution. The disputing party shall invoke formal dispute resolution procedures, within the time period provided in the preceding subparagraph, by serving on the counterparty a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting the disputing party's position and any supporting documentation and legal authorities relied upon by the disputing party. The counterparty shall serve its Statement of Position within 30 Days of receipt of the disputing party's Statement of Position, which shall also include, but need not be limited to, any factual data, analysis, or opinion supporting the counterparty's position and any supporting documentation and legal authorities relied upon by the counterparty. If the disputing parties are unable to consensually resolve the dispute within 30 Days after the counterparty serves its Statement of Position on the disputing party, the disputing party may file with the Court a motion for judicial review of the dispute in accordance with the following subparagraph.

6.2.3 Judicial Review. The disputing party may seek judicial review of the dispute by filing with the Court and serving on the counterparty and the United States, a motion requesting judicial resolution of the dispute. The motion must be filed within 45 Days of receipt of the counterparty's Statement of Position pursuant to the preceding subparagraph. The motion shall contain a written statement of disputing party's position on the matter in dispute, including any supporting factual data, analysis, opinion, documentation, and legal authorities, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly administration of the Trust. The counterparty shall respond to the motion within the time period allowed by the Local Rules of the Court, and the disputing party may file a reply memorandum, to the extent permitted by the Local Rules.

6.3 Choice of Law: The validity, interpretation, and performance of this Mitigation Trust shall be governed by the laws of the State of **[California] [Delaware]** and the United States, without giving effect to the rules governing the conflicts of law that would require the application of the law of another jurisdiction. This Trust Agreement shall not be subject to any provisions of the Uniform Trust Code as adopted by any State, now or in the future. This Trust Agreement shall be interpreted in a manner that is consistent with the Consent Decree, provided, however, that in the event of a conflict between the Consent Decree and this Trust Agreement, this Trust Agreement shall control.

6.4 Modification: Material modifications to the Mitigation Trust or Appendix D-2 (Eligible Mitigation Actions) may be made only with the written consent of the United States and upon order of the Court, and only to the extent that such modification does not change or inhibit the purpose of this Mitigation Trust. Minor modifications or clarifying amendments to the Mitigation Trust or Appendix D-2 (Eligible Mitigation Actions) may be made upon written agreement between the United States and the Trustee, as necessary to enable the Trustee to effectuate the provisions of this Mitigation Trust, and shall be filed with the Court. To the extent the consent of the Settling Defendants is required to effectuate the modification or amendment, such consent shall not be unreasonably withheld. Notwithstanding the foregoing sentence, without the express written consent of the Settling Defendants, no modification shall: (i) require the Settling Defendants to make any payments to the Trust other than the Mitigation Trust Payments required by the Consent Decree; or (ii) impose any greater obligation on Settling Defendants than those set forth in the Trust Agreement that is being modified. The Trustee shall provide to the Beneficiaries not less than 30 Days' notice of any proposed modification to the Mitigation Trust, whether material or minor, before such modification shall become effective.

6.5 Severability: If any provision of this Agreement or application thereof to any person or circumstance shall be finally determined by the Court to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

6.6 Taxes: If the Trustee determines, upon the advice of qualified tax professionals, that this Trust is a qualified settlement fund ("QSF") pursuant to 26 C.F.R. § 1.468B-1, then the Trustee shall be the "administrator," within the meaning of Treasury Regulation Section 1.468B-2(k)(3), of this Trust. Subject to definitive guidance from the U.S. Internal Revenue Service or a judicial decision to the contrary, the Trustee shall file tax returns and pay applicable taxes with respect to the Trust in a manner consistent with the provisions of the QSF regulations. All such taxes shall be paid from the Trust Administration Cost Account.

6.7 Termination: After all funds have been expended pursuant to subparagraph 5.4.5, and final reports have been delivered pursuant to subparagraph 3.3 and 3.3.1, the Trustee may file a motion with the Court requesting an order terminating this Trust. The United States and the Beneficiaries shall be given not less than 60 Days to oppose such motion. This Trust shall terminate upon approval by the Court of the Trustee's motion to terminate (the "Termination Date").

[Add Signatures for Settling Defendants and the Trustee]

APPENDIX D-1
Initial Allocation

APPENDIX D-1 - INITIAL ALLOCATION

INITIAL SUBACCOUNTS	INITIAL ALLOCATIONS ($)	INITIAL ALLOCATIONS (%)
Puerto Rico	$ 7,500,000.00	0.28%
North Dakota	$ 7,500,000.00	0.28%
Hawaii	$ 7,500,000.00	0.28%
South Dakota	$ 7,500,000.00	0.28%
Alaska	$ 7,500,000.00	0.28%
Wyoming	$ 7,500,000.00	0.28%
District of Columbia	$ 7,500,000.00	0.28%
Delaware	$ 9,051,682.97	0.34%
Mississippi	$ 9,249,413.91	0.34%
West Virginia	$ 11,506,842.13	0.43%
Nebraska	$ 11,528,812.23	0.43%
Montana	$ 11,600,215.07	0.43%
Rhode Island	$ 13,495,136.57	0.50%
Arkansas	$ 13,951,016.23	0.52%
Kansas	$ 14,791,372.72	0.55%
Idaho	$ 16,246,892.13	0.60%
New Mexico	$ 16,900,502.73	0.63%
Vermont	$ 17,801,277.01	0.66%
Louisiana	$ 18,009,993.00	0.67%
Kentucky	$ 19,048,080.43	0.71%
Oklahoma	$ 19,086,528.11	0.71%
Iowa	$ 20,179,540.80	0.75%
Maine	$ 20,256,436.17	0.75%
Nevada	$ 22,255,715.66	0.82%
Alabama	$ 24,084,726.84	0.89%
New Hampshire	$ 29,544,297.76	1.09%
South Carolina	$ 31,636,950.19	1.17%
Utah	$ 32,356,471.11	1.20%
Indiana	$ 38,920,039.77	1.44%
Missouri	$ 39,084,815.55	1.45%
Tennessee	$ 42,407,793.83	1.57%
Minnesota	$ 43,638,119.67	1.62%
Connecticut	$ 51,635,237.63	1.91%
Arizona	$ 53,013,861.68	1.96%
Georgia	$ 58,105,433.35	2.15%
Michigan	$ 60,329,906.41	2.23%
Colorado	$ 61,307,576.05	2.27%
Wisconsin	$ 63,554,019.22	2.35%
New Jersey	$ 65,328,105.14	2.42%
Oregon	$ 68,239,143.96	2.53%
Massachusetts	$ 69,074,007.92	2.56%
Maryland	$ 71,045,824.78	2.63%
Ohio	$ 71,419,316.56	2.65%
North Carolina	$ 87,177,373.87	3.23%
Virginia	$ 87,589,313.32	3.24%
Illinois	$ 97,701,053.83	3.62%
Washington	$ 103,957,041.03	3.85%
Pennsylvania	$ 110,740,310.73	4.10%
New York	$ 117,402,744.86	4.35%
Florida	$ 152,379,150.91	5.64%
Texas	$ 191,941,816.23	7.11%
California	$ 381,280,175.09	14.12%
Tribal Allocation Subaccount	$ 49,652,857.71	1.84%
Trust Administration Cost Subaccount	$ 27,000,000.00	1.00%
Tribal Administration Cost Subaccount	$ 993,057.15	0.04%
	$ 2,700,000,000.00	100.00%

APPENDIX D-2
Eligible Mitigation Actions and Mitigation Action Expenditures

APPENDIX D-2

ELIGIBLE MITIGATION ACTIONS AND MITIGATION ACTION EXPENDITURES

1. Class 8 Local Freight Trucks and Port Drayage Trucks (Eligible Large Trucks)

    a. Eligible Large Trucks include 1992-2009 engine model year Class 8 Local Freight or Drayage. For Beneficiaries that have State regulations that already require upgrades to 1992-2009 engine model year trucks at the time of the proposed Eligible Mitigation Action, Eligible Large Trucks shall also include 2010-2012 engine model year Class 8 Local Freight or Drayage.

    b. Eligible Large Trucks must be Scrapped.

    c. Eligible Large Trucks may be Repowered with any new diesel or Alternate Fueled engine or All-Electric engine, or may be replaced with any new diesel or Alternate Fueled or All-Electric vehicle, with the engine model year in which the Eligible Large Trucks Mitigation Action occurs or one engine model year prior.

    d. For Non-Government Owned Eligible Class 8 Local Freight Trucks, Beneficiaries may only draw funds from the Trust in the amount of:

        1. Up to 40% of the cost of a Repower with a new diesel or Alternate Fueled (e.g. CNG, propane, Hybrid) engine, including the costs of installation of such engine.

        2. Up to 25% of the cost of a new diesel or Alternate Fueled (e.g. CNG, propane, Hybrid) vehicle.

        3. Up to 75% of the cost of a Repower with a new All-Electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new All-Electric engine.

        4. Up to 75% of the cost of a new All-Electric vehicle, including charging infrastructure associated with the new All-Electric vehicle.

    e. For Non-Government Owned Eligible Drayage Trucks, Beneficiaries may only draw funds from the Trust in the amount of:

        1. Up to 40% of the cost of a Repower with a new diesel or Alternate Fueled (e.g. CNG, propane, Hybrid) engine, including the costs of installation of such engine.

        2. Up to 50% of the cost of a new diesel or Alternate Fueled (e.g. CNG, propane, Hybrid) vehicle.

3. Up to 75% of the cost of a Repower with a new All-Electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new All-Electric engine.

4. Up to 75% of the cost of a new all-electric vehicle, including charging infrastructure associated with the new All-Electric vehicle.

f. For Government Owned Eligible Class 8 Large Trucks, Beneficiaries may draw funds from the Trust in the amount of:

1. Up to 100% of the cost of a Repower with a new diesel or Alternate Fueled (e.g. CNG, propane, Hybrid) engine, including the costs of installation of such engine.

2. Up to 100% of the cost of a new diesel or Alternate Fueled (e.g. CNG, propane, Hybrid) vehicle.

3. Up to 100% of the cost of a Repower with a new All-Electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new All-Electric engine.

4. Up to 100% of the cost of a new All-Electric vehicle, including charging infrastructure associated with the new All-Electric vehicle.

2. Class 4-8 School Bus, Shuttle Bus, or Transit Bus (Eligible Buses)

a. Eligible Buses include 2009 engine model year or older class 4-8 school buses, shuttle buses, or transit buses. For Beneficiaries that have State regulations that already require upgrades to 1992-2009 engine model year buses at the time of the proposed Eligible Mitigation Action, Eligible Buses shall also include 2010-2012 engine model year class 4-8 school buses, shuttle buses, or transit buses.

b. Eligible Buses must be Scrapped.

c. Eligible Buses may be Repowered with any new diesel or Alternate Fueled or All-Electric engine, or may be replaced with any new diesel or Alternate Fueled or All-Electric vehicle, with the engine model year in which the Eligible Bus Mitigation Action occurs or one engine model year prior.

d. For Non-Government Owned Buses, Beneficiaries may draw funds from the Trust in the amount of:

1. Up to 40% of the cost of a Repower with a new diesel or Alternate Fueled (e.g. CNG, propane, Hybrid) engine, including the costs of installation of such engine.

2. Up to 25% of the cost of a new diesel or Alternate Fueled (e.g. CNG, propane, Hybrid) vehicle.

3. Up to 75% of the cost of a Repower with a new All-Electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new All-Electric engine.

4. Up to 75% of the cost of a new All-Electric vehicle, including charging infrastructure associated with the new All-Electric vehicle.

e. For Government Owned Eligible Buses, and Privately Owned School Buses Under Contract with a Public School District, Beneficiaries may draw funds from the Trust in the amount of:

1. Up to 100% of the cost of a Repower with a new diesel or Alternate Fueled (e.g. CNG, propane, Hybrid) engine, including the costs of installation of such engine.

2. Up to 100% of the cost of a new diesel or Alternate Fueled (e.g. CNG, propane, Hybrid) vehicle.

3. Up to 100% of the cost of a Repower with a new All-Electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new All-Electric engine.

4. Up to 100% of the cost of a new All-Electric vehicle, including charging infrastructure associated with the new All-Electric vehicle.

3. Freight Switchers

a. Eligible Freight Switchers include pre-Tier 4 switcher locomotives that operate 1000 or more hours per year.

b. Eligible Freight Switchers must be Scrapped.

c. Eligible Freight Switchers may be Repowered with any new diesel or Alternate Fueled or All-Electric engine(s) (including Generator Sets), or may be replaced with any new diesel or Alternate Fueled or All-Electric (including Generator Sets) Freight Switcher, that is certified to meet the applicable EPA emissions standards (or other more stringent equivalent State standard) as published in the CFR for the engine model year in which the Eligible Freight Switcher Mitigation Action occurs.

d. For Non-Government Owned Freight Switchers, Beneficiaries may draw funds from the Trust in the amount of :

1. Up to 40% of the cost of a Repower with a new diesel or Alternate Fueled (e.g. CNG, propane, Hybrid) engine(s) or Generator Sets, including the costs of installation of such engine(s).

2. Up to 25% of the cost of a new diesel or Alternate Fueled (e.g. CNG, propane, Hybrid) Freight Switcher.

3. Up to 75% of the cost of a Repower with a new All-Electric engine(s), including the costs of installation of such engine(s), and charging infrastructure associated with the new All-Electric engine(s).

4. Up to 75% of the cost of a new All-Electric Freight Switcher, including charging infrastructure associated with the new All-Electric Freight Switcher.

e. For Government Owned Eligible Freight Switchers, Beneficiaries may draw funds from the Trust in the amount of:

1. Up to 100% of the cost of a Repower with a new diesel or Alternate Fueled (e.g. CNG, propane, Hybrid) engine(s) or Generator Sets, including the costs of installation of such engine(s).

2. Up to 100% of the cost of a new diesel or Alternate Fueled (e.g. CNG, propane, Hybrid) Freight Switcher.

3. Up to 100% of the cost of a Repower with a new All-Electric engine(s), including the costs of installation of such engine(s), and charging infrastructure associated with the new All-Electric engine(s).

4. Up to 100% of the cost of a new All-Electric Freight Switcher, including charging infrastructure associated with the new All-Electric Freight Switcher.

4. Ferries/Tugs

a. Eligible Ferries and/or Tugs include unregulated, Tier 1, or Tier 2 marine engines.

b. Eligible Ferry and/or Tug engines that are replaced must be Scrapped.

c. Eligible Ferries and/or Tugs may be Repowered with any new Tier 3 or Tier 4 diesel or Alternate Fueled engines, or with All-Electric engines, or may be upgraded with an EPA Certified Remanufacture System or an EPA Verified Engine Upgrade.

d. For Non-Government Owned Eligible Ferries and/or Tugs, Beneficiaries may only draw funds from the Trust in the amount of:

1. Up to 40% of the cost of a Repower with a new diesel or Alternate Fueled (e.g. CNG, propane, Hybrid) engine(s), including the costs of installation of such engine(s).

2. Up to 75% of the cost of a Repower with a new All-Electric engine(s), including the costs of installation of such engine(s), and charging infrastructure associated with the new All-Electric engine(s).

e. For Government Owned Eligible Ferries and/or Tugs, Beneficiaries may draw funds from the Trust in the amount of:

1. Up to 100% of the cost of a Repower with a new diesel or Alternate Fueled (e.g. CNG, propane, Hybrid) engine(s), including the costs of installation of such engine(s).

2. Up to 100% of the cost of a Repower with a new All-Electric engine(s), including the costs of installation of such engine(s), and charging infrastructure associated with the new All-Electric engine(s).

5. Ocean Going Vessels (OGV) Shorepower

a. Eligible Marine Shorepower includes systems that enable a compatible vessel's main and auxiliary engines to remain off while the vessel is at berth. Components of such systems eligible for reimbursement are limited to cables, cable management systems, shore power coupler systems, distribution control systems, and power distribution. Marine shore power systems must comply with international shore power design standards (ISO/IEC/IEEE 80005-1-2012 High Voltage Shore Connection Systems or the IEC/PAS 80005-3:2014 Low Voltage Shore Connection Systems) and should be supplied with power sourced from the local utility grid. Eligible Marine Shorepower includes equipment for vessels that operate within the Great Lakes.

b. For Non-Government Owned Marine Shorepower, Beneficiaries may only draw funds from the Trust in the amount of up to 25% for the costs associated with the shore-side system, including cables, cable management systems, shore power coupler systems, distribution control systems, installation, and power distribution components.

c. For Government Owned Marine Shorepower, Beneficiaries may draw funds from the Trust in the amount of up to 100% for the costs associated with the shore-side system, including cables, cable management systems, shore power coupler systems, distribution control systems, installation, and power distribution components.

6. Class 4-7 Local Freight Trucks (Medium Trucks)

a. Eligible Medium Trucks include 1992-2009 engine model year class 4-7 Local Freight trucks, and for Beneficiaries that have State regulations that already require upgrades to 1992-2009 engine model year trucks at the time of the

proposed Eligible Mitigation Action, Eligible Trucks shall also include 2010-2012 engine model year class 4-7 Local Freight trucks.

b. Eligible Medium Trucks must be Scrapped.

c. Eligible Medium Trucks may be Repowered with any new diesel or Alternate Fueled or All-Electric engine, or may be replaced with any new diesel or Alternate Fueled or All-Electric vehicle, with the engine model year in which the Eligible Medium Trucks Mitigation Action occurs or one engine model year prior.

d. For Non-Government Owned Eligible Medium Trucks, Beneficiaries may draw funds from the Trust in the amount of:

    1. Up to 40% of the cost of a Repower with a new diesel or Alternate Fueled (e.g. CNG, propane, Hybrid) engine, including the costs of installation of such engine.

    2. Up to 25% of the cost of a new diesel or Alternate Fueled (e.g. CNG, propane, Hybrid) vehicle.

    3. Up to 75% of the cost of a Repower with a new All-Electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new All-Electric engine.

    4. Up to 75% of the cost of a new All-Electric vehicle, including charging infrastructure associated with the new All-Electric vehicle.

e. For Government Owned Eligible Medium Trucks, Beneficiaries may draw funds from the Trust in the amount of:

    1. Up to 100% of the cost of a Repower with a new diesel or Alternate Fueled (e.g. CNG, propane, Hybrid) engine, including the costs of installation of such engine.

    2. Up to 100% of the cost of a new diesel or Alternate Fueled (e.g. CNG, propane, Hybrid) vehicle.

    3. Up to 100% of the cost of a Repower with a new All-Electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new All-Electric engine.

    4. Up to 100% of the cost of a new All-Electric vehicle, including charging infrastructure associated with the new All-Electric vehicle.

7. Airport Ground Support Equipment

a. Eligible Airport Ground Support Equipment includes:

1. Tier 0, Tier 1, or Tier 2 diesel powered airport ground support equipment; and

2. Uncertified, or certified to 3 g/bhp-hr or higher emissions, spark ignition engine powered airport ground support equipment.

b. Eligible Airport Ground Support Equipment must be Scrapped.

c. Eligible Airport Ground Support Equipment may be Repowered with an All-Electric engine, or may be replaced with the same Airport Ground Support Equipment in an All-Electric form.

d. For Non-Government Owned Eligible Airport Ground Support Equipment, Beneficiaries may only draw funds from the Trust in the amount of:

1. Up to 75% of the cost of a Repower with a new All-Electric engine, including costs of installation of such engine, and charging infrastructure associated with such new All-Electric engine.

2. Up to 75% of the cost of a new All-Electric Airport Ground Support Equipment, including charging infrastructure associated with such new All-Electric Airport Ground Support Equipment.

e. For Government Owned Eligible Airport Ground Support Equipment, Beneficiaries may draw funds from the Trust in the amount of:

1. Up to 100% of the cost of a Repower with a new All-Electric engine, including costs of installation of such engine, and charging infrastructure associated with such new All-Electric engine.

2. Up to 100% of the cost of a new All-Electric Airport Ground Support Equipment, including charging infrastructure associated with such new All-Electric Airport Ground Support Equipment.

8. Forklifts and Port Cargo Handling Equipment

a. Eligible Forklifts includes forklifts with greater than 8000 pounds lift capacity.

b. Eligible Forklifts and Port Cargo Handling Equipment must be Scrapped.

c. Eligible Forklifts and Port Cargo Handling Equipment may be Repowered with an All-Electric engine, or may be replaced with the same equipment in an All-Electric form.

d. For Non-Government Owned Eligible Forklifts and Port Cargo Handling Equipment, Beneficiaries may draw funds from the Trust in the amount of:

1. Up to 75% of the cost of a Repower with a new All-Electric engine, including costs of installation of such engine, and charging infrastructure associated with such new All-Electric engine.

2. Up to 75% of the cost of a new All-Electric Forklift or Port Cargo Handling Equipment, including charging infrastructure associated with such new All-Electric Forklift or Port Cargo Handling Equipment.

e. For Government Owned Eligible Forklifts and Port Cargo Handling Equipment, Beneficiaries may draw funds from the Trust in the amount of:

1. Up to 100% of the cost of a Repower with a new All-Electric engine, including costs of installation of such engine, and charging infrastructure associated with such new All-Electric engine.

2. Up to 100% of the cost of a new All-Electric Forklift or Port Cargo Handling Equipment, including charging infrastructure associated with such new All-Electric Forklift or Port Cargo Handling Equipment.

9. Light Duty Zero Emission Vehicle Supply Equipment. Each Beneficiary may use up to fifteen percent (15%) of its allocation of Trust Funds on the costs necessary for, and directly connected to, the acquisition, installation, operation and maintenance of new light duty zero emission vehicle supply equipment for projects as specified below. Provided, however, that Trust Funds shall not be made available or used to purchase or rent real-estate, other capital costs (e.g., construction of buildings, parking facilities, etc.) or general maintenance (i.e., maintenance other than of the Supply Equipment).

a. Light duty electric vehicle supply equipment includes Level 1, Level 2 or fast charging equipment (or analogous successor technologies) that is located in a public place, workplace, or multi-unit dwelling and is not consumer light duty electric vehicle supply equipment (i.e., not located at a private residential dwelling that is not a multi-unit dwelling).

b. Light duty hydrogen fuel cell vehicle supply equipment includes hydrogen dispensing equipment capable of dispensing hydrogen at a pressure of 70 megapascals (MPa) (or analogous successor technologies) that is located in a public place.

c. Subject to the 15% limitation above, each Beneficiary may draw funds from the Trust in the amount of:

1. Up to 100% of the cost to purchase, install and maintain eligible light duty electric vehicle supply equipment that will be available to the public at a Government Owned Property.

2. Up to 80% of the cost to purchase, install and maintain eligible light duty electric vehicle supply equipment that will be available to the public at a Non-Government Owned Property.

3. Up to 60% of the cost to purchase, install and maintain eligible light duty electric vehicle supply equipment that is available at a workplace but not to the general public.

4. Up to 60% of the cost to purchase, install and maintain eligible light duty electric vehicle supply equipment that is available at a multi-unit dwelling but not to the general public.

5. Up to 33% of the cost to purchase, install and maintain eligible light duty hydrogen fuel cell vehicle supply equipment capable of dispensing at least 250 kg/day that will be available to the public.

6. Up to 25% of the cost to purchase, install and maintain eligible light duty hydrogen fuel cell vehicle supply equipment capable of dispensing at least 100 kg/day that will be available to the public.

10. Diesel Emission Reduction Act (DERA) Option. Beneficiaries may use Trust Funds for their non-federal voluntary match, pursuant to Title VII, Subtitle G, Section 793 of the DERA Program in the Energy Policy Act of 2005 (codified at 42 U.S.C. § 16133), or Section 792 (codified at 42 U.S.C. § 16132) in the case of Tribes, thereby allowing Beneficiaries to use such Trust Funds for actions not specifically enumerated in this Appendix D-2, but otherwise eligible under DERA pursuant to all DERA guidance documents available through the EPA. Trust Funds shall not be used to meet the non-federal mandatory cost share requirements, as defined in applicable DERA program guidance, of any DERA grant.

Eligible Mitigation Action Administrative Expenditures

For any Eligible Mitigation Action, Beneficiaries may use Trust Funds for actual administrative expenditures (described below) associated with implementing such Eligible Mitigation Action, but not to exceed 15% of the total cost of such Eligible Mitigation Action. The 15% cap includes the aggregated amount of eligible administrative expenditures incurred by the Beneficiary and any third-party contractor(s).

1. Personnel including costs of employee salaries and wages, but not consultants.
2. Fringe Benefits including costs of employee fringe benefits such as health insurance, FICA, retirement, life insurance, and payroll taxes.
3. Travel including costs of Mitigation Action-related travel by program staff, but does not include consultant travel.
4. Supplies including tangible property purchased in support of the Mitigation Action that will be expensed on the Statement of Activities, such as educational publications, office supplies, etc. Identify general categories of supplies and their Mitigation Action costs.
5. Contractual including all contracted services and goods except for those charged under other categories such as supplies, construction, etc. Contracts for evaluation and consulting services and contracts with sub-recipient organizations are included.
6. Construction including costs associated with ordinary or normal rearrangement and alteration of facilities.
7. Other costs including insurance, professional services, occupancy and equipment leases, printing and publication, training, indirect costs, and accounting.

Definitions/Glossary of Terms

"Airport Ground Support Equipment" shall mean vehicles and equipment used at an airport to service aircraft between flights.

"All-Electric" shall mean powered exclusively by electricity provided by a battery, fuel cell, or the grid.

"Alternate Fueled" shall mean an engine, or a vehicle or piece of equipment which is powered by an engine, which uses a fuel different from or in addition to gasoline fuel or diesel fuel (e.g., CNG, propane, diesel-electric Hybrid).

"Certified Remanufacture System or Verified Engine Upgrade" shall mean engine upgrades certified or verified by EPA or CARB to achieve a reduction in emissions.

"Class 4-7 Local Freight Trucks (Medium Trucks)" shall mean trucks, including commercial trucks, used to deliver cargo and freight (e.g., courier services, delivery trucks, box trucks moving freight, waste haulers, dump trucks, concrete mixers) with a Gross Vehicle Weight Rating (GVWR) between 14,001 and 33,000 lbs.

"Class 4-8 School Bus, Shuttle Bus, or Transit Bus (Buses)" shall mean vehicles with a Gross Vehicle Weight Rating (GVWR) greater than 14,001 lbs used for transporting people. See definition for School Bus below.

"Class 8 Local Freight, and Port Drayage Trucks (Eligible Large Trucks)" shall mean trucks with a Gross Vehicle Weight Rating (GVWR) greater than 33,000 lbs used for port drayage and/or freight/cargo delivery (including waste haulers, dump trucks, concrete mixers).

"CNG" shall mean Compressed Natural Gas.

"Drayage Trucks" shall mean trucks hauling cargo to and from ports and intermodal rail yards.

"Forklift" shall mean nonroad equipment used to lift and move materials short distances; generally includes tines to lift objects. Eligible types of forklifts include reach stackers, side loaders, and top loaders.

"Freight Switcher" shall mean a locomotive that moves rail cars around a rail yard as compared to a line-haul engine that move freight long distances.

"Generator Set" shall mean a switcher locomotive equipped with multiple engines that can turn off one or more engines to reduce emissions and save fuel depending on the load it is moving.

"Government" shall mean a State or local government agency (including a school district, municipality, city, county, special district, transit district, joint powers authority, or port authority, owning fleets purchased with government funds), and a tribal government or native village. The term 'State' means the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

"Gross Vehicle Weight Rating (GVWR)" shall mean the maximum weight of the vehicle, as specified by the manufacturer. GVWR includes total vehicle weight plus fluids, passengers, and cargo.

Class 1: < 6000 lb
Class 2: 6001-10,000 lb
Class 3: 10,001-14,000 lb
Class 4: 14,001-16,000 lb
Class 5: 16,001-19,500 lb
Class 6: 19,501-26,000 lb
Class 7: 26,001-33,000 lb
Class 8: > 33,001 lb

"Hybrid" shall mean a vehicle that combines an internal combustion engine with a battery and electric motor.

"Infrastructure" shall mean the equipment used to enable the use of electric powered vehicles (e.g., electric vehicle charging station).

"Intermodal Rail Yard" shall mean a rail facility in which cargo is transferred from drayage truck to train or vice-versa.

"Port Cargo Handling Equipment" shall mean rubber-tired gantry cranes, straddle carriers, shuttle carriers, and terminal tractors, including yard hostlers and yard tractors that operate within ports.

"Plug-in Hybrid Electric Vehicle (PHEV)" shall mean a vehicle that is similar to a Hybrid but is equipped with a larger, more advanced battery that allows the vehicle to be plugged in and recharged in addition to refueling with gasoline. This larger battery allows the car to be driven on a combination of electric and gasoline fuels.

"Repower" shall mean to replace an existing engine with a newer, cleaner engine or power source that is certified by EPA and, if applicable, CARB, to meet a more stringent set of engine emission standards. Repower includes, but is not limited to, diesel engine replacement with an engine certified for use with diesel or a clean alternate fuel, diesel engine replacement with an electric power source (grid, battery), diesel engine replacement with a fuel cell, diesel engine replacement with an electric generator(s) (genset), diesel engine upgrades in Ferries/Tugs with an EPA Certified Remanufacture System, and/or diesel engine upgrades in Ferries/Tugs with an EPA Verified Engine Upgrade. All-Electric and fuel cell Repowers do not require EPA or CARB certification.

"School Bus" shall mean a Class 4-8 bus sold or introduced into interstate commerce for purposes that include carrying students to and from school or related events. May be Type A-D.

"Scrapped" shall mean to render inoperable and available for recycle, and, at a minimum, to specifically cut a 3-inch hole in the engine block for all engines. If any Eligible Vehicle will be replaced as part of an Eligible project, scrapped shall also include the disabling of the chassis by cutting the vehicle's frame rails completely in half.

"Tier 0, 1, 2, 3, 4" shall refer to corresponding EPA engine emission classifications for nonroad, locomotive and marine engines.

"Tugs" shall mean dedicated vessels that push or pull other vessels in ports, harbors, and inland waterways (e.g., tugboats and towboats).

"Zero Emission Vehicle (ZEV)" shall mean a vehicle that produces no emissions from the on-board source of power (e.g., All-Electric or hydrogen fuel cell vehicles).

APPENDIX D-3
Certification for Beneficiary Status
Under Environmental Mitigation Trust Agreement

APPENDIX D-3

CERTIFICATION FOR BENEFICIARY STATUS UNDER ENVIRONMENTAL MITIGATION TRUST AGREEMENT

1. Identity of Lead Agency

_____("Beneficiary"), by and through the Office of the Governor (or, if not a State, the analogous Chief Executive) of the Appendix D-1 entity on whose behalf the Certification Form is submitted: (i) hereby identifies _____ ("Lead Agency") as the lead agency for purposes of the Beneficiary's participation in the Environmental Mitigation Trust ("Trust") as a Beneficiary; and (ii) hereby certifies that the Lead Agency has the delegated authority to act on behalf of and legally bind the Beneficiary for purposes of the Trust.

2. Submission to Jurisdiction

The Beneficiary expressly consents to the jurisdiction of the U.S. District Court for the Northern District of California for all matters concerning the interpretation or performance of, or any disputes arising under, the Trust and the Environmental Mitigation Trust Agreement ("Trust Agreement"). The Beneficiary's agreement to federal jurisdiction for this purpose shall not be construed as consent to federal court jurisdiction for any other purpose.

3. Agreement to be Bound by the Trust Agreement and Consent to Trustee Authority

The Beneficiary agrees, without limitation, to be bound by the terms of the Trust Agreement, including the allocations of the Trust Assets set forth in Appendix D-1 to Appendix D of the Consent Decree, as such allocation may be adjusted in accordance with the Trust Agreement. The Beneficiary further agrees that the Trustee has the authorities set forth in the Trust Agreement, including but not limited to the authority: (i) to approve, deny, request modifications, or request further information related to any request for funds pursuant to the Trust Agreement; and (ii) to implement the Trust Agreement in accordance with its terms.

4. Certification of Legal Authority

The Beneficiary certifies that: (i) it has the authority to sign and be bound by this Certification Form; (ii) the Beneficiary's laws do not prohibit it from being a Trust Beneficiary; (iii) either (a) the Beneficiary's laws do not prohibit it from receiving or directing payment of funds from the Trust, or (b) if the Beneficiary does not have the authority to receive or direct payment of funds from the Trust, then prior to requesting any funds from the Trust, the Beneficiary shall obtain full legal authority to receive and/or direct payments of such funds within two years of submitting this Certification Form; and (iv) if the Beneficiary does not have the authority to receive or direct payment of funds from the Trust and fails to demonstrate that it has obtained such legal authority within two years of submitting this Certification Form, it shall become an Excluded Entity under

the Trust Agreement and its initial allocation shall be redistributed among the Beneficiaries pursuant to subparagraph 5.0.1 of the Trust Agreement.

5. Certification of Legal Compliance and Disposition of Unused Funds

The Beneficiary certifies and agrees that, in connection with all actions related to the Trust and the Trust Agreement, the Beneficiary has followed and will follow all applicable law and will assume full responsibility for its decisions in that regard. The Beneficiary further certifies that all funds received on account of any Eligible Mitigation Action request that are not used for the Eligible Mitigation Action shall be returned to the Trust for credit to the Beneficiary's allocation.

6. Waiver of Claims for Injunctive Relief under Environmental or Common Laws

Upon becoming a Beneficiary, the Beneficiary, on behalf of itself and all of its agencies, departments, offices, and divisions, hereby expressly waives, in favor of the parties to the Consent Decree (including the Settling Defendants), all claims for injunctive relief to redress environmental injury caused by the 2.0 Liter Subject Vehicles, whether based on the environmental or common law within its jurisdiction. This waiver is binding on all agencies, departments, offices, and divisions of the Beneficiary asserting, purporting to assert, or capable of asserting such claims. This waiver does not waive, and the Beneficiary expressly reserves, its rights, if any, to seek fines or penalties. No waiver submitted by any Indian tribe shall be effective unless and until such Indian tribe actually receives Trust Funds.

7. Publicly Available Information

The Beneficiary certifies that it will maintain and make publicly available all documentation and records: (i) submitted by it in support of each funding request; and (ii) supporting all expenditures of Trust Funds by the Beneficiary, each until the Consent Decree Termination Date, unless the laws of the Beneficiary require a longer record retention period. Together herewith, the Beneficiary attaches an explanation of: (i) the procedures by which the records may be accessed, which shall be designed to support access and limit burden for the general public; (ii) for the Beneficiary Mitigation Plan required under Paragraph 4.1 of the Trust Agreement, the procedures by which public input will be solicited and considered; and (iii) a description of whether and the extent to which the certification in this Paragraph 7 is subject to the Beneficiary's applicable laws governing the publication of confidential business information and personally identifiable information.

8. Notice of Availability of Mitigation Action Funds

The Beneficiary certifies that, not later than 30 Days after being deemed a Beneficiary pursuant to the Trust Agreement, the Beneficiary will provide a copy of the Trust Agreement with Attachments to the U.S. Department of the Interior, the U.S. Department of Agriculture, and any other Federal agency that has custody, control or management of land within or contiguous to the territorial boundaries of the Beneficiary and has by then notified the Beneficiary of its interest hereunder, explaining that the Beneficiary may request Eligible Mitigation Action funds for use

on lands within that Federal agency's custody, control or management (including but not limited to Clean Air Act Class I and II areas), and setting forth the procedures by which the Beneficiary will review, consider, and make a written determination upon each such request.

9. Registration of 2.0 Liter Subject Vehicles

The Beneficiary certifies, for the benefit of the parties to the Consent Decree (including the Settling Defendants) and the owners from time-to-time of 2.0 Liter Subject Vehicles, that upon becoming a Beneficiary, the Beneficiary:

(a) Shall not deny registration to any Subject Vehicle based solely on:
   i. The presence of a defeat device or AECD covered by the resolution of claims in the Consent Decree; or
   ii. Emissions resulting from such a defeat device or AECD; or
   iii. The availability of an Approved Emissions Modification or the Buyback, Lease Termination, and Owner/Lessee Payment Program.

(b) Shall not deny registration to any Subject Vehicle that has received an Approved Emissions Modification based solely on:
   i. The fact that the vehicle received the Approved Emissions Modification; or
   ii. Emissions resulting from the modification (including but not limited to the anticipated emissions described in Appendix B to the Consent Decree); or
   iii. Other emissions-related vehicle characteristics that result from the modification; or
   iv. The availability of an Approved Emissions Modification or the Buyback, Lease Termination, and Owner/Lessee Payment Program.

(c) May identify 2.0 Liter Subject Vehicles as having received, or not received, the Approved Emissions Modification on the basis of VIN-specific information provided to the Beneficiary by the Settling Defendants.

(d) Notwithstanding the foregoing, the Beneficiary may deny registration to any Subject Vehicle on the basis that the Subject Vehicle fails to meet EPA's or the Beneficiary's failure criteria for the onboard diagnostic (OBD) inspection; or on other grounds authorized or required under applicable federal regulations (including an approved State Implementation Plan) or under Section 209 or 177 of the Clean Air Act and not explicitly excluded in subparagraphs 9(a)-(b).

FOR THE GOVERNOR (or, if not a State, the analogous Chief Executive):

Signature: _____

Name: _____
Title: _____
Date: _____
Location: _____

[FOR OTHER REQUIRED SIGNATORIES]:

Signature: _____

Name: _____
Title: _____
Date: _____
Location: _____

[FOR OTHER REQUIRED SIGNATORIES]:

Signature: _____

Name: _____
Title: _____
Date: _____
Location: _____