

**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 (“NO<sub>x</sub>”) 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<sub>x</sub> 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.

<b>Model Year</b>	<b>EPA Test Group</b>	<b>Make and Model(s)</b>
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.