

Court File No. CV-16-564517-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

UDO RENK

Plaintiff

-and-

AUDI CANADA INC., AUDI AKTIENGESELLSCHAFT,
AUDI OF AMERICA INC., VW CREDIT CANADA INC.,
PORSCHE CARS CANADA LTD., BENTLEY MOTORS CANADA LTD,
VOLKSWAGEN GROUP CANADA INC. and VOLKSWAGEN AKTIENGESELLSCHAFT
Defendants

Court File No. 500-06-000828-166

SUPERIOR COURT OF QUÉBEC

BETWEEN:

STÉPHANE GAGNON and JACQUES BOUCHARD

Petitioners

-and-

AUDI CANADA INC., AUDI AG,
VOLKSWAGEN GROUP CANADA INC., VOLKSWAGEN AG,
PORSCHE CARS CANADA, LTD. and BENTLEY MOTORS CANADA, LTD.

Respondents

TRANSMISSION/FUEL CONSUMPTION SETTLEMENT AGREEMENT
(the “**Settlement Agreement**”)
Dated as of September 4, 2020

TABLE OF CONTENTS

	Page
1. INTRODUCTION	1
2. DEFINITIONS	1
3. FOR SETTLEMENT PURPOSES	7
4. APPROVAL OF SETTLEMENT AGREEMENT	8
5. Compensation for SETTLEMENT class members	8
6. RELEASE AND WAIVER	11
7. claims administration	15
8. PAYMENT OF SETTLEMENT FUND	17
9. COOPERATION of the parties	18
10. NOTICE to settlement class	18
11. opt-out Requests and settlement objections/support	19
12. COUNSEL FEES and class counsel's requests for honoraria	20
13. TERMINATION OF SETTLEMENT AGREEMENT	21
14. OTHER TERMS AND CONDITIONS	23

1. INTRODUCTION

The Parties agree to settle the Actions, and all claims on behalf of the Settlement Class, related to the Audi-, Bentley-, Porsche-, and Volkswagen-brand gasoline vehicles, as identified in Schedule “A”, originally sold or leased in Canada on or before the Pre-Approval Notice Date of this Settlement Agreement.

The Actions seek relief on behalf of consumers on the basis that software used to manage the vehicle transmissions in these gasoline vehicles resulted in higher fuel consumption and CO2 emissions than originally represented.

Following extensive negotiations, the Parties agreed on the terms and conditions set forth in this Settlement Agreement.

The matters addressed in this Settlement Agreement relate solely to proceedings in Canada. Nothing in this Settlement Agreement is intended to apply to or affect the Defendants’ obligations in any jurisdiction outside Canada. In addition, this Settlement Agreement makes no factual findings or conclusions of law. Nothing in this Settlement Agreement is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any of the Released Claims, or of any wrongdoing or liability of any Released Parties.

2. DEFINITIONS

The capitalized terms in this Settlement Agreement have the following meanings, unless this Settlement Agreement specifically provides otherwise. Other capitalized terms used in this Settlement Agreement that are not defined in this Section 2 shall have the meanings ascribed to them elsewhere in this Settlement Agreement.

2.1 “**Actions**” means, collectively, *Udo Renk v. Audi Canada Inc. et al.*, Ontario Superior Court of Justice, Court File No. CV-16-564517-00CP (the “**Ontario Action**”)¹ and *Stéphane Gagnon et al. v. Audi Canada Inc. et al.*, Superior Court of Québec, Court File No. 500-06-000828-166 (the “**Québec Action**”)².

2.2 “**Administration Expenses**” means the reasonable costs, plus applicable taxes, incurred to administer the Claims Program, including the Administrator’s fees, the costs to administer the Notice

¹ The title of proceedings above for the Ontario Action reflects the parties in the proposed Second Fresh as Amended Claim.

² Petitioner Stéphane Gagnon, who is not a Settlement Class Member, will be discontinuing his legal proceeding against the Defendants, who will accept his discontinuance, the whole without costs. Petitioner Jacques Bouchard is the Settlement Class Representative for the Québec Action.

Program and opt-outs and objections/support, the costs to develop and host the Claims Portal and Settlement Website, English to French translation costs and any other expenses incurred to administer the Settlement Agreement and Settlement Fund. Pursuant to Section 3.3, the Administration Expenses shall be attributed 80.2% to the Ontario Action and 19.8% to the Québec Action.

2.3 “**Administrator**” means the third-party agreed to by the Parties and appointed by the Courts in the Actions to administer and oversee the Claims Program, Notice Program, opt-outs and objections/support.

2.4 “**Approval Order**” means a Court’s order and/or judgment approving this Settlement Agreement.

2.5 “**Audi**” means Audi Canada, Inc., Audi of America Inc. and AUDI AG.

2.6 “**Bentley**” means Bentley Motors Canada Ltd.

2.7 “**Claim**” means the claim of a Claimant, which must be submitted on a Claim Form with Proof of Ownership/Lease by the Claims Submission Deadline.

2.8 “**Claimant**” means a potential Settlement Class Member (including individuals and entities), or his or her or its representative, who submits a Claim.

2.9 “**Claim Form**” means the paper or electronic form that must be completed and submitted in order to make a Claim.

2.10 “**Claims Period**” means the period during which Claims can be submitted.

2.11 “**Claims Portal**” means the English and French online portal available during the Claims Period, which will be designed and administered by the Administrator, and include a matrix approved by the Parties to identify Eligible Vehicles and estimate a Settlement Class Member’s maximum potential payment. The Claims Portal shall be accessible from the Settlement Website.

2.12 “**Claims Program**” means a reasonable program that the Administrator shall use to develop and disseminate the Claim Form and the list of Proofs of Ownership/Lease, to receive and assess the eligibility of Claims, and to determine and distribute payments to Eligible Claimants.

2.13 “**Claims Submission Deadline**” means the deadline by which a Settlement Class Member must submit a Claim to the Administrator. The Claims Submission Deadline will be one-hundred and

twenty (120) days from the start of the Claims Period. By agreement between the Administrator and Class Counsel, the Claims Submission Deadline may be extended. Class Counsel and the Administrator shall agree to extend the Claims Submission Deadline if, in their opinions, there are reasonable and material grounds for doing so, doing so will not adversely affect the fair and efficient administration of the Settlement Fund and it is in the best interests of the Settlement Class to do so.

2.14 “**Class Counsel**” means National Class Counsel and Québec Class Counsel, collectively.

2.15 “**Combined Delta**” means the difference between the original and restated combined fuel rating of the Eligible Vehicles that is expressed in litres per 100 km, as set out in Schedule “A” to this Settlement Agreement.

2.16 “**Counsel Fees**” means such funds/amounts as may be approved or awarded by the Courts to Class Counsel as the reasonable compensation/percentage for their fees, disbursements and applicable taxes in respect of the Actions and the settlement thereof, which funds/amounts shall be approved, awarded and determined in accordance with the existing caselaw and principles generally applied by the Courts in the context of the resolution of the fees, disbursements and taxes payable to class counsel in class actions.

2.17 “**Court(s)**” means, with respect to the Ontario Action, the Ontario Superior Court of Justice and, with respect to the Québec Action, the Superior Court of Québec.

2.18 “**CPF**” means the Class Proceedings Fund.

2.19 “**CPF Payments**” means the payments to the CPF of the statutory 10% levy and to reimburse expenses paid by the CPF to National Class Counsel. For clarity, the 10% levy will be assessed on the payments available to all Eligible Claimants other than those residing in Québec (i.e. after the payment of the aforesaid CPF expense reimbursement, the Ontario Action share of Administration Expenses and Counsel Fees of National Class Counsel from the \$3,969,900 attributed from the Settlement Fund to the Ontario Action (as described in Section 3.3)). Such non-Québec Eligible Claimants represent 80.2% of the Settlement Class calculated on the basis that 80.2% of the Eligible Vehicles involved a first retail or fleet sale in Canada outside Québec. Because the payment of the 10% levy will be assessed on the payment amount available for take-up by non-Québec Eligible Claimants, and not actual distributions to those Settlement Class Members, no additional payment to the CPF will be made from any remainder in the Settlement Fund.

2.20 “**Date of First Canadian Sale**” means the date on which the vehicle was first sold from an Audi, Bentley, Porsche or Volkswagen-authorized dealership in Canada, or leased from VCCI or PFSC, to a retail or fleet customer. The date must be on or before the Pre-Approval Notice Date.

2.21 “**Defendants**” means Audi, Bentley, Porsche and VW.

2.22 “**Effective Date**” means the date on which the last of the two Approval Orders is entered by a Court.

2.23 “**Eligible Claimant**” means a Settlement Class Member who has submitted a Claim and has been determined by the Administrator to be eligible to receive a payment under the Settlement Agreement.

2.24 “**Eligible Vehicle**” means gasoline-powered vehicles with a Date of First Canadian Sale of the make, model, model year, and engine capacity listed in Schedule “A” to this Settlement Agreement.

2.25 “**Escrow Agent**” means the person agreed to by the Parties to hold and administer the Trust Account.

2.26 “**Excluded Persons**” means the entities and individuals that shall be excluded from the Settlement Class. The following entities and individuals are excluded from the Settlement Class:

- (a) The Defendants’ officers, directors and employees and participants in the Defendants’ internal leasing programs; the Defendants’ affiliates and those affiliates’ officers, directors and employees;
- (b) Distributors of the Eligible Vehicles or parts therefrom, such as dealerships, insurance companies, and salvage yards, and those distributors’ officers, directors and employees;
- (c) Judicial officers assigned to the Actions and their immediate family members and associated court staff; and
- (d) All those otherwise in the Settlement Class who or which timely and properly exclude themselves from the Settlement Class in accordance with Section 11.

2.27 “**Maximum Per Vehicle Payments**” means the maximum total amount of Claim payments available per Eligible Vehicle, as detailed in Schedule “A” of this Settlement Agreement.

2.28 “**National Class Counsel**” means the law firms listed as lawyers of record in the Ontario Action, namely Roy O’Connor LLP and Koskie Minsky LLP.

2.29 “**Notice Program**” means a reasonable notice program for distributing Settlement Notices in English and French that reflects the availability of direct notice to Settlement Class Members.

2.30 “**Objection/Support Deadline**” means the deadline by which a Settlement Class Member’s objection to or support of the Settlement Agreement must be received by the Administrator in order to be timely and valid. The Objection/Support Deadline shall be sixty (60) days after the Pre-Approval Notice Date.

2.31 “**Opt-Out Deadline**” means the last day that a Settlement Class Member may opt out of the Settlement Class. The Opt-Out Deadline shall be sixty (60) days after the Pre-Approval Notice Date.

2.32 “**Parties**” means the Defendants and the Settlement Class Representatives, collectively, and “**Party**” means one of them.

2.33 “**PFSC**” means Porsche Financial Services Canada, Inc., and includes PFSC GP dba Bentley Financial Services Canada.

2.34 “**Porsche**” means Porsche Cars Canada, Ltd.

2.35 “**Pre-Approval/Approval Motions**” means all motions or applications brought in an Action and before a Court by Class Counsel as part of the process of seeking an Approval Order, including certification or authorization of the Action as a class proceeding for settlement purposes. In addition, the Pre-Approval/Approval Motions shall include requests to dismiss and discontinue the Actions without costs to any Party and with no discontinuance notice obligations for the Defendants.

2.36 “**Pre-Approval Notice**” means the English and French versions of the summary and long-form notices.

2.37 “**Pre-Approval Notice Date**” means the date on which the Pre-Approval Notice in summary form is first distributed in Canada.

2.38 “**Proof of Ownership/Lease**” means, except as otherwise accepted by the Administrator as objective verification, (a) in the case of an owner of an Eligible Vehicle, a copy of the bill of sale for the purchase plus, in the case of current ownership, a copy of the vehicle’s registration(s) covering the period from the Pre-Approval Notice Date through the submission date of the Claim, and, in the case of former

ownership, a copy of the bill of sale for the trade-in or sale or a copy of the insurance settlement if the vehicle was a write-off, and (b) in the case of an Eligible Vehicle leased from VCCI or PFSC, a copy of the lease agreement and, if the lease has matured, the end of lease invoice.

2.39 “**Québec Class Counsel**” means the law firm listed as lawyers of record in the Québec Action, namely Consumer Law Group Inc.

2.40 “**Settlement Approval Hearing**” means the hearing or hearings before a Court for the purpose of determining whether to issue an Approval Order.

2.41 “**Settlement Class**” means, for purposes of this Settlement Agreement only, a class of all persons (including individuals and entities), except for Excluded Persons, who reside in Canada or the United States and, as of the Pre-Approval Notice Date, own or owned an Eligible Vehicle or, alternatively, lease or leased an Eligible Vehicle from VCCI or PFSC.

2.42 “**Settlement Class Member**” means a member of the Settlement Class.

2.43 “**Settlement Class Representatives**” means representatives of the Settlement Class proposed by National Class Counsel and Québec Class Counsel in the Ontario Action and the Québec Action, respectively.

2.44 “**Settlement Fund**” means the CAD \$4.95 million to be paid by or on behalf of the Defendants into the Trust Account as consideration for settlement of the Actions as reflected in this Settlement Agreement. The Settlement Fund shall be all-inclusive of all Claims by Eligible Claimants, Administration Expenses, Counsel Fees, CPF Payments, and any other costs and interest. Under no circumstances will the Defendants be required to pay more than the Settlement Fund. There will be no reversion of the Settlement Fund to the Defendants.

2.45 “**Settlement Notices**” means the English and French versions of the Pre-Approval Notice and any other notice provided for in the Notice Program.

2.46 “**Settlement Website**” means the English and French website maintained by the Administrator for the purposes of providing Settlement Class Members with information on the Settlement Agreement, the Settlement Notices, the Claims Program and access to the Claims Portal.

2.47 “**Transmission/Fuel Consumption Matter**” means (1) the installation, presence, design, manufacture, assembly, testing, or development of software that used transmission shift maps or otherwise

caused the transmission to operate in a manner in the certification and/or fuel consumption testing process in any Eligible Vehicle that differed from transmission shift maps used or transmission operation in basic or dynamic shift programs (the “**Transmission Warm-Up Mode**”); (2) the marketing or advertisement of the fuel consumption in the Eligible Vehicles to the extent the fuel consumption was impacted by the Transmission Warm-Up Mode; and/or (3) the subject matter of the Actions.

2.48 “**Trust Account**” means an interest-bearing trust account at a Canadian Schedule 1 bank in Ontario under the control of the Escrow Agent for the benefit of Settlement Class Members.

2.49 “**VCCI**” means VW Credit Canada, Inc., also known as Volkswagen Finance and Audi Finance.

2.50 “**VW**” means, individually and collectively, Volkswagen Group Canada Inc., VCCI and Volkswagen AG.

3. FOR SETTLEMENT PURPOSES

3.1 **No Admission of Liability.** The Settlement Agreement, and any and all negotiations, documents, discussions and proceedings associated with the Settlement Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Defendants, or of the truth of any of the claims or allegations contained in the Actions or any other pleading filed by Class Counsel.

3.2 **Agreement Not Evidence.** The Settlement Agreement, and any and all negotiations, documents, discussions and proceedings associated with the Settlement Agreement, and any action taken to carry out the Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future action or proceeding, except in a proceeding to approve and/or enforce the Settlement Agreement, or to defend against the assertion of Released Claims (as defined in Section 6), or as otherwise required by law.

3.3 **Apportionment of Settlement Fund.** As to the portions of the Settlement Fund attributable to and for the Québec Action and Ontario Action, Class Counsel stipulate, and the Defendants accept, that 80.2% of the \$4.95 million total Settlement Fund (\$3,969,900) will be attributed to and available for the settlement of the Ontario Action, and 19.8% of the \$4.95 million (\$980,100) will be attributed to and available for the settlement of the Québec Action. The percentages above were applied by Class Counsel based on the location of the first retail or fleet sale of each of the Eligible Vehicles in Canada. In

particular, 80.2% of the Eligible Vehicles involved a first retail or fleet sale in Canada outside Québec, while 19.8% of the Eligible Vehicles involved a first retail or fleet sale in Québec.

4. APPROVAL OF SETTLEMENT AGREEMENT

4.1 The Parties shall use their best efforts to obtain prompt approval of this Settlement Agreement by the Courts, including through Class Counsel's submission of Pre-Approval/Approval Motions.

4.2 The Parties agree that the Pre-Approval/Approval Motions shall seek certification or authorization of an Action for settlement purposes only. The Defendants retain all and do not waive any rights to assert that certification or authorization of a class in the Actions for any other purpose is not appropriate.

4.3 The Parties agree that the Pre-Approval/Approval Motions submitted to each Court shall seek approval of the Notice Program and an Approval Order, as the case may be, conditional upon a complementary order being made by the other Court. To the extent that a proposed Approval Order is submitted to a Court, the Parties agree to collaborate and cooperate on its form.

4.4 Except as otherwise agreed to by the Parties, a Pre-Approval/Approval Motion seeking approval of the Notice Program and certification/authorization for settlement purposes shall be submitted to each of the Courts in a manner that seeks to preserve the confidentiality of the Settlement Agreement until such time as the hearing of the motion before a Court, and then any disclosures shall be made only as are necessary to have the motion heard. If approval of the Notice Program and certification/authorization for settlement purposes are granted in both Actions, disclosure by the Parties of this Settlement Agreement and the Pre-Approval Notice shall be consistent with Section 10.

4.5 This Settlement Agreement shall only become final on the Effective Date.

5. COMPENSATION FOR SETTLEMENT CLASS MEMBERS

In addition to all of the other consideration set forth in this Settlement Agreement, Settlement Class Members shall have the right to obtain compensation, as detailed herein.

5.1 This Settlement Agreement provides cash compensation for additional fuel costs calculated based on the Combined Delta. The Maximum Per Vehicle Payments for the Eligible Vehicles, assuming the maximum 96-month possession period, are set out in Schedule "A" to this Settlement Agreement.

- (a) **Active Leases.** Eligible Claimants who hold active leases with VCCI or PFSC as of the Pre-Approval Notice Date will be entitled to compensation for the full duration of their lease.
- (b) **Current Owners.** Eligible Claimants who owned their Eligible Vehicle as of the Pre-Approval Notice Date will be entitled to compensation for the months they owned their Eligible Vehicle or previously leased it from VCCI or PFSC and, subject to proof of continued ownership as of the date of their Claim, any future remaining months up to a total of 96 months from the Eligible Vehicle's Date of First Canadian Sale.
- (c) **Prior Owners and Prior Lessees.** If Eligible Claimants either leased their Eligible Vehicle with such lease having ended before the Pre-Approval Notice Date, and/or purchased and sold their Eligible Vehicle before the Pre-Approval Notice Date, such Eligible Claimants will be entitled to a payment based on the number of months they possessed it, up to a total of 96 months from the Eligible Vehicle's Date of First Canadian Sale.

5.2 **Limitations on Settlement Compensation**

- (a) Claim payments from the Settlement Fund will be paid out to Settlement Class Members proportionately based on the number of participating Eligible Claimants up to the amount of the Maximum Per Vehicle Payments. Under no circumstances shall the total payments for all Claims for the same Eligible Vehicle exceed compensation for 96 months from the Eligible Vehicle's Date of First Canadian Sale.
- (b) In the event that 96 months have already passed since the Date of First Canadian Sale of an Eligible Vehicle, Eligible Claimants for that same Eligible Vehicle will share the Maximum Per Vehicle Payments on a *pro rata* basis in accordance with the duration of their respective possession of the Eligible Vehicle.
- (c) If the total amount of Claims to be paid out to Eligible Claimants exceeds the funds available in the Settlement Fund after deducting Counsel Fees and all costs and interest including with respect to Administration Expenses as well as the CPF Payments, then all payments to Eligible Claimants will be reduced *pro rata* to the total amount that is available. Under this *pro rata* distribution, the portions of the Maximum Per Vehicle Payments of all Eligible Claimants will be aggregated, and Eligible Claimants will each be

entitled to a payment based on the relative share of their portion of the Maximum Per Vehicle Payment for their Eligible Vehicle.

5.3 Eligibility for Settlement Compensation. As part of the Claims Program, a Settlement Class Member shall be eligible for a payment in this Settlement Agreement provided that such Settlement Class Member: (1) completes and timely submits to the Administrator a Claim Form with Proof of Ownership/Lease by the Claims Submission Deadline; and (2) has a Claim that is eligible for payment.

5.4 Payment to Eligible Claimants. If accepted for payment, the Administrator shall pay a Claim via issuance of a cheque sent by regular mail to the mailing address provided by the Eligible Claimant. Cheques not cashed by an Eligible Claimant within one-hundred and eighty (180) days of issuance will become stale-dated and not eligible for redemption. There will be no obligation to reissue stale-dated cheques.

5.5 Remainder Funds. It may be the case that funds will remain in the Settlement Fund after deducting Counsel Fees and all costs and interest including with respect to Administration Expenses, CPF Payments and payments to Eligible Claimants. An assessment of any remainder of the Settlement Fund will be determined after the expiry of at least one-hundred and eighty (180) days following payment distributions to Eligible Claimants to capture any uncashed stale-dated cheques.

- (a) To the extent there is any remainder in the respective amounts attributed to and available from the Settlement Fund for the Ontario Action or Québec Action, those excess funds shall be pooled together and paid to a third-party environmental charity to be agreed to by the Defendants and, through Class Counsel, the Settlement Class Representatives, and approved by the Courts, less any amounts payable to Québec's *Fonds d'aide aux actions collectives*.
- (b) For the purposes of calculating the amount payable to the *Fonds d'aide aux actions collectives*, the percentage prescribed by the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, CQLR c R-2.1, r 2, shall be multiplied by the remainder amount from the \$980,100 attributed to and available for the Québec Action. The \$980,100 represents the percentage of the Eligible Vehicles with a first retail or fleet sale in Québec as applied by Class Counsel.

5.6 Canadian Dollars. All dollar amounts referred to in this Settlement Agreement are in Canadian dollars. All payments made to Eligible Claimants will be paid in Canadian dollars.

5.7 **Tax Implications.** While there is no intended tax effect to Eligible Claimants from payments made pursuant to the Settlement Agreement, Settlement Class Members are encouraged to consult a tax advisor for assistance regarding any tax ramifications of the Settlement Agreement. For clarity, neither the Settlement Class Representatives nor Class Counsel offer any advice on any tax effect for any Eligible Claimant.

6. RELEASE AND WAIVER

6.1 The Parties agree to the following release and waiver (the “**Settlement Class Release**”), which shall take effect upon the Effective Date. The terms of the Release are a material term of the Settlement Agreement and will be reflected in the Approval Orders.

6.2 **Released Parties.** “**Released Parties**” means any person who, or entity that, is or could be responsible or liable in any way whatsoever, whether directly or indirectly, for the Transmission/Fuel Consumption Matter. The Released Parties include, without limitation, (1) Volkswagen AG, Volkswagen Group of America, Inc. (d/b/a Volkswagen of America, Inc. or Audi of America, Inc.), Volkswagen Group of America Chattanooga Operations, LLC, Volkswagen Group Canada Inc., AUDI AG, Audi of America, LLC, Audi Canada Inc., VW Credit, Inc., VW Credit Leasing, Ltd., VCI Loan Services, LLC, VW Credit Canada, Inc., Porsche Automobil Holding SE, Dr. Ing. h.c. F. Porsche AG, Porsche Cars North America, Inc., Porsche Cars Canada, Ltd., Porsche Financial Services, Inc., Porsche Financial Services Canada, Inc. (including PFSC GP d/b/a Bentley Financial Services Canada), Porsche Leasing Ltd., Porsche Enterprises Incorporated, Bentley Motors Limited, Bentley Motors, Inc., Bentley Motors Canada Ltd., and any former, present, and future owners, shareholders (direct or indirect), members (direct or indirect), directors, officers, members of management or supervisory boards, employees, lawyers, affiliates, parent companies (direct or indirect), subsidiaries (direct or indirect), predecessors, and successors of any of the foregoing (the “**Released Entities**”); (2) any and all contractors, subcontractors, joint venture partners, consultants, auditors, and suppliers of the Released Entities, including, but not limited to Aisin Seiki Co., Ltd., Conti Temic, Continental AG, IAV Automotive Engineering, Inc., IAV GmbH, Robert Bosch GmbH, Robert Bosch LLC, ZF AG, and ZF North America, Inc.; (3) any and all persons and entities indemnified by any Released Entity with respect to the Transmission/Fuel Consumption Matter; (4) any and all other persons and entities involved in the design, research, development, manufacture, assembly, testing, sale, leasing, repair, warranting, marketing, advertising, public relations, promotion, or distribution of any Eligible Vehicle, even if such persons are not specifically named in this paragraph, including without limitation all authorized dealers of the Defendants, as well as non-authorized dealers and sellers; (5) the Administrator; (6) lenders, creditors, financial institutions, or any other parties that financed any purchase or lease of an

Eligible Vehicle; and (7) for each of the foregoing, their respective former, present, and future affiliates, parent companies, subsidiaries, predecessors, successors, shareholders, indemnitors, subrogees, spouses, joint ventures, general or limited partners, lawyers, assigns, principals, officers, directors, members of management or supervisory boards, employees, members, agents, representatives, trustees, insurers, reinsurers, heirs, beneficiaries, wards, estates, executors, administrators, receivers, conservators, personal representatives, divisions, dealers, and suppliers.

6.3 **Settlement Class Release.** In consideration for the Settlement Agreement, Settlement Class Members, on behalf of themselves and their agents, heirs, executors and administrators, successors, assigns, insurers, lawyers (including any lawyer engaged by Settlement Class Members who is not Class Counsel), representatives, shareholders, owners associations, and any other legal or natural persons who may claim by, through, or under them (the “**Releasing Parties**”), fully, finally, irrevocably, and forever release, waive, discharge, relinquish, settle, and acquit any and all claims, demands, actions, or causes of action, whether known or unknown, that they may have, purport to have, or may have hereafter against any Released Party, as defined above, arising out of or in any way related to the Transmission/Fuel Consumption Matter. This Settlement Class Release applies to any and all claims, demands, actions, or causes of action of any kind or nature whatsoever, whether in law or in equity, contractual, quasi-contractual or statutory, known or unknown, direct, indirect or consequential, liquidated or unliquidated, past, present or future, foreseen or unforeseen, developed or undeveloped, contingent or non-contingent, suspected or unsuspected, whether or not concealed or hidden, arising from or in any way related to the Transmission/Fuel Consumption Matter, including without limitation (1) any claims that were or could have been asserted in the Actions; (2) any claims for fines, penalties, economic damages, punitive damages, exemplary damages, liens, injunctive relief, lawyers’ fees, costs or liens, expert, consultant, or other litigation fees or costs, except the Counsel Fees awarded by the Courts in connection with this Settlement Agreement; and (3) any other liabilities that were or could have been asserted in any civil, administrative, or other proceeding, including arbitration (the “**Released Claims**”). This Settlement Class Release applies without limitation to any and all Released Claims regardless of the legal or equitable theory or nature under which they are based or advanced including without limitation legal and/or equitable theories under any federal, provincial, territorial, municipal, local, tribal, administrative, or international law, or statute, ordinance, code, regulation, contract, common law, equity, or any other source, and whether based in strict liability, negligence, gross negligence, punitive damages, nuisance, trespass, breach of warranty, misrepresentation, breach of contract, fraud, or any other legal or equitable theory, whether existing under the laws of Canada, a province or territory of Canada, or of any other foreign or domestic state, territory,

or other legal or governmental body, whether existing now or arising in the future. Notwithstanding the foregoing, this Settlement Agreement does not release any claims for wrongful death or personal injury.

6.4 **Possible Future Claims.** For the avoidance of doubt, Settlement Class Members expressly understand and acknowledge that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that they now know or believe to be true, related to the Transmission/Fuel Consumption Matter, the Actions and/or the Settlement Class Release herein. Nevertheless, it is the intention of Class Counsel and the Settlement Class Representatives in executing this Settlement Agreement to fully, finally, irrevocably, and forever release, waive, discharge, relinquish, settle, and acquit all such matters, and all claims relating thereto which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action or proceeding) with respect to the Transmission/Fuel Consumption Matter and/or the Released Claims.

6.5 **Individual Release.** Each Settlement Class Member who submits a Claim pursuant to this Settlement Agreement shall be required to execute an Individual Release, in a form consistent with the Settlement Class Release, as a precondition to receiving an eligible payment. Consistent with the Settlement Class Release provided in this Settlement Agreement, the Individual Release will provide that the Settlement Class Member releases all of the Released Parties from any and all present and future claims (as described above) arising out of or related to the Transmission/Fuel Consumption Matter. Subject to Section 13.6, the Individual Release shall remain effective even if an Approval Order is reversed and/or vacated on appeal, or if this Settlement Agreement is abrogated or otherwise voided in whole or in part.

6.6 **Actions or Proceedings Involving Released Claims.** Settlement Class Members who do not opt out expressly agree that this Settlement Class Release, and the Approval Orders, are, will be, and may be raised as a complete defence to, and will preclude, any action or proceeding specified in, or involving claims encompassed by, this Settlement Class Release. Settlement Class Members who do not opt out shall not now or hereafter institute, maintain, prosecute, assert, and/or cooperate in the institution, commencement, filing or prosecution of any suit, action, and/or other proceeding, against the Released Parties with respect to the claims, causes of action and/or any other matters subject to this Settlement Class Release. To the extent that they have initiated, or caused to be initiated, any suit, action, or proceeding not already encompassed by the Actions, Settlement Class Members who do not opt out shall cause such suit, action, or proceeding to come to an end, with prejudice where available. If a Settlement Class Member who does not opt out commences, files, initiates, or institutes any new legal action or other proceeding for any Released Claim against any Released Party in any federal, provincial or territorial court, arbitral tribunal, or administrative or other forum, (1) such legal action or other proceeding shall be brought to an end, with

prejudice where available, and at that Settlement Class Member's cost; and (2) the respective Released Party shall be entitled to recover any and all reasonable related costs and expenses from that Settlement Class Member arising as a result of that Settlement Class Member's breach of his, her, or its obligations under this Settlement Class Release. Class Counsel will take such steps as are reasonably necessary and appropriate, or where appropriate will cooperate with the Defendants' efforts, to give effect to this Settlement Agreement and will not seek any additional relief on behalf of Settlement Class Members who do not opt out with respect to the Transmission/Fuel Consumption Matter and/or the Released Claims.

6.7 Ownership of Released Claims. The Settlement Class Representatives represent and warrant that they are the sole and exclusive owners of any and all claims that they personally are releasing under this Settlement Agreement. The Settlement Class Representatives further acknowledge that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Transmission/Fuel Consumption Matter, including without limitation, any claim for benefits, proceeds or value under the Actions, and that the Settlement Class Representatives are not aware of anyone other than themselves claiming any interest, in whole or in part, in any benefits, proceeds or values to which the Settlement Class Representatives may be entitled as a result of the Transmission/Fuel Consumption Matter. Settlement Class Members submitting a Claim Form shall represent and warrant therein that they are the sole and exclusive owner of all claims that they personally are releasing under the Settlement Agreement and that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Actions, including without limitation, any claim for benefits, proceeds or value under the Actions, and that such Settlement Class Members are not aware of anyone other than themselves claiming any interest, in whole or in part, in any benefits, proceeds or values to which those Settlement Class Members may be entitled as a result of the Transmission/Fuel Consumption Matter.

6.8 Total Satisfaction of Released Claims. Any benefits pursuant to the Settlement Agreement are provided in full, complete, and total satisfaction of all of the Released Claims against the Released Parties. Such benefits are sufficient and adequate consideration for each and every term of this Settlement Class Release, and this Settlement Class Release shall be irrevocably binding upon the Settlement Class Representatives and Settlement Class Members who do not opt out of the Settlement Class.

6.9 Release Not Conditioned on Claim or Payment. The Settlement Class Release shall be effective with respect to all Releasing Parties, including all Settlement Class Members who do not opt out,

regardless of whether those Settlement Class Members ultimately submit a Claim under this Settlement Agreement.

6.10 **Basis for Entering Release.** The Settlement Class Representatives acknowledge that they (through Class Counsel) have conducted sufficient independent investigation to recommend the approval of this Settlement Agreement to the Courts and that they execute this Settlement Agreement freely, voluntarily, and without being pressured or influenced by, or relying on any statements, representations, promises, or inducements made by the Released Parties or any person or entity representing the Released Parties, other than as set forth in this Settlement Agreement. The Settlement Class Representatives further acknowledge, agree, and specifically represent and warrant that they have discussed with Class Counsel the terms of this Settlement Agreement and have received legal advice with respect to the advisability of entering into this Settlement Agreement and the Settlement Class Release, and the legal effect of this Settlement Agreement and the Settlement Class Release. The representations and warranties made throughout the Settlement Agreement shall survive the execution of the Settlement Agreement and shall be binding upon the respective heirs, representatives, successors and assigns of the Parties.

6.11 **Material Term.** The Settlement Class Representatives hereby agree and acknowledge that Section 6 of the Settlement Agreement was, in its entirety, separately bargained for and constitutes a key, material term of the Settlement Agreement that shall be reflected in the Approval Orders.

6.12 **Released Parties' Release of Settlement Class Representatives, the Settlement Class, and Class Counsel.** Upon the Effective Date, the Released Parties absolutely and unconditionally release and forever discharge the Settlement Class Representatives, Settlement Class Members, Defendants' counsel and Class Counsel from any and all claims relating to the institution or prosecution of the Actions.

6.13 **Jurisdiction.** As to their respective Action, the Courts shall retain exclusive and continuing jurisdiction over the Parties and this Settlement Agreement to resolve any dispute that may arise regarding this Settlement Agreement or in relation to that Action, including any dispute regarding validity, performance, interpretation, administration, enforcement, enforceability, or termination of the Settlement Agreement and no Party shall oppose the reopening and reinstatement of an Action for the purposes of effecting Section 6 of the Settlement Agreement.

7. CLAIMS ADMINISTRATION

7.1 **Role of Administrator.** The Administrator will be responsible for the administration of the Notice Program and Claims Program, including developing and maintaining the Settlement Website

and Claims Portal. These responsibilities include receiving, reviewing and, as applicable, paying Claims. The Administrator shall have the authority to determine whether a Claim is complete and timely.

7.2 **Toll-Free Number.** The Administrator shall establish a toll-free number for calls in order to support the Notice Program and Claims Program. The Administrator shall dedicate sufficient personnel to respond to inquiries in English and French.

7.3 **Electronic and Hardcopy Claims.** The online Claims Portal will be the main channel for Settlement Class Members to submit their Claim Form and Proof of Ownership/Lease. If a Settlement Class Member is unable to electronically submit a Claim using the Claims Portal, the Settlement Class Member can register over the telephone with the Administrator and the Administrator shall send the Settlement Class Member a hardcopy Claim Form by mail. The completed and executed hardcopy Claim Form with Proof of Ownership/Lease must be submitted to the Administrator postmarked no later than the Claims Submission Deadline.

7.4 **Claim Deficiencies.** If the Administrator finds that deficiencies exist in a Claim or the Proof of Ownership/Lease, the Administrator will notify the Claimant of the deficiencies and allow a reasonable period from the date of such notice to correct the deficiencies. If the deficiencies are not corrected within this period, the Administrator will deny the Claim.

7.5 **Reports.** During the Claims Period, the Administrator will provide weekly reports to Class Counsel and the Defendants' counsel of the progress of the Claims Program, and will provide any other information about the Claims Program that Class Counsel or any of the Defendants' counsel may reasonably request. The Administrator will also provide any reports requested by the Courts.

7.6 **Distribution of Payments.** As soon as practicable following the expiry of the Claims Submission Deadline plus any required cure period for deficiencies, the Administrator shall report to Class Counsel and the Defendants' counsel the particulars of the proposed payment distribution to each Eligible Claimant.

7.7 **Personal Information.** Personal information of Claimants acquired as a result of this Settlement Agreement shall be used solely for the purpose of administering the Claims Program. All information relating to the Claims Program and processing is confidential and proprietary and shall not be disclosed, except as necessary to the Administrator, the Defendants, Class Counsel and a Court in accordance with the terms of this Settlement Agreement or as required by legal process.

8. PAYMENT OF SETTLEMENT FUND

8.1 The Released Parties have no obligation, for any reason, to pay any amount beyond the Settlement Fund pursuant to or in furtherance of this Settlement Agreement.

8.2 **Responsibility for Settlement Fund Payment.** Volkswagen AG shall bear the ultimate responsibility for all required payments owed by the Defendants under the Settlement Agreement. Any legal successor or assign of Volkswagen AG shall assume Volkswagen AG's liability and remain jointly and severally liable for the payment and other performance obligations herein. Volkswagen AG 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 its successor or assigns. No change in the ownership or control of any such entity shall affect the obligations herein of Volkswagen AG without modification of the Settlement Agreement.

8.3 Within ten (10) business days after the Effective Date, the Settlement Fund shall be paid into the Trust Account, which payment shall be in full satisfaction of all payment obligations of the Defendants under this Settlement Agreement and in total satisfaction of all of the Released Claims against the Released Parties.

8.4 The Escrow Agent shall maintain the Trust Account. The Escrow Agent shall not pay out all or part of the monies in the Trust Account except in accordance with the Settlement Agreement or in accordance with an order of the Courts.

8.5 Taxes and Interest

- (a) Subject to Section 8.5(c), all interest earned on the Settlement Fund shall accrue to the benefit of the Settlement Class and shall become and remain part of the Trust Account.
- (b) Subject to Section 8.5(c), all taxes payable on any interest which accrues on the Settlement Fund in the Trust Account or otherwise in relation to the Settlement Fund shall be the responsibility of the Settlement Class. The Escrow Agent shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Fund in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned on the Settlement Fund shall be paid from the Trust Account.

- (c) The Defendants shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned by the Settlement Fund or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is terminated or invalidated, in which case the interest earned on the Settlement Fund in the Trust Account or otherwise shall be paid to Volkswagen AG, which, in such case, shall be responsible for the payment of all taxes on such interest.

9. COOPERATION OF THE PARTIES

9.1 The Parties reserve the right to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement.

9.2 After entry of the Approval Orders, the Parties may, without further notice to the Settlement Class or further order of a Court, amend, modify or expand the terms and provisions of the Settlement Agreement by written agreement provided any such changes are consistent with the Approval Orders and do not limit the rights of Settlement Class Members.

10. NOTICE TO SETTLEMENT CLASS

10.1 **Settlement Notices.** The Settlement Notices provided to the Settlement Class in English and French shall include: (1) the Pre-Approval Notice, (2) notice of each Settlement Approval Hearing, (3) notice of the Approval Orders, and (4) notice of the start and end date of the Claims Period, including availability of the Claims Portal. These Settlement Notices may be combined in a single communication as appropriate.

10.1.1 The form of the Settlement Notices referred to in Section 10.1 and the manner of their distribution shall be agreed to by the Parties and consistent with the Notice Program approved by the Courts.

10.2 **Settlement Website.** If the Courts approve the Pre-Approval Notice, Class Counsel and the Administrator shall obtain Internet addresses to establish a Settlement Website in English and French. The Internet addresses of the Settlement Website shall be included in the Settlement Notices. The Claims Portal, when made available, will be accessible from the Settlement Website.

10.3 **Direct Notice.** Based on customer contact information in the Defendants' possession, to the extent such information was registered by customers with the Defendants, the Defendants will make reasonable efforts to compile a list of the names, email addresses and mailing addresses of Settlement Class Members. The information required by this Section 10.3 shall be delivered to Class Counsel and the Administrator at least five (5) business days before the Pre-Approval Notice Date. Class Counsel and the

Administrator shall maintain the information as confidential, and may only use this information to facilitate the dissemination of Settlement Notices and to facilitate the Claims Program.

10.3.1 If this Settlement Agreement is terminated or invalidated, all information provided by the Defendants pursuant to Section 10.3 shall be destroyed forthwith, no record of the information so provided shall be retained by Class Counsel or the Administrator in any form whatsoever.

10.4 All of the costs of the Notice Program, including costs for printing, mailing, postage, translation from English to French, and to establish and maintain the Settlement Website, shall be paid from the Settlement Fund.

11. OPT-OUT REQUESTS AND SETTLEMENT OBJECTIONS/SUPPORT

11.1 The Courts will appoint the Administrator to receive any written elections to opt out of the Settlement Class and any objections to, or support of, this Settlement Agreement.

11.2 Elections to opt out of the Settlement Class and objections/support to the Settlement Agreement must be sent in writing by pre-paid mail, courier, or email to the Administrator. Settlement Class Members residing in Québec must in addition send their opt-out request to the clerk of the Superior Court of Québec. An election to opt out or an objection/support to the Settlement Agreement will only be effective if:

- (a) It is sent to the Administrator;
- (b) It is received or post-marked on or before the Opt-Out Deadline or Objection/Support Deadline, as the case may be; and
- (c) It is on behalf of a single Settlement Class Member or on behalf of multiple Settlement Class Members residing at the same address.

11.3 All written elections to opt out of the Settlement Class and objections/support to the Settlement Agreement must be personally signed by the Settlement Class Member and shall include the following, except for paragraph (d) that is optional:

- (a) The Settlement Class Member's name, mailing address, telephone number, and email address (if available);
- (b) The make, model, model year, and Vehicle Identification Number of the Eligible Vehicle;

- (c) A statement that the Settlement Class Member elects to be excluded from the Settlement Class, or a brief statement of the nature of and reason for the objection to/support of the Settlement Agreement, as applicable;
- (d) If the Settlement Class Member elects to opt out of the Settlement Class, it is recommended but not required that the Settlement Class Member provide a copy of his, her, or its Proof of Ownership/Lease; and
- (e) If objecting to or supporting the Settlement Agreement, whether the Settlement Class Member intends to appear at the Settlement Approval Hearing, and if appearing by counsel, the name, address, telephone number, and email address of counsel.

11.3.1 Any Settlement Class Member who elects to opt out of the Settlement Class may not also object to or support the Settlement Agreement. If a Settlement Class Member elects to opt out of the Settlement Class and objects to or supports the Settlement Agreement, the opt-out election shall supersede and the objection/support shall be deemed withdrawn.

11.4 **Consequences of Failure to Opt Out.** All Settlement Class Members who do not validly opt out will be bound by the Settlement Agreement and Approval Orders. Settlement Class Members in Québec who have commenced other actions or commence other actions and fail to discontinue such other actions by the Opt-Out Deadline shall be deemed to have opted out.

11.5 The Administrator shall provide copies of all opt-out elections and objections/support to the Defendants and Class Counsel within three (3) business days of receipt. Wherever reasonably possible, such copies shall be provided in electronic form.

11.6 The Administrator shall, five (5) business days before the Settlement Approval Hearings, provide to the Defendants and Class Counsel and file with the Courts an affidavit reporting on the number of opt-out elections received on or before the Opt-Out Deadline, and compiling all of the objections/support received on or before the Objection/Support Deadline, as attributed to the Ontario Action and Québec Action.

12. COUNSEL FEES AND CLASS COUNSEL'S REQUESTS FOR HONORARIA

12.1 **Counsel Fees.** Counsel Fees shall be paid exclusively from the Settlement Fund. National Class Counsel and Québec Class Counsel will seek approval of their respective Counsel Fees from their respective Court and, pursuant to Section 3.3, from the amounts attributed as aforesaid to the Ontario Action

and Québec Action, respectively. The Defendants will not oppose any request for Counsel Fees provided it reasonably accords with the caselaw and principles generally applied by the respective Court with respect to such class counsel fees. Such Counsel Fees will become payable after ten (10) business days following the later of (a) the date of the Court's order on Counsel Fees and (b) the Effective Date. In the event that the amount of Counsel Fees awarded by a Court is reduced on appeal, such Class Counsel shall, within thirty (30) days of such appellate order, cause the difference in the amount paid and the amount awarded on appeal to be returned to the Settlement Fund for purposes of the distribution of funds in the Ontario Action or Québec Action, as appropriate.

12.2 **Honoraria.** Québec Class Counsel will be asking for the payment of a \$5,000 per Petitioner honorarium (subject to Court approval) from the portion of the Settlement Fund attributable to and for the Québec Action. National Class Counsel will also be asking for the payment of an honorarium no greater than \$5,000 (subject to Court approval) from the portion of the Settlement Fund attributable to and for the Ontario Action. The references herein to Class Counsel's intention to seek honoraria payments are not statements of consent to such payments by the Defendants. In the event approved by a Court, an honorarium payment will become payable after ten (10) business days following the later of (a) the date when that Court's order becomes final and non-appealable; and (b) the Effective Date.

13. TERMINATION OF SETTLEMENT AGREEMENT

13.1 Subject to Section 13.2, this Settlement Agreement shall terminate at the discretion of either the Defendants or, through Class Counsel, the Settlement Class Representatives in the event that:

- (a) Any Court declines to certify or authorize an Action for settlement purposes;
- (b) Any Court declines to approve the Settlement Agreement or any material part thereof;
- (c) Any Court approves the Settlement Agreement in a materially modified form; or
- (d) Any Approval Order does not become final and non-appealable.

13.2 It is expressly agreed that any failure or refusal of a Court to grant or approve, in whole or in part, a request for Counsel Fees as provided in Section 12.1, or a request for an honorarium payment as provided in Section 12.2., shall not be deemed to be a refusal or failure by a Court to approve this Settlement Agreement or any material part thereof, nor be deemed to be a material modification of all, or a part, of this Settlement Agreement, and shall not provide any basis for the modification or termination of this Settlement Agreement.

13.3 If an option to withdraw from and terminate this Settlement Agreement arises under Section 13.1, the Parties will be returned to their positions *status quo ante* with respect to the Actions as if this Settlement Agreement was not entered into.

13.4 If, but only if, this Settlement Agreement is terminated pursuant to Section 13.1 or is otherwise invalidated, then:

- (a) This Settlement Agreement, including the Settlement Class Release, shall be null and void and shall have no force or effect, and no Party to this Settlement Agreement shall be bound by any of its terms except as expressly provided in Section 13;
- (b) No motion to certify or authorize an Action as a class action on the basis of the Settlement Agreement shall proceed;
- (c) Any order certifying or authorizing an Action as a class action on the basis of the Settlement Agreement, and any other settlement-related order(s) or judgment(s) entered in the Actions after the date of execution of this Settlement Agreement, shall be null and void and shall have no force or effect;
- (d) All of the provisions of this Settlement Agreement, and all negotiations, statements and proceedings relating to it, shall be without prejudice to any position that any of the Parties may later take on any issue in the Actions or any other litigation;
- (e) Within ten (10) business days of such termination or invalidation, Class Counsel shall return, or cause to be returned, to Volkswagen AG any and all amounts paid from the Settlement Fund in respect of the CPF Payments, Counsel Fees under Section 12.1, or an honorarium payment under Section 12.2; and
- (f) Within ten (10) business days of such termination or invalidation, Class Counsel shall destroy all non-public information provided to them by the Defendants in connection with this Settlement Agreement or materials reflecting such information and, to the extent Class Counsel has disclosed any non-public information provided by the Defendants in connection with this Settlement Agreement to the Administrator, Class Counsel shall recover and destroy such information. Class Counsel shall provide the Defendants with a written certification of such destruction.

13.5 If the Settlement Agreement is terminated or invalidated, the Escrow Agent shall pay to Volkswagen AG the Settlement Fund amount plus all accrued interest thereon, less any incurred costs and expenses paid therefrom, within thirty (30) days of the Escrow Agent being advised in writing that the Settlement Agreement has been terminated or invalidated in accordance with its terms.

13.6 If a Settlement Class Member has (a) executed and delivered an Individual Release and (b) been issued compensation under this Settlement Agreement prior to its termination or invalidation, such Settlement Class Member shall be bound by the terms of the Individual Release, which terms shall survive termination or invalidation of this Settlement Agreement.

13.7 If this Settlement Agreement is terminated or invalidated, the provisions of Sections 3, 8.2, 8.5, 10.3.1, 10.4, 13 and 14 shall survive the termination and continue in full force and effect. The definitions shall survive only for the limited purpose of the interpretation of these surviving sections within the meaning of the Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

13.8 The Parties expressly reserve all of their respective rights if this Settlement Agreement is terminated or invalidated.

14. OTHER TERMS AND CONDITIONS

14.1 **Released Parties Have No Liability for Administration.** The Released Parties have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement or the distribution of the Settlement Fund.

14.2 **Motions for Directions.** Class Counsel may apply to the Courts for directions in respect of the distribution of the Settlement Fund. All motions contemplated by or referred to in this Settlement Agreement shall be on notice to the Defendants with the understanding that the Defendants shall take no position on a motion dealing solely with the distribution of the Settlement Fund as between Settlement Class Members.

14.3 Ongoing Jurisdiction

14.3.1 Each of the Courts shall retain exclusive jurisdiction over the Action commenced in its jurisdiction, the parties thereto, and the determination of Counsel Fees in that Action.

14.3.2 The Parties agree that no Court shall make any order or give a direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other Court.

14.4 This Settlement Agreement shall be binding upon, and enure to the benefit of the Defendants, the Settlement Class Representatives, all Settlement Class Members, the Released Parties and the Releasing Parties, and their respective agents, heirs, executors, administrators, successors, transferees, and assigns.

14.5 Class Counsel represent that (a) Class Counsel are authorized by the Settlement Class Representatives to enter into this Settlement Agreement; and (b) Class Counsel are seeking to protect the interests of the Settlement Class. Counsel for the Defendants represent that they are authorized by their respective clients to enter into this Settlement Agreement.

14.6 The waiver by one Party of any breach of this Settlement Agreement by another Party shall not be deemed a waiver of any prior or subsequent breach of this Settlement Agreement.

14.7 All time periods in this Settlement Agreement shall be computed in calendar days unless expressly provided otherwise. Also, unless otherwise provided in this Settlement Agreement, in computing any period of time in this Settlement Agreement or by order of a Court, the day of the act or event shall not be included, and the last day of the period shall be included, unless it is a Saturday, a Sunday, or a Canadian statutory holiday, or, when the act to be done is a court filing, a day on which the court is closed, in which case the period shall run until the end of the next day that is not one of the aforementioned days.

14.8 This Settlement Agreement sets forth the entire agreement among the Parties with respect to its subject matter. Any agreement purporting to change or modify the terms of this Settlement Agreement must be in writing and executed by the Defendants and Class Counsel. The Parties expressly acknowledge that no other related agreements, arrangements, or understandings not expressed in this Settlement Agreement exist among or between them, and that in deciding to enter into this Settlement Agreement, they have relied solely upon their own judgment and knowledge. This Settlement Agreement supersedes any prior agreements, understandings, or undertakings (written or oral) by and between the Parties regarding the subject matter of this Settlement Agreement.

14.9 In Québec, this Settlement Agreement constitutes a transaction within the meaning of Article 2631 and following of the *Civil Code of Québec*, and the Parties are hereby renouncing to any errors of fact, of law, and/or of calculation.

14.10 The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; *les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais*. If requested by the Québec Court, Class Counsel or the Administrator, a translation firm selected by Class Counsel shall prepare a French translation of this Settlement Agreement after its execution. The Parties agree that any such translation would be for convenience only. The cost of such translation shall be paid from the Settlement Fund. In the event of any dispute as to the interpretation of this Settlement Agreement, the English language version shall govern.

14.11 Whenever this Settlement Agreement requires or contemplates that one of the Parties shall or may give notice to the other, notice shall be provided by email and/or next-day (excluding Saturdays, Sundays, and Canadian statutory holidays) express delivery service as follows:

If to Audi, Bentley or VW, then to:

Cheryl Woodin
BENNETT JONES LLP
3400 One First Canadian Place
100 King Street West
Toronto, ON M5X 1A4
Email: woodinc@bennettjones.com

If to Porsche, then to:

Glenn Zakaib
BORDEN LADNER GERVAIS LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West, Suite 3400
Toronto, ON M5H 4E3
Email: gzakaib@blg.com

If to National Class Counsel, then to:

James Sayce
KOSKIE MINSKY LLP
20 Queen Street West
Suite 900, Box 52
Toronto, ON M5H 3R3
Email: jsayce@kmlaw.ca

AND

David O'Connor and Adam Dewar
ROY O'CONNOR LLP
200 Front Street West, Suite 2300
Toronto, ON M5V 3K2
Email: dfo@royoconnor.ca
Email: jad@royoconnor.ca

If to Québec Class Counsel, then to:

Jeff Orenstein
CONSUMER LAW GROUP INC.
1030 rue Berri, Suite 102
Montréal, QC H2L 4C3
Email: jorenstein@clg.org

14.12 The Settlement Class, Settlement Class Representatives and/or the Defendants shall not be deemed to be the drafter of this Settlement Agreement or of any particular provision, nor shall they argue that any particular provision should be construed against its drafter. All Parties agree that this Settlement Agreement was drafted by counsel for the Parties during extensive arm's-length negotiations. No parol or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances under which this Settlement Agreement was made or executed.

14.13 The division of this Settlement Agreement into sections and the insertion of topic and section headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement.

14.14 The Parties agree that this Settlement Agreement was reached voluntarily after consultation with competent legal counsel.

14.15 This Settlement Agreement, including the Individual Release, shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to any conflict of law rule or principle that would mandate or permit application of the substantive law of any other jurisdiction.

14.16 This Settlement Agreement may be signed with an electronic signature and in counterparts, each of which shall constitute a duplicate original.

14.17 The Parties have executed this Settlement Agreement effective as of the date on the cover page.

