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**Joint report of the Supervisory Board and  
Board of Management of VOLKSWAGEN AG  
on agenda items 10 and 11**

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## A. INTRODUCTION

Under the two agenda items 10 and 11, the Supervisory Board and Board of Management recommend that the settlement agreements with the former Board of Management members Professor Winterkorn and Mr. Stadler (“**liability settlements**”) and the settlement agreement between Volkswagen Aktiengesellschaft (“**Volkswagen**”), AUDI AG (“**AUDI**”), Dr. Ing. h.c. F. Porsche AG (“**Porsche**”) and various D&O insurers (“**coverage settlement**”) be approved. With these settlements, Volkswagen intends to conclude the legal investigation of the diesel issue with regard to the responsibilities of the board members under civil law.

The term “diesel issue” refers in this context to the development, installation, distribution and other use of certain software functions in the engine control unit of diesel engines (among others EA189 and EA288, as well as various V-TDI engines) that led to deviations between the exhaust emissions during dynamometer operation and road use and all facts and circumstances related thereto. The term also covers the clarification and investigation of the matter at Volkswagen, AUDI and Porsche following the publication of the Notice of Violation by the US Environmental Protection Agency (“**EPA**”) on 18 September 2015.

## B. BACKGROUND TO THE SETTLEMENT AGREEMENTS

### I. Overview of the diesel issue

#### 1. Volkswagen

The diesel issue arose from the manipulation of parts of the engine control unit software for the EA189 diesel engine developed by Volkswagen between 2002 and 2008 (“**defeat device**”).

The decision to develop and install this software function was taken in late 2006 by employees in the Engine Development Division. The decision was taken because, *inter alia*, it was not certain that the EA189 as it was at the time could comply with the strict US emission limits and because there were at the same time technical problems with the long-term stability of the NOx storage catalytic converter. The defeat device recognised the driving curve of exhaust gas tests. Depending on the recognised driving curve, it switched between two different modes: one mode for optimum NOx values during dynamometer operation and one mode for optimum particulate values during road use. The defeat device was initially used in vehicles with EA189 2.0l diesel engines intended for the North American market (“**NAR**”). It was used in model years 2009-2014 Gen1 NAR EA189 diesel engines that were equipped with a NOx storage catalytic converter. It was also used in Gen2 EA189 NAR diesel engines that were equipped with an SCR system. In an SCR system, nitrogen oxides are reduced to nitrogen and water by injecting a urea solution (brand

name: “**AdBlue**”). The defeat device was also used in the model that succeeded the EA189, namely the model year 2015 Gen3 NAR EA288 diesel engine with SCR system.

In May 2014, the International Council on Clean Transportation (“**ICCT**”) published a study in which, upon conducting measurements of NO<sub>x</sub> emissions for vehicles of the Volkswagen Group with EA189 2.0l diesel engines intended for the NAR market, they were found to be between 15 and 35 times higher under real driving conditions than during testing on the dynamometer. In the months following publication of this study, the unusually high NO<sub>x</sub> emissions were checked for plausibility and confirmed by Volkswagen. The California Air Resources Board (“**CARB**”), a part of the environmental authority of the US State of California, was informed of this result. At the same time, the offer was made to CARB to carry out a recalibration (so-called “**flash**” or “**software fix**”) of the engine control unit software of the EA189 diesel engines in the US as part of a service measure that had in any case been planned.

At the beginning of September 2015, Volkswagen classified the manipulation of the diesel engine control unit software as an unlawful defeat device under US law. Volkswagen disclosed the defeat device to EPA and CARB on 3 September 2015. According to the administrative practice of the competent US authorities up to that point, comparable violations by other automobile manufacturers always resulted in fines at the lower end of the statutory fine range as part of amicable settlements.

On 18 September 2015, EPA published a Notice of Violation addressed to Volkswagen, the Volkswagen Group of America Inc. and AUDI and announced that irregularities in relation to nitrogen oxide (NO<sub>x</sub>) emissions had been discovered in exhaust gas tests on certain model year 2009-2015 vehicles with 2.0l diesel engines (EA189 and EA288) of the Volkswagen Group in the US.

Following the announcement by EPA, Volkswagen made an ad hoc announcement on 22 September 2015 to the effect that noticeable discrepancies between the emission levels achieved in testing on the dynamometer and under real driving conditions had been identified in EA189 diesel engines, affecting around eleven million vehicles worldwide. Volkswagen immediately stopped the sale and delivery of vehicles with engines covered by the Notice of Violation of 18 September 2015 in the US and in the following weeks also in other markets.

By 31 December 2020, the Volkswagen Group had spent a total of at least EUR 32 billion for negative special factors in connection with the diesel issue. The amount is made up of, among other things, the costs of recalls and field measures, compensation and settlement payments to dealers, internal investigation costs and fines.

## 2. AUDI

Starting in 2005, AUDI developed a 3.0l V6 TDI engine for the NAR market. In order to meet the strict US emission limits, the competent AUDI bodies decided to make use of the then new SCR technology.

On 2 November 2015, EPA announced with a further Notice of Violation that irregularities had been uncovered in connection with the software used in AUDI, Volkswagen and Porsche vehicles with 3.0l V6 TDI engines and that these were classified under US law as auxiliary emission control devices (“**AECD**”) requiring notification or unlawful defeat devices. AUDI then stopped the sale of vehicles affected by this in the NAR market on 4 November 2015. AUDI thereafter carried out extensive investigations into the use of any unlawful software functions. The software functions that were subsequently disclosed to the US authorities were related to the temperature conditioning and AdBlue dosing in the SCR system. Following the Notice of Violation of 2 November 2015, the Federal Motor Transport Authority (*Kraftfahrt-Bundesamt*, “**KBA**”) also asked questions about the 3.0l V6 and 4.2l V8 TDI engines developed and manufactured by AUDI for the European markets. Between 2017 and 2019, the KBA issued various notices against AUDI and Volkswagen on account of what it deemed unlawful defeat devices in the engine control unit software of several vehicles with various V-TDI engines developed by AUDI.

### 3. Porsche

Porsche at no time developed or built diesel engines itself. For a long time, Porsche only manufactured sports cars and also offered sports utility vehicles (“**SUV**”), which were added later, initially exclusively with petrol engines.

In 2007, Porsche commissioned Volkswagen and AUDI/a subsidiary of AUDI for the first time to develop, manufacture and deliver V6 and V8 TDI engines already used in AUDI and Volkswagen vehicles for use in Porsche vehicles as well as to develop and apply the accompanying engine control unit software. Among other things, the basic data of previously developed AUDI and Volkswagen projects was essentially taken over and merely adapted by AUDI to the vehicle- and model-specific features and requirements of the Porsche vehicles. The software functions relating to the temperature conditioning and AdBlue dosing in the SCR system developed by AUDI for 3.0l V6 TDI engines were part of this basic data.

In 2017 and 2018, the KBA issued several notices against Porsche as well.

## II. Extensive investigation of the diesel issue and review of responsibilities

The law firm Gleiss Lutz assisted the Supervisory Boards of Volkswagen, AUDI and Porsche in clarifying the causes of the diesel issue. Gleiss Lutz carried out an extensive review of breaches of duty and claims for damages.

At its meeting on 26 March 2021, the Supervisory Board of Volkswagen decided to assert claims for damages against the former Chairman of the Group Board of Management, Professor Winterkorn, and the former Group Board of Management member and Chairman of the Board of Management of AUDI, Mr. Stadler, on account of negligent breaches of the duty of care under stock corporation law.

The Supervisory Boards of AUDI and Porsche also examined the results of the investigations of their companies during their meetings. In this connection, the former Chairman of the Board of Management of AUDI, Mr. Stadler, and former members of the Board of Management of AUDI, Professor Hackenberg and Dr. Knirsch, as well as the former member of the Board of Management of Porsche, Mr. Hatz, are also being accused of negligent breaches of the duty of care under stock corporation law. The Supervisory Boards of AUDI and Porsche decided to assert claims for damages against these persons based on stock corporation law.

The resolutions of the three Supervisory Boards are based on expert opinions drawn up by Gleiss Lutz in which negligent breaches of duty were identified. The investigation and review covered all members of the Boards of Management of the three companies who were in office during the relevant period.

The Board of Management of Volkswagen extensively reviewed whether the former or current members of the Supervisory Board of Volkswagen had fulfilled their duties in connection with the diesel issue. The Board of Management of Volkswagen instructed the law firm Linklaters to carry out this review. In its expert opinion, Linklaters concluded that there were no indications that former or current members of Volkswagen's Supervisory Board might have breached their duties under stock corporation law in connection with the diesel issue becoming known and being investigated. The Boards of Management of AUDI and Porsche likewise asked Linklaters to review whether the members of their Supervisory Boards had acted in accordance with their duties. With regard to the members of the Supervisory Board of Porsche, Linklaters found that there were no indications of breaches of duty. The same applied to the members of the Supervisory Board of AUDI, with the exception of Professor Winterkorn who, according to Linklaters' findings, had negligently breached his duties under stock corporation law.

### **III. Ongoing proceedings in connection with the diesel issue**

A considerable number of official and court proceedings in connection with the diesel issue are still pending in Germany and abroad, including the following:

- Individual and class actions by customers and actions by consumer and/or environmental organisations are pending against Volkswagen and other members of the Volkswagen Group in various countries. In Germany, the Federation of German Consumer Organisations (Verbraucherzentrale Bundesverband e.V.) filed a class action for a declaratory judgment against Volkswagen with Braunschweig Higher Regional Court in November 2018 with the aim of having the latter set out certain prerequisites for claims, if any, of consumers against Volkswagen. Since April 2020 Volkswagen has entered into individual settlements with some 245,000 customers within the scope of the framework settlement of 28 February 2020 negotiated with the Federation of German Consumer Organisations in the course of the class action for a declaratory judgment. In addition, around 60,000 individual proceedings, proceedings by major customers with around 9,000 vehicles as well as eight actions by financialright GmbH based on rights of around 37,000 customers assigned to it are

pending in Germany in connection with the diesel issue. Outside of Germany, civil proceedings are currently pending in a large number of jurisdictions. These include, for example, lawsuits brought by around 90,000 plaintiffs in England and Wales that were combined in a class action (group litigation). In Belgium, the Belgian consumer organisation Tests Aankoop VZW filed a class action against Volkswagen. Two consumer class actions are pending in Brazil. In all of these proceedings, Volkswagen runs the risk of substantial damages payments. Other proceedings are pending in, for example, France, Italy, the Netherlands, Portugal and South Africa. The subject matter of these proceedings is essentially claims for damages or claims relating to the rescission of sales contracts.

- Investors from Germany and other countries have also sued Volkswagen for damages for the alleged fall in the share price as a consequence of supposed misconduct in relation to capital market communication in connection with the diesel issue. All in all, claims in excess of EUR 9.7 billion are being asserted against Volkswagen in connection with the diesel issue in actions brought by investors around the world as well as under claims registered pursuant to the German Capital Investors Model Proceedings Act.
- Furthermore, the Braunschweig, Munich II and Stuttgart public prosecutor's offices are conducting criminal proceedings *inter alia* against Professor Winterkorn and Mr. Stadler, in particular on account of alleged fraud.
- Various German and foreign administrative authorities have also instituted proceedings against Volkswagen and other members of the Volkswagen Group in connection with the diesel issue. These concern in particular certification-related proceedings by the KBA as well as, outside Germany, the European certification authority, the Société Nationale de Certification et d'Homologation; in addition, other official proceedings are pending in the US in particular, including on account of alleged breaches of environmental law as well as proceedings brought by the US Securities and Exchange Commission on account of allegedly incorrect information in prospectuses.
- Moreover, Volkswagen is involved in various proceedings with former employees before the labour courts. In 2017 and 2018, Volkswagen terminated the employment contracts of six employees for cause, alternatively subject to a notice period, on account of misconduct in connection with the diesel issue. These employees then filed actions on the grounds of unfair dismissal before the labour courts. All these actions are still pending before the court of first instance or appeal court. In all these actions, Volkswagen filed a counterclaim in which it moved for it to be found that these employees are liable for damages. With the exception of Dr. Neußer, these employees are not covered by the D&O insurance program. Of the counterclaims, four proceedings are still pending.

Notwithstanding the aforementioned proceedings, Volkswagen assumes that, in view of its comprehensive investigation of the diesel issue in the course of the official and court proceedings, no new material findings with regard to the responsibilities of the current and former board members under civil law are to be expected.

#### IV. Claims for damages of Volkswagen against former Board of Management members

##### 1. Professor Winterkorn

From 1996 to 2005, Professor Winterkorn was a member of the Board of Management for the Volkswagen Passenger Cars brand, where he was responsible for the Technical Development Division. Between 2000 and 2002, he was responsible for the Research and Development Division on Volkswagen's Group Board of Management. He was Chairman of the Board of Management of AUDI from 2002 to the end of 2006, before becoming Chairman of the Board of Management of Volkswagen on 1 January 2007, taking over responsibility for, among other things, the Research and Development, Sales, Quality Management and Legal Divisions as well as the position of Chairman of the Board of Management for the Volkswagen Passenger Cars brand. Professor Winterkorn resigned from Volkswagen's Board of Management on 23 September 2015. He was the Chairman of AUDI's Supervisory Board from 2007 to 2015.

Professor Winterkorn was not actively involved in the development and use of unlawful software functions, nor did he have actual knowledge of such a violation of the law. Moreover, no breaches of organisational duties by Professor Winterkorn that contributed to the diesel issue were identified. He did not breach his duties under capital market law in connection with the diesel issue, either.

Professor Winterkorn did however negligently breach his duties of care under stock corporation law as a member of Volkswagen's Board of Management by failing, in the period from 27 July 2015 on, to further clarify, comprehensively and promptly, the circumstances behind the use of unlawful software functions in 2.0l TDI engines sold in the NAR market between 2009 and 2015. Professor Winterkorn also failed to ensure that the questions asked by the US authorities in this context were answered truthfully, completely and without delay.

On the morning of 27 July 2015, Professor Winterkorn asked various employees about the current status of the certification for model year 2016 diesel vehicles that was being withheld by the US authorities as well as about emissions problems in old vehicles on the NAR market. During the afternoon of the same day, certain aspects of the diesel issue were presented to Professor Winterkorn and Dr. Diess during an extraordinary meeting following what was known as a "damages roundtable". Volkswagen engineers from the Technical Development, Engine Development, Quality Management, Exhaust Aftertreatment and Certification Departments discussed the key features of the defeat device that had been installed in the engine control units of around 500,000 vehicles with Gen1 and Gen2 NAR EA189 2.0l diesel engines. In the estimation of some of the Volkswagen engineers, the defeat device was technically unjustifiable. The employees in attendance also presented Professor Winterkorn with a strategy for the further course of action vis-à-vis the US authorities. Professor Winterkorn assumed that the strategy designated as an "offensive" course of action by the employees present at the meeting would lead to a full disclosure of the circumstances behind the emissions problems. In actual fact, however, the employees did not intend to fully disclose the defeat device and the technical background to this to the US authorities.

Instead, they were only to admit to software problems in Gen2 NAR EA189 diesel engines, in order to get the US authorities to issue the withheld certification for US model year 2016 diesel vehicles. At that time, it had not yet been established whether the manipulation of the diesel engine control unit software was to be classified as an unlawful defeat device under US law. A review and classification of the defeat device under US law was only completed at the beginning of September 2015. Accordingly, Professor Winterkorn did not obtain any knowledge of the use of software that was unlawful under US law on 27 July 2015, nor did he knowingly accept this. He did however receive specific indications of possibly unlawful functions in Gen1 and Gen2 NAR EA189 2.0l diesel engines developed by Volkswagen. Based on his responsibilities and his considerable prior knowledge, Professor Winterkorn – unlike Dr. Diess, who had only started working for Volkswagen at the beginning of July 2015 – should have given top priority to pursuing these indications without delay from 27 July 2015 onwards. Given the areas for which he was responsible, Professor Winterkorn had primary responsibility for solving the technical problems discussed in the meeting following the “damages roundtable”. During his years of work, he obtained extensive and to some extent detailed knowledge of the particular challenges pertaining to the technical development of diesel engines for the NAR market. It was, in particular, apparent to Professor Winterkorn that a software fix carried out only a few months before had not eliminated the emissions problems. At that point in time Professor Winterkorn was therefore no longer justified in trusting that the competent Volkswagen bodies and employees would, with the required care and speed, look into the indications of possibly unlawful functions in Gen1 and Gen2 NAR EA189 2.0l diesel engines developed by Volkswagen and would communicate with the US authorities and customers in accordance with their duties.

Given the specific indications of possibly unlawful functions in engines developed by Volkswagen, as well as the fact that these engines had, to Professor Winterkorn’s knowledge, also been installed in vehicles of the AUDI brand, he would moreover have been obliged, in his capacity as Chairman of the Supervisory Board of AUDI, to inform AUDI’s Board of Management of his findings and to work towards comprehensively clarifying the facts and circumstances at AUDI as well. Since he failed to do this, then according to the findings of the Board of Management of AUDI he also negligently breached his duties under stock corporation law as Chairman of AUDI’s Supervisory Board.

Professor Winterkorn has, via the lawyers instructed by him, rejected the allegation of a breach of the duties of care and disputed the asserted claims.

## **2. Mr. Stadler**

Mr. Stadler was a member of the Board of Management of AUDI from January 2003 onwards. He was initially responsible for the Finance Division, and took over the position of Chairman of the Board of Management at AUDI as of 1 January 2007. As Chairman of the Board of Management, his responsibilities included the Legal Division (Central Legal Services) and, up to 31 August 2017, the “Compliance” Division. Between 25 September 2015 and 31 December 2015 Mr. Stadler also temporarily took over responsibility for the Technical Development Division. He

was a member of the Board of Management of Volkswagen, where he was responsible for the “*Audi, Chairman of the Board of Management*” Division, as from January 2010 until the termination of all his Board of Management offices at Volkswagen and AUDI by mutual agreement on 28 September 2018.

Mr. Stadler was not actively involved in the development and use of unlawful software functions, nor did he have actual knowledge of such a violation of the law. Moreover, no breaches of organisational duties by Mr. Stadler that contributed to the diesel issue were identified.

Mr. Stadler did however negligently breach his duties of care under stock corporation law as a member of Volkswagen’s Board of Management by failing, in the period from 21 September 2016 on, to work without delay towards a targeted and systematic investigation of the 3.0l V6 and 4.2l V8 TDI engines developed by AUDI for the European markets in order to establish whether the emission control systems of the affected vehicles contained unlawful defeat devices.

On 21 September 2016 Mr. Stadler received several presentations drawn up by AUDI employees. One of the presentations, which was drawn up immediately after the Notice of Violation in September 2015, shows that AUDI employees had at that time already classified certain data statuses of the engine control unit software as requiring notification to the authorities and that further analysis was considered necessary. According to the presentation, the functions concerned were used not only in the 3.0l V6 TDI engines developed by AUDI for the NAR market, but also in the engines that AUDI had developed in parallel from 2005 on for future use in the European markets.

After the Notice of Violation AUDI’s Board of Management had repeatedly called on the development engineers to establish transparency and disclose all the functions. In the context of the initial investigations of the 3.0l V6 TDI engines for the NAR market, further software functions were discovered and disclosed to the US authorities up to June 2016.

After the Notice of Violation of 2 November 2015, the KBA also launched investigations into the 3.0l V6 and 4.2l V8 TDI engines developed and manufactured by AUDI for the European markets. Even though irregularities had already been identified at that time during internal random checks at AUDI, the development engineers told AUDI’s Board of Management that the engines for the European markets were “clean”. In discussions with the KBA, AUDI employees did disclose certain elements of the software functions, but concealed critical parameters of these functions from both AUDI’s Board of Management and the KBA. On 22 April 2016, the Federal Ministry of Transport and Digital Infrastructure published the “Report by the Volkswagen Investigation Commission” which concluded, based on measurements of AUDI vehicles with 3.0l V6 TDI engines certified under the Euro 5 und Euro 6 emission standards, that the KBA’s independent review had not confirmed the allegation made in the US regarding the use of unlawful defeat devices as far as certain vehicle types for the European markets were concerned. From November 2016 onwards, the investigations at AUDI were continued by a task force and a systematic review of the software for the engines intended for the European markets was undertaken from July 2017 onwards. All of the relevant vehicle designs with 2008 to 2018 3.0l V6 and 4.2l V8 TDI engines

were then checked by July 2018 and the results of the review and measurements were submitted to the KBA.

During AUDI's investigations into the engines for the European markets Mr. Stadler was initially justified in relying on the statements made by the development engineers and the positive feedback from the KBA that the software for the European markets did not have a problem similar to that affecting the engines for the NAR market. Mr. Stadler is not an engineer and was not familiar with the technical details of emission control. It was however apparent from the presentation submitted on 21 September 2016 that employees in the company had previously carried out an assessment of the functions for the NAR market and the European markets that had, in summer 2016, proven to be correct for the engines for the NAR market that had already been investigated. Given his prior knowledge from the in-depth discussions of the diesel issue by AUDI's Board of Management from November 2015 onwards and the information in the presentation received by him on 21 September 2016, Mr. Stadler could have realised that there was a need for further clarification in connection with the engines for the European markets and that a targeted and systematic investigation of the diesel engines developed by AUDI for the European markets, going beyond the previous investigations, was required.

Mr. Stadler has rejected the allegation of a breach of the duties of care and has disputed the asserted claims.

## **V. No other claims for damages of Volkswagen against Board of Management members**

According to the findings of the Supervisory Board's investigation, no breaches of duty by other Board of Management members of Volkswagen in connection with the diesel issue were identified.

In particular, no Board of Management member has breached any duties under capital market law. The substantial drops in the price of the VW share after publication of the Notice of Violation on 18 September 2015 were due to the fact that the US authorities published their allegations completely unexpectedly during ongoing talks with Volkswagen. The Notice of Violation not only entailed making the existence of an unlawful defeat device public, but also and in particular signalled a fundamental change in EPA's policy in terms of regulating violations of the US Clean Air Act. With the Notice of Violation, EPA made it clear that it wanted to take vigorous and aggressive action against Volkswagen. In addition, on 18 September 2015 an employee of EPA explicitly confirmed, in response to questions from journalists, that fines of up to USD 18 billion could be imposed on Volkswagen. Contrary to the previous practice of the US authorities, where fines in comparable cases had rather been at the lower end of the fine range – which would have meant a fine in the lower hundreds of millions in Volkswagen's case – an imposition of the maximum fine was therefore on the table for the first time. This course of action by EPA represented a fundamental departure from its established practice in the past. This paradigm shift was new information for Volkswagen and the capital market and was something that was not known prior to 18 September 2015 and could not have been foreseen by Volkswagen's Board of Management.

No inside information of relevance under capital market law existed prior to the publication of the Notice of Violation on 18 September 2015.

The proceeding conducted by the Braunschweig public prosecutor's office against Mr. Pötsch and Dr. Diess on suspicion of having breached the German Securities Trading Act was finally dropped against payment of a fine on 20 May 2020 by order of Braunschweig Regional Court pursuant to section 153a(2) German Code of Criminal Procedure before the main proceedings were opened, and the proceeding conducted against Professor Winterkorn with the same allegation was provisionally terminated by order of Braunschweig Regional Court of 14 January 2021 pursuant to section 154(2) German Code of Criminal Procedure before the main proceedings were opened. In the view of Volkswagen, the public prosecutor's office's charges against Mr. Pötsch and Dr. Diess were unfounded in every respect. The law firm Gleiss Lutz concluded, even before the proceedings were terminated, that neither Mr. Pötsch nor Dr. Diess had breached their duties under capital market law. This assessment was supported by opinions prepared by Linklaters law firm on behalf of the Board of Management, also before the proceedings were terminated.

Nor did Dr. Diess breach any duties in connection with the meeting following the "damages roundtable". Dr. Diess had only joined Volkswagen at the beginning of July 2015. He had no prior knowledge of the development or distribution of Volkswagen diesel engines in the North American market. In contrast to Professor Winterkorn, Dr. Diess was furthermore not directly competent for solving the problems with the US authorities, as discussed at the meeting following the "damages roundtable", either. In contrast to Professor Winterkorn, at this point in time Dr. Diess was justified in trusting that the competent Volkswagen bodies and employees would, with the required care and speed, look into the indications of possibly unlawful functions in the Gen1 and Gen2 NAR EA189 2.0l diesel engines developed by Volkswagen and would communicate with the US authorities and customers in accordance with their duties.

## **VI. No claims for damages of Volkswagen against Supervisory Board members**

In its expert opinion, Linklaters concludes that there are no indications that former or current members of Volkswagen's Supervisory Board might have breached their duties under stock corporation law in connection with the knowledge and investigation of the diesel issue. According to Linklaters' review, there are neither any indications that former or current members of the Supervisory Board knew about the diesel issue before the Notice of Violation was published on 18 September 2015 nor are there any indications of breaches of duty in connection with the investigation of the diesel issue after publication of the Notice of Violation.

In particular, there are no reliable indications that in the spring of 2015 individual members of the Executive Committee of the Supervisory Board were informed of manipulations of exhaust emission values by Professor Piëch. The statements made by Professor Piëch during his questioning in the public prosecutor's office have been closely reviewed and found not credible. On 8 February 2017, Volkswagen's Supervisory Board had also stated as much in a press release. Furthermore, there is nothing to indicate that in the spring of 2015 Supervisory Board members knew

about the diesel issue or behaved in breach of duty in any other way in connection with the diesel issue.

### C. D&O INSURANCE PROGRAM

Since 1 January 2012, Volkswagen has maintained a D&O insurance policy (“**primary policy**”) with Zurich Insurance plc (“**Zurich**”) with an insured sum of EUR 25 million that is part of an international insurance program with integrated local policies. This primary policy is supplemented by various excess liability insurance policies. The primary policy and the excess liability insurance policies, as well as the other policies designated in the coverage settlement, are jointly referred to as the “**VW D&O**”, and the insurers involved in the VW D&O in the 2015 and 2021 insurance periods, as the “**VW D&O insurers**”. The VW D&O is an insurance policy for the entire Volkswagen Group. It contains an arbitration clause, meaning that any disputes about the existence of coverage claims can be clarified in the course of non-public arbitration proceedings. The VW D&O provides coverage to the persons defined in the insurance policies (“**insured persons**”) who work or worked for the policyholder or other companies covered by the policy according to the insurance terms and conditions (including AUDI and Porsche), in particular in the event that claims for damages are asserted against insured persons or official proceedings are initiated against them. The insured persons include, in particular, former and current board members of the companies as well as members of the Board of Management for the Volkswagen Passenger Cars brand.

For the insurance periods from 1 January 2015 to 1 January 2016, the VW D&O consisted of the insurance policy with Zurich for primary coverage with a maximum insured sum of EUR 25 million as well as nine excess liability insurance policies with a combined maximum insured sum of an additional EUR 475 million (together the “**2015 insurance program**”). The total insured sum of the 2015 insurance program is therefore EUR 500 million, in terms of which the insured sum in excess of EUR 300 million is only available for board members of Volkswagen.

In November 2015 Volkswagen, as a precaution, reported to the VW D&O insurers of the 2015 insurance program the facts and circumstances of the diesel issue that it was aware of at that time. The insurers then excluded the insurance coverage for so-called “manipulations of exhaust emission values” for the insurance periods as from 1 January 2016 under the VW D&O. The coverage was however maintained for the response management, which was defined in greater detail. In the subsequent years, the VW D&O was continued with this exclusion of coverage and some additional adjustments.

For the insurance period that commenced on 1 January 2021, the VW D&O consists of the insurance policy with Zurich for primary coverage with a maximum insured sum of EUR 25 million as well as eleven excess liability insurance policies with a combined maximum insured sum of an additional EUR 455 million (together the “**2021 insurance program**”). The total insured sum of

the 2021 insurance program is therefore EUR 480 million, in terms of which the insured sum in excess of EUR 300 million is once again only available for board members of Volkswagen.

Zurich has made payments under the 2015 primary coverage for legal defence costs of the insured persons, among other things in connection with criminal investigations and various proceedings in the US.

Volkswagen is of the opinion that the facts and circumstances in question fall under the 2015 insurance program and the 2021 insurance program. The VW D&O insurers argued that coverage could at best exist under the 2015 insurance program. In the interest of a comprehensive and definitive resolution, the VW D&O insurers of the 2021 insurance program are however also participating in the coverage settlement.

## **D. BASIC CONTENT OF THE SETTLEMENT AGREEMENTS**

### **I. Liability settlements**

Volkswagen and AUDI have concluded the liability settlements attached as Annexes to agenda item 10 with Professor Winterkorn and Mr. Stadler. The liability settlement with Professor Winterkorn relates both to claims that exist on the basis of negligent breaches of duty committed by Professor Winterkorn in his capacity as Chairman of the Board of Management of Volkswagen, and also to claims that exist on the basis of negligent breaches of duty committed by Professor Winterkorn in his capacity as Chairman of the Supervisory Board of AUDI. The liability settlement with Mr. Stadler concerns claims that exist on the basis of negligent breaches of duty committed by Mr. Stadler as a Board of Management member of Volkswagen and as Chairman of the Board of Management of AUDI. Both Volkswagen and AUDI are therefore parties to these liability settlements.

The main obligations and legal effects of these liability settlements are:

- Professor Winterkorn shall undertake, in accordance with section 1.1, to pay an own contribution totalling EUR 11,200,000.00 to Volkswagen. The own contribution shall be composed of a payment by Professor Winterkorn in the amount of EUR 7,210,000.00 in two equal annual instalments to Volkswagen pursuant to section 1.2 and the irrevocable and full waiver of claims against Volkswagen in the amount of EUR 3,990,000.00 gross pursuant to section 1.3. Professor Winterkorn shall waive a Long-Term Incentive Bonus for the 2016 financial year in the amount of EUR 2,655,000.00 gross and a bonus for the 2016 financial year in the amount of EUR 1,335,000.00 gross in that regard. These claims would per se have been due in 2017 already. They have however not yet been covered since their due date for payment was deferred until 30 June 2021 by way of several agreements between 2017 and 2020.

- Mr. Stadler shall undertake, in accordance with section 1.1, to pay an own contribution totalling EUR 4.1 million to Volkswagen and AUDI. Mr. Stadler shall pay the own contribution by waiving claims against Volkswagen and AUDI. Mr. Stadler shall waive a share of EUR 420,000.00 of a Long-Term Incentive Bonus (LTI) of EUR 888,508.74 for the 2018 financial year. Moreover, Mr. Stadler shall waive a claim, subject to a condition precedent, against Volkswagen and AUDI for a severance payment in the amount of EUR 5,112,500.00 gross, as well as a claim, subject to a condition precedent, against AUDI for a severance payment in the amount of EUR 112,500.00. Both claims to severance payments are subject to the condition precedent of legally binding or final termination or discontinuance of all criminal proceedings against him which are ongoing and were initiated before 1 January 2023 in connection with the diesel issue without any finding of personal fault under criminal law. Since according to the result of the extensive investigations of the diesel issue carried out by the law firms, Mr. Stadler is only guilty of a negligent breach of his duty of care, Volkswagen and AUDI presume that the condition precedent for the two severance payment claims has been met. The severance payment claim against Volkswagen and AUDI, subject to a condition precedent, in the amount of EUR 5,112,500.00 gross, shall therefore be taken into account for the own contribution as a payment in the amount of EUR 3,600,000.00. The severance payment claim in the amount of EUR 112,500.00 gross shall therefore be taken into account for the own contribution as a payment in the amount of EUR 80,000.00. Furthermore, Mr. Stadler shall assign to AUDI all claims arising from a deductible insurance he took out with Zurich. According to the plausible legal opinion of Zurich, it is however to be assumed that Zurich is not obliged to make payment on account of the exclusions of coverage and the special arrangements made.
- As soon as the respective own contribution pursuant to section 1.1 has been fully paid up, all claims of Volkswagen, AUDI and their subsidiaries against Professor Winterkorn and Mr. Stadler arising from or in connection with the “relevant facts and circumstances” shall be deemed satisfied and settled (sections 1.7 and 1.5 respectively). “Relevant facts and circumstances” include not only the diesel issue, but also any other manipulations, distortions or false statements made of/on exhaust emission, consumption or performance values of engines from the Volkswagen Group. The term “consumption values” denotes in particular the consumption values of all operating materials of a vehicle (such as petrol, diesel, electricity, oil). “Relevant facts and circumstances” also include any anticompetitive arrangements made in connection with exhaust emission and consumption value manipulations. The VW D&O insurers insisted on this comprehensive settlement. The background is that Volkswagen announced, e.g. in December 2015, that internal investigations had revealed that during the process of determining the CO<sub>2</sub> level for the type approval of vehicles values had been measured for which there was no explanation. While the suspicion of unlawful modification of the consumption figures for current production vehicles was not confirmed, the settlements nevertheless include this matter, among others, in the interests of a comprehensive arrangement. Such claims in respect of which less than three years have elapsed since they arose shall not, however, be deemed satisfied and settled. Sections 1.8

and 1.6 respectively thereby take the requirements of section 93(4), sentence 3 German Stock Corporation Act into account.

- Section 2.1 provides for the consent of Professor Winterkorn and Mr. Stadler to the coverage settlement and at the same time makes it clear that the payments made and yet to be made by the VW D&O insurers will depend on the insurance policy and the coverage settlement. Sections 2.2 and 2.3 furthermore restrict the effect of being satisfied and settled under sections 1.7 and 1.5 respectively *inter alia* with regard to the VW D&O insurers which are not parties to the coverage settlement and in the event that the coverage settlement should subsequently turn out to be null and void and for that reason the VW D&O insurers which are not parties to the coverage settlement do not pay Volkswagen the intended settlement contributions in full or demand at least partial repayment from Volkswagen. To that extent, Volkswagen and AUDI shall be able to take action against Professor Winterkorn or Mr. Stadler, which can also indirectly make it possible for claims to be asserted against the VW D&O insurers. Such a course of action should not however place additional financial burdens on Professor Winterkorn and Mr. Stadler if they have paid their respective own contributions and at Volkswagen's request have assigned their indemnification claims against the VW D&O insurers to Volkswagen and/or AUDI or a third party named by them. In that event, the companies shall therefore generally only issue execution against the indemnification claim of Professor Winterkorn and Mr. Stadler against the VW D&O insurers, insofar as this indemnification claim has not already passed to Volkswagen or AUDI anyway, but not against the other assets of Professor Winterkorn and Mr. Stadler.
- Professor Winterkorn and Mr. Stadler shall be indemnified against, among other things, third party claims that are based on the "relevant facts and circumstances" pursuant to section 3.1. This may be of relevance, for example, if third parties also assert claims against Professor Winterkorn or Mr. Stadler in person in connection with actions brought against Volkswagen or AUDI. The indemnification shall also extend to the costs that Prof. Winterkorn incurs in connection with the defence of these claims or criminal allegations arising out of the relevant facts and circumstances. The indemnification shall only apply if no payments flow from the VW D&O and no claims under the VW D&O exist. Moreover, the indemnification shall be restricted pursuant to section 3.2. It shall not exist where coverage is excluded under the insurance terms and conditions of the VW D&O. Furthermore, the indemnification shall be restricted to the difference between the coverage of the VW D&O and the insurance payments already made or yet to be made by the VW D&O insurers. In addition, an indemnification is out of the question if it would violate section 93(4), sentence 3 German Stock Corporation Act or other mandatory statutory provisions. These restrictions serve the purpose in particular of preventing third parties from asserting claims against Professor Winterkorn or Mr. Stadler in order to indirectly access the assets of Volkswagen or AUDI by way of the indemnification. The restrictions of the insured sums and exclusions of cover shall however not apply to the reimbursement of costs for the defence of claims and other legal defence costs. This concession to Professor Winterkorn and

Mr. Stadler is appropriate *inter alia* because it is also in the interest of Volkswagen that Professor Winterkorn and Mr. Stadler be represented by competent lawyers, above all also in the proceedings with foreign authorities and plaintiffs.

- Pursuant to section 3.4 Professor Winterkorn and Mr. Stadler will only assert claims against third parties from the Volkswagen Group, particularly against current and former board members and employees of the companies, with the consent of Volkswagen and AUDI. This shall not apply, however, insofar as the restrictions of the indemnification claims of Professor Winterkorn and Mr. Stadler apply pursuant to section 3.2.
- Pursuant to sections 5.1 a) and b), the entry into effect of the respective liability settlements with Professor Winterkorn and Mr. Stadler is subject to the condition precedent of the General Meetings of Volkswagen and AUDI approving the respective liability settlement without an objection, recorded in the minutes, by a minority whose aggregate shares are at least equivalent to one tenth of the share capital. This reflects the legal requirements set out in section 93(4), sentence 3 German Stock Corporation Act. In addition, section 5.1 c) provides that the condition precedent of the coverage settlement must be met as well, which includes in particular the approval of the coverage settlement by the General Meetings of Volkswagen, AUDI and Porsche.
- Pursuant to section 5.3 Professor Winterkorn and Mr. Stadler shall, until six months have elapsed after the resolution of the last action for avoidance or nullity in connection with the respective liability settlement, refrain from asserting the defence of the statute of limitations for claims arising from the “relevant facts and circumstances”. The waiver of the statute of limitations shall be independent of fulfilment of the conditions for the liability settlement to take effect pursuant to section 5.1. This is to ensure that the companies’ claims for damages do not become statute-barred even if a liability settlement should be invalid.

In addition to the liability settlements with Professor Winterkorn and Mr. Stadler, liability settlements have also been concluded with Dr. Knirsch and Mr. Hatz. The liability settlement with the former member of the AUDI Board of Management, Dr. Knirsch, was concluded by AUDI. The liability settlement with Mr. Hatz involves not only Porsche but also Volkswagen and AUDI because Mr. Hatz worked for these companies as an employee prior to his activities on the Porsche Board of Management. As Dr. Knirsch and Mr. Hatz have not been on the Board of Management or the Supervisory Board of Volkswagen, there is no need for approval from the Volkswagen General Meeting for these liability settlements.

The contractual provisions of the liability settlements with Dr. Knirsch and Mr. Hatz correspond in essence to the liability settlements of Volkswagen and AUDI with Professor Winterkorn and Mr. Stadler. The respective own contributions differ, however: Pursuant to the liability settlement, Dr. Knirsch shall pay AUDI an own contribution of EUR 1 million. Mr. Hatz shall pay Porsche an own contribution of EUR 1.5 million. The conditions precedent also apply accordingly, so that the liability settlement with Dr. Knirsch is, above all, subject to the condition precedent of approval by the AUDI General Meeting, and the liability settlement with Mr. Hatz to the condition

precedent of approval by the Porsche General Meeting. Part of the condition precedent laid down in both liability settlements is likewise the approval of the coverage settlement by the General Meeting.

## II. Coverage settlement

Volkswagen, AUDI and Porsche concluded the coverage settlement attached as an Annex to agenda item 11 with the VW D&O insurers (“**participating VW D&O insurers**”).

The main obligations and legal effects of this coverage settlement are:

- The participating VW D&O insurers shall undertake in accordance with section 1.1 of the coverage settlement to pay a total amount of EUR 270,015,000.00 minus payments already made pursuant to sections 1.2 and minus insurance payments still to be made pursuant to section 2. Of that, the VW D&O insurers for the 2015 insurance program shall pay an amount of EUR 261,890,000.00 pursuant to section 1.2. Of that, the VW D&O insurers for the 2021 insurance program shall pay an amount of EUR 8,125,000.00 pursuant to section 1.3.
- On account of the damage sustained by AUDI and Porsche as a result of the diesel issue and the corresponding claims AUDI and Porsche have for damages against the persons against whom claims are asserted, who for their part come under the VW D&O, of the above sum Volkswagen shall, pursuant to section 1.1, pass on a share of 34.18 percent of that amount to AUDI and a share of 14.50 percent to Porsche. Both AUDI and Porsche are (indirectly) wholly-owned subsidiaries of Volkswagen with whom control and profit/loss transfer agreements exist. Therefore, the payments that are passed on to AUDI and Porsche also benefit Volkswagen.
- Pursuant to sections 2.1 and 2.2 of the coverage settlement, Zurich will set up a provisions account into which XL Insurance Company SE and Allianz Global Corporate & Specialty SE will pay a combined total amount of EUR 50 million from the 2015 settlement amounts. Future insurance payments for the relevant facts and circumstances that can still be demanded also taking into account the liability settlements and the coverage settlement shall be made from this provisions account. Such payments include, in particular, the assumption of costs of the defence against claims and indemnification against justified claims should any be asserted by third parties against insured persons. Should, once these payments have been rendered, there still be a balance in the provisions account, it shall be paid out to Volkswagen.
- According to sections 3.1 and 3.2, all coverage claims against the participating VW D&O insurers based on or in connection with the “relevant facts and circumstances”, as well as all other coverage claims which are attributable to the 2015 insurance period, shall be deemed satisfied and settled vis-à-vis Volkswagen, AUDI and Porsche as soon as the coverage settlement pursuant to section 7.1 has taken effect, the respective settlement amounts

pursuant to section 1 have been fully paid by individual participating VW D&O insurers and provisions for future insurance payments pursuant to section 2 have been created and insofar as the parties are authorised to dispose of the coverage claims in accordance with the provisions in the insurance policy and the Insurance Contracts Act.

- Under section 3.3, the payments to be made pursuant to section 1.1 und 1.3 during the 2021 insurance period shall be set off against the insured sum of this insurance period.
- Once the conditions precedent pursuant to section 6.1 have been met and the settlement amount has been paid pursuant to section 1, Volkswagen, AUDI and Porsche undertake pursuant to sections 3.6 and 3.7 never to assert claims in connection with the “relevant facts and circumstances” against current and former Board of Management members or against any other insured persons – with the exception, pursuant to section 3.10, of Professor Winterkorn, Mr. Stadler, Professor Hackenberg, Dr. Knirsch, Mr. Hatz and Dr. Neußer (together the “**persons against whom claims are asserted**”). Pursuant to section 3.9, this applies comprehensively for claims in connection with the diesel issue. This does not apply for other claims in connection with the “relevant facts and circumstances” insofar as no VW D&O insurance coverage exists. According to the results of the extensive investigations carried out by the law firms, the companies do not have any claims for damages against the other insured persons, so that any assertion of claims can be omitted without this resulting in economic disadvantages. Only by means of such a comprehensive solution can the intended purpose of the agreements, namely to bring the investigation of the diesel issue with respect to possible liability claims to a final conclusion in terms of liability and insurance law, be achieved. This arrangement will allow the current board members to concentrate in particular on their future-oriented tasks in the companies. In the current situation, with the automotive sector undergoing structural changes, this is of particular importance.
- Such claims in respect of which less than three years have elapsed since they arose shall not, however, be deemed settled. Section 3.8 thereby takes the requirements of section 93(4), sentence 3 German Stock Corporation Act into account.
- Should no liability settlements have been concluded with the persons against whom claims are asserted, or such liability settlements do not enter into force or are declared null and void, the claims for damages against them shall remain in place pursuant to section 3.10. However, pursuant to section 3.10, such claims for damages are only enforceable for that part of the claim which would remain had the VW D&O insurers also spent the difference between the settlement amounts pursuant to section 1 and the maximum insurance sums for the 2015 and the 2021 insurance periods for the indemnification of the respective persons against whom claims are asserted. These provisions are of particular importance for claims for damages against Dr. Neußer and Prof. Hackenberg, with whom no liability settlement was concluded. Claims have already been asserted against Dr. Neußer. The Supervisory Board of AUDI has instructed that preparations be made for legal action to be taken against Prof. Hackenberg.

- Section 4 contains indemnifications in favour of the participating VW D&O insurers for the event that after the coverage settlement takes effect, legitimate claims to insurance payments are asserted based on or in connection with the “relevant facts and circumstances” and the provisions account pursuant to section 2 is no longer in credit. With regard to the 2015 insurance program, the indemnification obligation also applies to claims which are not attributable to the “relevant facts and circumstances”, because claims arising from the 2015 insurance program are completely covered by the coverage settlement. Other restrictions of the indemnification obligation remain unaffected, however.
- The participating VW D&O insurers undertake pursuant to section 5.1 not to assert any claims for recourse or compensation against the companies, insured persons or third parties on account of payments made by these insurers. The VW D&O Insurers must assign such claims upon Volkswagen’s request to Volkswagen, AUDI, Porsche or a third party.
- Berkshire Hathaway International Insurance Limited (“**Berkshire Hathaway**”), as the insurer of the first excess liability insurance policy of the 2021 insurance program with a maximum insured sum of EUR 50 million after the primary coverage by Zurich in the amount of EUR 25 million, was not willing to enter into a settlement. Berkshire Hathaway is therefore not a party to the coverage settlement. To the extent possible under the relevant insurance policies and the statutory provisions, the coverage settlement shall not have any effect on the rights and duties of Berkshire Hathaway as a VW D&O insurer. Section 6.1 stipulates that Berkshire Hathaway is to be excluded from all of the effects of the coverage settlement which benefit the VW D&O insurers. In order to make it possible to assert claims against Berkshire Hathaway, liability claims against the persons against whom claims are asserted pursuant to section 6.2 shall additionally continue to exist in full and be enforceable. However, compulsory enforcement against the persons against whom claims are asserted shall be limited in this regard to their indemnification claims against Berkshire Hathaway under the insurance contracts.
- The effectiveness of the coverage settlement is, pursuant to sections 7.1 a) and b), subject to the condition precedent of approval by the General Meetings of Volkswagen, AUDI and Porsche without an objection to the respective resolution, recorded in the minutes, by a minority whose aggregate shares are at least equivalent to one tenth of the share capital of Volkswagen, AUDI or Porsche. This reflects the legal requirements set out in section 93(4), sentence 3 German Stock Corporation Act. Section 7.2 contains provisions for the event that a defective resolution action is brought against the respective approval resolution of the General Meetings. The bringing of such a defective resolution action does not, alone, prevent the coverage settlement taking effect. If a defective resolution action is successful, the coverage settlement will cease to be effective retroactively.

## **E. LEGAL FRAMEWORK FOR THE SETTLEMENT AGREEMENTS**

Pursuant to section 93(4), sentence 3 German Stock Corporation Act, Volkswagen may only waive claims for damages against members of the Board of Management or reach a settlement in that regard if three years have passed since the claim arose, the General Meeting agrees and a minority whose combined shares make up the tenth part of the share capital does not record an objection in the minutes.

Section 93(4), sentence 3 German Stock Corporation Act also applies to settlement agreements with former Board of Management members and therefore to the liability settlements with Professor Winterkorn and Mr. Stadler put to the vote under agenda item 10. As part of the counter-performance of Volkswagen, AUDI and Porsche, the coverage settlement provides that D&O liability claims will never be asserted. Therefore, the coverage settlement put to the vote under agenda item 11 will only take effect under the conditions set forth in section 93(4), sentence 3 German Stock Corporation Act. Therefore, the liability settlements as well as the coverage settlement are to be presented to the General Meeting for approval.

The decisive factor for commencement of the three-year period is the time at which the claim arises. A claim arises as soon as the requirements for establishing liability are met, i.e. the breach of duty has been committed and damage has been incurred. In this connection, the three-year period commences – independently of whether the development of the damage has come to an end – upon knowledge of the first damage items as soon as the claim can be asserted by means of an action for performance or for a declaratory judgment. This point in time is more than three years ago for all of the facts and circumstances reviewed as part of the extensive investigations carried out by the law firms. Moreover, claims in respect of which less than three years have elapsed since they arose are, purely as a precaution, expressly excluded from satisfaction and settlement. Therefore, the General Meeting can permissibly vote on the settlement agreements.

## **F. MAIN REASONS FOR THE SETTLEMENT AGREEMENTS**

Volkswagen's Supervisory Board and Board of Management are convinced that the settlement agreements put to the vote under agenda items 10 and 11 are in the interest of Volkswagen. This is based on the following considerations.

The responsibilities of Volkswagen's board members in connection with the diesel issue have meanwhile been thoroughly and very carefully investigated over a period of more than five and a half years. Now that this comprehensive investigation has been concluded, the clarification process should be brought to an end so that Volkswagen can draw a line under reviewing the responsibilities of the board members and conclude the diesel issue in that regard as well. Volkswagen can make use of the internal and external resources that have hitherto been dealing with the clarification for its important strategic and operative issues for the future. This is of crucial importance in particular since Volkswagen is facing major business challenges in its ongoing transformation

of the company. It is only once this investigation has been concluded and the settlement agreements have been concluded that the payment of the considerable funds from the D&O insurance and the own contributions of the board members against whom claims are asserted can be made.

The Supervisory Board and the Board of Management regard the settlement contributions of the participating VW D&O insurers and the respective own contributions claimed from the board members, amounting Group-wide to a sum total of EUR 287,815,000.00, as financially appropriate in the interest of the company. Although in the company's view the financial losses incurred by the Volkswagen Group as a result of the diesel issue, as well as the losses attributable to the negligent breaches of duty committed by Professor Winterkorn and Mr. Stadler and the other insured persons, are far more than the total amount agreed, the financial capability of the persons against whom claims are asserted – even taking into account the insured sum – is nowhere near the damage incurred that, in the view of the company, is attributable to these persons. Against this background, any comprehensive satisfaction of the claims for damages that exist in the company's opinion, is not realistic from the outset.

Furthermore, if claims for damages were asserted in court, Volkswagen would have to conduct a number of complex proceedings. As a first step, Volkswagen would need to take action against the persons against whom claims are asserted, in particular Professor Winterkorn and Mr. Stadler, in order to then be able to assert a claim against the VW D&O insurers as a second step. The existence and extent of liability claims would need to be clarified in proceedings against the persons against whom claims are being asserted, whereas in subsequent proceedings against the VW D&O insurers the decisive question would be whether and the extent to which any claims for damages awarded to the company are insured.

As in the case of any lawsuit, asserting claims for damages in court against the persons in question would involve litigation risks with the possible outcome that the claims for damages might not be awarded at all or not in full. In the event of a legal dispute between the company and the persons against whom claims are asserted, the courts would have a number of complicated factual and legal questions to decide. The persons against whom claims are asserted would very likely raise numerous factual and legal objections to avert the claims for damages. Many of the legal issues raised in that respect have not yet been decided either by lower courts or the supreme court. Furthermore, with a view to any lawsuit with the VW D&O insurers, it could not be assumed that the VW D&O insurers would accept Volkswagen's claims without raising extensive (legal) objections. It would moreover take many years for final and binding decisions to be reached in court proceedings.

In any event, litigating against Professor Winterkorn and Mr. Stadler and the other persons against whom claims are asserted, as well as the VW D&O insurers, would nonetheless give rise to considerable costs for all those involved in the proceedings. Volkswagen would thereby be burdened with considerable procedural costs. In addition, the procedural costs incurred by the persons against whom claims are asserted would burden the liable funds available to Volkswagen and hence indirectly Volkswagen again, even if Volkswagen won the case. If Volkswagen lost in full

or in part, in addition to its remaining damage the company would be required to bear the procedural costs in full or in part itself. By concluding the settlement agreements before an action is filed, the costs of a lawsuit in this regard can be entirely avoided.

Unlike in the case of asserting the claims in court, it is furthermore ensured that the claims against Professor Winterkorn and Mr. Stadler can be realised, considerable sums can be claimed from the participating VW D&O insurers and the inflow of the funds to Volkswagen can be expected in good time. Lastly, pursuing the claims in court would tie up considerable human resources of the company that could be employed more efficiently, in economic terms, elsewhere.

The Supervisory Board and the Board of Management are convinced that the possibility cannot be ruled out that public court proceedings in which the conduct of Professor Winterkorn and Mr. Stadler, sometimes from long ago, is discussed and assessed in public, would damage the public perception of Volkswagen and the Volkswagen Group. In that regard, the Supervisory Board and the Board of Management see the risk that Volkswagen's considerable performance and success in compliance management over the past few years would not be appropriately appreciated in the public eye. On the contrary, there might be a risk – not least because of negative press reports on the court proceedings – of these successes being thwarted on account of the misconduct of former executives and employees in the past. Such a perception might have a negative impact on the current business activities and reputation of the company and the entire Volkswagen Group which, in the view of Volkswagen, must be avoided in the interest of the company.

Furthermore, the coming into force of the settlement agreements would greatly simplify the legal situation of Volkswagen. Although Berkshire Hathaway is not a party to the coverage settlement, and the Supervisory Board has instructed that preparations be made for legal action to be taken against Berkshire Hathaway, it would also be possible to assert claims against it in the course of arbitration proceedings. Apart from that, however, Volkswagen would then be able to concentrate on its defence against claims and put forward the best possible defence in the proceedings that are still ongoing.

The own contributions made by Professor Winterkorn and Mr. Stadler on the one hand take their responsibility and the damage incurred by Volkswagen into account but, on the other hand, also their accomplishments for Volkswagen during their many years of working for the Group with great success. During Professor Winterkorn's time as Chairman of the Board of Management, the Volkswagen Group generated a cumulative net profit of around 75 billion. Its international business, above all in the People's Republic of China, was furthermore expanded at great profit and the Group's important commercial vehicle business strategically advanced. The Volkswagen core brand was able to manifest its claim to the premium high-volume segment in the automotive sector. During his term as Chairman of the Board of Management, Mr. Stadler enhanced the brand's premium claim. Over this period deliveries almost doubled and net profit more than doubled. In addition, with the Audi A8 the world's first series-produced car was designed specifically for highly automated driving (level 3), introducing the electrification of the model range. The own contributions owed by Professor Winterkorn and Mr. Stadler under the liability settlements stress

that Volkswagen does not tolerate wrongful behaviour of its board members without sanctions but instead calls wrongfully acting board members to account.

The waiver of potential liability claims against the other insured persons does not however result in economic disadvantages for the company since, according to the results of the extensive investigations carried out by the law firms, the companies do not have any claims for damages against the other insured persons. Only by means of such a comprehensive solution can the intended purpose of the agreements, namely to bring the investigation of the diesel issue with respect to possible D&O liability claims to a final conclusion in terms of liability and insurance law, be achieved. This arrangement will also allow the current board members to concentrate in particular on their future-oriented tasks in the companies.

The ongoing proceedings do not stand in the way of concluding a settlement. In the view of the Supervisory Board and the Board of Management, the conclusion of a settlement should not be delayed any further since the advantages of such a settlement, namely the rapid conclusion of the investigation of the diesel issue, the speedy inflow of the funds and the improvement in Volkswagen's situation as regards the ongoing proceedings, can only be fully achieved by concluding the settlement at an early stage.

## **G. COURT-ORDERED SPECIAL AUDIT**

The conclusion of the settlement agreements and the waiving of claims vis-à-vis other board members is permissible even taking into consideration the special audit ordered to take place at Volkswagen by Celle Higher Regional Court for the purpose of examining whether the actions of the Board of Management and Supervisory Board in connection with the diesel issue were in accordance with their duties. Notwithstanding the order for this special audit, the Board of Management and the Supervisory Board remain entitled under the delineation of responsibilities under stock corporation law to resolve on settlement agreements and waivers with board members at their due discretion and in the interest of the company. The same applies to the competence of the General Meeting to approve such agreements.

More than five and a half years after the diesel issue became known, the Board of Management and the Supervisory Board consider that, due to the comprehensive reviews by Gleiss Lutz for the Supervisory Board and Linklaters for the Board of Management, there are now sufficient findings in every respect regarding the responsibilities of current and former members of the Board of Management and Supervisory Board under stock corporation law in connection with the diesel issue. Based on the findings of these reviews, the Supervisory Board and the Board of Management have resolved on the assertion of claims for damages and the present settlement agreements. By this, the intention is to conclusively deal with the issue of the civil law responsibilities of Volkswagen board members in connection with the diesel issue. Volkswagen will ultimately be put in a position to concentrate unhampered on the substantial operative and strategic challenges facing the company.

The Board of Management and the Supervisory Board do not consider it appropriate to await the results of the special audit. This applies not least because, given the scope and depth of the comprehensive investigations by the Supervisory Board and the Board of Management, no further findings are expected from the special audit. Moreover, it is likely to be a considerable amount of time before the special auditor is in a position to submit his final report because no audit procedures have yet taken place at Volkswagen. This would also mean that the considerable funds from the settlement agreements with the D&O insurers and Professor Winterkorn and Mr. Stadler would not flow to Volkswagen at the present time.

In addition, it is uncertain whether the special audit will be continued at all in the future. Volkswagen has lodged two constitutional complaints against the rulings of Celle Higher Regional Court underlying the order for the special audit on the grounds that they violate its constitutionally guaranteed rights. In the event of a successful constitutional complaint, the special audit would have to be halted immediately. Volkswagen has also instituted proceedings for injunctive relief against the special auditor because in Volkswagen's view – supported by a detailed expert opinion from a renowned professor – the special auditor has not yet sufficiently proven there to be no bar to his appointment.

#### **H. SUMMARY RECOMMENDATION**

On this basis, the Supervisory Board and the Board of Management are convinced that, in the interest of the company, the settlement agreements put to the vote under agenda items 10 and 11 are far preferable to the enforcement of compensation or coverage claims in court. In the opinion of the Supervisory Board and the Board of Management, it is clearly in the interest of the company and the Group to bring the legal investigation of the diesel issue with regard to the responsibilities of the board members under civil law to a quick, legally certain and final conclusion by way of the settlement agreements. The Supervisory Board and Board of Management thus propose that the General Meeting approve the settlement agreements.

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## Liability Settlement

between

- (1) VOLKSWAGEN AKTIENGESELLSCHAFT, Berliner Ring 2, 38440 Wolfsburg (“**VOLKSWAGEN**” or “**VOLKSWAGEN AG**”), represented by the Supervisory Board,
- (2) AUDI Aktiengesellschaft, Auto-Union-Strasse 1, 85045 Ingolstadt (“**AUDI**” or “**AUDI AG**”), represented by its Board of Management and Supervisory Board,

– VOLKSWAGEN and AUDI also referred to hereinafter as “**Companies**” –

- (3) Prof. Dr. Martin Winterkorn, represented by Dr. Kersten von Schenck, M.C.J. (NYU), lawyer and notary, Arndtstrasse 28, 60325 Frankfurt am Main and by CYRUS Rechtsanwälte PartG mbB, Mainzer Landstrasse 50, 60325 Frankfurt am Main, each being authorised to represent him on their own.

(VOLKSWAGEN, AUDI and Professor Winterkorn also referred to hereinafter individually as “**Party**” and collectively as “**Parties**”).

### Preamble

- (A) From 1996 to 2005, Prof. Dr. Winterkorn was a member of the Board of Management for the Volkswagen Passenger Cars brand, where he was responsible for the Technical Development Division. Between 2000 and 2002, he was responsible for the Research and Development Division on VOLKSWAGEN’s Group Board of Management. He was Chairman of the Board of Management of AUDI from 2002 to the end of 2006, before becoming Chairman of the Board of Management of VOLKSWAGEN on 1 January 2007, taking over responsibility for, among other things, the Research and Development, Sales, Quality Management and Legal Divisions as well as the position of Chairman of the Board of Management for the Volkswagen Passenger Cars brand. On 30 June 2015 Prof. Dr. Winterkorn retired from his post as Chairman of the Board of Management for the “Volkswagen Passenger Cars” brand. On 23 September 2015 he resigned from the Board of Management of Volkswagen. His employment contract ended on 31 December 2016.
- (B) Based on a comprehensive review, VOLKSWAGEN, AUDI and Dr. Ing. h.c. F. Porsche Aktiengesellschaft (“**Porsche**”) came to the conclusion that several of their former board members breached their duties of care in connection with the diesel issue. The term “Diesel Issue” refers in this context to the development, installation, distribution and other use of certain software functions in the engine control unit of EA189 and EA288 diesel engines as well as various V-TDI engines that led to deviations between the exhaust emissions during dynamometer operation and road use and all facts and circumstances related thereto. For the purposes of this Liability Settlement, the term also covers the clarification and investigation of the matter at VOLKSWAGEN,

AUDI and Porsche following the publication of the Notice of Violation by the US Environmental Protection Agency (EPA) on 18 September 2015.

As a consequence, the Supervisory Board of VOLKSWAGEN wrote to Prof. Dr. Winterkorn on behalf of the Company on 26 March 2021 asserting claims for damages against him for breaches of duty based on section 93(2), sentence 1 German Stock Corporation Act. VOLKSWAGEN accuses Prof. Dr. Winterkorn of having breached his duties of care as former Chairman of the Board of Management of VOLKSWAGEN AG by having failed, in the period from 27 July 2015 on, to promptly and comprehensively clarify the circumstances behind the use of unlawful software functions in 2.0l TDI diesel engines sold in the North American market between 2009 and 2015. VOLKSWAGEN argues that Prof. Dr. Winterkorn also failed to ensure that the questions asked by the US authorities in this context were answered truthfully, completely and without delay, and that VOLKSWAGEN suffered substantial damage as a result that must be compensated by Prof. Dr. Winterkorn.

Through the lawyers instructed by him, Prof. Dr. Winterkorn has rejected the allegation of a breach of the duties of care and disputed both the merits and the amount of the asserted claims.

- (C) Since 1 January 2012, VOLKSWAGEN has maintained a D&O insurance policy (“**Primary Policy**”) with Zurich with an insured sum of EUR 25 million (policy no. 802.380.116.137), that is part of an international insurance plan. The Primary Policy is supplemented by various excess liability insurance policies (together with the Primary Policy, the “**VW D&O**”, the insurers participating in the VW D&O in the 2015 and 2021 insurance periods, together the “**D&O Insurers**”). The VW D&O provides coverage to contractually defined persons who work or worked for VOLKSWAGEN or other companies covered by the policy (AUDI, among others) according to the insurance terms and conditions in the event that claims for damages are asserted against them. The insured persons include, in particular, former or current board members of the Companies.

VOLKSWAGEN, AUDI and PORSCHE shall conclude a settlement agreement with the D&O Insurers (“**Coverage Settlement**”) to settle all coverage claims from the VW D&O in connection with exhaust emission and consumption value manipulations (as defined in the Coverage Settlement, the “**Relevant Facts and Circumstances**”).

The Coverage Settlement stipulates, among other things, that claims of VOLKSWAGEN for damages against Prof. Dr. Winterkorn shall continue to exist to the extent that they exceed the maximum insured sum still available in each case or if they are not insured for other reasons, unless a corresponding Liability Settlement with Prof. Dr. Winterkorn has been entered into and the performance owed under the Liability Settlement has been rendered.

- (D) Against this background, the Parties wish, in the interests of both sides, to avoid years-long disputes over the asserted claims and to come to a mutual agreement, whilst maintaining their respective standpoints on liability.

For this purpose, the Parties agree the following:

**1. Own Contribution of Prof. Dr. Winterkorn**

1.1 Prof. Dr. Winterkorn agrees to make payments to VOLKSWAGEN totalling EUR 11,200,000 (in words: eleven million two hundred thousand euros) in accordance with sections 1.2 and 1.3 below (the “**Own Contribution**”). Save where this Liability Settlement contains a more specific provision, the Own Contribution shall be made without prejudice to payments made by the D&O Insurers and independently of personal own contributions made by other potentially liable parties. The Parties agree by way of a genuine contract for the benefit of Third Parties that no indemnification or any other form of full or partial compensation can be claimed from the D&O Insurers for this Own Contribution.

1.2 Prof. Dr. Winterkorn agrees to make this Own Contribution by paying an amount of EUR 7,210,000 in two equal annual instalments of EUR 3,605,000 to an account to be specified by VOLKSWAGEN.

1.3 In addition to that, Prof. Dr. Winterkorn hereby irrevocably and completely waives the following claims against VOLKSWAGEN (in each case including claims for interest, if any):

a) Long-Term Incentive Bonus (LTI) for the 2016 financial year in the amount of EUR 2,655,000.00 gross, and

b) bonus for the 2016 financial year in the amount of EUR 1,335,000.00 gross,

the due date for payment of both of which has been deferred pursuant to agreements of 9 May 2017, 29 May 2018, 14 May 2019 and 18 June 2020 to 30 June 2021.

The Parties are in agreement that, with the exception of the claim to a pension pursuant to section 7 of the services agreement with VOLKSWAGEN of 19 May 2011, Prof. Dr. Winterkorn has no claims to remuneration against the Companies.

VOLKSWAGEN and Prof. Dr. Winterkorn are further in agreement that Prof. Dr. Winterkorn also has no claims to remuneration against any companies other than AUDI that are affiliated with VOLKSWAGEN as parent company. In relation to any other affiliated company, this agreement constitutes a separate, genuine contract for the benefit of Third Parties, for the purposes of which AUDI represents the other companies affiliated with VOLKSWAGEN as parent company and hereby accepts the agreement on their behalf.

1.4 Prof. Dr. Winterkorn accepts this obligation to pay

a) without acknowledging any duty to pay damages or any liability,

b) without acknowledging any breach of duty in connection with the Relevant Facts and Circumstances, and

c) without prejudice in terms of a legal dispute, should this Liability Settlement not take effect.

- 1.5 The first instalment of the Own Contribution shall be due for payment on 15 September 2021, but no earlier than two weeks after the condition precedent pursuant to section 5.1 has been met. Prof. Dr. Winterkorn shall have the right to pay before the amount becomes due. The second instalment shall be due for payment on 15 September 2022. Prof. Dr. Winterkorn warrants that he has not already assigned, pledged or otherwise disposed of the claims which he is waiving pursuant to section 1.3(a) and (b) and that he will not dispose of them in the period until the waiver takes effect.
- 1.6 If and to the extent that the Own Contribution is not paid when due, interest shall be payable thereon from the due date at the statutory rate pursuant to section 288(1), sentence 2 German Civil Code. A reminder is not necessary.
- 1.7 Insofar as this Liability Settlement does not provide otherwise, all known or unknown, current or future, conditional or unconditional claims of the Companies and their subsidiaries against Prof. Dr. Winterkorn out of or in connection with the Relevant Facts and Circumstances, regardless of their legal basis, are satisfied and settled as soon as Prof. Dr. Winterkorn has paid his Own Contribution in full.
- 1.8 Pursuant to section 93(4), sentence 3 German Stock Corporation Act, a waiver of claims of the Companies cannot be made if less than three years have elapsed since they have arisen. Claims of this kind are therefore excluded from satisfaction and settlement.

## **2. Payments by the D&O Insurers and Waivers of the Companies**

- 2.1 The payments made and yet to be made by the D&O Insurers shall be determined by reference to the insurance policy and the Coverage Settlement with the D&O Insurers. Prof. Dr. Winterkorn agrees to the Coverage Settlement, which is attached to this Settlement (without signatures).
- 2.2 Notwithstanding section 1.7, the Companies reserve the right to assert claims against Prof. Dr. Winterkorn for liability for the damage resulting from the Relevant Facts and Circumstances,
  - a) should, following performance of the condition pursuant to section 5.1, a court find, res judicata, the Coverage Settlement to be void or declare it, res judicata, void, and
  - b) should, for that reason, the D&O Insurers not pay in full the contributions provided for in the Coverage Settlement towards the settlement of the damage or demand that all or part of their settlement contributions be reimbursed.

If they obtain an enforceable judgment in such a case, the Companies shall not, however, seek enforcement against the (other) private assets of Prof. Dr. Winterkorn. Therefore, enforcement may only be sought against his claims against the D&O Insurers for indemnification or his recourse claims against other debtors, in particular joint and several debtors, out of or in connection with the Relevant Facts and Circumstances. However, this limitation on enforcement shall only apply

- (i) if Prof. Dr. Winterkorn has paid his Own Contribution as defined in section 1 in full, and
- (ii) if, at the request of VOLKSWAGEN and AUDI, he assigns in full his claims against the D&O Insurers for indemnification in relation to the res judicata liability claims to one of the Companies or a Third Party to be specified by the Companies, and
- (iii) if he has not violated any obligation vis-à-vis the D&O Insurers, resulting in him losing some or all of his D&O cover.

The conclusion of this Liability Settlement and the waiver of the statute of limitations in section 5.3 do not, according to the common understanding of the Parties, constitute a violation of any obligation vis-à-vis the D&O Insurers. Should, contrary to expectations, this assessment prove to be incorrect, Prof. Dr. Winterkorn shall not be liable vis-à-vis the Companies in this regard.

- 2.3 In cases where the Companies or one of the Companies wish to take action against D&O Insurers that are excluded from the effect of being satisfied and settled in the Coverage Settlement with the aim of enforcing claims to insurance payments against these D&O Insurers, section 2.2 shall apply *mutatis mutandis*.
- 2.4 In cases covered by section 2.2(b) or section 2.3, the Companies can require Prof. Dr. Winterkorn to make a written transfer to one of the Companies of all or some of his indemnification claims against the D&O Insurers – insofar as they relate to the claims for damages asserted by the Companies – but not of his claims to defence costs against the D&O Insurers. Prof. Dr. Winterkorn guarantees that he will not encumber the indemnification claims with Third-Party rights, but he gives no guarantee for the valid existence and enforceability of the indemnification claims. The Companies are then entitled, but not obliged, to file a direct action against the D&O Insurers that have not signed the Coverage Settlement or that ask for repayment of the settlement contributions. The Companies shall not transfer the assigned claims to Third Parties, with the exception of D&O Insurers in the context of a settlement or any other satisfaction of coverage claims.

### **3. Indemnification, Counterclaims**

- 3.1 VOLKSWAGEN shall indemnify Prof. Dr. Winterkorn against all claims
  - a) that Third Parties are awarded, res judicata, against Prof. Dr. Winterkorn on the basis of his work for the Companies based on the Relevant Facts and Circumstances, or with regard to which a court decision is at least provisionally enforceable, insofar as Prof. Dr. Winterkorn assigns his claims to reimbursement of the payments made on the basis of the provisionally enforceable ruling to the Companies, or
  - b) that Prof. Dr. Winterkorn acknowledges with the consent of the Companies, or
  - c) with regard to which, with the consent of the Companies, he waives his right to appeal or seek legal redress in the course of a legal dispute.

“**Third Parties**” within the meaning of this Liability Settlement shall be any and all natural or legal persons with the exception of VOLKSWAGEN, AUDI and Prof. Dr. Winterkorn.

The indemnification shall also extend to the costs that Prof. Dr. Winterkorn incurs in connection with the defence against these claims or criminal or other allegations brought forward by the authorities out of or in connection with the Relevant Facts and Circumstances, except where a D&O Insurer could explicitly and legitimately object to the level of the costs. No claim to indemnification shall exist insofar as Prof. Dr. Winterkorn receives or has received payments from the D&O Insurers or has a claim to such payments. The defence of claims shall also include defending claims asserted by the Companies against Prof. Dr. Winterkorn under section 2.2 or section 2.3.

A claim to indemnification shall only exist insofar as

- (i) Prof. Dr. Winterkorn does not receive or has not received any payments from the D&O Insurers or through one of the Companies and
- (ii) the D&O Insurers have rejected a request for indemnification from Prof. Dr. Winterkorn or have taken longer than a month to reply to such a request.

Each Company shall grant indemnification to the extent that the claim asserted against Prof. Dr. Winterkorn or the criminal or official proceedings concern work at the respective Company. Should a Company not grant indemnification within a reasonable period, the Companies shall be jointly and severally liable.

3.2 A claim to indemnification pursuant to section 3.1 shall moreover only exist insofar as

- a) coverage is not excluded under the D&O terms and conditions, and
- b) the insured sum agreed in the D&O policies has not already been exhausted by insurance payments of the D&O Insurers – including the settlement contributions based on the Coverage Settlement – and the indemnification payments made by VOLKSWAGEN, AUDI and Porsche in connection with the Relevant Facts and Circumstances to the benefit of insured persons, and

an indemnification does not violate section 93(4), sentence 3 German Stock Corporation Act.

Corresponding to the stipulation under letter b), the Parties agree by way of a genuine contract for the benefit of Third Parties that if Prof. Dr. Winterkorn asserts claims against the D&O insurers, they too can, as regards the utilisation of the insured sum, apply the payments that VOLKSWAGEN, AUDI and Porsche have made in place of the insurers on the basis of the indemnification of insured persons. The exclusion/restriction of the indemnification commitment given in letters a) and b) shall not apply to the reimbursement of costs for the defence of claims and other legal defence costs.

3.3 Prof. Dr. Winterkorn shall notify the Companies of every assertion of claims included under section 3.1 against him and every announcement of such assertion of claims without undue delay.

Prof. Dr. Winterkorn undertakes to refrain from submitting any acknowledgement, or waiver of pleas or objections, and from concluding any settlement or any other such binding arrangement in relation to such assertion of claims without the consent of the Companies. The Companies are, as far as legally permissible and provided that the indemnification is not restricted by section 3.2, each entitled to take all legally permissible measures themselves or on behalf of Prof. Dr. Winterkorn to prevent claims being asserted or to settle the matter in some other way. Prof. Dr. Winterkorn shall support the Companies in preventing or settling claims. Should the Companies not exercise their right pursuant to sentence 3, they shall support Prof. Dr. Winterkorn in line with sentence 4.

- 3.4 Prof. Dr. Winterkorn shall assert any claims to which he might be entitled against Third Parties from the VOLKSWAGEN Group (in particular other – also former – board members or employees of the Companies) arising from or in connection with the Relevant Facts and Circumstances, only with the consent of the Companies. This shall not apply, however, insofar as the restriction of Prof. Dr. Winterkorn's indemnification claim applies pursuant to section 3.2.
- 3.5 Unless provided otherwise in this Liability Settlement, Prof. Dr. Winterkorn hereby waives, as a matter of precaution, all potential claims against the Companies on account of expenses incurred by him in connection with the Relevant Facts and Circumstances, including any losses. To the extent that the Companies have borne or reimbursed such expenses by the date on which this Liability Settlement has become effective, Prof. Dr. Winterkorn shall not be under an obligation to repay such expenses; the Companies hereby waive any repayment. Prof. Dr. Winterkorn hereby accepts this waiver.

#### **4. Tax Aspects**

Should the arrangements made in this Liability Settlement trigger an obligation to pay wage tax, the following shall apply: VOLKSWAGEN or the company affiliated with VOLKSWAGEN that is under an obligation to pay wage tax shall file an application to the tax authority to determine the wage tax vis-à-vis the taxable person (Prof. Dr. Winterkorn) pursuant to section 42d German Income Tax Act and enable Prof. Dr. Winterkorn to submit reasons to the tax office for determining the wage tax vis-à-vis the taxable person in an appropriate manner and reply to any rejection of the application. Insofar as the tax office has not accepted the application ten banking days before the wage tax is due, VOLKSWAGEN or its affiliate obliged to pay wage tax shall be justified in notifying Prof. Dr. Winterkorn of the amount (including solidarity surcharge) that needs to be paid. Prof. Dr. Winterkorn shall transfer this amount to the account specified by VOLKSWAGEN within five banking days of receiving relevant notification from VOLKSWAGEN. VOLKSWAGEN or its affiliate that is under an obligation to pay wage tax shall be justified in paying the amount to the tax office if the tax office has failed to accept the application two banking days before the wage tax is due. Should the amount not be paid to the tax office, it shall be transferred back to Prof. Dr. Winterkorn. The possibility for Prof. Dr. Winterkorn to deduct the wage tax paid from his income tax remains unaffected.

## 5. Entry into Effect

5.1 With the exception of section 5.3, this Liability Settlement is subject to the condition precedent

- a) that the General Meetings of the Companies approve the Liability Settlement,
- b) that there is no objection to the resolution, recorded in the minutes, by a minority whose aggregate shares are at least equivalent to one tenth of the share capital of the respective Company (section 93(4), sentence 3 German Stock Corporation Act) and
- c) that the condition precedent with the D&O Insurers pursuant to section 7.1 Coverage Settlement has been fulfilled.

The condition precedent shall be deemed to have definitively ceased to apply should it not have been fulfilled by 31 December 2021. The fulfilment of the condition precedent shall no longer apply either with retroactive effect (*ex tunc*) or with future effect (*ex nunc*) in the event that an avoidance or nullity action is brought.

5.2 The entry into effect of this Liability Settlement does not depend on the conclusion and entry into effect of any Liability Settlements with other (former) board members of the Companies or with (former) board members of the undertakings affiliated with the Companies.

5.3 Prof. Dr. Winterkorn hereby waives vis-à-vis the Companies the plea of the statute of limitations with respect to claims arising from the Relevant Facts and Circumstances, to the extent that such claims are not already statute-barred when the Liability Settlement is signed. This waiver of the statute of limitations shall end six months after a final and binding decision or other final settlement of the last action for avoidance or nullity brought against the Liability Settlement or the approval resolutions adopted by the Supervisory Board or the General Meeting of one of the Companies. The running of the limitation period shall be suspended until that point in time. Should the condition precedent pursuant to section 5.1 not be met, this waiver of the statute of limitations shall end on 30 June 2022. Should, contrary to the Parties' expectations, a D&O Insurer declare that it regards this waiver of the statute of limitations as a violation of obligations, Prof. Dr. Winterkorn shall inform the Companies. The Companies shall then notify Prof. Dr. Winterkorn of whether they will, for their part, waive the waiver of the statute of limitations with retroactive effect or indemnify Prof. Dr. Winterkorn against all economic disadvantages suffered by him as a result of the relevant D&O Insurer not having expressly consented to this waiver of the statute of limitations. The provisions of this section 5.3, sentences 1 and 2 are not subject to the condition precedent of section 5.1, are not in any synallagmatic relationship with performances of the Companies and exist regardless of the validity of the other terms of this Liability Settlement.

5.4 In the event that an action for avoidance or nullity is brought against the Coverage Settlement or this Liability Settlement before Prof. Dr. Winterkorn has paid his Own Contribution, the Companies shall as a matter of precaution waive pleas arising from sections 814, 818(3) German Civil Code. This waiver exists regardless of the validity of the other terms of this Liability Settlement.

**6. Miscellaneous**

- 6.1 In the event of conflicts between this Liability Settlement and the Coverage Settlement, the provisions of this Liability Settlement shall take precedence in the relationship between the Parties.
- 6.2 There are no side agreements to this Liability Settlement. Amendments to this Liability Settlement, including to this written form requirement, must be in written form within the meaning of section 126 German Civil Code excluding section 127(2) German Civil Code. Notifications shall require text form.
- 6.2 German law shall apply to any and all disputes arising from or in connection with this Liability Settlement. The place of performance shall be Wolfsburg. Braunschweig, Germany shall be the place of jurisdiction to the extent permitted by law.
- 6.3 Should a provision of this Liability Settlement be or become invalid or unenforceable in whole or in part, or should there prove to be an omission when this Coverage Settlement is implemented, this shall not affect the validity of the remaining provisions. The invalid or unenforceable provision shall be replaced or the omission remedied by a reasonable and legally permissible provision that comes closest in economic terms to what the Parties wanted or would have wanted had they considered the invalidity or unenforceability or the omission.

## Liability Settlement

between

- (1) VOLKSWAGEN AKTIENGESELLSCHAFT, Berliner Ring 2, 38440 Wolfsburg (“VOLKSWAGEN” or “VOLKSWAGEN AG”), represented by the Supervisory Board,
- (2) AUDI Aktiengesellschaft, Auto-Union-Strasse 1, 85045 Ingolstadt (“AUDI” or “AUDI AG”), represented by the Supervisory Board,

– VOLKSWAGEN and AUDI also referred to hereinafter as “**Companies**” –

- (3) Mr. Rupert Stadler, represented by the lawyer Prof. Dr. Michael Kliemt, KLIEMT.Arbeitsrecht, Speditionstrasse 21, 40221 Düsseldorf

(Volkswagen, AUDI and Mr. Stadler also referred to hereinafter individually as “**Party**” and collectively as “**Parties**”).

### Preamble

- (A) Mr. Stadler was a member of the Board of Management of AUDI from January 2003 onwards. He was initially responsible for the Finance Division, and took over the position of Chairman of the Board of Management at AUDI as of 1 January 2007. As Chairman of the Board of Management, his responsibilities included the Legal Division (Central Legal Services) and, up to 31 August 2017, the “Compliance” Division. Between 25 September 2015 and 31 December 2015 Mr. Stadler also temporarily took over responsibility for the Technical Development Division.

He was a member of the Board of Management of VOLKSWAGEN, where he was responsible for the “*Audi, Chairman of the Board of Management*” Division, as from January 2010 until the termination of all his Board of Management offices at VOLKSWAGEN and AUDI by mutual agreement on 28 September 2018.

- (B) Based on a comprehensive review, VOLKSWAGEN, AUDI and Dr. Ing. h.c. F. Porsche Aktiengesellschaft (“**Porsche**”) came to the conclusion that several of their former board members breached their duties of care in connection with the diesel issue. The term “Diesel Issue” refers in this context to the development, installation, distribution and other use of certain software functions in the engine control unit of EA189 and EA288 diesel engines as well as various V-TDI engines that led to deviations between the exhaust emissions during dynamometer operation and road use and all facts and circumstances related thereto. For the purposes of this Liability Settlement, the term also covers the clarification and investigation of the matter at VOLKSWAGEN, AUDI and Porsche following the publication of the Notice of Violation by the US Environmental Protection Agency (EPA) on 18 September 2015.

As a consequence, the Supervisory Board of VOLKSWAGEN wrote to Mr. Stadler on behalf of the Company on 26 March 2021 asserting claims for damages against him for breaches of duty

based on section 93(2), sentence 1 German Stock Corporation Act. VOLKSWAGEN and AUDI accuse Mr. Stadler of having breached his duties of care as a member of VOLKSWAGEN AG's Board of Management and as Chairman of the Board of Management of AUDI AG by having negligently failed, in the period from 21 September 2016 to 21 July 2017, to work without delay towards a targeted and systematic investigation of the 3.0l V6 and 4.2l V8 TDI diesel engines for the EU in order to establish whether the emission control systems of the affected vehicles contained unlawful defeat devices. VOLKSWAGEN and AUDI suffered substantial damage as a result of this that must be compensated by Mr. Stadler. Through the lawyers instructed by him, Mr. Stadler has disputed both the merits and the amount of the asserted claims.

- (C) Since 1 January 2012, VOLKSWAGEN has maintained a D&O insurance policy ("**Primary Policy**") with Zurich with an insured sum of EUR 25 million (policy no. 802.380.116.137), that is part of an international insurance plan. The Primary Policy is supplemented by various excess liability insurance policies (together with the Primary Policy, the "**VW D&O**", the insurers participating in the VW D&O in the 2015 and 2021 insurance periods, together the "**D&O Insurers**").

The VW D&O provides coverage to contractually defined persons who work or worked for VOLKSWAGEN or other companies covered by the policy (AUDI, among others) according to the insurance terms and conditions in the event that claims for damages are asserted against them. The insured persons include, in particular, former or current board members of the Companies.

VOLKSWAGEN, AUDI and PORSCHE shall conclude a settlement agreement with the D&O Insurers ("**Coverage Settlement**") to settle all coverage claims from the VW D&O in connection with exhaust emission and consumption value manipulations (as defined in the Coverage Settlement, the "**Relevant Facts and Circumstances**").

- (D) Against this background, the Parties wish, in the interests of both sides, to avoid years-long disputes over the asserted claims and to come to a mutual agreement, whilst maintaining their respective standpoints on liability.

For this purpose the Parties agree the following:

## 1. Own Contribution of Mr. Stadler

- 1.1 Mr. Stadler agrees to make payments to VOLKSWAGEN and AUDI totalling EUR 4,100,000 (the "**Own Contribution**") in accordance with a) to c) below. Save where this Liability Settlement contains a more specific provision, the Own Contribution shall be made without prejudice to payments made by the D&O Insurers and independently of personal own contributions made by other potentially liable parties. The Parties agree by way of a genuine contract for the benefit of Third Parties that no indemnification or any other form of full or partial compensation can be claimed from the D&O Insurers for this Own Contribution.

- a) Mr. Stadler irrevocably waives, in the amount of EUR 420,000, the claim to a Long-Term Incentive Bonus (LTI) for the 2018 financial year (2018-2020 performance period) pursuant to section 3(4) of the trilateral termination agreement dated 28 September / 2 October / 3 October 2018 (the “**VW/AUDI Termination Agreement**”). VOLKSWAGEN and AUDI hereby accept the waiver.
- b) In addition to that, Mr. Stadler hereby irrevocably and completely waives
  - aa) the claim, subject to a condition precedent, against VOLKSWAGEN and AUDI to a severance payment pursuant to section 4 of the VW/AUDI Termination Agreement in the amount of EUR 5,112,500. VOLKSWAGEN and AUDI hereby accept the waiver. The waiver of this claim subject to a condition precedent shall be taken into account for the Own Contribution as a payment by Mr. Stadler in the amount of EUR 3,600,000.
  - bb) the claim, subject to a condition precedent, against AUDI to a remaining severance payment pursuant to section 1 of the termination agreement dated 28 September / 2 October 2018. AUDI hereby accepts the waiver. The waiver of this claim subject to a condition precedent shall be taken into account for the Own Contribution as a payment by Mr. Stadler in the amount of EUR 80,000.
- c) Furthermore, Mr. Stadler hereby irrevocably assigns all claims arising from the deductible insurance he took out with Zurich (insurance policy no. 802.380.133.260) to AUDI, insofar as they have arisen from the Relevant Facts and Circumstances. AUDI hereby accepts the assignment.

The Parties are in agreement that, with the exception of the claim to a pension pursuant to section 7 of the VW/AUDI Termination Agreement and the claim to a Long-Term Incentive Bonus (LTI) for the 2018 financial year (2018-2020 performance period) pursuant to section 3(4) of the VW/AUDI Termination Agreement remaining after the waiver pursuant to a), Mr. Stadler has no claims to remuneration or a severance payment against the Companies. He does not in particular have any claims to remuneration against AUDI. The Parties are also in agreement that Mr. Stadler has no claims to remuneration against undertakings affiliated with the Companies. In this respect, VOLKSWAGEN and AUDI shall act as representatives of the undertakings affiliated with them.

1.2 Mr. Stadler accepts this obligation to pay

- a) without acknowledging any duty to pay damages or any liability,
- b) without acknowledging any breach of duty in connection with the Relevant Facts and Circumstances, and
- c) without prejudice in terms of a legal dispute, should this Liability Settlement not take effect.

1.3 The waivers agreed pursuant to section 1.1(a) and (b) and the assignment pursuant to section 1.1(c) shall come into effect once the condition precedent pursuant to section 5.1 has been met. Mr.

Stadler warrants that he has not already assigned, pledged or otherwise disposed of the claims which he is waiving pursuant to section 1.1(a) and (b) and assigning pursuant to section 1.1(c) and will not dispose of them in the period until the waiver takes effect.

- 1.4 If and to the extent that the Own Contribution is not paid when due, interest shall be payable thereon from the due date at the statutory rate pursuant to section 288(1), sentence 2 German Civil Code. A reminder is not necessary.
- 1.5 Insofar as this Liability Settlement does not provide otherwise, all known or unknown, current or future, conditional or unconditional claims of the Companies and their subsidiaries against Mr. Stadler out of or in connection with the Relevant Facts and Circumstances, regardless of their legal basis, are satisfied and settled as soon as Mr. Stadler has paid his Own Contribution in full in accordance with section 1.1.
- 1.6 Pursuant to section 93(4), sentence 3 German Stock Corporation Act, a waiver of claims of the Companies cannot be made if less than three years have elapsed since they have arisen. Claims of this kind are therefore excluded from the satisfaction and settlement.

## **2. Payments by the D&O Insurers and Waivers of the Companies**

- 2.1 The payments made and yet to be made by the D&O Insurers shall be determined by reference to the insurance policy and the Coverage Settlement with the D&O Insurers. Mr. Stadler agrees to the Coverage Settlement, which is attached to this Settlement (without signatures).
- 2.2 Notwithstanding section 1.5, the Companies reserve the right to assert claims against Mr. Stadler for liability for the damage resulting from the Relevant Facts and Circumstances,
  - a) should, following performance of the condition pursuant to section 5.1, a court find, res judicata, the Coverage Settlement to be void or declare it, res judicata, void, and
  - b) should, for that reason, the D&O Insurers not pay in full the contributions provided for in the Coverage Settlement towards the settlement of the damage or demand that all or part of their settlement contributions be reimbursed.

If they obtain an enforceable judgment in such a case, the Companies shall not however seek enforcement against the (other) private assets of Mr. Stadler. Therefore, enforcement may only be sought against his claims against the D&O Insurers for indemnification or his recourse claims against other debtors, in particular joint and several debtors, out of or in connection with the Relevant Facts and Circumstances. However, this limitation on enforcement shall only apply

- (i) if Mr. Stadler has paid his Own Contribution as defined in section 1 in full, and
- (ii) if, at the request of VOLKSWAGEN and AUDI, he assigns in full his claims against the D&O Insurers for indemnification in relation to the res judicata liability claims to one of the Companies or a Third Party to be specified by the Companies, and

- (iii) if he has not violated any obligation vis-à-vis the D&O Insurers, resulting in him losing some or all of his D&O cover.

The conclusion of this Liability Settlement and the waiver of the statute of limitations in section 5.3 do not, according to the common understanding of the Parties, constitute a violation of any obligation vis-à-vis the D&O Insurers. Should, contrary to expectations, this assessment prove to be incorrect, Mr. Stadler shall not be liable vis-à-vis the Companies in this regard.

- 2.3 In cases where the Companies or one of the Companies wish to take action against D&O Insurers that are excluded from the effect of being satisfied and settled in the Coverage Settlement with the aim of enforcing claims to insurance payments against these D&O Insurers, section 2.2 shall apply *mutatis mutandis*.
- 2.4 In cases covered by section 2.2(b) or section 2.3, the Companies can require Mr. Stadler to make a written transfer to one of the Companies of all or some of his indemnification claims against the D&O Insurers – insofar as they relate to the claims for damages asserted by the Companies – but not of his claims to defence costs against the D&O Insurers. Mr. Stadler guarantees that he will not encumber the indemnification claims with Third-Party rights, but he gives no guarantee for the valid existence and enforceability of the indemnification claims. The Companies are then entitled, but not obliged, to file a direct action against the D&O Insurers that have not signed the Coverage Settlement or that ask for repayment of the settlement contributions.

### 3. Indemnification, Counterclaims

- 3.1 The Companies shall indemnify Mr. Stadler against all claims
  - a) that Third Parties are awarded, *res judicata*, against Mr. Stadler on the basis of his work for the Companies based on or in connection with the Relevant Facts and Circumstances, or with regard to which the court decision is at least provisionally enforceable, insofar as Mr. Stadler assigns his claims to reimbursement of the payments made on the basis of the provisionally enforceable ruling to the Companies, or
  - b) that Mr. Stadler acknowledges with the consent of the Companies, or
  - c) with regard to which, with the consent of the Companies, he waives his right to appeal or seek legal redress in the course of a legal dispute.

“**Third Parties**” within the meaning of this Liability Settlement shall be any and all natural or legal persons with the exception of VOLKSWAGEN, AUDI and Mr. Stadler.

The indemnification shall also extend to the costs that Mr. Stadler incurs in connection with the defence of these claims or criminal or other allegations brought forward by the authorities out of or in connection with the Relevant Facts and Circumstances, except where a D&O Insurer could explicitly and legitimately object to the level of the costs. No claim to indemnification shall exist insofar as Mr. Stadler receives or has received payments from the D&O Insurers or has a claim

to such payments. The defence of claims shall also include defending claims asserted by the Companies against Mr. Stadler under section 2.2 or section 2.3.

A claim to indemnification shall only exist insofar as

- (i) Mr. Stadler does not receive or has not received any payments from the D&O Insurers or through one of the Companies and
- (ii) the D&O Insurers have rejected a request for indemnification from Mr. Stadler or have taken longer than a month to reply to such a request.

Each Company shall grant indemnification to the extent that the claim asserted against Mr. Stadler or the criminal or official proceedings concern work at the respective Company. Should a Company not grant indemnification within a reasonable period, the Companies shall be jointly and severally liable.

In the event of indemnification pursuant to section 3.1(a) based on a provisionally enforceable ruling, the indemnification payments made to Mr. Stadler are to be reimbursed to the Companies after the ruling is set aside. This shall not apply to the defence costs.

3.2 A claim to indemnification pursuant to section 3.1 shall moreover only exist insofar as

- a) coverage is not excluded under the D&O terms and conditions, and
- b) the insured sum agreed in the D&O policies has not already been exhausted by insurance payments of the D&O Insurers – including the settlement contributions based on the Coverage Settlement – and the indemnification payments made by VOLKSWAGEN, AUDI and Porsche in connection with the Relevant Facts and Circumstances to the benefit of insured persons, and
- c) an indemnification does not violate section 93(4), sentence 3 German Stock Corporation Act.

Corresponding to the stipulation under letter b), the Parties agree by way of a genuine contract for the benefit of Third Parties that if Mr. Stadler asserts claims against the D&O insurers, they too can, as regards the utilisation of the insured sum, apply the payments that VOLKSWAGEN, AUDI and Porsche have made in place of the insurers on the basis of the indemnification of insured persons. The exclusion/restriction of the indemnification commitment given in letters a) and b) shall not apply to the reimbursement of costs for the defence of claims and other legal defence costs.

3.3 Mr. Stadler shall notify the Companies of every assertion of claims included under section 3.1 against him and every announcement of such assertion of claims without undue delay. Mr. Stadler undertakes to refrain from submitting any acknowledgement, or waiver of pleas or objections, and from concluding any settlement or any other such binding arrangement in relation to such assertion of claims without the consent of the Companies. The Companies are, as far as legally

permissible and provided that the indemnification is not restricted by section 3.2, each entitled to take all legally permissible measures themselves or on behalf of Mr. Stadler to prevent claims being asserted or to settle the matter in some other way. Mr. Stadler shall support the Companies in preventing or settling claims. Should the Companies not exercise their right pursuant to sentence 3, they shall support Mr. Stadler in line with sentence 4.

- 3.4 Mr. Stadler shall assert any claims to which he might be entitled against Third Parties from the VOLKSWAGEN Group (in particular other – also former – board members or employees of the Companies) arising from or in connection with the Relevant Facts and Circumstances, only with the consent of the Companies. This shall not apply, however, insofar as the restriction of Mr. Stadler's indemnification claim applies pursuant to section 3.2.
- 3.5 Unless provided otherwise in this Liability Settlement, Mr. Stadler hereby waives, as a matter of precaution, all potential claims against the Companies on account of expenses incurred by him in connection with the Relevant Facts and Circumstances including any losses. To the extent that the Companies have borne or reimbursed such expenses by the date on which this Liability Settlement has become effective, Mr. Stadler shall not be under an obligation to repay such expenses; the Companies hereby waive any repayment. Mr. Stadler hereby accepts this waiver.

#### **4. Tax aspects**

Should the arrangements made in this Liability Settlement, with the exception of the setoff against the claim to a severance payment provided for in section 1.2, trigger an obligation to pay wage tax, the following shall apply: VOLKSWAGEN or the company affiliated with VOLKSWAGEN that is under an obligation to pay wage tax shall file an application to the tax authority to determine the wage tax vis-à-vis the taxable person (Mr. Stadler) pursuant to section 42d German Income Tax Act and enable Mr. Stadler to submit reasons to the tax office for determining the wage tax vis-à-vis the taxable person in an appropriate manner and reply to any rejection of the application. Insofar as the tax office has not accepted the application ten banking days before the wage tax is due, VOLKSWAGEN or its affiliate obliged to pay wage tax shall be justified in notifying Mr. Stadler of the amount (including solidarity surcharge) that needs to be paid. Mr. Stadler shall transfer this amount to the account specified by VOLKSWAGEN within five banking days of receiving relevant notification from VOLKSWAGEN. VOLKSWAGEN or its affiliate that is under an obligation to pay wage tax shall be justified in paying the amount to the tax office if the tax office has failed to accept the application two banking days before the wage tax is due. Should the amount not be paid to the tax office, it shall be transferred back to Mr. Stadler. The possibility for Mr. Stadler to deduct the wage tax paid from his income tax remains unaffected.

#### **5. Entry into effect**

- 5.1 With the exception of section 5.3, this Liability Settlement is subject to the condition precedent
  - a) that the General Meetings of the Companies approve the Liability Settlement,

- b) that there is no objection to the resolution, recorded in the minutes by a minority whose aggregate shares are at least equivalent to one tenth of the share capital of the respective Company (section 93(4), sentence 3 German Stock Corporation Act) and
- c) that the condition precedent with the D&O Insurers pursuant to section 7.1 Coverage Settlement has been fulfilled.

The condition precedent shall be deemed to have definitively ceased to apply should it not have been fulfilled by 31 December 2021. The fulfilment of the condition precedent shall no longer apply either with retroactive effect (*ex tunc*) or with future effect (*ex nunc*) in the event that an avoidance or nullity action is brought.

- 5.2 The entry into effect of this Liability Settlement does not depend on the conclusion and entry into effect of any Liability Settlements with other (former) board members of the Companies or with (former) board members of the undertakings affiliated with the Companies.
- 5.3 Mr. Stadler hereby waives vis-à-vis the Companies the plea of the statute of limitations with respect to claims arising from the Relevant Facts and Circumstances, to the extent that such claims are not already statute-barred when the Liability Settlement is signed. This waiver of the statute of limitations shall end six months after a final and binding decision or other final settlement of the last action for avoidance or nullity brought against the Liability Settlement or the approval resolutions adopted by the Supervisory Board or the General Meeting of one of the Companies. The running of the limitation period shall be suspended until that point in time. Should the condition precedent pursuant to section 5.1 not be met, this waiver of the statute of limitations shall end on 30 June 2022. Should, contrary to the Parties' expectations, a D&O Insurer declare that it regards this waiver of the statute of limitations as a violation of obligations, Mr. Stadler shall inform the Companies. The Companies shall then notify Mr. Stadler of whether they will, for their part, waive the waiver of the statute of limitations with retroactive effect or indemnify Mr. Stadler against all economic disadvantages suffered by him as a result of the relevant D&O Insurer not having expressly consented to this waiver of the statute of limitations. The provisions of this section 5.3 are not subject to the condition precedent of section 5.1, are not in any synallagmatic relationship with performances of the Companies and exist regardless of the validity of the other terms of this Liability Settlement.
- 5.4 In the event that an action for avoidance or nullity is brought against the Coverage Settlement or this Liability Settlement before Mr. Stadler has paid his Own Contribution, the Companies shall as a matter of precaution waive pleas arising from sections 814, 818(3) German Civil Code. This waiver exists regardless of the validity of the other terms of this Liability Settlement.

## **6. Miscellaneous**

- 6.1 In the event of conflicts between this Liability Settlement and the Coverage Settlement, the provisions of this Liability Settlement shall take precedence in the relationship between the Parties.

- 6.2 There are no side agreements to this Liability Settlement. Amendments to this Liability Settlement, including to this written form requirement, must be in written form within the meaning of section 126 German Civil Code excluding section 127(2) German Civil Code. Notifications shall require text form.
- 6.3 German law shall apply to any and all disputes arising from or in connection with this Liability Settlement. The place of performance shall be Wolfsburg. Braunschweig, Germany shall be the place of jurisdiction to the extent permitted by law.
- 6.4 Should a provision of this Liability Settlement be or become invalid or unenforceable in whole or in part, or should there prove to be an omission when this Coverage Settlement is implemented, this shall not affect the validity of the remaining provisions. The invalid or unenforceable provision shall be replaced or the omission remedied by a reasonable and legally permissible provision that comes closest in economic terms to what the Parties wanted or would have wanted had they considered the invalidity or unenforceability or the omission.

## Coverage Settlement

between

- (1) VOLKSWAGEN Aktiengesellschaft, Berliner Ring 2, 38440 Wolfsburg (“**VOLKSWAGEN**”), represented by its Board of Management and Supervisory Board,
- (2) AUDI Aktiengesellschaft, Auto-Union-Straße 1, 85045 Ingolstadt (“**AUDI**”), represented by its Board of Management and Supervisory Board,
- (3) Dr. Ing. h.c. F. Porsche Aktiengesellschaft, Porscheplatz 1, 70436 Stuttgart (“**Porsche**”), represented by its Board of Management and Supervisory Board,

(VOLKSWAGEN, AUDI and Porsche collectively the “**Companies**”),

- (4) AIG Europe S.A., German Regional Office, Neue Mainzer Straße 46-50, 60331 Frankfurt am Main (“**AIG**”),
- (5) Allianz Global Corporate & Specialty SE, Königinstraße 28, 80802 Munich (“**AGCS**”),
- (6) Great Lakes Insurance SE, Königinstraße 107, 80802 Munich (“**Great Lakes**”),
- (7) HDI Global SE, HDI-Platz 1, 30659 Hanover (“**HDI**”),
- (8) Liberty Mutual Insurance Europe SE, German Regional Office, Im Klapperhof 7-23, 50670 Cologne (“**Liberty**”),
- (9) QBE Europe SA/NV, German Regional Office, Breite Straße 31, 40213 Düsseldorf (“**QBE**”),
- (10) Tokio Marine Europe SA Sucursal en España, Torre Diagonal Mar, Planta 10, Josep Pla 2, 08019 Barcelona, Spain (“**TMHCC**”),
- (11) XL Insurance Company SE, German Regional Office (simultaneously as legal successor of AXA Corporate Solutions Deutschland, branch office of AXA Corporate Solutions Assurance S.A., as well as of Catlin Insurance Company (UK) Ltd.), Colonia-Allee 10-20, 51067 Cologne (“**AXA XL**”),
- (12) Zurich Insurance plc, German Branch Office, Platz der Einheit 2, 60327 Frankfurt am Main (“**Zurich**”),

(insurance companies nos. (4) to (12) including their co-insurers”, the “**Insurers**”)

(the Companies and Insurers each individually a “**Party**” and collectively the “**Parties**”).

Where an Insurer acts as leading underwriter for an excess liability policy pursuant to paragraph (D) or (F) of the Preamble, it acts both in its own name and in the names of the co-insurers of the respective excess liability policy, unless otherwise explicitly provided for in this Coverage Settlement.

## Preamble

- (A) The *Companies* are automobile manufacturers, several Board of Management members and other *Insured Persons* under the VW D&O of which are said to have breached duties of care in connection with the so-called “Diesel Issue”. The term “**Diesel Issue**” refers in this context to the development, installation, distribution and other use of certain software functions in the engine control unit of the, inter alia, EA189 and EA288 diesel engines as well as various V-TDI engines that led to deviations between the exhaust emissions during dynamometer operation and road use, and all facts and circumstances related thereto, in particular those notified by *VOLKSWAGEN* with the notification of circumstances of 2015. For the purposes of this Coverage Settlement, the term covers the clarification and investigation of the matter at the *Companies* following the publication of the Notice of Violation by the US Environmental Protection Agency (“EPA”) on 18 September 2015, including the so-called “response management” and all measures taken for the preparation and conclusion of this settlement. A considerable number of official and court proceedings in connection with the *Diesel Issue* are still pending in Germany and abroad, including individual and class actions by customers, as well as by consumer and/or environmental organisations. The subject matter of these proceedings is essentially claims for damages or claims relating to the rescission of sales contracts. In the United States, the SEC has filed a lawsuit against *VOLKSWAGEN* before the United States District Court for the Northern District of California (3:19-cv-01393-CRB). Further, there are two Shareholder Derivate Actions dated 22 July 2020 and 28 April 2021 before the Supreme Court of the State of New York (Lambinet ./ Volkswagen AG as well as Lambinet and Robert C. Andersen ./ Volkswagen AG and others). Moreover, *VOLKSWAGEN* is involved in various proceedings with former employees before the labour courts. Investors from Germany and other countries have also sued *VOLKSWAGEN* for damages for the alleged fall in the share price as a consequence of supposed misconduct in relation to capital market communication in connection with the *Diesel Issue*. Furthermore, inter alia, the Braunschweig and Munich II public prosecutor’s offices are conducting criminal proceedings inter alia against Professor Winterkorn and Mr. Stadler, in particular on account of alleged fraud.
- (B) As at 31 December 2020, the *Companies*, its subsidiaries and other group companies (“**VOLKSWAGEN Group**”) have, according to information provided by *VOLKSWAGEN*, spent a total of at least EUR 32.2 billion for negative special factors in connection with the *Diesel Issue*. The amount is comprised of, among other things, the costs of recalls and field measures, compensation and settlement payments to dealers, internal investigation costs and fines.
- (C) Since 1 January 2012, *VOLKSWAGEN* has maintained a D&O insurance policy (“**Primary Policy**”) with *Zurich* with an insured sum of EUR 25 million which, together with several local policies (“**Local Policies**”, Primary Policy and Local Policies collectively also “**International Program Policies**”), comprise an international insurance program. The *Primary Policy* is additionally supplemented successively by various excess liability insurance policies (together with the *International Program Policies*, the “**VW Insurance Program**”). Volkswagen Financial Services AG maintains a separate D&O insurance, which is supplemented successively by various excess liability insurance policies (collectively “**VWFS Policy**”). Some of the excess liability insurance

policies which supplement the *Primary Policy* serve at the same time as excess liability insurance policies for the *VWFS Policy*. Additionally, there is a separate D&O insurance for IAV GmbH Ingenieurgesellschaft Auto und Verkehr (“**IAV Policy**”), for which the *Primary Policy* acts as an insurance drop down and a difference in conditions insurance and contains an accumulation arrangement. *Porsche* maintained its own D&O insurance up to the complete takeover by VOLKSWAGEN, which has been in run-off since 1 February 2011 (“**Porsche Policy**”). The *International Program Policies*, the excess liability insurance policies to the *Primary Policy*, the *VWFS Policy*, the *IAV Policy* and the *Porsche Policy* are referred to in this Agreement collectively as the “**VW D&O**” (and all of the Insurers of these policies are referred to collectively as the “**VW D&O Insurers**”). The *VW D&O* provides coverage to the persons defined in the insurance policies (“**Insured Persons**”) who work or worked for the respective policyholder or other companies covered by the policy according to the insurance terms and conditions (in the *Primary Policy*, *AUDI* and *Porsche* among others), in particular in the event that claims for damages are asserted against *Insured Persons* or official proceedings are initiated against them. The *Insured Persons* include, in particular, former and current board members of the *Companies*.

(D) For the insurance period from 1 January 2015 to 1 January 2016, the *VW insurance program* comprised the following insurance policies (collectively, the “**2015 Insurance Program**”):

- Primary coverage and various Local Policies (integrated limits) with a maximum insured sum of EUR 25 million with *Zurich* (100%) (“**2015 Primary Coverage**”)
- First excess liability insurance policy with a maximum insured sum of EUR 25 million (after EUR 25 million) with *AXA XL* (100%) (“**First Excess Liability Insurance 2015**”)
- Second excess liability insurance policy with a maximum insured sum of EUR 25 million (after EUR 50 million) with *AGCS* (100%) (“**Second Excess Liability Insurance 2015**”)
- Third excess liability insurance policy with a maximum insured sum of EUR 25 million (after EUR 75 million) with *AXA XL* (100%) (“**Third Excess Liability Insurance 2015**”)
- Fourth excess liability insurance policy with a maximum insured sum of EUR 50 million (after EUR 100 million) with *AIG* as lead underwriter (50%) and involvement of *HDI* (50%) (“**Fourth Excess Liability Insurance 2015**”)
- Fifth excess liability insurance policy with a maximum insured sum of EUR 50 million (after EUR 150 million) with *Liberty* as lead underwriter (40%) and involvement of Allied World Assurance Company (Europe) dac (“**AWAC**”) (30%), *AXA XL* (20%) and *AGCS* (10%) (“**Fifth Excess Liability Insurance 2015**”)
- Sixth excess liability insurance policy with a maximum insured sum of EUR 50 million (after EUR 200 million) with *TMHCC* as lead underwriter (50%) and involvement of *MSIG* Insurance Europe AG (“**MSIG**”) (30%) und *CNA Insurance Company Ltd.* (“**CNA**”) (20%) (“**Sixth Excess Liability Insurance 2015**”)

- Seventh excess liability insurance policy with a maximum insured sum of EUR 50 million (after EUR 250 million) with *QBE* as lead underwriter (60%), Underwriters at Lloyd's Syndicate 4711 ("**Lloyd's 4711**") (20%) and R+V Allgemeine Versicherung AG ("**R+V**") (20%) ("**Seventh Excess Liability Insurance 2015**")
- Eighth excess liability insurance policy with a maximum insured sum of EUR 150 million (after EUR 300 million) with *Great Lakes* as lead underwriter (16.667%) and involvement of ArgoGlobal SE ("**ARGO**") (16.667%), Starr Managing Agents Ltd. for and on behalf of Starr Consortium 9885 ("**Starr**") (13.333%), Brit Syndicates Ltd. for and on behalf of Underwriters at Lloyd's Syndicate 2987 ("**Brit**") (10%), Royal and Sun Alliance Insurance Ltd. ("**RSA**") (10%), ANV Underwriters at Lloyd's Syndicate 1861 ("**ANV / Lloyd's 1861**") (6.667%), Arch Insurance (EU) dac ("**Arch**") (6.667%), AXA XL (6.667%), *TMHCC* (6.667%), Underwriters at Lloyd's Syndicates 0623 and 2623 ("**Lloyd's 0623 and 2623**") (3.333%), and Underwriters at Lloyd's Syndicate 2468 ("**Lloyd's 2468**") (3.333%) ("**Eighth Excess Liability Insurance 2015**")
- Ninth excess liability insurance policy with a maximum insured sum of EUR 50 million (after EUR 450 million) with *AIG* as lead underwriter (50%) and participation of Swiss Re International SE ("**Swiss Re**") (50%) ("**Ninth Excess Liability Insurance 2015**")

The total insured sum of the *2015 Insurance Program* is therefore EUR 500 million. The insured sum in excess of EUR 300 million is only available for board members of VOLKSWAGEN.

- (E) As of the 2016 insurance period, the Insurers excluded coverage for so-called "exhaust emission value manipulations" – with the exception of the response management defined in more detail – under the *VW D&O*.
- (F) For the insurance period that has been running since 1 January 2021, the *VW* insurance program comprises the following insurance policies (collectively, the "**2021 Insurance Program**"):
- Primary coverage with a maximum insured sum of EUR 25 million with *Zurich* (100%) ("**2021 Primary Coverage**")
  - First excess liability insurance policy with a maximum insured sum of EUR 50 million (after EUR 25 million) with Berkshire Hathaway International Insurance Limited, Zweigniederlassung Cäcilienstraße 30, 50667 Cologne ("**Berkshire Hathaway**") (100%) ("**First Excess Liability Insurance 2021**")
  - Second excess liability insurance policy with a maximum insured sum of EUR 25 million (after EUR 75 million) with AXA XL as lead underwriter (60%) and participation of *AIG* (40%) ("**Second Excess Liability Insurance 2021**")
  - Third excess liability insurance policy with a maximum insured sum of EUR 50 million (after EUR 100 million) with *HDI* as lead underwriter (30%) and involvement of *AIG* (30%), *QBE* (20%), Generali Deutschland AG ("**Generali**") (10%), ANV / *Lloyd's 1861*

(5%) and Navigators / The Hartford Underwriters at Lloyd's Syndicate 1221 ("**Navigators / The Hartford / Lloyd's 1221**") (5%) ("**Third Excess Liability Insurance 2021**")

- Fourth excess liability insurance policy with a maximum insured sum of EUR 50 million (after EUR 150 million) with *Liberty* as lead underwriter (50%) and participation of Beazley Insurance dac, German Branch Office ("**Beazley**") (30%), Lloyd's Insurance Company S.A. CVS 5337 (10%), as well as AXA XL (10%) ("**Fourth Excess Liability Insurance 2021**")
- Fifth excess liability insurance policy with a maximum insured sum of EUR 50 million (after EUR 200 million) with *TMHCC* as lead underwriter (50%) and involvement of *MSIG* (30%) and *Generali* (20%) ("**Fifth Excess Liability Insurance 2021**")
- Sixth excess liability insurance policy with a maximum insured sum of EUR 50 million (after EUR 250 million) with ERGO Versicherung AG as lead underwriter (30%) and participation of Generali (20%), *AIG* (10%), *ANV / Lloyd's 1861* (10%), Ryan Specialty Group Denmark A/S (10%), Lloyd's Insurance Company S.A. WRB 5340 (10%), *Volante Ltd.* ("**Volante**") (7.5%) and Aviva Insurance Ltd. ("**Aviva**") (2.5%) ("**Sixth Excess Liability Insurance 2021**")
- Seventh excess liability insurance policy with a maximum insured sum of EUR 100 million (after EUR 300 million) with *Great Lakes* as lead underwriter (15%) and participation of *AGCS* (15%), *TMHCC* (10%), Newline Europe Versicherung AG (10%), Underwriters at Lloyd's Syndicate 5000 (9.5%), *Aviva* (6.25%), *IGI – International General Insurance Ltd.* (5.5%), *MSIG* (5%), *R+V* (10%), *SI Insurance (Europe)*, *SA* (5%), *UNIQA Österreich Versicherungen AG* (5%) and *Volante* (3.75%) ("**Seventh Excess Liability Insurance 2021**")
- Eighth excess liability insurance policy with a maximum insured sum of EUR 50 million (after EUR 400 million) with *Swiss Re* as lead underwriter (50%) and participation of Arch Reinsurance Ltd. (20%), *AIG* (10%), *VALE Insurance Partners Europe, BV* (10%) and *Beazley* (10%) ("**Eighth Excess Liability Insurance 2021**")
- Ninth excess liability insurance policy with a maximum insured sum of EUR 15 million (after EUR 450 million) with *Liberty* as lead underwriter (66.67%) and participation of *AXIS Specialty Europe SE* (33.33%) ("**Ninth Excess Liability Insurance 2021**")
- Tenth excess liability insurance policy with a maximum insured sum of EUR 10 million (after EUR 465 million) with *CHUBB European Group SE* (100%) ("**Tenth Excess Liability Insurance 2021**")
- Eleventh excess liability insurance policy with a maximum insured sum of EUR 5 million (after EUR 475 million) with *HDI* (100%) ("**Eleventh Excess Liability Insurance 2021**")

The total insured sum of the *2021 Insurance Program* is therefore EUR 480 million. The insured sum in excess of EUR 300 million is, once again, only available for board members of *VOLKSWAGEN*.

*Zurich* and insurers of the *Local Policies* have made payments under the *2015 Primary Coverage* for legal defence costs of the *Insured Persons* in connection with some of the proceedings mentioned in (A), among other things in connection with criminal investigations and various proceedings in the US.

- (G) Based on their investigations, the *Companies* are of the view that the former Chairman of the Board of Management of *VOLKSWAGEN*, Prof. Winterkorn, the former member of the Board of Management of *VOLKSWAGEN* and Chairman of the Board of Management of *AUDI*, Mr. Stadler, the former members of the Board of Management of *AUDI*, Prof. Hackenberg and Dr. Knirsch, as well as the former *Porsche* Board of Management member Mr. Hatz have committed violations in connection with the *Diesel Issue*.
- (H) Accordingly, on 26 March 2021, the *Companies* called upon Prof. Martin Winterkorn, Mr. Rupert Stadler, Prof. Ulrich Hackenberg, Dr. Stefan Knirsch and Mr. Wolfgang Hatz to pay damages in connection with the *Diesel Issue*. Prior to this, in the course of a proceeding for protection against dismissal before the courts for labour matters, claims had been asserted against a (former) employee of *VOLKSWAGEN*, Dr. Heinz-Jakob Neußer (former member of the so-called Board of Management for the Volkswagen Passenger Cars brand) (together with Prof. Winterkorn, Mr. Stadler, Prof. Ulrich Hackenberg, Dr. Knirsch and Mr. Hatz, the “**Persons against whom Claims are Asserted**”), as well as against other (former) employees of the *Companies*. The *Persons against whom Claims are Asserted* have disputed their obligation to pay damages by way of their attorneys with respect to the merits and the amount.
- (I) *VOLKSWAGEN* is of the opinion that these claims for damages and the underlying facts and circumstances pertain to the *2015 Insurance Program*, as well as the *2021 Insurance Program*. The Insurers have argued that coverage could at best exist under the *2015 Insurance Program* and reserved the right to make further arguments.
- (J) The *Companies* intend to conclude agreements with the *Persons against whom Claims are Asserted* – with the exception of Dr. Neußer and Prof. Dr. Hackenberg, who was not willing to enter into a settlement agreement – out of court on the liability claims mentioned under (H) (“**Liability Settlements**”), which will enter into force if the General Meetings of the respective *Companies* consent to the Liability Settlements, there is no objection, recorded in the minutes, to the resolution by a minority, the aggregate of whose shares is at least equivalent to one tenth of the share capital of the respective *Company* (section 93(4), sentence 3 German Stock Corporation Act), and the present coverage settlement enters into force.
- (K) The *Parties* intend
  - while maintaining their respective legal positions,

- without acknowledging any legal obligation to do so and
- without prejudice in terms of any legal disputes

to agree upon a provision on the coverage claims which is to be comprehensive and definitive on the matter. Apart from the *Diesel Issue*, the “**Relevant Facts and Circumstances**” to which the legal relationships under insurance law that are regulated in this Coverage Settlement pertain also include other potential manipulations, falsifications or misrepresentations of or pertaining to exhaust emissions, consumption levels or performance values of engines within the *VOLKSWAGEN Group* (“**Exhaust Emission and Consumption Value Manipulations**”). It is immaterial which measures or circumstances are the cause for *Exhaust Emission and Consumption Value Manipulations* (e.g., manipulations of software or hardware) or to whom potential misstatements were made (e.g., authorities, merchants or customers). The term “**Consumption Value**” includes the consumption values of, inter alia, all fuels of a vehicle (e.g., gasoline, diesel, electric energy, oil). The term “**Relevant Facts and Circumstances**” includes in particular – but is not limited to – the assertion of claims in connection with damages claims under civil law, criminal investigations, regulatory, official or other proceedings and claims which are introduced, initiated, announced or raised due to *Exhaust Emission and Consumption Value Manipulations* on cars with diesel or petrol engines (regardless of type) and violations of disclosure obligations or accounting provisions in connection with *Exhaust Emission and Consumption Value Manipulations*. The term *Relevant Facts and Circumstances* further includes potential agreements in violation of antitrust law in connection with the *Diesel Issue* and other *Exhaust Emission and Consumption Value Manipulations* including related investigations, proceedings and assertions of claims.

- (L) It was not possible to reach a settlement with *Berkshire Hathaway* as Insurer of the First Excess Liability Insurance 2021. *Berkshire Hathaway* is therefore not a party to this Coverage Settlement.

Now therefore, the Parties hereto agree to the following provisions:

## 1. Payment obligations of the Insurers

- 1.1 In order to settle the *Relevant Facts and Circumstances*, the Insurers shall, in accordance with the following provisions, pay a total amount of EUR 270,015,000.00 minus the payments already made (see section 1.2) and the insurance payments that are still to be made to *VOLKSWAGEN*, *AUDI* and *Porsche* pursuant to section 2 into an account to be designated by *VOLKSWAGEN*. Of this amount, *VOLKSWAGEN* shall pass on a share of 34.18 percent to *AUDI* and a share of 14.5 percent to *Porsche*.
- 1.2 The Insurers of the *2015 Insurance Program* shall each bear, as individual debtors of the total settlement amount under the *2015 Insurance Program* of EUR 261,890,000.00, in accordance with the percentage of their respective participation in the *Primary Policy* and/or the excess liability policies of the *2015 Insurance Program* (cf. paragraph (D) of the Preamble), the following amounts (the respective share of the *Insurer* hereinafter referred to as the “**2015 Settlement Amount**”) unless specified otherwise as follows:

- a) 2015 Primary Coverage: EUR 25,000,000.00
- b) First Excess Liability Insurance 2015: EUR 22,000,000.00
- c) Second Excess Liability Insurance 2015: EUR 21,750,000.00
- d) Third Excess Liability Insurance 2015: EUR 20,525,000.00
- e) Fourth Excess Liability Insurance 2015: EUR 35,000,000.00
- f) Fifth Excess Liability Insurance 2015: EUR EUR 32,500,000.00
- g) Sixth Excess Liability Insurance 2015: EUR 23,000,000.00, of which EUR 12,500,000.00 are to be borne by *TMHCC*, EUR EUR 7,500,000.00 by *MSIG* and EUR 3,000,000.00 by *CNA*, each as individual debtors
- h) Seventh Excess Liability Insurance 2015: EUR 25,500,000.00
- i) Eighth Excess Liability Insurance 2015: EUR 45,615,000.00
- j) Ninth Excess Liability Insurance 2015: EUR 11,000,000.00

In order to ascertain the amount to be paid by the respective *Insurer* into the account pursuant to section 1.1, the following shall be deducted from the *2015 Settlement Amount*:

- (i) the EUR sums of those insurance payments – in particular defence costs – which the *VW D&O Insurers* have already rendered for insured events they attributed to the *Relevant Facts and Circumstances*, or other insured events they attributed to the *2015 insurance period* under the *VW D&O*, or will be rendering by the time the amount of the payment falls due (i.e. not via the Provisions Account pursuant to section 2.1). Payments from *Local Policies* shall be treated in this regard as payments from the *Primary Policy*, regardless of which *Insurer* has rendered them. With a deduction, the respective *VW D&O Insurer* tacitly declares an irrevocable waiver of a recovery of the insurance payments deducted; *Zurich* also declares this in the name of the Insurers of the *Local Policies* (as defined in paragraph (C) of the Preamble). All of the other *Insurers* hereby consent to such a waiver as a matter of precaution; and
- (ii) those payments which the *Insurers* have to pay into the Provisions Account pursuant to section 2.2.

- 1.3 The *Insurers of the 2021 Insurance Program* shall each bear, as individual debtors of the total settlement amount under the *2021 Insurance Program* in the amount of EUR 8,125,000.00, in accordance with the percentage of their respective participation in the *Primary Policy* and/or the excess liability policies of the *2021 Insurance Program* (cf. (B) of the Preamble), the following amounts (the respective share of the *Insurer* hereinafter referred to as the “**2021 Settlement Amount**”):

- a) 2021 Primary Coverage: EUR 3,500,000.00
- b) Second Excess Liability Insurance 2021: EUR 1,625,000.00
- c) Third Excess Liability Insurance 2021: EUR 3,000,000.00

- 1.4 The payment sums pursuant to sections 1.2 and 1.3 shall fall due within one month after the prerequisites for the entry of this Coverage Settlement into force pursuant to section 7.1 are met, *VOLKSWAGEN* notifies the *Insurers* thereof and discloses the bank account for the instruction to make the payments. Each *Insurer* shall have the right to pay before the amount becomes due.

The payments to be made by the *Insurers* as individual debtors are enumerated in the **Annex** to this agreement.

- 1.5 The Parties unanimously assume that the settlement amounts involve genuine damages payments and consequently no VAT is to be charged on the payments to be rendered by the *Insurers*. Any legal risk with regard to the VAT shall be borne by the *Companies*. For the *Insurers*, the payment of the aforementioned settlement amounts shall also be conclusive in this regard. However, they shall, within reasonable limits, provide the *Companies* with any information and documents which are relevant for an examination of the consequences under tax law or where their presentation to the tax authorities would be necessary or expedient.

## 2. Provisions for future insurance payments

- 2.1 *Zurich*, as the primary insurer of the *VW D&O*, shall open a separate bank account (“**Provisions Account**”), which shall be administered for *VOLKSWAGEN* in trust and from which further insurance payments under the *VW D&O* shall be rendered for the *Relevant Facts and Circumstances* by *Zurich* and in accordance with the following provisions, provided that an *Insured Person* can still demand defence coverage and/or indemnification against liability claims from the *Insurers of the VW D&O*, even in consideration of the Liability Settlements and this Coverage Settlement, or this is the subject of a dispute. Payments made from the *Provisions Account* shall expressly not be rendered on coverage claims of the insured companies.

- 2.2 The following one-time payments shall be made to the *Provisions Account* from the *2015 Settlement Amounts*:

- a) AXA XL: EUR 30,000,000 and
- b) AGCS: EUR 20,000,000.

However, the amount of the payment into the *Provisions Account* by the *Insurers* shall in every case be limited in amount to the sum agreed upon in section 1.2 a) to j) minus the insurance payments which have already been made or are yet to be made pursuant to section 1.2 (i).

Section 1.4 shall apply for the payment into the *Provisions Account* *mutatis mutandis*.

- 2.3 Insurance payments under section 2.1 shall only be granted subject to the contractual provisions of the VW D&O for the respective relevant insurance period and the statutory provisions. *Zurich* shall be entitled to settle claims of *Insured Persons* arising from or in connection with the *Relevant Facts and Circumstances* out of the *Provisions Account* if the claims are substantiated in its view or, in case of dispute, if an amicable agreement or another favourable solution can be achieved. An insurance payment pursuant to this section 2 shall not release *Berkshire Hathaway* from a primary duty to assume liability.
- 2.4 The administrative costs, including expenses incurred by *Zurich* for services rendered by third parties, expenses for the defence against unjustified claims to coverage and an appropriate remuneration for the settlement services, shall be charged to the *Provisions Account*. Should claims be made against other VW D&O Insurers on the grounds of the *Relevant Facts and Circumstances*, they will refer the claimant to *Zurich*; in the case of a dispute in court, their expenses are to be charged to the *Provisions Account* as well. In carrying out the settlement, *Zurich* shall act with the same care that it customarily exercises in its own affairs as an insurer. At the same time, *Zurich* shall bear liability for financial losses within the scope of liability based on fault only in cases of intent. This shall also apply with regard to breaches of duty by persons whose fault *Zurich* must allow to be attributed to it under the statutory provisions and in favour of such persons.
- 2.5 Should *Insured Persons* – regardless of the basis in law – be obliged to make refunds of insurance payments they received from the *Provisions Account*, these shall be paid into the *Provisions Account*. Should the *Provisions Account* already be dissolved pursuant to section 2.6, the payments shall be made into the account to be designated by VOLKSWAGEN. Section 1.1, sentence 2 applies mutatis mutandis.
- 2.6 The accounting of the *Provisions Account*, in particular of the insurance payments made from it, expenses and remunerations, shall be carried out by *Zurich* within 4 weeks after the end of each calendar half-year. *Zurich* shall provide VOLKSWAGEN with the accounting of its own accord. The accounting shall be carried out for the last time on 31 December of the year
- a) in which the *Provisions Account* no longer has a credit balance or
  - b) in which the last pending claims known and notified to *Zurich* or ongoing proceedings in connection with the *Relevant Facts and Circumstances* are decided with final and binding effect or the dispute has been otherwise resolved,
- but no later than 31 December 2027. The credit balance on the *Provisions Account* shall be paid out to VOLKSWAGEN within one month after this final accounting into the account to be designated by VOLKSWAGEN. Section 1.1, sentence 2 applies mutatis mutandis.
- 2.7 *Zurich* has the right to inform the Insurers on the current status of the payments made. *Zurich* is obliged to likewise inform the *Insurers* upon request.

### 3. Effect of being satisfied and settled

3.1 The *Parties* agree that, with the fulfilment of the conditions precedent pursuant to section 7.1 of this Agreement and payment in full of the respective settlement amounts to be paid by the individual *Insurers* pursuant to section 1 of this Coverage Settlement and payment of the relevant amounts into the *Provisions Account* for future insurance payments pursuant to section 2 of this Coverage Settlement,

- a) all coverage claims of *Insured Persons* as well as of the *Companies* and other insured undertakings for insured events and facts and circumstances based on or in connection with the *Relevant Facts and Circumstances*, irrespective of under which policy of which policyholder the claims fall or which insurance period they relate to; and
- b) all coverage claims of *Insured Persons* as well as of the *Companies* and other insured undertakings for insured events that occurred in the *2015 insurance period* or are to be allocated to this period for reasons pertaining to insurance contract law,

shall be deemed satisfied and settled vis-à-vis the *VW D&O Insurers* insofar as the *Parties* are authorised to dispose of the coverage claims in accordance with the contractual provisions and the German Insurance Contract Act.

At the same time, the *Companies* undertake to never or no longer assert potential coverage claims in or out of court. The *Companies* shall – to the extent legally permissible – also ensure and work towards ensuring that *VOLKSWAGEN Group companies* likewise will not (or will no longer) assert, assign or otherwise transfer such claims against *VW D&O Insurers*.

3.2 The effect of being satisfied and settled pursuant to section 3.1 shall apply irrespective of whether this involves current or future, known or unknown, conditional or unconditional claims or rights arising from own rights or rights transferred by statutory subrogation; in particular, the *Parties* agree that no further claims can be asserted against the *VW D&O Insurers* under the *VW D&O* on the basis of or in connection with the *Relevant Facts and Circumstances*. The effect of being satisfied and settled pursuant to section 3.1 shall apply to the *VW D&O Insurers* not involved in this Coverage Settlement in the sense of a genuine contract for the benefit of third parties.

3.3 The payments to be made by the individual *Insurers* pursuant to sections 1.1 and 1.3 falling under the *2021 insurance period* shall be set off against the insured sum under the respective insurance policy from the *2021 insurance period*. Beyond that, the payments made by the *Insurers* of the *2021 insurance period* pursuant to sections 1.1 and 1.3 shall completely exhaust the insured sums of the *2021 Primary Coverage* and the *Second Excess Liability Insurance*, as well as the subsequent excess liability insurances of the *2021 Insurance Program* for all facts and circumstances and claims based on or in connection with the *Relevant Facts and Circumstances*.

3.4 The effect of being settled pursuant to sections 3.1 to 3.3 shall apply to the benefit of the *Insurers* which have paid their respective settlement amounts pursuant to section 1 and made their respective payments pursuant to section 2 of this Coverage Settlement in full, irrespective of whether

other *Insurers* have also paid their settlement amounts. In relation to the *VW D&O Insurers* which do not have to pay a settlement amount under the *2021 insurance period*, the effect of being settled pursuant to sections 3.1 to 3.3 shall apply once the conditions precedent in section 7.1 are met.

- 3.5 Section 2 shall remain unaffected by the effect of being satisfied and settled pursuant to sections 3.1 to 3.3 above. Claims of *Insured Persons* to insurance payments in accordance with the pertinent insurance terms and conditions of the *VW D&O* against *VW D&O Insurers* for proceedings and claims asserted in connection with the *Relevant Facts and Circumstances* shall be settled by the *VW D&O Insurers* in accordance with section 2 via the *Provisions Account* or – if the *Provisions Account* has been exhausted – shall be paid by the *VW D&O Insurers* after indemnification by *VOLKSWAGEN* in the context of the provisions of section 4. The *Parties* agree that this Coverage Settlement as well as the Liability Settlements and the settlements of claims contained therein do not have any impact on the insurance cover provided by section 3.3.4 of the *Primary Policy*.

For the avoidance of doubt, the *Parties* state that this counter-exception shall not apply to any coverage claims by insured Companies.

- 3.6 With the fulfilment of the conditions precedent pursuant to section 7.1 of this Agreement and receipt of the settlement amount in accordance with section 1 of this Agreement, the *Companies* undertake to never or no longer assert in or out of court claims against current or former members of the Boards of Management of the Companies (“**Board of Management Members**”) based on or in connection with the *Relevant Facts and Circumstances*. This is a genuine contract for the benefit of third parties for the benefit of the Board of Management Members that can no longer be amended without the consent of the beneficiary (section 328(2) German Civil Code) and which applies irrespective of whether this involves known or unknown, conditional or unconditional claims or rights arising from own rights or rights transferred by statutory subrogation.

The *Companies* warrant that they have not assigned such claims and undertake not to make any such assignments or otherwise transfer claims.

The *Companies* shall – to the extent legally permissible – ensure and work towards ensuring that *VOLKSWAGEN GROUP companies* likewise will not (or will no longer) assert, assign or otherwise transfer such claims against *Board of Management members*.

- 3.7 With the fulfilment of the conditions precedent pursuant to section 7.1 of this Agreement and receipt of the settlement amount in accordance with section 1 of this Agreement, the *Companies* undertake to never or no longer assert in or out of court claims against any other *Insured Persons* based on or in connection with the *Relevant Facts and Circumstances*. This is a genuine contract for the benefit of third parties for the benefit of the *Insured Persons* that can no longer be amended without the consent of the beneficiary (section 328(2) German Civil Code) and which applies irrespective of whether this involves known or unknown, conditional or unconditional claims or rights arising from own rights or rights transferred by statutory subrogation.

The *Companies* warrant that they have not assigned such claims and undertake not to make any such assignments or otherwise transfer claims.

The *Companies* shall – to the extent legally permissible – ensure and work towards ensuring that *VOLKSWAGEN GROUP* companies likewise will not (or will no longer) assert, assign or otherwise transfer such claims against *Insured Persons*.

- 3.8 Pursuant to section 93(4), sentence 3 German Stock Corporation Act, a waiver of liability claims against (former) board members cannot be made if less than three years have elapsed since they arose. Such claims are therefore excluded from the provisions of sections 3.6 and 3.7 as well as section 3.10.
- 3.9 In all other respects, the settlement agreed upon in sections 3.6 and 3.7 for claims of the *Companies* due to or in connection with the *Diesel Issue* shall apply comprehensively. The settlement shall not apply for other claims of the *Companies* due to or in connection with the *Relevant Facts and Circumstances* insofar as it is ascertained that insurance protection does not exist for such claims under the *VW D&O*, regardless of which insurance period is involved; the burden of proof for this shall be borne by the *Companies*.
- 3.10 With regard to the *Persons against whom Claims are Asserted*, the stipulations in sections 3.6 and 3.7 shall not apply, but rather those in the Liability Settlements entered into with these persons. If they have not concluded a liability settlement or such settlement becomes invalid or is declared void, the *Companies* may, in derogation of sections 3.6 and 3.7, continue to bring actions against the *Persons against whom Claims are Asserted*, but only for that part of the claim which would remain had the *Insurers* also spent the difference between the settlement amounts pursuant to section 1 and the maximum insurance sums for the *2015 insurance period* and the *2021 insurance period* for insurance payments. With regard to the remaining part, the *Companies* undertake to never assert claims against the *Persons against whom Claims are Asserted* due to or in connection with the *Relevant Facts and Circumstances* in or out of court. This is a genuine contract for the benefit of third parties for the benefit of the *Persons against whom Claims are Asserted*, which applies irrespective of whether this involves known or unknown, conditional or unconditional claims or rights arising from own rights or rights transferred by statutory subrogation. However, the two preceding sentences shall not apply insofar as the *Persons against whom Claims are Asserted* would not have been insured for reasons other than the exhaustion of the insured sum. This shall not affect the provisions in section 4.

#### **4. Indemnifications**

- 4.1 Should, based on or in connection with the *Relevant Facts and Circumstances*, claims be asserted against one or more *VW D&O Insurers*, *VOLKSWAGEN*, foregoing the right to set-off and the right of retention, shall indemnify the *VW D&O Insurers*, inter alia,

- a) against all claims to insurance payments, especially indemnification claims under liability insurance law and claims to the assumption of the costs of legal protection of *Insured Persons*; and
- b) against associated necessary judicial and extrajudicial costs, including the *Insurers*' own costs up to a reasonable amount, especially lawyers' fees for the review and/or defence of claims to insurance payments. The costs shall be considered necessary and reasonable if they are in line with previous regulatory practice; and
- c) against default interest and interest accruing from the date of the proceedings becoming pending on coverage claims; and
- d) against the costs of providing security or similar expenses caused by the *Insurers* in defending against coverage claims in court in order to prevent the enforcement of a court ruling.

For the avoidance of doubt, the *Parties* agree that *VOLKSWAGEN*'s indemnification obligation shall exist in particular for claims to insurance payments that have not been satisfied and settled vis-à-vis the persons entitled to the claims or third parties pursuant to sections 3.1 to 3.3 of this Agreement because the *Parties* are not authorised to dispose of the claims under the contractual provisions or the German Insurance Contracts Act or because the *Parties* could not agree or have not agreed on satisfaction and settlement with effect vis-à-vis the persons entitled to the claims or third parties for other reasons. Insofar as *VW D&O Insurers* are not party to this Agreement, this is a genuine contract for the benefit of third parties for the benefit of these *VW D&O Insurers* which applies irrespective of whether this involves known or unknown, conditional or unconditional claims or rights arising from own rights or rights transferred by statutory subrogation.

- 4.2 The indemnification obligation pursuant to section 4.1 shall, with regard to the *2015 Insurance Program 2015*, extend to such claims against one or several Insurers of the *VW D&O* which are not related to the *Relevant Facts and Circumstances*.
- 4.3 The indemnification obligation pursuant to section 4.1 shall not apply
  - a) insofar as the coverage claims can be settled via a remaining credit balance in the *Provisions Account* pursuant to section 2; or
  - b) if the *Insured Person* against whom claims are asserted
    - aa) acknowledges corresponding claims for damages with the explicit consent of the *Insurers*,
    - bb) reaches a settlement in respect of these with the explicit consent of the *Insurers* or
    - cc) allows existing defence options to finally and conclusively expire without being used, with the explicit consent of the *Insurers*,

without *VOLKSWAGEN* having explicitly consented to such a course of action. *VOLKSWAGEN* shall be deemed to have given its consent if it does not explicitly object to a corresponding inquiry from the Insurers within two weeks. Irrespective of this, *VOLKSWAGEN*'s indemnification obligation shall continue to exist if the Insurers are obliged to provide coverage. The Insurers shall bear the burden of proof in this regard.

- 4.4 The indemnification obligation shall moreover not apply if the *VW D&O Insurers* acknowledge corresponding coverage claims without *VOLKSWAGEN*'s prior explicit consent, reach a settlement in respect of these or knowingly allow defence options of which they are aware to finally and conclusively expire without being used, unless the *VW D&O Insurers* had in particular to issue an acknowledgment or were otherwise obliged to take one of the above actions based on the applicable insurance terms and conditions or statutory provisions. Section 4.3, sentence 2 applies *mutatis mutandis*.
- 4.5 Insofar as insurance payments are to be repaid by the *Insured Persons*, the *VW D&O Insurers* shall forward these amounts to *VOLKSWAGEN*, *AUDI* and *Porsche* into the account to be designated by *VOLKSWAGEN* (section 1.1) without undue delay after repayment by the *Insured Persons*. Section 1.1, sentence 2 applies *mutatis mutandis*.
- 4.6 The limitation period for an indemnification claim shall start to run at the earliest on the assertion of the respective claim against the *Insurers*. The statutory provisions on the expiry of the limitation period shall otherwise apply.
- 4.7 *AUDI* and *Porsche* shall indemnify *VOLKSWAGEN* to the extent that the underlying facts and circumstances relate to the respective *Company*. The *Companies* shall not be jointly and severally liable in this regard.

## 5. Claims for recourse and compensation, recovery claims

- 5.1 The *Insurers* shall not assert any claims for recourse or compensation on account of payments made by them based on their own rights or rights transferred by statutory subrogation, in particular based on section 86 German Insurance Contracts Act, against the *Companies*, *Insured Persons* or third parties. The *Insurers* shall, at *VOLKSWAGEN*'s request, assign such claims to one of the *Companies* or a third party. The transferee shall be designated by *VOLKSWAGEN*.
- 5.2 Insofar as the prerequisites for this laid down in the insurance policies and by law have been met, *VOLKSWAGEN* may request that the Insurers which are entitled to the claims in question at the time of such request assert recovery claims against *Insured Persons* on account of payments from the *Provisions Account* (section 2.5) or payments made by the Insurers in respect of which *VOLKSWAGEN* was obliged to issue an indemnification pursuant to section 4.1. The *Insurers* may request that *VOLKSWAGEN* reimburse all expenses, including internal costs up to a reasonable amount, incurred by them in connection with the request.

For the avoidance of doubt, the Parties state that this does not apply to payments the recovery of which has been waived by the Insurers pursuant to section 1.2(i) or to amounts paid to the *Companies* pursuant to section 1.

## 6. Berkshire Hathaway Carve out

- 6.1 This Coverage Settlement shall not have any legal effect in favour of *Berkshire Hathaway*, which did not wish to conclude this *Coverage Settlement*, insofar as this is permissible under the provisions of the insurance policies and the statutes. In particular, insofar as this is permissible under the provisions of the insurance policies and the statutes, *Berkshire Hathaway* shall be excluded from all of the effects of this Agreement which benefit the *VW D&O Insurers*, specifically
- a) the effect of being satisfied and settled in section 3.1, section 3.2 and section 3.4 and
  - b) the indemnification obligations in favour of the *VW D&O Insurers* in section 4.1.
- 6.2 In derogation of section 3.10 sentences 2 to 6, liability claims against the *Persons against whom Claims are Asserted* shall exist in full and be enforceable. However, the *Companies* undertake to limit the compulsory enforcement under any liability judgments against the *Persons against whom Claims are Asserted*
- a) to their indemnification claims against *Berkshire Hathaway* under the insurance policies and
  - b) otherwise to the scope regulated in section 3.10 sentences 2 to 6 or – insofar as a liability settlement has been concluded with the relevant *Persons against whom Claims are Asserted* – to the scope regulated in the relevant liability settlement.
- 6.3 The *Companies* intend to enforce *Berkshire Hathaway's* insurance obligation with regard to the *Relevant Facts and Circumstances*, including in court if necessary. However, in doing so they shall not be bound to the settlement amount and other settlement terms that were offered to *Berkshire Hathaway* in the course of the negotiations on this Coverage Settlement.

## 7. Entry into effect

- 7.1 The Coverage Settlement shall enter into effect subject to the condition precedent
- c) that the General Meetings of the *Companies* approve the Coverage Settlement and
  - d) that there is no objection, recorded in the minutes, to the resolution by a minority, the aggregate of whose shares is at least equivalent to one tenth of the share capital of the respective *Company*.

The condition precedent shall be deemed to have definitively ceased to apply should it not have been fulfilled by 31 December 2021.

- 7.2 Should nullity actions pursuant to section 249 German Stock Corporation Act and/or actions for avoidance pursuant to section 246 German Stock Corporation Act be filed against one or more of the resolutions within the meaning of section 7.1, this shall not affect the processing of the Coverage Settlement until final and binding judgments have been rendered in favour of the plaintiffs, unless mandatory legal provisions stipulate otherwise. Should a final and binding judgment be rendered in favour of the plaintiff in such an action, the *Parties* must return the payments made to one another with the exclusion of the pleas arising from sections 814, 818(3) German Civil Code and the right to set-off and the right of retention.
- 7.3 The entry into effect of this Coverage Settlement does not depend on the conclusion and entry into effect of the Liability Settlements with the *Persons against whom Claims are Asserted*. The conditions laid down in sections 3.1 and 3.10 for the effect of being satisfied to arise vis-à-vis the *Persons against whom Claims are Asserted* shall not be affected by this.
- 7.4 The *Parties* further agree the following with regard to the entry into effect of this Coverage Settlement:
- a) The *Companies* have instructed and authorised Gleiss Lutz to receive and make all notifications and declarations in connection with this Settlement Agreement. In the same way, the *Insurers* instruct and authorise DLA Piper. The other *Parties* must be informed of any amendment to these notification and declaration authorisations two weeks in advance.
  - b) Each *Party* shall send the following to Gleiss Lutz:
    - aa) by e-mail in advance: a scanned copy of the Coverage Settlement signed by it and initialled by it on each page;
    - bb) by post or by courier: 18 original copies of the full Coverage Settlement, initialled on each page, including the signature pages signed by hand.
  - c) The *Parties* irrevocably authorise Gleiss Lutz to put the original copies of the signature pages together with one original copy of the Settlement Agreement in each case and to send these to the Parties. Accordingly, the *Parties* irrevocably authorise Gleiss Lutz to put the scans sent by e-mail in advance together to form an electronic document.
  - d) This Settlement shall already enter into effect if Gleiss Lutz has sent the electronic document created in accordance with the above provision to DLA Piper by e-mail. The written form requirement pursuant to section 9.2 shall not apply in this regard.

## **8. Costs incurred in connection with the conclusion of this Agreement**

Each *Party* shall bear the costs incurred and yet to be incurred by it in connection with the preparation and implementation of this Coverage Settlement itself.

**9. Miscellaneous**

- 9.1 There are no side agreements to this Coverage Settlement.
- 9.2 Unless a different form is stipulated by mandatory law or this Coverage Settlement,
- a) amendments to this Coverage Settlement must be in written form within the meaning of section 126 German Civil Code excluding section 127(2) German Civil Code;
  - b) text form within the meaning of section 126b German Civil Code shall suffice for other notifications, requests, objections or other declarations.
- 9.3 The *Companies* have irrevocably instructed and authorised Volkswagen Insurance Brokers GmbH to make as well as to receive declarations pursuant to section 4.4 and 4.5.
- 9.4 All disputed arising out of or in connection with this Coverage Settlement are subject to German law under the exclusion of the rules on the conflict of laws.
- 9.5 All disputes arising out of this Coverage Settlement or pertaining to its validity are to be finally decided upon under the Arbitration Rules by the German Arbitration Institute (DIS) under exclusion of the right to bring suit before a state court.
- a) The Arbitral Tribunal consists of three Arbitrators.
  - b) The place of arbitration is Frankfurt am Main.
  - c) The proceedings are to be conducted in German.
- 9.6 Should a provision of this Coverage Settlement be or become invalid or unenforceable in whole or in part, or should there prove to be an omission when this Coverage Settlement is implemented, this shall not affect the validity of the remaining provisions. The invalid or unenforceable provision shall be replaced or the omission remedied by a reasonable and legally permissible provision that comes closest in economic terms to what the Parties wanted or would have wanted had they considered the invalidity or unenforceability or the omission.

**Annex**

| Excess Layer | Insurer               | 2015 Settlement Amount (EUR) |
|--------------|-----------------------|------------------------------|
| 0            | Zurich*               | 25,000,000.00                |
| 1            | AXA XL*               | 22,000,000.00                |
| 2            | AGCS*                 | 21,750,000.00                |
| 3            | AXA XL*               | 20,525,000.00                |
| 4            | AIG                   | 17,500,000.00                |
| 4            | HDI                   | 17,500,000.00                |
| 5            | Liberty               | 13,000,000.00                |
| 5            | AWAC                  | 9,750,000.00                 |
| 5            | AXA XL                | 6,500,000.00                 |
| 5            | AGCS                  | 3,250,000.00                 |
| 6            | TMHCC                 | 12,500,000.00                |
| 6            | MSIG                  | 7,500,000.00                 |
| 6            | CNA                   | 3,000,000.00                 |
| 7            | QBE                   | 15,300,000.00                |
| 7            | Lloyd's 4711          | 5,100,000.00                 |
| 7            | R+V                   | 5,100,000.00                 |
| 8            | ARGO                  | 7,602,500.00                 |
| 8            | Great Lakes           | 7,602,500.00                 |
| 8            | Starr                 | 6,082,000.00                 |
| 8            | Brit                  | 4,561,500.00                 |
| 8            | RSA                   | 4,561,500.00                 |
| 8            | ANV / Lloyd's 1861    | 3,041,000.00                 |
| 8            | Arch                  | 3,041,000.00                 |
| 8            | AXA XL                | 3,041,000.00                 |
| 8            | TMHCC                 | 3,041,000.00                 |
| 8            | Lloyd's 0623 und 2623 | 1,520,500.00                 |
| 8            | Lloyd's 2468          | 1,520,500.00                 |
| 9            | AIG                   | 5,500,000.00                 |
| 9            | SwissRe               | 5,500,000.00                 |
|              | Total                 | 261,890,000.00               |

**Preliminary information**

| Excess Layer | Insurer                                  | 2021 Settlement Amount (EUR) |
|--------------|------------------------------------------|------------------------------|
| 0            | Zurich                                   | 3,500,000.00                 |
| 2            | AXA XL                                   | 975,000.00                   |
| 2            | AIG                                      | 650,000.00                   |
| 3            | AIG                                      | 900,000.00                   |
| 3            | HDI                                      | 900,000.00                   |
| 3            | QBE                                      | 600,000.00                   |
| 3            | Generali                                 | 300,000.00                   |
| 3            | ANV / Lloyd's 1861                       | 150,000.00                   |
| 3            | Navigators / The Hartford / Lloyd's 1221 | 150,000.00                   |
|              | Total                                    | 8,125,000.00                 |

\* Minus the amounts to be deducted pursuant to sections 1.2 i) and ii)