

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

IN RE MERCEDES-BENZ EMISSIONS
LITIGATION

Civil Action: 16-cv-881 (KM) (ESK)

ELECTRONICALLY FILED

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

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1. THE PROPOSED SETTLEMENT

On February 18, 2016, Plaintiffs filed this lawsuit against Daimler AG (“Daimler”) and Mercedes-Benz USA, LLC (“MBUSA”) (together, the “Mercedes Defendants”) in the United States District Court for the District of New Jersey, relating to the Mercedes Defendants’ marketing and sale of Mercedes-Benz BlueTEC II diesel vehicles. After extensive litigation and settlement efforts facilitated by mediator Hon. Edward A. Infante (Ret.), Plaintiffs and the Mercedes Defendants have reached this agreement to resolve consumers’ claims related to the BlueTEC II vehicles sold or leased in the United States (the “Class Action Agreement” or the “Class Action Settlement”).

As detailed below, the Class Action Settlement, if approved by the Court, provides substantial compensation and relief to all eligible Class Members. Pursuant to a proposed Consent Decree with the Department of Justice (“DOJ”), the Environmental Protection Agency (“EPA”), and the California Attorney General (“CA AG”), acting on behalf of the California Air Resources Board (“CARB”), the Mercedes Defendants will provide Approved Emission Modifications (“AEMs”)—modifications of the emission control system software calibration and certain related hardware—that ensure that the vehicles meet the emissions standards to which they were originally certified. Upon entry by a federal district court, the proposed Consent Decree (the “US-CA Consent Decree”) will resolve the agencies’ allegations that certain software functions and calibrations in BlueTEC II vehicles reduced the effectiveness of the vehicles’ emission control systems. Daimler has developed, and the EPA and CARB have approved, AEMs for approximately 123,000 currently registered vehicles. Proposed emission modifications for the remaining BlueTEC II vehicles are scheduled to be submitted for approval during the years 2020 and 2021.

The Class Action Agreement provides eligible Class Members with cash payments and other benefits. The Class Action Agreement is a claims-made settlement. The compensation pursuant to the Class Action Settlement is available only to Class Members who do not opt out

of the Class and who submit Valid Claims in the Claims Program. The amount the Mercedes Defendants will pay under the Class Action Agreement depends on how many Class Members submit Valid Claims. The ultimate goal of the Class Action Agreement is to resolve Plaintiffs' claims against the Mercedes Defendants in this Action, compensate eligible Class Members, and incentivize owners and lessees to have the AEMs installed in their vehicles. The Benefits provided by this Class Action Agreement will become available only upon, and after, the US-CA Consent Decree is entered by a federal district court and this Class Action Settlement receives final approval from this Court.

2. DEFINITIONS

As used in this Class Action Agreement (which, as defined below, includes the attached Exhibits), the terms defined herein have the following meanings.

2.1. "Action" means the class actions that have been consolidated in the United States District Court for the District of New Jersey in *In re Mercedes-Benz Emissions Litigation*, No. 2:16-cv-0881-KM-ESK (D.N.J.).

2.2. "AEM Availability Deadline" means the date on which, if an AEM for a Subject Vehicle is not available, Class Members who own or lease an affected Registered Subject Vehicle become eligible and may file a Claim for a Class Member Payment pursuant to Sections 5.3.4 or 5.3.5. The AEM Availability Deadline is October 1, 2022. However, if the deadline to submit an Emission Modification Proposal Report for a Subject Vehicle is extended beyond November 8, 2021 pursuant to the terms of the US-CA Consent Decree, the AEM Availability Deadline shall be extended by the number of days that the last deadline to submit an Emission Modification Proposal Report extends beyond November 8, 2021.

2.3. "Approved Emission Modification(s)" or "AEM(s)" means modifications to the emissions software and certain related hardware of vehicles in the Emission Modification Categories, as proposed by the Mercedes Defendants and approved by EPA and CARB, pursuant to Appendix B, Paragraphs 4-5 of the US-CA Consent Decree.

2.4. “Authorized Service Provider” means a Dealer or any other entity authorized by the Mercedes Defendants to install the Approved Emission Modification.

2.5. “Benefits” means all consideration made available to the Class Members pursuant to this Class Action Settlement, including but not limited to Class Member Payments.

2.6. “BlueTEC Diesel Matter” means all claims arising from or in any way relating to: (1) the design, manufacture, assembly, testing, development, installation, performance, presence, disclosure, or nondisclosure of any auxiliary emission control device (“AECD”) (as defined in 40 C.F.R. § 86.1803-01) or defeat device (as defined in 40 C.F.R. § 86.1803-01 or 42 U.S.C. § 7522(a)(3)(B)) in any Subject Vehicle, as that term is defined in Section 2.70; (2) the design, manufacture, assembly, testing, development, installation, or performance of emission control equipment and methods and related hardware or software in Subject Vehicles, including Diesel Exhaust Fluid and associated equipment, Selective Catalytic Reduction systems, electronic control units, and emission-related software programming, coding, and calibrations; (3) overpayment or diminution in value related to the design, manufacture, assembly, testing, development, installation, or performance of emission control equipment and methods and related hardware or software in Subject Vehicles; (4) the actual or alleged noncompliance of any Subject Vehicle with state or federal environmental or emissions standards; (5) the marketing or advertisement of the emissions or environmental characteristics or performance of any Subject Vehicle, including as clean diesel, clean, low emissions, green, environmentally friendly, and/or compliant with state or federal environmental or emissions standards; (6) the marketing or advertisement of the fuel efficiency, fuel economy, mileage, power, drivability, or performance of any Subject Vehicle, to the extent related in any way to the emissions performance, the design, manufacture, assembly, testing, development, installation, or performance of emission control equipment and methods, and related hardware or software; (7) any badges, signage, or BlueTEC labels on the Subject Vehicles, including any badges or signage placed on the Subject Vehicles at the point of sale or in an advertisement; (8) performance of the AEM in a Subject

Vehicle, exclusive of the Extended Modification Warranty and any “Lemon Law” protections available to Class Members; (9) whether the Subject Vehicles meet or exceed (or met or exceeded) consumer expectations, to the extent related in any way to the emissions performance, the design, manufacture, assembly, testing, development, installation, or performance of emission control equipment, and methods and related hardware or software; or (10) the subject matter of the Action as well as events or allegations related to the Action, with respect to the Subject Vehicles. Without limiting the foregoing, “BlueTEC Diesel Matter” includes allegations that (i) are related to any Subject Vehicle, (ii) relate to conduct by a Released Party that predates the date of this Class Action Settlement, and (iii) formed or relate to the factual basis for a claim that was made or could have been made in the Complaint.

2.7. “CARB” means the California Air Resources Board and any of its successor departments or agencies.

2.8. “Claim” means the claim of any Class Member or their representative submitted on a Claim Form as provided in this Class Action Agreement. Class Members will not be required to submit more than one Claim Form per Subject Vehicle to receive Benefits.

2.9. “Claim Form” means the paper or online form used to submit a Claim for a Class Member Payment under this Class Action Agreement. The Claim Form is attached as Exhibit 4.

2.10. “Claim Submission Deadline for Eligible Former Owners/Lessees” means the latest date by which an Eligible Former Owner/Lessee may submit a Claim to participate in the Claims Program. The Claim Submission Deadline for Eligible Former Owners/Lessees is the later of (1) 75 days after the Notice Date; or (2) the date of the Final Approval Order.

2.11. “Claim Submission Deadline for Eligible Current Owners/Lessees” means the latest date by which an Eligible Current Owner/Lessee may submit a Claim to participate in the Claims Program. The Claim Submission Deadline for Eligible Current Owners/Lessees is October 1, 2022, except under the following circumstances:

- 2.11.1. If an Approved Emission Modification for a Subject Vehicle becomes available less than 60 days before October 1, 2022, then Eligible Current Owners/Lesseees of the affected Registered Subject Vehicle may file a Claim for an Owner/Lessee Payment or Post-Announcement Owner/Lessee Payment (as applicable) within 60 days of the date on which the AEM becomes available, in accordance with the claims process described in Sections 5-6; and
- 2.11.2. If an AEM for a Subject Vehicle is not available by the AEM Availability Deadline, Class Members who own or lease the affected Registered Subject Vehicles on the AEM Availability Deadline may file a Claim within 60 days to receive a Class Member Payment, pursuant to Sections 5.3.4 or 5.3.5, as applicable; and
- 2.11.3. If the AEM Availability Deadline is extended pursuant to Section 2.2, and an AEM becomes available by the AEM Availability Deadline but after October 1, 2022, then Eligible Current Owners/Lesseees of the affected Registered Subject Vehicle may file a Claim for an Owner/Lessee Payment or Post-Announcement Owner/Lessee Payment (as applicable) within 60 days of the date on which the AEM becomes available, in accordance with the claims process described in Sections 5-6.
- 2.11.4. For the purpose of Sections 2.11.1-2.11.3, an AEM is “available” on the date the Mercedes Defendants post the Consumer Emission Modification Disclosure pertaining to that AEM on the Settlement Website.

2.12. “Claims Program” means the program through which Class Members may submit Claims and, if eligible, obtain benefits under this Class Action Agreement, as described in Sections 5-6.

2.13. “Claims Review Committee” or “CRC” means the committee approved by the Court to resolve disputes regarding whether Subject Vehicles are Operable, as defined herein, and regarding the implementation of the Extended Modification Warranty. The CRC is described more fully in Section 5.7.

2.14. “Class” means, for purposes of this Class Action Settlement only, a nationwide class, including territories of the United States, of all Persons who (1) on or before the Settlement Announcement Date owned or leased, and Registered, a Subject Vehicle, or (2) after the Settlement Announcement Date begin owning or leasing, and Register, a Subject Vehicle for which an AEM has not been installed. The following entities and individuals are excluded from the Class:

- (a) The Mercedes Defendants and their officers, directors, and employees; the Mercedes Defendants’ corporate affiliates and corporate affiliates’ officers, directors, and employees; their distributors and distributors’ officers, directors, and employees;
- (b) Judicial officers and their immediate family members and associated court staff assigned to this case;
- (c) Persons who have settled with, released, or otherwise had claims adjudicated on the merits against the Mercedes Defendants arising from the same core allegations or circumstances as the BlueTEC Diesel Matter; and
- (d) All Persons otherwise in the Class who timely and properly exclude themselves from the Class as provided in this Class Action Agreement.

2.15. “Class Action Agreement” means this settlement agreement and the exhibits attached hereto, including any subsequent amendments or any exhibits to such amendments. The Class Action Agreement may also be referred to as the “Class Action Settlement.”

2.16. “Class Counsel” means Carella, Byrne, Cecchi, Olstein, Brody & Agnello, PC, and Hagens Berman Sobol Shapiro LLP, the firms that were appointed by the Court to be Interim Lead Counsel on April 7, 2016 (D.E. 7), as well as Seeger Weiss LLP, which has also represented the Class in connection with negotiations of this Class Action Settlement.

2.17. “Class Member” means a Person who meets the Class definition set forth in Section 2.14 of this Class Action Agreement and who has not timely opted out of the Class pursuant to the procedures set forth in Section 7.

2.18. “Class Member Payment” means the monetary compensation that the Mercedes Defendants shall pay eligible Class Members who do not opt out of the Class and who submit a Valid Claim, on the conditions set forth in Sections 5-6. The Class Member Payment includes the Owner/Lessee Payment, Post-Announcement Owner/Lessee Payment, Former Owner/Lessee Payment, and the contingency payments described in Section 5.3.

2.19. “Class Notice Program” means the program for distributing information about the Class Action Settlement to the Class, as approved by the Court.

2.20. “Complaint” means the Fifth Consolidated and Amended Class Action Complaint and Demand For Jury Trial (D.E. 185) filed in the Action on March 15, 2019.

2.21. “Consumer Emission Modification Disclosure” means the disclosure required by Paragraphs 15.a-b of Appendix A of the US-CA Consent Decree. The Consumer Emission Modification Disclosure is described in Section 5.8.

2.22. “Court” means the United States District Court for the District of New Jersey.

2.23. “Daimler” means Daimler AG.

2.24. “Dealer” means any entity authorized by MBUSA or DVUSA, subject to a written dealer agreement, to sell and/or service Subject Vehicles in the United States.

2.25. “DOJ” means the United States Department of Justice.

2.26. “DVUSA” means Daimler Vans USA, LLC.

2.27. “Effective Date” means the earliest date on which both of the following events have occurred: (a) entry of the Final Approval Order; and (b) entry of the US-CA Consent Decree by a federal district court. Due to the interrelationship between the US-CA Consent Decree and Class Action Settlement, the Mercedes Defendants shall have no obligation to provide Benefits to Class Members under the Class Action Settlement unless and until the US-CA Consent Decree is entered by a federal district court and the Final Approval Order is entered.

2.28. “Eligible Current Owners/Lessees” includes Eligible Owners, Eligible Lessees, Eligible Post-Announcement Owners, and Eligible Post-Announcement Lessees.

2.29. “Eligible Former Lessee” means a Class Member (1) who leased and Registered a Subject Vehicle prior to the Settlement Announcement Date, (2) who surrendered or surrenders the Subject Vehicle on or before the Claim Submission Deadline for Former Owners/Lessees, and (3) whose Subject Vehicle did not receive the Approved Emission Modification during their lease period. For the avoidance of doubt, this includes any Eligible Former Lessee whose lease is terminated as a result of a total loss before the AEM is installed in their vehicle.

2.30. “Eligible Former Owner” means a Class Member (1) who owned and Registered a Subject Vehicle prior to the Settlement Announcement Date, (2) who sold or otherwise transferred ownership of the Subject Vehicle on or before the Claim Submission Deadline for Former Owners/Lessees, and (3) whose Subject Vehicle did not receive the Approved Emission Modification during their period of ownership. For avoidance of doubt, a sale or transfer of ownership under this definition includes the transfer of ownership of a Subject Vehicle as a result of a total loss.

2.31. “Eligible Former Owners/Lessees” includes Eligible Former Owners and Eligible Former Lessees.

2.32. “Eligible Lessee” means a Class Member who (1) leases and Registers a Subject Vehicle on or before the Settlement Announcement Date; and (2) is leasing the Registered Subject Vehicle at the time the Approved Emission Modification is installed in that vehicle. A Class Member is not an Eligible Lessee if they surrender their Subject Vehicle under the terms of the lease or assign their lease to another Person before the AEM is installed.

2.33. “Eligible Owner” means a Class Member who (1) owns and Registers a Subject Vehicle on or before the Settlement Announcement Date; and (2) owns the Registered Subject Vehicle at the time the AEM is installed in that vehicle. However, the lessor of a Subject Vehicle shall not be an Eligible Owner.

2.34. “Eligible Post-Announcement Lessee” means a Class Member who did not lease the Registered Subject Vehicle on or before the Settlement Announcement Date, but who leases the Registered Subject Vehicle at the time the Approved Emission Modification is installed.

2.35. “Eligible Post-Announcement Owner” means a Class Member who did not own the Registered Subject Vehicle on or before the Settlement Announcement Date, but who owns the Registered Subject Vehicle at the time the Approved Emission Modification is installed.

2.36. “Emission Modification Category” means any one of the 12 categories of models and model years as identified in the seventh column of Appendix B, Attachment I of the US-CA Consent Decree, for which the Mercedes Defendants have or will submit an Emission Modification Proposal Report. To facilitate development and approval of the Approved Emission Modifications, vehicles are grouped into Emission Modification Categories according to their technological characteristics.

2.37. “Emission Modification Program” means the program specified in Paragraph 1 of Appendix A of the US-CA Consent Decree to implement the Approved Emission Modifications.

2.38. “Emission Modification Proposal Report” means the report specified in Paragraph 4.a of Appendix B of the US-CA Consent Decree that the Mercedes Defendants must submit to

EPA and CARB for approval of the Approved Emission Modifications, according to the schedule in Appendix B, Attachment I of the US-CA Consent Decree.

2.39. “EPA” means the United States Environmental Protection Agency and any of its successor departments or agencies.

2.40. “Extended Modification Warranty” means the warranty described in Section 5.4.

2.41. “Fairness Hearing” means the hearing held by the Court for the purpose of determining whether to approve this Class Action Settlement as fair, reasonable, and adequate.

2.42. “Final Approval Order” means the order substantially in the form of Exhibit 7 that may, at the discretion of the Court, be entered by the Court granting final approval of the Class Action Settlement.

2.43. “Final Judgment” means the order substantially in the form of Exhibit 8 by which Court may, at its discretion, enter final judgment with respect to the Released Claims.

2.44. “Former Owner/Lessee Payment” means monetary compensation, as set forth in Section 5, that the Mercedes Defendants will pay to Eligible Former Owners/Lesseees who submit a Valid Claim, on the conditions set forth in Section 5-6.

2.45. “Individual Release” means the release that Class Members must execute to receive a Class Member Payment, as described in Section 10 of this Class Action Agreement. The Individual Release will remain valid even if the Court does not enter the Final Approval Order, the Final Approval Order is later reversed and/or vacated on appeal, or if this Class Action Agreement is abrogated or otherwise voided in whole or in part. The Individual Release binds Class Members when they receive a Class Member Payment.

2.46. “Long Form Notice” means the Long Form Notice substantially in the form attached hereto as Exhibit 2.

2.47. “MBUSA” means Mercedes-Benz USA, LLC.

2.48. “Mediator” means Hon. Edward A. Infante (Ret.), who mediated settlement negotiations between the Parties, and who will preside over certain settlement-related proceedings, if necessary, as set forth in this Class Action Agreement.

2.49. “Mercedes Defendants” means Daimler AG and Mercedes-Benz USA, LLC.

2.50. “Mercedes Defendants’ Lead Counsel” means Daniel W. Nelson of Gibson, Dunn & Crutcher LLP, and Troy M. Yoshino of Squire Patton Boggs (US) LLP.

2.51. “Non-Settling Defendants” means Robert Bosch LLC and Robert Bosch GmbH.

2.52. “Notice Date” means the date on which the Class Notice Program begins, as set forth in the Preliminary Approval Order, which shall be the later of (1) within 15 business days of the Preliminary Approval Order; or (2) within 15 business days after Entry of the US-CA Consent Decree.

2.53. “Operable” means that a vehicle can be driven under its own engine power. A Subject Vehicle that has been altered with the use of any after-market emissions-related components, parts, and/or software or the removal of any original emissions-related components, parts, and/or software, if such alteration(s) are likely to substantially affect the operation of the vehicle with the Approved Emission Modification or substantially impede installation of the AEM, shall not be considered Operable unless and until the owner or lessee of such vehicle has reversed the alteration(s) such that the AEM may be installed and not substantially affected. Vehicles that are not Operable may be unable to receive the AEM. The CRC will be the final decision maker on whether a vehicle is Operable, but the initial determination of whether a vehicle is Operable will be made by the Authorized Service Provider that has been asked to install the AEM in the Subject Vehicle. A determination under this Section regarding whether a vehicle is Operable does not constitute any determination by EPA or CARB as to whether the emissions system of the vehicle has been modified.

2.54. “Opt-Out Deadline” means the last day a Person within the definition of the Class may opt out of the Class Action Settlement, which is 60 days from the Notice Date. Requests to opt-out must be received by the Settlement Administrator by the Opt-Out Deadline.

2.55. “Owner/Lessee Payment” means monetary compensation the Mercedes Defendants will pay to Eligible Owners and Eligible Lessees who submit a Valid Claim, on the conditions set forth in Sections 5-6.

2.56. “Parties” means the Settlement Class Representatives and the Mercedes Defendants, collectively.

2.57. “Party” means the Settlement Class Representatives or the Mercedes Defendants, as applicable.

2.58. “Person” or “Persons” includes individuals and entities.

2.59. “Post-Announcement Owner/Lessee Payment” means monetary compensation that the Mercedes Defendants will pay to Eligible Post-Announcement Owners and Eligible Post-Announcement Lessees who submit a Valid Claim, on the conditions set forth in Section 5-6.

2.60. “Post-Appeal Date” means the latest date on which the Final Approval Order approving this Class Action Settlement becomes final. For purposes of this Class Action Settlement:

2.60.1. If no appeal has been taken from the Final Approval Order, “Post-Appeal Date” means the date on which the time to appeal therefrom has expired; or

2.60.2. If any appeal has been taken from the Final Approval Order, “Post-Appeal Date” means the date on which all appeals therefrom, including petitions for rehearing or reargument, petitions for rehearing en banc, and petitions for a writ of certiorari or any other form of review, have

been fully disposed of in a manner that affirms the Final Approval Order; or

2.60.3. If Class Counsel and the Mercedes Defendants agree in writing, the “Post-Appeal Date” can occur on any other earlier agreed date.

2.61. “Preliminary Approval Order” means the order substantially in the form of Exhibit 6 that may be entered by the Court approving the Class Notice Program, concluding that the Court will likely be able to approve the Class Action Settlement and certify the proposed Class as outlined in Section 4 of this Class Action Agreement, and staying all discovery as to the Mercedes Defendants and the Released Parties.

2.62. “Register” means to register a vehicle with a Department of Motor Vehicles or equivalent agency in the name of the owner or, for a leased vehicle, the lessee, in the United States or its territories. “Registered” means to have registered a vehicle with a Department of Motor Vehicles or equivalent agency in the name of the owner or, for a leased vehicle, the lessee, in the United States or its territories.

2.63. “Release” means the release and waiver described in Section 10 of this Class Action Agreement and in the Final Approval Order.

2.64. “Released Party” or “Released Parties” has the definition set forth in Section 10 of this Class Action Agreement.

2.65. “Settlement Administrator” means the third-party agent agreed to by the Parties and appointed by the Court to oversee the Claims Program, including the claims process described in Section 6, and to implement the Class Notice Program. The Parties agree that JND Legal Administration shall serve as the Settlement Administrator, subject to approval by the Court.

2.66. “Settlement Announcement Date” means September 14, 2020.

2.67. “Settlement Class Representative” means a Plaintiff in this Action who meets the Class definition set forth in Section 2.14 of this Class Action Agreement, and who has agreed to

represent the Class for purposes of obtaining approval of, and effectuating, this Class Action Settlement, as described in the Parties' Motion for Preliminary Approval.

2.68. "Settlement Website" means the public website that provides information and key filings regarding the Class Action Settlement, including Frequently Asked Questions. Class Members will be able to access a "Claims Portal" on the Settlement Website. The Settlement Website also will allow Class Members to obtain a description of the Emission Modification Program and to complete and submit an online Claim Form, or download a Claim Form to complete and submit in hard copy. The Settlement Website shall display the Consumer Emissions Modification Disclosure and the Supplemental Notice of Class Benefits in a manner such that members of the public and consumers can readily access the information.

2.69. "Short Form Notice" means the Short Form Notice(s) substantially in the form as attached hereto as Exhibit 1.

2.70. "Subject Vehicles" means a "Subject Vehicle" as defined in the US-CA Consent Decree, which includes the diesel vehicles listed in the table below.

BlueTEC II Diesel Vehicles	
Model	Model Year(s)
E250	2014-2016
E350	2011-2013
GL320	2009
GL350	2010-2016
GLE300d	2016
GLE350d	2016
GLK250	2013-2015
ML250	2015
ML320	2009
ML350	2010-2014
R320	2009
R350	2010-2012
S350	2012-2013
Mercedes-Benz or Freightliner Sprinter (4-cylinder)	2014-2016
Mercedes-Benz or Freightliner Sprinter (6-cylinder)	2010-2016

2.71. “Supplemental Notice of Class Benefits” means the notice that will be sent by the Settlement Administrator announcing that an Approved Emission Modification has become available for a make, model, and model year of a Subject Vehicle, and describing the available Class Member Payments, including any available contingent payments pursuant to Section 5.3. The Supplemental Notice of Class Benefits will be sent to Class Members who own or lease the Subject Vehicle, to the extent possible at the same time as the Consumer Emission Modification Disclosure is sent.

2.72. “US-CA Consent Decree” means the Consent Decree lodged with a federal district court on or about September 14, 2020, as agreed by (1) the United States on behalf of the EPA; (2) the People of the State of California, by and through CARB and the Attorney General of California; and (3) the Mercedes Defendants, resolving disputes between those parties on the terms described therein. If the federal district court approves and enters the Consent Decree, “US-CA Consent Decree” shall mean the decree as and in the form that it is ultimately approved and entered by the federal district court.

2.73. “Valid Claim” means a Claim that is accurate, truthful, complete, executed by a Class Member or authorized representative, and submitted to the Settlement Administrator by the applicable claims deadline. A Valid Claim must include a fully executed Individual Release and all required documentation, including, for Eligible Current Owners/Lessees, proof that the Approved Emission Modification has been installed in their Subject Vehicle by an Authorized Service Provider (e.g., by repair order).

2.74. Other capitalized terms used in this Class Action Agreement but not defined in this Section 2 shall have the meanings ascribed to them elsewhere in this Class Action Agreement.

2.75. The terms “he or she” and “his or her” include “it” or “its,” as applicable; the terms “they” or “their” include “he,” “she,” “his,” “her,” “it,” or “its,” as applicable.

3. DENIAL OF ANY WRONGDOING AND LIABILITY

3.1. The Mercedes Defendants deny the material factual allegations and legal claims asserted by the Plaintiffs and Class Members in the Action, including, but not limited to, any and all charges of wrongdoing or liability, or allegations of defect, arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Action.

4. PRELIMINARY APPROVAL

4.1. Promptly after this Class Action Agreement is signed, but by no later than September 15, 2020, the Parties shall file the Class Action Agreement with the Court, together with a Motion for Preliminary Approval, seeking preliminary approval of the Class Action Agreement, including the proposed Long Form Notice and Short Form Notice. Simultaneously, the Settlement Class Representatives shall move for certification of the Class for settlement purposes only, pursuant to Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 23(a), 23(b)(3), and 23(e). It is expressly agreed that any certification of the Class shall be for settlement purposes only, and the Mercedes Defendants do not waive any arguments that they may have that class certification for any other purpose would be improper.

4.2. Until the Preliminary Approval Order is entered, Settlement Class Representatives and Class Counsel shall not pursue any litigation proceedings against the Released Parties; the Mercedes Defendants shall not pursue litigation proceedings against the Releasing Parties; and the Parties and their respective counsel shall not in any way subsequently argue that the Released Parties or Releasing Parties have failed to comply with their litigation obligations in any respect by reason of the Released Parties' or Releasing Parties' suspension of litigation efforts following the execution of this Class Action Agreement. Upon entry of the Preliminary Approval Order, all proceedings in this Action pertaining to the Mercedes Defendants, other than the proceedings necessary to effectuate this Class Action Agreement, shall be stayed and suspended until further notice of the Court.

4.3. The Parties agree to promptly take all actions and steps reasonably necessary to obtain the Preliminary Approval Order from the Court and to fully implement and effectuate this Class Action Settlement.

5. CLASS MEMBER COMPENSATION AND REMEDIES

5.1. **Overview of Benefits.** The Class Action Settlement provides substantial compensation and benefits to owners and lessees, as detailed in this Section 5 (Benefits). The Benefits described in this Section 5 are available only to Class Members who submit a Valid Claim.

5.2. Payments to Eligible Class Members.

5.2.1. **Owner/Lessee Payment.** Eligible Owners and Eligible Lessees whose Subject Vehicle receives an Approved Emission Modification and who submit a Valid Claim are entitled to an Owner/Lessee Payment. The Owner/Lessee Payment will be **\$3,290** per Subject Vehicle, unless an Eligible Former Owner or Eligible Former Lessee submits a Valid Claim for that same vehicle, in which case the Owner/Lessee Payment will be **\$2,467.50** per Subject Vehicle. To obtain an Owner/Lessee

Payment, Eligible Owners and Eligible Lessees must submit a Valid Claim by the Claim Submission Deadline for Eligible Current Owners/Lessees. No Owner/Lessee Payment will be issued to an Eligible Owner or Eligible Lessee until the Settlement Administrator receives proof that the AEM was installed in that Eligible Owner's or Eligible Lessee's Subject Vehicle at an Authorized Service Provider (e.g., by repair order).

5.2.2. **Former Owner/Lessee Payment.** Eligible Former Owners/Lessees who submit a Valid Claim are entitled to a Former Owner/Lessee Payment. The Former Owner/Lessee Payment amount is **\$822.50** per Subject Vehicle, and shall be divided equally among the Eligible Former Owners and Eligible Former Lessees who submit Valid Claims on the same vehicle. To obtain a Former Owner/Lessee Payment, Eligible Former Owners/Lessees must submit a Valid Claim by the Claim Submission Deadline for Eligible Former Owners/Lessees.

5.2.3. **Post-Announcement Owner/Lessee Payment.** Eligible Post-Announcement Owners and Eligible Post-Announcement Lessees whose Subject Vehicle receives an Approved Emission Modification and who submit a Valid Claim are entitled to a Post-Announcement Owner/Lessee Payment. The Post-Announcement Owner/Lessee Payment will be **\$2,467.50** per Subject Vehicle. To obtain a Post-Announcement Owner/Lessee Payment, Eligible Post-Announcement Owners and Eligible Post-Announcement Lessees must submit a Valid Claim by the Claim Submission Deadline for Eligible Current Owners/Lessees. No Post-Announcement Owner/Lessee Payment will be issued to an Eligible Post-Announcement Owner or Eligible Post-

Announcement Lessee until the Settlement Administrator receives proof that the AEM was installed in that Eligible Post-Announcement Owner's or Eligible Post-Announcement Lessee's Subject Vehicle.

5.2.4. The Mercedes Defendants shall not pay to Eligible Current Owners/Lessees and Eligible Former Owners/Lessees more than **\$3,290**, in total, for any individual Subject Vehicle, excluding contingent payments that may be required pursuant to Section 5.3. For the avoidance of doubt, the Parties agree that this is a claims-made settlement, meaning that the Mercedes Defendants must make payments only up to **\$3,290** per Subject Vehicle for Valid Claims made under the terms of this Class Action Agreement, excluding any contingent payments that may be required pursuant to Section 5.3.

5.3. **Contingency Payments.** In addition to the payments described in Section 5.2, in certain circumstances Eligible Current Owners/Lessees may be entitled to additional payments:

5.3.1. **Deferred Availability Payment.** If an Emission Modification Proposal Report for a Subject Vehicle is not scheduled (pursuant to Attachment I of Appendix B of the US-CA Consent Decree and any subsequent modifications thereto) to be submitted for approval to EPA and CARB within 60 days of the Effective Date, Eligible Owners and Eligible Lessees of those Subject Vehicles will be eligible for a Deferred Availability Payment of \$400, which shall be paid in addition to and at the same time as the Owner/Lessee Payment. To obtain a Deferred Availability Payment, Eligible Owners and Eligible Lessees must submit Valid Claims by the Claim Submission Deadline for Eligible Current Owners/Lessees. Eligible Post-Announcement Owners and Eligible Post-Announcement Lessees shall not be entitled to the

Deferred Availability Payment. For the avoidance of doubt, Eligible Owners and Eligible Lessees cannot receive both the Deferred Availability Payment and compensation for an AEM that is not available pursuant to Sections 5.3.4 and 5.3.5.

- 5.3.2. **Payments If The Mercedes Defendants Submit An Emission Modification Proposal Report Late.** The Mercedes Defendants intend to submit Emission Modification Proposal Reports to EPA and CARB according to the deadlines set forth in Attachment I of Appendix B of the US-CA Consent Decree, including any subsequent modifications to those deadlines pursuant to the terms of the US-CA Consent Decree. If the Mercedes Defendants do not submit the initial Emission Modification Proposal Report for a Subject Vehicle within 30 days of the deadline set forth in Attachment I of Appendix B of the US-CA Consent Decree, Eligible Owners and Eligible Lessees of the affected Subject Vehicles will be eligible for a payment of \$200, which shall be paid in addition to and at the same time as the Owner/Lessee Payment. If the Mercedes Defendants do not submit the initial Emission Modification Proposal Report for a Subject Vehicle within 180 days of the deadline set forth in Attachment I of Appendix B of the US-CA Consent Decree, Eligible Owners and Eligible Lessees of the affected Subject Vehicles will be eligible for a payment of \$400, which shall be paid in addition to and at the same time as the Owner/Lessee Payment. To obtain a payment pursuant to this Section 5.3.2, Eligible Owners and Eligible Lessees must submit Valid Claims by the Claim Submission Deadline for Eligible Current Owners/Lessees. Eligible Post-Announcement Owners and Eligible Post-Announcement Lessees shall

not be entitled to a payment pursuant to this Section 5.3.2. For the avoidance of doubt, the payments under this Section 5.3.2 do not cumulate, and Eligible Owners and Lessees would be eligible for a payment of \$400 (and not \$600) if an initial Emission Modification Proposal Report for a Subject Vehicle is submitted more than 180 days past the deadline set forth in Attachment I of Appendix B of the US-CA Consent Decree. For the avoidance of doubt, Eligible Owners and Eligible Lessees cannot receive both a payment pursuant to this Section 5.3.2 and compensation for an AEM that is not available pursuant to Sections 5.3.4 and 5.3.5. Notwithstanding anything in this Class Action Agreement, the Mercedes Defendants shall have no obligation to pay an Eligible Owner or Eligible Lessee of an affected Subject Vehicle pursuant to this Section 5.3.2 until the final resolution of any request to EPA and CARB (including any dispute resolution procedures) pursuant to the terms of the US-CA Consent Decree to modify the submission deadline for the Emission Modification Proposal Report for the affected Subject Vehicle.

5.3.3. **Payments For Reclassification Of Emission Standard.** The Mercedes Defendants represent that after receiving the Approved Emission Modification, the Subject Vehicles shall remain within the same emissions classification to which they were originally certified (i.e., the emissions classifications listed for each vehicle in Appendix I of Attachment B of the US-CA Consent Decree). If, however, EPA and CARB approve an Emission Modification Proposal Report that fails to meet the emission standard to which the Subject Vehicles were originally certified, Eligible Current Owners/Lessees of the affected

Subject Vehicle will be eligible for a payment of \$350, which shall be paid in addition to and at the same time as the Owner/Lessee Payment or Post-Announcement Owner/Lessee Payment, as applicable. To obtain a payment pursuant to this Section 5.3.3, Eligible Current Owners/Lessees must submit Valid Claims by the Claim Submission Deadline for Eligible Current Owners/Lessees.

5.3.4. Payments If An Approved Emission Modification Is Not Available.

The Mercedes Defendants expect to offer an AEM for each Emission Modification Category. If, however, an AEM for a Subject Vehicle is not available by the AEM Availability Deadline, Class Members who own or lease an affected Registered Subject Vehicle on the AEM Availability Deadline will be eligible for a payment in accordance with the following schedule:

- (a) For Model Years 2014-2016, the payment shall be 80% of the Owner/Lessee Payment.
- (b) For Model Years 2012-2013, the payment shall be 60% of the Owner/Lessee Payment.
- (c) For Model Years 2009-2011, the payment shall be 30% of the Owner/Lessee Payment.

To obtain a payment pursuant to this Section 5.3.4, eligible Class Members must submit a Valid Claim within 60 days of the AEM Availability Deadline.

5.3.5. If, prior to the AEM Availability Deadline, an AEM for an Emissions Modification Category as defined in the US-CA Consent Decree is unavailable, and no vehicle in that Emissions Modification Category

can be re-registered in the Registered Subject Vehicle owner's state of residence because the AEM is unavailable, then the owner of an affected Registered Subject Vehicle on the AEM Availability Deadline may file a claim within 60 days of that deadline. If a Valid Claim is received within 60 days of the AEM Availability Deadline, the Mercedes Defendants will offer to repurchase the Subject Vehicle for an amount equal to the value of the vehicle according to Manheim Market Report.

- 5.3.6. For the purpose of Sections 5.3.4 and 5.3.5, an AEM is "available" on the date the Mercedes Defendants post the Consumer Emission Modification Disclosure pertaining to that AEM on the Settlement Website.
- 5.3.7. Class Members cannot receive compensation under both Sections 5.3.4 and 5.3.5. For the avoidance of doubt, Class Members cannot receive both (1) payment for an AEM not available pursuant to Sections 5.3.4 and 5.3.5 and (2) the Deferred Availability Payment pursuant to Section 5.3.1 or a payment pursuant to Section 5.3.2.
- 5.3.8. **Payments If Approved Emission Modification Causes Reduced Performance.** The Mercedes Defendants represent that the AEMs will not cause "Reduced Performance" or "Substantially Reduced Performance." For purposes of this Section 5.3.8, Reduced Performance means a change in any of the following performance attributes: (1) a reduction in calculated fuel economy using the EPA formula of more than 3 MPG; (2) a decrease of greater than 5% in peak horsepower; or (3) a decrease of greater than 5% in peak torque. Substantially Reduced Performance means a change in any of the following performance attributes: (1) a reduction in calculated fuel

economy using the EPA formula of more than 6 MPG; (2) a decrease of greater than 10% in peak horsepower; or (3) a decrease of greater than 10% in peak torque. The performance impacts shall be measured by the Mercedes Defendants pursuant to industry standards or otherwise as measured in connection with their submission of the Emission Modification Proposal Reports to the EPA and CARB, and, upon final approval of such Emissions Modification Proposal, the Mercedes Defendants shall disclose any impact as required by the US-CA Consent Decree. If an AEM causes Reduced Performance of the Subject Vehicle, then Eligible Current Owners/Lesseees of the affected Subject Vehicle will be eligible for a payment of \$325; if an AEM causes Substantially Reduced Performance of the Subject Vehicle, then Current Owners/Lesseees of the affected Subject Vehicle will be eligible for a payment of \$650. Payments for Reduced Performance or Substantially Reduced Performance shall be paid in addition to and at the same time as the Owner/Lessee Payment or Post-Announcement Owner/Lessee Payment, as applicable. To obtain a payment pursuant to this Section 5.3.8, Eligible Current Owners/Lesseees must submit Valid Claims by the Claim Submission Deadline for Eligible Current Owners/Lesseees. For the avoidance of doubt, the Reduced Performance and Substantially Reduced Performance payments under this Section 5.3.8 do not cumulate; the maximum possible payment for any individual vehicle with Reduced Performance is \$325, and the maximum possible payment for any individual vehicle with Substantially Reduced Performance is \$650, even if performance is reduced in more than one category. Eligible Owners/Lesseees may not receive payments for both Reduced

Performance and Substantially Reduced Performance for any individual vehicle.

- 5.3.9. **Payment If Approved Emission Modification Causes Change In Frequency Of Diesel Exhaust Fluid (“DEF”) Tank Refill.** For some consumers, the Approved Emission Modification may change the frequency with which they need to refill their DEF (also known as AdBlue) tank. If so, this will be disclosed in the relevant Consumer Emission Modification Disclosure, consistent with Paragraph 15.a of Appendix A of the US-CA Consent Decree. If an AEM changes the frequency with which consumers need to refill their DEF tank, Eligible Current Owners/Lessees of the affected Subject Vehicle will be eligible to receive \$75, which shall be paid in addition to and at the same time as the Owner/Lessee Payment or Post-Announcement Owner/Lessee Payment, as applicable. For the purposes of this Section 5.3.9, whether there is a change in the frequency with which consumers need to refill their DEF tank will be determined by whether the Consumer Emission Modification Disclosures state that there will be such a change for a particular model and model year of Subject Vehicles, consistent with Paragraph 15.a of Appendix A of the US-CA Consent Decree. To obtain a payment pursuant to this Section 5.3.9, Eligible Current Owners/Lessees must submit Valid Claims by the Claim Submission Deadline for Eligible Current Owners/Lessees.

5.4. **Warranty Obligations.**

- 5.4.1. Extended Modification Warranty. Under the US-CA Consent Decree, the Mercedes Defendants must provide an extended warranty for each Subject Vehicle that receives the Approved Emission Modification,

known as the “Extended Modification Warranty.” The Extended Modification Warranty under the Class Action Settlement, including all terms described in Section 5.4 of this Class Action Agreement, is identical to the terms in Paragraph 18 of Appendix A of the US-CA Consent Decree. This Section 5.4 describes the Mercedes Defendants’ obligations to Class Members pursuant to Paragraph 18 of Appendix A of the US-CA Consent Decree.

5.4.2. Other Warranty-Related Terms. The following warranty-related terms below (subparts (a)-(j)) also are provided to Class Members under the Class Action Agreement. Sections (a) through (i) reflect terms in Paragraphs 18.b-j and 19-20 of Appendix A of the US-CA Consent Decree.

(a) Extended Warranty Period. The warranty period for the Extended Modification Warranty shall be the greater of: (i) 10 years from date of initial sale or 120,000 miles on the odometer, whichever comes first; or (ii) 4 years or 48,000 miles from the date of installation of the Approved Emission Modification, whichever comes first. The Extended Modification Warranty Period shall continue after the Termination (as set forth in Paragraphs 105-106 of the US-CA Consent Decree) of the US-CA Consent Decree, as provided in Paragraph 18.b of Appendix A of the US-CA Consent Decree.

(b) Modification of the Extended Warranty. The Mercedes Defendants shall expand the Extended Modification Warranty to include all additional parts that, due to a change to the Approved Emission Modification as approved by EPA and CARB pursuant

to Paragraph 14.a of Appendix A of the US-CA Consent Decree, are exchanged as part of the AEM beyond those parts listed in Attachment I of Appendix B of the US-CA Consent Decree.

- (c) The Extended Modification Warranty shall be associated with the vehicle, and remains available to all subsequent owners and operators. The Mercedes Defendants shall not seek or offer a waiver of any provision of the Extended Modification Warranty.
- (d) Neither the Extended Modification Warranty, nor installation of the Approved Emission Modification or any approved changes made thereto, shall supersede or void any outstanding warranty. To the extent there is a conflict in any provision(s) of the Extended Modification Warranty and any other warranty on any Subject Vehicles, that conflict shall be resolved to the benefit of the consumer.
- (e) The Extended Modification Warranty shall not modify, limit, or affect any state, local or federal legal rights available to the owners. The Extended Modification Warranty shall be subject to any remedies provided by state or federal laws, such as the Magnuson-Moss Warranty Act, that provide consumers with protections, including without limitation “Lemon Law” protections, with respect to warranties.
- (f) In no event shall warranty coverage under the Extended Modification Warranty be subject to service writers’ discretion.
- (g) In the event that the hardware of the Engine Control Unit or Transmission Control Unit is damaged by the software flash during installation of the Approved Emission Modification, the Mercedes

Defendants will replace the hardware at no cost to the customer and provide a 2-year “spare parts” warranty for the replaced part.

- (h) Voluntary Repurchase and Lease Termination Remedies. In addition to any protections provided by applicable law, the Mercedes Defendants must provide a voluntary repurchase or lease termination to any Eligible Owner or Eligible Lessee of a Subject Vehicle that receives an Approved Emission Modification in the event that, during the 18 months or 18,000 miles (whichever comes first) following the completion of the Approved Emission Modification (the “Remedy Period”), the Mercedes Defendants fail to repair or remedy a confirmed failure or malfunction covered by the Extended Modification Warranty and associated with the Approved Emission Modification (a “Warrantable Failure”) after the Eligible Owner or Eligible Lessee physically presents the Subject Vehicle to a Dealer for repair of the Warrantable Failure; and (1) the Warrantable Failure is unable to be remedied after making four separate service visits to the same Dealer for the same Warrantable Failure during the Remedy Period; or (2) the Subject Vehicle with the Warrantable Failure is out-of-service due to the Warrantable Failure for a cumulative total of 30 days during the Remedy Period, not including any days when the Dealer returns or otherwise tenders the Subject Vehicle to the customer while the Dealer awaits necessary parts and such vehicle remains Operable. The conditions in (1) and (2) of this Section 5.4.2(h) shall incorporate any subsequent extensions under the terms of the US-CA Consent Decree.

- (i) Grounds for Denial of Extended Modification Warranty. Extended Modification Warranty coverage may be denied if a Subject Vehicle has been altered with the use of any after-market emissions-related components, parts, and/or software, or with the removal of any original emissions-related components, parts, and/or software, and such alteration(s) are likely to substantially affect the operation of the vehicle with the Approved Emission Modification, until the owner of such vehicle, at his or her expense, has reversed the alteration(s) such that the Approved Emission Modification will not be substantially affected.
- (j) Warranties for Nonmodified Subject Vehicles. For those who do not receive the Approved Emission Modification for a Subject Vehicle, the existing applicable warranty provisions shall continue to govern, provided, however, that the Mercedes Defendants may decline to service the Engine Control Unit (“ECU”) or Transmission Control Unit (“TCU”) if servicing the ECU or TCU would require the Mercedes Defendants to install or reflash any configuration other than the AEM. Such requirements, and the potential effect on owners and lessees of Subject Vehicles (or prospective purchasers or prospective lessees), must be clearly described in the Consumer Emissions Modification Disclosure.

5.5. **Warranty Database.** As set forth in Paragraph 16 of Appendix A of the US-CA Consent Decree, for ten (10) years following the entry of the US-CA Consent Decree, the Mercedes Defendants shall maintain a database by which users, including Eligible Current Owners/Lessees, prospective purchasers and lessees, and dealers may conduct a free-of-charge search by vehicle VIN to determine whether an Approved Emission Modification is available for

a vehicle, whether the vehicle has received an AEM, and whether the Extended Modification Warranty and any additional warranty extension(s) as described in the US-CA Consent Decree apply to the specific vehicle. Information relevant to a specific part covered by the applicable Extended Modification Warranty, including whether a specific part is covered by the Extended Modification Warranty, shall be available when searching on the website by VIN.

5.6. Issues Regarding Operability And Extended Modification Warranty. Class Members and the Mercedes Defendants agree to meet-and-confer in good faith to address issues raised by Class Members regarding whether vehicles are Operable (as defined in Section 2.53) and regarding the implementation of the Extended Modification Warranty. Class Counsel shall participate in this meet-and-confer process on behalf of Class Members (and have responsibility for handling related communications with Class Members), and the Mercedes Defendants shall have responsibility for handling related communications with dealers, if necessary. When Class Members raise issues relating to Operability determinations or implementation of the Extended Modification Warranty, the Mercedes Defendants and Class Counsel will confer and attempt to resolve the issue within 30 days. If the Mercedes Defendants and Class Counsel address the issue through agreement, the agreement is binding upon the Class Member and the Mercedes Defendants, who shall not have any right to appeal the agreement to the Court.

5.7. Claims Review Committee To Finally Adjudicate Disputes Regarding Operability And Extended Modification Warranty. If Class Counsel and the Mercedes Defendants cannot resolve an issue raised by a Class Member relating to (1) Operability determinations or (2) implementation of the Extended Modification Warranty, then (and only then) the dispute may be submitted to the Claims Review Committee (“CRC”). The CRC will include the Mercedes Defendants’ representative, Class Counsel’s representative, and a “CRC Neutral.” Class Counsel shall designate a representative to participate in the CRC on behalf of Class Members (and have responsibility for handling related communications with Class Members), and the Mercedes Defendants shall designate a representative to participate in the

CRC on behalf of the Mercedes Defendants (and have responsibility for handling related communications with dealers). The CRC shall resolve the dispute in a final adjudication rendered within 30 days of the submission of the dispute to the CRC. The CRC Neutral will be a third party who will be agreed upon by both the Mercedes Defendants and Class Counsel. In the event that the Mercedes Defendants and Class Counsel cannot agree on a Neutral representative, they agree to mediate the issue before the Mediator, who shall have authority to make the final selection. The Parties may agree to a replacement or successor CRC Neutral at any point. Final adjudications by the CRC are binding on the Mercedes Defendants and the Class Member raising the dispute. The Mercedes Defendants and Class Members shall not have any right to appeal a final adjudication by the CRC to the Court. The Parties will bear their own costs, and the Mercedes Defendants will pay for the CRC Neutral.

5.8. **Consumer Emission Modification Disclosure.** As set forth in Paragraphs 15.a-b of Appendix A of the US-CA Consent Decree, the Mercedes Defendants shall provide owners and lessees of vehicles eligible to receive the Approved Emission Modification and, as applicable, prospective purchasers and lessees with a clear and accurate written disclosure (the “Consumer Emission Modification Disclosure”) regarding the impacts of the Approved Emission Modification. The Consumer Emission Modification Disclosure shall be sent via first-class, postage paid U.S. mail to all owners and lessees of vehicles eligible to receive the Approved Emission Modification known to the Mercedes Defendants immediately prior to the date of mailing, within 15 business days after the later of (a) the Effective Date of the US-CA Consent Decree, (b) approval of the applicable Emission Modification Proposal Report. The Consumer Emission Modification Disclosure will be sent at the same time as the Short Form Notice and/or Supplemental Notice of Class Benefits, to the extent possible. As described more fully in the US-CA Consent Decree, the Consumer Emission Modification Disclosure will describe in plain language: (1) a summary of the AEM generally; (2) a reference to the label described in Paragraph 13 of Appendix A of the US-CA Consent Decree, and a statement regarding the

applicable emission standard following the AEM; (3) a list of any hardware exchanged as specified in Attachment I of Appendix B of the US-CA Consent Decree; (4) a general description of any changes, or lack thereof, in fuel economy, noise, vibration, and harshness, and drivability resulting from the AEM; (5) a general description of any changes, or lack thereof, in frequency of oil changes and DEF refill, resulting from the AEM; (6) a summary of how Class Members can obtain the AEM; (7) any OBD system limitations that make identification and repair of any components difficult, compromise warranty coverage, or may reduce the effectiveness of inspection and maintenance program vehicle inspections; (8) the applicable Extended Modification Warranty; and (9) any other disclosures required by law.

5.8.1. The Consumer Emission Modification Disclosure shall also be made available online by the Mercedes Defendants through the Settlement Website within five business days of the approval of the applicable Approved Emission Modification, or no later than 15 days after the Effective Date of the US-CA Consent Decree, whichever is later. Online access shall continue on the website established pursuant to the US-CA Consent Decree for a minimum of 10 years after the US-CA Consent Decree is entered.

5.9. **No Prohibition On Other Incentives.** Nothing in this Class Action Agreement is intended to prohibit the Mercedes Defendants from offering any consumer any further incentives in addition to those provided herein; however, the Mercedes Defendants may not offer Class Members other incentives in lieu of the Benefits contained herein, in whole or in part, or any incentive not to participate in the Claims Program, including by causing the Subject Vehicle not to receive the Approved Emission Modification.

5.10. **Telephone Call Center.** As set forth more fully in Paragraph 1 of Appendix A of the US-CA Consent Decree, the Mercedes Defendants shall establish a toll-free telephone call center to address Class Member inquiries. The Mercedes Defendants and Class Counsel will

confer as to what information will be provided by the telephone call center to inquiring Class Members, will jointly work on scripts and training materials, and will confer on how to address any issues that arise from the telephone call center relating to the Class Action Settlement.

5.11. **Responsibility For Required Payments.** MBUSA shall bear the ultimate responsibility for all required payments owed under this Class Action Agreement. All of Daimler's obligations under the Class Action Agreement apply to, and are binding upon, MBUSA, any of MBUSA's successors, assigns, or other entities or persons otherwise bound by law. MBUSA bears the ultimate responsibility for making all payments owed by Daimler, including, but not limited to, all costs and warranties associated with the Claims Program. Further, MBUSA shall be responsible to implement all repair requirements described herein. Any legal successor or assign of MBUSA shall assume MBUSA's liability and shall be liable for the payment and other obligations herein. No change in the ownership or control of any such entity shall affect the obligations herein of MBUSA without modification of this Class Action Agreement.

5.12. **Tax Implications.** Class Members should consult their personal tax advisor for assistance regarding any tax ramifications of this Class Action Settlement. Neither Class Counsel, the Mercedes Defendants, nor the Mercedes Defendants' Lead Counsel are providing any opinion or advice as to the tax consequences or liabilities of Class Members as a result of any payments or benefits under this Class Action Settlement.

5.13. **Settlement Value.** This is a claims-made settlement. The estimated maximum value of the monetary Benefit of this Class Action Settlement to the Class is approximately \$726 million (not including any contingent payments that may be required by Section 5.3), if there are no opt-outs and every Person fitting the definition of the Class participates in the Class Action Settlement by filing a Valid Claim. This Class Action Settlement is specifically designed, in conjunction with the US-CA Consent Decree, to incentivize and to facilitate achievement of the

85% emission modification installation rate, as defined in Paragraph 4 of Appendix A of the US-CA Consent Decree.

5.14. **Disposition of Returned Vehicles.** As set forth more fully in Paragraph 6 of Appendix A of the US-CA Consent Decree, after the date of approval of the applicable Approved Emission Modification by EPA and CARB, or date of lodging of the US-CA Consent Decree with a court, whichever is later, the Mercedes Defendants will not sell or lease unmodified Subject Vehicles, and they will instruct Dealers not to sell or lease unmodified Subject Vehicles.

6. CLASS CLAIMS PROCESS AND ADMINISTRATION

6.1. **Claims Program.** The process for submitting a Claim is designed to be as simple and convenient to Class Members as possible, who will only be required to file a single Claim Form per Subject Vehicle, consistent with the integrity of the Claims Program.

6.2. The Claims Program described in this Class Action Agreement shall be the sole and exclusive process for submitting a Claim for any Class Member Payment, and any Class Member seeking a Class Member Payment is required to comply fully with the deadlines and other requirements for the Claims Program. However, participation in the Claims Program is not required in order for a Class Member's vehicle to be eligible to receive an AEM under the US-CA Consent Decree. Under the US-CA Consent Decree, all owners and lessees who receive the AEM will also receive the Extended Modification Warranty, under the terms set forth in Appendix A of the US-CA Consent Decree and, for Class Members, the terms set forth in Section 5.4 of the Class Action Agreement. Nothing in the Class Action Agreement is intended to impose any requirements or conditions that must be met in order for Class Members to receive the AEM or the Extended Modification Warranty. Nothing in the Class Action Agreement limits any Person from receiving an AEM.

6.3. **Loaner Vehicle.** Class Members may be able to reserve a loaner vehicle, shuttle service, or other alternative transportation if they so desire, free of charge, where the

implementation of the Approved Emission Modification will take three hours or longer to complete and where loaner vehicles are available. In the event a loaner vehicle, shuttle service, or other alternative transportation is not made available in an instance where the AEM takes three hours or longer to complete, Class Members shall be eligible to submit a claim, supported by substantiating documentation, for transportation costs of up to \$35 which shall be paid in addition to and at the same time as the Owner/Lessee Payment or Post-Announcement Owner/Lessee Payment, as applicable.

7. REQUESTS FOR EXCLUSION

7.1. Manner Of Opting Out. The Class Notice Program will provide instructions regarding the procedures that must be followed to opt out of the Class pursuant to Federal Rule of Civil Procedure 23(c)(2)(B)(v). The Parties agree that, to validly opt out from the Class, a Person must personally sign and date, and send a written request to opt out stating “I have reviewed the Long Form Notice and wish to exclude myself from the Class in In re Mercedes-Benz Emissions Litigation, 2:16-cv-0881” (or substantially similar clear and unambiguous language) to the Settlement Administrator at an address to be provided by the Mercedes Defendants. The written request to opt out must be postmarked on or before the Opt-Out Deadline, and must include: (1) the Person’s name, address, telephone number, (2) the VIN of the Subject Vehicle forming the basis of the Person’s inclusion in the Class definition and a statement as to whether the Person owns/owned or leases/leased the Subject Vehicle, and (3) a “wet” signature not affixed via electronic means. If a question is raised about the authenticity of a request to opt out, the Settlement Administrator will have the right to demand additional proof of the individual’s identity and intent. The Parties retain discretion to determine whether any opt-out request substantially complies with the requirements above. The Settlement Administrator will provide bi-weekly summary reports and copies of all opt-out requests to Class Counsel and the Mercedes Defendants’ Lead Counsel. Opt-out requests that are signed by an attorney but not by the Person requesting to be excluded from the Class are invalid.

7.2. **Opt Out Deadline.** Requests to opt out must be postmarked by the Settlement Administrator no later than 60 days from the Notice Date.

7.3. **Consequences Of Failure To Opt Out In A Timely And Proper Manner.** All Persons fitting the Class definition who do not timely and properly opt out of the Class will in all respects be bound by all terms of this Class Action Agreement, including the Release, and the Final Approval Order upon the Effective Date.

7.4. **Opting Out And Objecting Are Mutually Exclusive Options.** Any Person who opts out pursuant to Section 7 may not also object to the Class Action Settlement. Any Class Member who elects to object pursuant to Section 8 herein may not also opt out pursuant to Section 7.

8. OBJECTIONS TO THE SETTLEMENT

8.1. **Manner Of Objecting.** The Class Notice Program will provide instructions regarding the procedures that must be followed to object to the Class Action Settlement pursuant to Federal Rule of Civil Procedure 23(e)(5). Provided that a Class Member has not submitted a written request to opt out, as set forth in Section 7, the Class Member may present a written statement of objection(s), if any, explaining why they believe the Class Action Settlement should not be approved by the Court as fair, reasonable, and adequate. No later than 60 days after the Notice Date, a Class Member who wishes to object to any aspect of the Class Action Settlement must file with the Court, or as the Court otherwise may direct, a written statement of the objection(s), and serve the objection on Class Counsel and the Mercedes Defendants' Lead Counsel. The written statement of objection(s) must include: (1) a statement as to whether it applies only to the objector, to a specific subset of the class, or to the entire class, and also state with specificity the grounds for the objection, including any evidence and legal authority the Class Member wishes to bring to the Court's attention; (2) the Class Member's printed name, address, and telephone number; (3) the VIN of the Subject Vehicle forming the basis of the Class Member's inclusion in the Class and the beginning and end dates (if applicable) of the Class

Member's ownership or lease of the Subject Vehicle; (4) a statement that the Class Member has reviewed the Class definition and has not opted out of the Class; (5) any supporting papers, materials, or briefs the Class Member wishes the Court to consider when reviewing the objection; (6) a statement of whether the Class Member intends to appear at the final approval hearing; and (7) a dated "wet" signature not affixed by electronic means.

8.2. **Objecting Through Counsel.** A Class Member may submit a written statement of objection(s) on his or her own behalf or through a lawyer hired at that Class Member's own expense, provided the Class Member has not submitted a written request to opt out, as set forth in Section 7. Lawyers asserting objections on behalf of Class Members must: (1) file a notice of appearance with the Court by the deadline set by the Court in the Preliminary Approval Order, or as the Court otherwise may direct; (2) file a sworn declaration attesting to his or her representation of each Class Member on whose behalf the objection is being filed or file (in camera) a copy of the contract between that lawyer and each such Class Member; and (3) comply with the requirements and procedures described in Section 8, including the provision of all information set forth in Section 8.1. Lawyers asserting objections on behalf of Class Members also must file a sworn declaration that specifies the number of times during the prior five-year period they have objected to a class action settlement on their own behalf or on behalf of a member of a class.

8.3. **Intent to Appear at the Fairness Hearing.** A Class Member (or counsel individually representing them, if any) seeking to make an appearance at the Fairness Hearing must file with the Court, by the deadline set by the Court in the Preliminary Approval Order, a written notice of their intent to appear at the Fairness Hearing, in accordance with the requirements set forth in the Preliminary Approval Order, or by such time and in such manner as the Court may otherwise direct. A Class Member who does not timely submit a notice of intent to appear at the Fairness Hearing in accordance with all of the requirements of Section 8 shall

not be allowed to appear at the hearing. The Court may hold the Fairness Hearing via videoconference or teleconference.

8.4. **Consequences of Failure to Object in a Timely and Proper Manner.** Unless the Court directs otherwise, any Class Member who fails to comply with the provisions of Section 8 will waive and forfeit any and all rights they may have to object to the Class Action Settlement and/or to appear and be heard on said objection at the Fairness Hearing. Failure to object waives a Class Member's right to appeal the Final Approval Order.

9. DUTIES OF THE SETTLEMENT ADMINISTRATOR

9.1. In administering the Class Notice Program, the Settlement Administrator shall be responsible for, without limitation: (1) printing, mailing by First-Class U.S. Mail, postage paid, or arranging for the mailing of, and/or emailing of, the Long Form Notice and/or Short Form Notice (attached as Exhibits 1-2), as approved by the Court; (2) sending Supplemental Notices of Class Benefits; (3) updating address information for the Class prior to mailing using the National Change of Address (NCOA) system; (4) handling returned notice-related mail not delivered to the Class; (5) attempting to obtain updated address information for any notices returned without a forwarding address; (6) establishing a post-office box for the receipt of any correspondence; (7) responding to requests from Class Counsel or the Mercedes Defendants' Lead Counsel; (8) assisting in the creation of Notice-related content for the Settlement Website to which the Class may refer for information about the Action and the Class Action Settlement; (9) otherwise implementing and/or assisting with the dissemination of the notice of the Class Action Settlement pursuant to the Class Notice Program.

9.2. The Settlement Administrator shall be responsible for arranging for the publication of notice as set forth in the Class Notice Program and ordered by the Court, and for consulting on other aspects of the Class Notice Program.

9.3. In administering the Claims Program, the Settlement Administrator shall be responsible for, without limitation: (1) receiving and maintaining on behalf of the Court any

correspondence regarding requests for opt-out and/or objections to the Class Action Settlement; (2) forwarding written inquiries to Class Counsel and the Mercedes Defendants' Lead Counsel or their designees for a response, if warranted; (3) overseeing implementation and administration of the Claims Program; (4) processing and issuing the Class Member Payments; (5) screening out any fraudulent Claims; (6) making final, unreviewable decisions on whether Claims are Valid Claims; (7) auditing submitted Claims, as requested; and (8) consulting on and maintaining the Settlement Website.

9.4. All reasonable and necessary costs of the Class Notice Program and Claims Program, and the fees and costs of the Settlement Administrator, shall be paid by MBUSA.

9.5. Within 10 days after this Class Action Agreement is filed in Court, the Settlement Administrator will cause a notice of the proposed settlement consisting of the materials required by the Class Action Fairness Act (28 U.S.C. § 1715) ("CAFA") to be served upon the appropriate state official in each state of the United States as well as the appropriate federal officials. Within 15 days after the Notice Date, the Settlement Administrator shall provide declarations to the Court, with a copy to Class Counsel and the Mercedes Defendants' Lead Counsel, attesting to the measures undertaken to provide notice as directed by CAFA.

9.6. The Settlement Administrator and the Parties shall promptly after receipt provide copies of any requests to opt-out, objections, and/or related correspondence to each other.

9.7. Not later than 10 days before the date of the Fairness Hearing, the Settlement Administrator shall file with the Court a list of those persons who have opted out or excluded themselves from the Class Action Settlement, and a declaration outlining the scope, method, and results of the Class Notice Program.

10. RELEASE AND WAIVER

10.1. The Parties agree to the following release and waiver (as defined above, the Release), which shall take effect upon entry of the Final Approval Order. The terms of the

Release are a material term of the Class Action Agreement and will be reflected in the Final Approval Order.

10.2. **Released Parties.** The Released Parties include, without limitation, (1) Daimler AG, Mercedes-Benz USA, LLC, Mercedes-Benz AG, and any former, present, and future owners, shareholders (direct or indirect), members (direct or indirect), directors, officers, members of management or supervisory boards, employees, attorneys, affiliates, parent companies (direct or indirect), subsidiaries (direct or indirect), predecessors, and successors of any of the foregoing (the “Entities”); (2) any and all contractors, subcontractors, joint venture partners, consultants, auditors, dealers, and suppliers of the Entities; (3) any and all persons and entities indemnified by any Entity with respect to the Action or the BlueTEC Diesel Matter; (4) any and all other persons and entities involved in the design, research, development, manufacture, assembly, testing, sale, leasing, repair, warranting, marketing, advertising, public relations, promotion, or distribution of any Subject Vehicle, even if such persons are not specifically named in this Section 10.2; (5) Settlement Administrator; (6) lenders, creditors, financial institutions, or any other parties that financed any purchase or lease of a Subject Vehicle; (7) for each of the foregoing, their respective former, present, and future affiliates, parent companies, subsidiaries, predecessors, successors, shareholders, indemnitors, subrogees, spouses, joint venturers, general or limited partners, attorneys, assigns, principals, officers, directors, members of management or supervisory boards, employees, members, agents, representatives, trustees, insurers, reinsurers, heirs, beneficiaries, wards, estates, executors, administrators, receivers, conservators, personal representatives, divisions, dealers, and suppliers; and (8) any other person or entity that is or could be alleged to be responsible or liable in any way whatsoever, whether directly or indirectly, for the BlueTEC Diesel Matter. Notwithstanding the foregoing, the Released Parties do not include Non-Settling Defendants Robert Bosch LLC, Robert Bosch GmbH, and their affiliates.

10.3. **Class Release.** In consideration for the Class Action Settlement, Class Members, on behalf of themselves and their agents, heirs, executors and administrators, successors, assigns, insurers, attorneys (including any attorney engaged by Class Members who is not Class Counsel), representatives, shareholders, owners associations, and any other legal or natural persons who may claim by, through, or under them (the “Releasing Parties”), fully, finally, irrevocably, and forever release, waive, discharge, relinquish, settle, and acquit any and all claims, demands, actions, or causes of action of any kind or nature whatsoever, whether in law or in equity, contractual, quasi-contractual or statutory, known or unknown, direct, indirect or consequential, liquidated or unliquidated, past, present or future, foreseen or unforeseen, developed or undeveloped, contingent or non-contingent, suspected or unsuspected, whether or not concealed or hidden, arising from, in whole or in part, or in any way related to the BlueTEC Diesel Matter, including without limitation (1) any claims or allegations that are, were, or could have been asserted in the Action; (2) any claims for fines, penalties, economic damages, punitive damages, exemplary damages, statutory damages, liens, injunctive relief, attorneys’ fees (except as provided in Section 11 of this Class Action Agreement), expert, consultant, or other litigation fees or costs; or (3) any other liabilities that were or could have been asserted in any civil, administrative, or other proceeding, including arbitration (“Released Claims”). The Released Claims include without limitation any and all such claims, demands, actions, or causes of action regardless of the legal or equitable theory or nature under which they are based or advanced including without limitation legal and/or equitable theories under any federal, state, provincial, local, tribal, administrative, or international law, or statute, ordinance, code, rule, regulation, contract, common law, equity, or any other source, and whether based in strict liability, negligence, gross negligence, punitive damages, nuisance, trespass, breach of warranty, misrepresentation, breach of contract, fraud, or any other legal or equitable theory, whether existing under the laws of the United States, a state, territory, or possession of the United States, or of any other foreign or domestic state, territory, county, city, or municipality, or any other

legal or governmental body, whether existing now or arising in the future, that arise from, in whole or in part, or in any way relate to the BlueTEC Diesel Matter. Notwithstanding the foregoing, this Class Action Agreement does not release any claims for wrongful death or personal injury.

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

10.5. **Release of “Holder Rule” Claims.** In exchange for the Benefits, Class Members release their potential claims under the Trade Regulation Rule Concerning the Preservation of Consumers’ Claims and Defenses, 16 C.F.R. § 433.2 (the “Holder Rule”), relating to the BlueTEC Diesel Matter.

10.6. **Waiver of California Civil Code Section 1542 and Analogous Provisions.** Settlement Class Representatives expressly understand and acknowledge, and Class Members will be deemed to understand and acknowledge, Section 1542 of the California Civil Code, which provides: “**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**” Each Settlement Class Representative expressly acknowledges that they have been advised by Class Counsel of the contents and effect of Section 1542 of the California Civil Code and that they have considered the possibility that the number or magnitude of all claims may not currently

be known. To ensure that this Release is interpreted fully in accordance with its terms, Class Members expressly waive and relinquish any and all rights and benefits that they may have under Section 1542 of the California Civil Code to the extent that Section 1542 of the California Civil Code may be applicable to the Release. Class Members likewise expressly waive and relinquish any rights or benefits of any law of any state, territory, county, municipality, or city of the United States, federal law or principle of common law, or of international, foreign, or tribal law, which is similar, comparable, analogous, or equivalent to Section 1542 of the California Civil Code to the extent that such laws or principles may be applicable to the Release.

10.7. **Individual Release.** Each Class Member who submits a Claim shall be required to execute an Individual Release, in the form attached as Exhibit 5, as a precondition to receiving a Class Member Payment. Consistent with the Release provided in this Agreement, the Individual Release will provide that the Class Member releases all of the Released Parties from any and all Released Claims (as described in this Section 10) arising out of or related to the BlueTEC Diesel Matter. The Individual Release shall remain effective even if the Court does not enter the Final Approval Order, the Final Approval Order is reversed and/or vacated on appeal, or if this Class Action Agreement is abrogated or otherwise voided in whole or in part. The Individual Release binds Class Members when they receive a Class Member Payment.

10.8. **Actions or Proceedings Involving Released Claims.** Class Members expressly agree that this Release and the Final Approval Order, are, will be, and may be raised as a complete defense to, and will preclude, any action or proceeding specified in, or involving claims encompassed by, this Release. Class Members shall not now or hereafter institute, maintain, prosecute, assert, and/or cooperate in the institution, commencement, filing, or prosecution of any suit, action, and/or other proceeding against the Released Parties with respect to the claims, causes of action, and/or any other matters subject to this Release. To the extent that they have initiated, or caused to be initiated, any suit, action, or proceeding not already encompassed by the Action, Class Members shall promptly cause their claims in any such suit,

action, or proceeding to be dismissed with prejudice. If a Class Member commences, files, initiates, or institutes any legal action or other proceeding for any Released Claim against any Released Party in any federal or state court, arbitral tribunal, or administrative or other forum, (1) such legal action or other proceeding shall be dismissed with prejudice and at that Class Member's cost; (2) any refusal or failure to immediately dismiss such claims shall provide a basis for any Released Party to seek an injunction, sanctions, or other appropriate relief; and (3) the respective Released Party shall be entitled to recover any and all reasonable related costs and expenses from that Class Member arising as a result of that Class Member's breach of their obligations under this Release. Within five business days of the Post-Appeal Date, Class Counsel will dismiss the Mercedes Defendants from the Complaint in this Action with prejudice.

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

part, in any benefits, proceeds, or values to which those Class Members may be entitled as a result of the Action or BlueTEC Diesel Matter.

10.10. **Total Satisfaction of Released Claims.** The Benefits pursuant to the Class Action Agreement are in full, complete, and total satisfaction of all of the Released Claims against the Released Parties. The Benefits are sufficient and adequate consideration for each and every term of this Release, and this Release shall be irrevocably binding upon Settlement Class Representatives and Class Members.

10.11. **Release Not Conditioned on Claim or Payment.** The Release shall be effective with respect to all Releasing Parties, including all Class Members, regardless of whether those Class Members ultimately submit a Claim or receive a Class Member Payment under this Class Action Agreement.

10.12. **Material Term.** Settlement Class Representatives and Class Counsel hereby agree and acknowledge that this Section 10 in its entirety was separately bargained for and constitutes a key, material term of the Class Action Agreement that shall be reflected in the Final Approval Order.

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

10.14. Class Counsel shall cooperate with Released Parties to ensure that the release set forth in the Final Approval Order is given its full force and effect (including by seeking the inclusion of the releases in the Final Approval Order, Final Judgment, and the Claims Forms) and to ensure that Releasing Parties comply with their obligations set forth in this Class Action Agreement.

11. ATTORNEYS' FEES AND COSTS

11.1. MBUSA agrees to pay reasonable attorneys' fees and costs to Class Counsel for work performed in connection with the Action as well as the work performed by other attorneys designated by Class Counsel (to the extent consistent with the Court's Order appointing Class Counsel (D.E. 7)) in connection with the Action up to \$80,200,000 in fees and \$3,200,000 in costs and that must be approved by the Court. The Mercedes Defendants do not agree to pay fees or costs for any work not set forth in the Court's Order appointing Class Counsel (D.E. 7), and Class Members and Class Counsel expressly release the Mercedes Defendants from any such payments that otherwise may be due by operation of law or otherwise. Class Counsel and the Mercedes Defendants represent that they reached agreement in principle on the material terms of this Class Action Agreement before discussing the amount of fees and costs to be paid. MBUSA will wire to an account specified by Class Counsel all attorneys' fees and costs approved by the Court within 10 business days of the Effective Date.

11.2. Settlement Class Representatives, Class Counsel, and Class Members will not seek in excess of the sums specified in Section 11.1, and in any event, they agree that the Mercedes Defendants shall not pay, nor be obligated to pay, any sum in excess of the cap amounts specified in Section 11.1. In furtherance of the agreements in this Section 11, in the event of any objections to the Class Action Settlement or appeal from any order of the Court granting final approval, Class Counsel agree that they will be responsible for responding to objectors and intervenors, and defending the Court's Final Approval Order and Final Judgment on appeal, if any, at their own cost. The Mercedes Defendants reserve the right to respond to objectors and intervenors, and to join in the defense of the Final Approval Order and Final Judgment. The Mercedes Defendants agree not to appeal, or otherwise support any appeal, of an order or judgment entered by the Court that is consistent with the terms of the Class Action Settlement. Any costs incurred by Class Counsel in such appeals, including costs incurred to

settle any claims by objectors or intervenors, are the sole responsibility of Class Counsel. No Person may seek to recover such costs from the Mercedes Defendants.

11.3. **No Credit for Attorneys' Fees or Costs.** To the extent the Mercedes Defendants elect or are ordered to pay Class Counsel's attorneys' fees or costs, the Mercedes Defendants will not receive credit for such payments against obligations to Class Members under this Class Action Agreement and the Final Approval Order. The Mercedes Defendants reserve the right to challenge attorneys' fees or costs to the extent the request for an award of fees and costs is inconsistent with the terms of this Class Action Agreement, e.g., exceeds the fees and costs that the Mercedes Defendants have agreed to pay.

12. AGREEMENT TO COOPERATE TO EFFECTUATE SETTLEMENT

12.1. Counsel for all Parties represent and warrant that they are expressly authorized by the Parties whom they represent to negotiate this Class Action Agreement. The Persons signing this Class Action Agreement on behalf of each Party warrant that he or she is authorized to sign this Class Action Agreement on behalf of that Party.

12.2. The Parties, their successors and assigns, and their respective counsel will cooperate with each other, act in good faith, and make all reasonable efforts in seeking prompt Court approval of this Class Action Agreement, to ensure the timely and expeditious implementation and effectuation of the Class Action Agreement, the Notice Program, and the Claims Program, and to minimize the costs and expenses incurred therein. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Class Action Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Class Action Agreement, the Parties may first seek the assistance of the Mediator, and then if necessary the Court, to resolve such disagreement.

13. MODIFICATION OR TERMINATION OF THIS CLASS ACTION AGREEMENT

13.1. The terms and provisions of this Class Action Agreement may only be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that after entry of the Final Approval Order, the Parties may by written agreement effect such amendments, modifications, or expansions of this Class Action Agreement and its implementing documents (including all exhibits hereto) without further notice to the Class or approval by the Court if such changes are consistent with the Court's Final Approval Order and do not limit the rights of Class Members under this Class Action Agreement.

13.2. Any unintended conflicts between the Class Action Agreement and the US-CA Consent Decree shall not be held against any of the Parties. In the event of any such unintended conflicts, the language of the US-CA Consent Decree shall control.

13.3. This Class Action Agreement shall terminate at the discretion of either the Mercedes Defendants or the Settlement Class Representatives, through Class Counsel, if: (1) the Court, or any appellate court(s) rejects, modifies, or denies approval of any portion of this Class Action Agreement, any district court modifies any portion of the US-CA Consent Decree before it is entered, or any appellate court(s) rejects or modifies any portion of the US-CA Consent Decree, that the Settlement Class Representatives (through Class Counsel) in their sole judgment and discretion reasonably determine is material to this Class Action Agreement, or that the Mercedes Defendants in their sole judgment and discretion reasonably determine is material, including, without limitation, the terms of relief, the findings or conclusions of the Court, the provisions relating to notice, the definition of the Class, and/or the terms of the Release; or (2) the Court, or any appellate court(s), does not enter or completely affirm, or alters, narrows, or expands, any portion of the Final Approval Order, or any of the Court's findings of fact or conclusions of law, that the terminating Party in its (or their) sole judgment and discretion reasonably determine(s) is material. The terminating Party must exercise the option to withdraw from and terminate this Class Action Agreement, as provided in this Section 13, by a signed

writing served on the other Parties no later than 20 days after receiving notice of the event prompting the termination. The Parties will be returned to their positions status quo ante as of the date immediately before the Parties' execution of the Class Action Agreement.

13.4. If an option to withdraw from and terminate this Class Action Agreement arises under Section 13.3, neither the Mercedes Defendants nor Settlement Class Representatives are required for any reason or under any circumstance to exercise that option and any exercise of that option shall be at their election in good faith.

13.5. If, but only if, this Class Action Agreement is terminated pursuant to Section 13.3 then:

13.5.1. This Class Action Agreement shall be null and void and shall have no force or effect, and no Party to this Class Action Agreement shall be bound by any of its terms, except for the terms of Section 13 herein;

13.5.2. The Parties will petition the Court to have any stay orders entered pursuant to this Class Action Agreement lifted;

13.5.3. All of the provisions of this Class Action Agreement, and all negotiations, statements, and proceedings relating to it, shall be without prejudice to the rights of the Mercedes Defendants, Settlement Class Representatives, or any Class Member, all of whom shall be restored to their respective positions existing immediately before the execution of this Class Action Agreement, except that the Parties shall cooperate in requesting that the Court set a new scheduling order such that no Party's substantive or procedural rights are prejudiced by the settlement negotiations and proceedings;

13.5.4. Released Parties expressly and affirmatively reserve all defenses, arguments, and motions as to all claims that have been or might later be

asserted in the Action, including, without limitation, the argument that the Action may not be litigated as a class action;

- 13.5.5. Settlement Class Representatives and all other Class Members, on behalf of themselves and their heirs, assigns, executors, administrators, predecessors, and successors, expressly and affirmatively reserve and do not waive all motions as to, and arguments in support of, all claims, causes of action, or remedies that have been or might later be asserted in the Action including, without limitation, any argument concerning class certification, and treble or other damages;
- 13.5.6. The Mercedes Defendants expressly and affirmatively reserve and do not waive all motions and positions as to, and arguments in support of, all defenses to the causes of action or remedies that have been sought or might be later asserted in the Action, including without limitation, any argument or position opposing class certification, liability, damages, or injunctive relief;
- 13.5.7. Neither this Class Action Agreement, the fact of its having been entered into, nor the negotiations leading to it shall be admissible or entered into evidence for any purpose whatsoever;
- 13.5.8. Any settlement-related order(s) or judgment(s) entered in this Action after the date of execution of this Class Action Agreement shall be deemed vacated and shall be without any force or effect;
- 13.5.9. The Mercedes Defendants shall bear all reasonable and necessary costs incurred by the Settlement Administrator in connection with the implementation of this Class Action Settlement up until its termination. Neither the Settlement Class Representatives nor Class Counsel shall be responsible for any such settlement-related costs; and

13.5.10. Class Counsel shall return or reimburse to MBUSA any attorneys' fees and costs paid by the Mercedes Defendants.

13.6. Notwithstanding the terms of Sections 13.5.1 through 13.5.10 above, if a Class Member has (1) received a Class Member Payment under the Class Action Agreement prior to its termination or invalidation; and (2) executed an Individual Release, such Class Member and the Mercedes Defendants shall be bound by the terms of the Individual Release, which terms shall survive termination or invalidation of the Class Action Agreement.

14. COVID-19

14.1. The Parties acknowledge the possibility that a resurgence of COVID-19 may result in modifications of the dates by which the Mercedes Defendants must perform obligations under the US-CA Consent Decree, specifically including the dates to submit Emission Modification Proposal Reports under the terms of the US-CA Consent Decree ("EMPR Submission Dates"). The Parties agree that official modifications (i.e., adopted by the EPA or CARB, or ordered by the district court that enters the US-CA Consent Decree) to EMPR Submission Dates in the US-CA Consent Decree shall apply to the corresponding dates in Sections 2.2, 5.3.1-5.3.2, and 5.3.4-5.3.5 of this Class Action Agreement.

15. REPRESENTATIONS AND WARRANTIES

15.1. Class Counsel represent that they have conducted sufficient independent investigation and discovery to enter into this Class Action Agreement and that they execute this Class Action Agreement freely, voluntarily, and without being pressured or influenced by, or relying on any statements, representations, promises, or inducements made by the Released Parties or any person or entity representing the Released Parties, other than as set forth in this Class Action Agreement. Class Counsel represent that they are authorized by the Settlement Class Representatives to enter into this Class Action Agreement with respect to the claims asserted in the Action and all other claims covered by the Release, and that they are seeking to protect the interests of the Class. Settlement Class Representatives acknowledge, agree, and

specifically represent and warrant that they have discussed with Class Counsel the terms of this Class Action Agreement and have received legal advice with respect to the advisability of entering into this Class Action Agreement and the Release, and the legal effect of this Class Action Agreement and the Release.

15.2. Class Counsel further represents that the Settlement Class Representatives: (1) have agreed to serve as representatives of the Class proposed to be certified herein; (2) are willing, able, and ready to perform all of the duties and obligations of representatives of the Class; (3) have read the pleadings in the Action, including the Complaint, or have had the contents of such pleadings described to them in detail; (4) have consulted with Class Counsel about the obligations imposed on representatives of the Class; (5) understand that they are entitled only to the rights and remedies of Class Members under this Class Action Agreement and not to any additional compensation by virtue of their status as Settlement Class Representatives, except that Class Counsel may seek reasonable and appropriate service awards for Settlement Class Representatives of \$5,000 if the Settlement Class Representative had his or her deposition taken and \$2,500 if the Settlement Class Representative did not have his or her deposition taken to be paid by MBUSA in addition to the Benefits at the same time as the Class Member Payment, subject to Court approval; and (6) shall remain and serve as representatives of the Class until the terms of this Class Action Agreement are fully effectuated, this Class Action Agreement is terminated in accordance with its terms, or the Court at any time determines that said Settlement Class Representatives cannot represent the Class. The Mercedes Defendants shall retain the right to object to the payment of any service awards, including the amount thereof (even an amount at or below the amount set forth above).

15.3. Daimler represents and warrants that the individual(s) executing this Class Action Agreement are authorized to enter into this Class Action Agreement on behalf of Daimler.

15.4. MBUSA represents and warrants that the individual(s) executing this Class Action Agreement are authorized to enter into this Class Action Agreement on behalf of MBUSA.

15.5. The Parties acknowledge and agree that no opinion concerning the tax consequences of the proposed Class Action Settlement to the Class is given or will be given by the Parties, nor are any representations or warranties in this regard made by virtue of this Class Action Agreement. In addition, the Parties acknowledge and agree that no tax ruling from any governmental tax authority in relation to a Class Member's tax consequences will be requested by the Mercedes Defendants. The Parties further acknowledge and agree that nothing in this Class Action Agreement should be relied upon by any Class Member as the provision of tax advice. Each Class Member's tax consequences or liabilities, and the determination thereof, are the sole responsibility of the Class Member, and it is understood that each Class Member's federal, state, county, city, or foreign tax consequences or liabilities may vary depending on the particular circumstances of each individual Class Member. Class Members shall hold the Mercedes Defendants and their counsel harmless from any federal, state, county, city, or foreign tax assessments, interest, and/or penalties that result for any amounts paid or benefits provided under this Class Action Agreement, and the Mercedes Defendants shall not be liable for the payment of any additional amounts now or in the future for any amount related to any Class Member's tax consequences.

15.6. The representations and warranties made throughout the Class Action Agreement shall survive the execution of the Class Action Agreement and shall be binding upon the respective heirs, representatives, successors, and assigns of the Parties.

16. GENERAL MATTERS AND RESERVATIONS

16.1. This Class Action Agreement will be binding upon, and inure to the benefit of, the successors, transferees, and assigns of the Mercedes Defendants, the Settlement Class Representatives, and Class Members.

16.2. Settlement Class Representatives and Class Counsel agree that confidential information made available to them solely through the settlement process was made available solely to facilitate this Class Action Settlement, and on the condition that it not be disclosed to persons other than Settlement Class Representatives' counsel and certain experts or consultants retained by Settlement Class Representatives in connection with the Action. This confidential information cannot be used for any purpose other than effectuating this Class Action Settlement. For the avoidance of doubt, Settlement Class Representatives and Class Counsel agree that they cannot use any confidential information provided in the course of settlement negotiations in any other action, litigation, arbitration, mediation, proceeding, or matter of any kind.

16.3. Information provided by the Mercedes Defendants, the Mercedes Defendants' counsel, and/or the Mediator to Settlement Class Representatives, Class Counsel, any individual Class Member, counsel for any individual Class Member, the Settlement Administrator, and/or other administrators, pursuant to the negotiation and implementation of this Class Action Agreement, includes trade secrets and highly confidential and proprietary business information and shall be deemed "Highly Confidential" pursuant to the protective order (D.E. 236) that has been entered in the Action, and shall be subject to all of the provisions thereof. Any materials inadvertently produced shall, upon the Mercedes Defendants' request, be promptly returned to the Mercedes Defendants' counsel, as appropriate, and there shall be no implied or express waiver of any privileges, rights, or defenses.

16.4. This Class Action Agreement, complete with its exhibits and all documents filed with the Court, sets forth the entire agreement among the Parties with respect to its subject matter, and it may not be altered, amended, or modified except by written instrument executed by Class Counsel and the Mercedes Defendants' Lead Counsel. The Parties expressly acknowledge that no other agreements, arrangements, or understandings not expressed in this Class Action Agreement or the documents filed with the Court exist among or between them, and that in deciding to enter into this Class Action Agreement, they have relied solely upon their

own judgment and knowledge. No parol or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances under which this Class Action Agreement was made or executed. This Class Action Agreement and the accompanying documents filed with the Court supersede any prior agreements, understandings, or undertakings (written or oral) by and between the Parties regarding the subject matter of this Class Action Agreement.

16.5. This Class Action Agreement and any amendments thereto, and any dispute arising out of or related to this Class Action Agreement, shall be governed by and interpreted according to the Federal Rules of Civil Procedure and applicable jurisprudence relating thereto, and the laws of the State of New Jersey notwithstanding its conflict of law provisions.

16.6. The Court shall retain exclusive and continuing jurisdiction over all Parties, Class Members, the Action, and this Class Action Agreement to resolve any suit, action, proceeding, case, controversy, or dispute that may arise regarding this Class Action Agreement, the Class Notice Program, the Claims Program, application of the Release, or in relation to this Action, including any dispute regarding validity, performance, interpretation, administration, enforcement, enforceability, or termination of the Class Action Agreement (“Disputes”). The Parties, and each Class Member who has not validly and timely opted-out of this Class Action Agreement, hereby irrevocably submit to the exclusive jurisdiction and venue of the Court for resolution of Disputes, and irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of the Court, or that the Court is in any way an improper venue or an inconvenient forum. No Party or Class Member shall oppose the reopening and reinstatement of the Action for the purposes of effecting the Release described in Section 10. To the extent there are any Disputes between the Parties and/or Class Members, they will submit those disputes to the Mediator before reopening and reinstating this Action. The Parties and Class Members hereby agree to pay, and the Court is authorized to award, attorneys’ fees and costs to the prevailing party in connection with a

Dispute. Notwithstanding anything else in this Section 16.6, all determinations of the CRC are final and binding, and in any event those determinations shall not be subject to this Section 16.6.

16.7. Whenever this Class Action Agreement requires or contemplates that one of the Parties shall or may give notice to the other, notice shall be provided by e-mail and/or next-day (excluding Saturdays, Sundays, and Federal Holidays) express delivery service as follows:

If to the Mercedes Defendants, then to:

Daniel W. Nelson
Gibson, Dunn & Crutcher LLP
1050 Connecticut Ave. NW
Washington, DC 20036
Email: dnelson@gibsondunn.com

Troy M. Yoshino
Squire Patton Boggs (US) LLP
275 Battery Street, Suite 2600
San Francisco, CA 94111
Email: troy.yoshino@squirepb.com

If to the Class, then to:

Steve W. Berman
Hagens Berman Sobol Shapiro LLP
1301 Fifth Ave., Suite 2000
Seattle, WA 98101
Email: steve@hbsslaw.com

James E. Cecchi
Carella, Byrne, Cecchi, Olstein,
Brody & Agnello, P.C.
5 Becker Farm Rd.
Roseland, NJ 07068
Email: jcecchi@carellabyrne.com

Christopher A. Seeger
Seeger Weiss LLP
55 Challenger Road, 6th Floor
Ridgefield Park, NJ 07660
Email: cseeger@seegerweiss.com

16.8. All time periods in this Class Action Agreement shall be computed in calendar days unless otherwise expressly provided. In computing any period of time in this Class Action Agreement or by order of the Court, the day of the act or event shall not be included. The last day of the period shall be included, unless it is a Saturday, a Sunday or a Federal Holiday, or, when the act to be done is the filing of a paper in court, a day on which the court is closed, in which case the period shall run until the end of the next day that is not one of the aforementioned days. As used in this Class Action Agreement, “Federal Holiday” includes holidays designated in Fed. R. Civ. P. 6(a) or by the Clerk of the United States District Court for the District of New Jersey.

16.9. The Parties reserve the right, subject to the Court’s approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Class Action Agreement.

16.10. The Class, Settlement Class Representatives, Class Counsel, the Mercedes Defendants, and/or the Mercedes Defendants’ Lead Counsel shall not be deemed to be the drafter of this Class Action Agreement or of any particular provision, nor shall they argue that any particular provision should be construed against its drafter. All Parties agree that this Class Action Agreement was drafted by counsel for the Parties during extensive arm’s-length negotiations.

16.11. The Parties expressly acknowledge and agree that this Class Action Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, related notes, and correspondence, constitute an offer of compromise and a compromise within the meaning of Federal Rule of Evidence 408 and any equivalent rule of evidence in any state or territory.

16.12. The Parties agree that the Class Action Agreement was reached voluntarily after consultation with competent legal counsel.

16.13. Neither this Class Action Agreement nor the Claims Program, nor any act performed or document executed pursuant to or in furtherance of this Class Action Agreement, the Class Notice Program, or the Claims Program is or may be deemed to be or may be used or construed as an admission of, or evidence of, the validity of any of the Released Claims, or of any wrongdoing or liability of any Released Parties; nor may the Class Action Agreement, the Class Notice Program, or Claims Program be used, deemed, or construed as an admission of, or evidence of, any fault or omission of any Released Parties in any civil, criminal, regulatory, or administrative proceeding in any court, administrative agency, or other tribunal. Nor shall this Class Action Agreement, the Class Notice Program, or the Claims Program be deemed an admission by any Party as to the merits of any claim or defense.

16.14. Any of the Released Parties may file this Class Action Agreement and/or the Final Approval Order in any action that may be brought against them in order to support any defense or counterclaim, including without limitation those based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion, issue preclusion, or similar defense or counterclaim.

16.15. The Parties, their successors and assigns, and their counsel undertake to implement the terms of this Class Action Agreement in good faith, and to use good faith in resolving any disputes that may arise in the implementation of the terms of this Class Action Agreement.

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

16.17. If one Party to this Class Action Agreement considers another Party to be in breach of its obligations under this Class Action Agreement, that Party must provide the breaching Party with written notice of the alleged breach and provide a reasonable opportunity to


cure the breach before taking any action to enforce any rights under this Class Action Agreement.

16.18. This Class Action Agreement may be signed with an electronic or facsimile signature and in counterparts, each of which shall constitute a duplicate original.

16.19. In the event any one or more of the provisions contained in this Class Action Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision if the Mercedes Defendants' Lead Counsel on behalf of the Mercedes Defendants, and Class Counsel, on behalf of Settlement Class Representatives and Class Members, mutually agree in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Class Action Agreement. Any such agreement shall be reviewed and approved by the Court before it becomes effective.

COUNSEL FOR PLAINTIFFS:

Date: September 14, 2020



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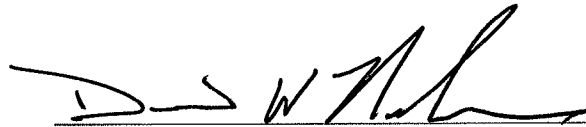
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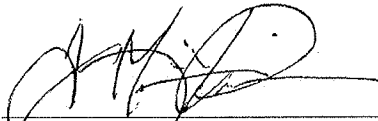
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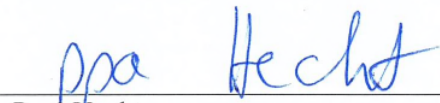
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