

No. _____

**United States Court of Appeals
for the Federal Circuit**

IN RE VOLKSWAGEN GROUP OF AMERICA, INC.,

Petitioner

On Petition for a Writ of Mandamus to the
United States District Court for the Western District of Texas
No. 6:20-cv-01131
Judge Alan D. Albright

PETITION FOR A WRIT OF MANDAMUS

Mark A. Hannemann
Thomas R. Makin
Eric S. Lucas
Ahmed ElDessouki
SHEARMAN & STERLING LLP
599 Lexington Avenue
New York, NY 10022
212.848.4000

*Attorneys for Petitioner
Volkswagen Group of
America, Inc.*

November 1, 2021

FORM 9. Certificate of Interest

Form 9 (p. 1)
July 2020

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF INTEREST

Case Number _____

Short Case Caption In re Volkswagen Group of America, Inc.

Filing Party/Entity Volkswagen Group of America, Inc.

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I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 11/01/2021

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Name: Mark Hannemann

FORM 9. Certificate of Interest

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<p>1. Represented Entities. Fed. Cir. R. 47.4(a)(1).</p>	<p>2. Real Party in Interest. Fed. Cir. R. 47.4(a)(2).</p>	<p>3. Parent Corporations and Stockholders. Fed. Cir. R. 47.4(a)(3).</p>
<p>Provide the full names of all entities represented by undersigned counsel in this case.</p>	<p>Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities.</p> <p><input checked="" type="checkbox"/> None/Not Applicable</p>	<p>Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities.</p> <p><input type="checkbox"/> None/Not Applicable</p>
<p>Volkswagen Group of America, Inc.</p>		<p>Volkswagen AG</p>

Additional pages attached

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4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

None/Not Applicable Additional pages attached

David Whittlesey (Shearman & Sterling LLP)	Daniel M. Chozick (Shearman & Sterling LLP)	

5. Related Cases. Provide the case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. Do not include the originating case number(s) for this case. Fed. Cir. R. 47.4(a)(5). See also Fed. Cir. R. 47.5(b).

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IN RE VOLKSWAGEN GROUP OF AMERICA, INC., No. 21-149 (Fed. Cir. 2021) (decided 6/9/2021)	StratosAudio, Inc. v. Hyundai Motor America, Case No. 6:20-CV-01125-ADA (W.D. Tex.)	

6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

None/Not Applicable Additional pages attached

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RELIEF SOUGHT

Volkswagen Group of America, Inc. (VWGoA) filed a motion to dismiss or transfer the district-court case for improper venue.¹ The district court denied the motion, ruling that venue was properly laid in the Western District of Texas because independently owned Volkswagen- and Audi-brand dealers—although not VWGoA itself—have places of business in the district.

VWGoA seeks an order vacating the district court’s denial of VWGoA’s motion and instructing the district court either to dismiss the action or to transfer it to the United States District Court for the Eastern District of Michigan.

ISSUE PRESENTED

This petition presents the issue of whether a place of business of an independently owned automotive dealership, to whom an auto manufacturer or U.S. distributor sells vehicles that are in turn sold by the dealer to customers, is a place of business of the manufacturer/distributor for the purposes of the patent venue statute, 28 U.S.C. §1400(b). At least two district courts have, in comprehensively reasoned opinions, decided that a dealership is not the distributor’s own place of business. The

¹ VWGoA previously sought a writ of mandamus seeking either dismissal/transfer or a stay of the district court proceedings pending the district court’s decision on VWGoA’s venue motion, which was denied because the district judge had pledged to decide the venue issue before holding a *Markman* hearing. Case No. 2021-149 (Fed. Cir. June 29, 2021).

only contrary decision of which Petitioner is aware (other than the ruling in this and a companion case) is a vacated ruling from the Eastern District of Texas.

There is plainly a conflict between, on the one hand, the United States District Court for the Southern District of California and the United States District Court for the Northern District of Georgia, and, on the other hand, the Western District of Texas. Interlocutory review by this Court will resolve the split between the district courts, an important consideration given the frequency with which this exact issue arises.²

² Seven motions on this issue are known to be pending in district court right now. *See Arigna Tech. Ltd. v. Bayerische Motoren Werke AG*, No. 2:21-cv-00172 (E.D. Tex.), D.I. 25 (Defendant BMW of North America, LLC's Motion to Dismiss for Improper Venue); *id.*, D.I. 50 (Defendant VWGoA's Motion to Dismiss for Improper Venue); *id.*, D.I. 56 (Defendant American Honda Motor Co., Inc.'s Motion to Dismiss for Improper Venue); *Arigna Tech. Ltd. v. Volkswagen AG*, No. 2:21-cv-00054 (E.D. Tex.), D.I. 85 (Defendant BMW of North America, LLC's Motion to Dismiss for Improper Venue); *id.*, D.I. 91 (Defendant Mercedes-Benz USA, LLC's Motion to Dismiss for Improper Venue); *id.*, D.I. 138 (Defendant VWGoA's Motion to Dismiss for Improper Venue); *Arigna Tech. Ltd. v. Daimler AG*, No. 2:21-cv-00175 (E.D. Tex.), D.I. 32 (Defendant Mercedes-Benz USA, LLC's Motion to Dismiss for Improper Venue).

FACTS NECESSARY TO UNDERSTAND THE ISSUE PRESENTED

VWGoA does not sell vehicles or services to consumers in the Western District of Texas. It is a distributor. It has no employees or documents in the Western District. It has no real estate in the Western District, owned or leased. It does not own any Volkswagen- or Audi-brand vehicles that are sold in the Western District, and it keeps no inventory there. VWGoA's relationship with the Western District is no different or more significant than its relationship with any other district, and considerably less significant than its relationship with other districts where it does have places of business.³ See Appx0019–Appx0021. All these facts are uncontested.

The contracts between VWGoA and authorized Volkswagen- and Audi-brand dealers allegedly have various requirements with which the dealers must comply. As the district court wrote:

Volkswagen's alleged control over its dealers include: (1) the dealers' premises and facilities and their use and maintenance;^[4] (2) the dealers' use of Volkswagen trademarks and trade names in advertising and marketing; (3) the price and terms upon which its dealers purchase its vehicles; (4) the dealers' inventory of vehicles and parts; (5) the terms and scope of warranties to be included in its vehicle sales, the manner in which its dealers provide

³ *E.g.*, VWGoA does have a place of business in the Eastern District of Michigan. Appx. 0021 (Hahn Decl., ¶ 11).

⁴ It is unclear what alleged control the district court was referring to in the item numbered 1, if not the facts described in items 2–9. For clarity, VWGoA notes that it does not own or lease the dealers' premises (or any other real estate in the District), and has no control over those premises.

notice and advertise such warranties, and the rate or price at which a Volkswagen or Audi dealer will be reimbursed for services; (6) monthly reporting from the dealers of their finances and operations; (7) the IT equipment such as computers that its dealers must use and maintain; (8) the number of personnel that its dealers must have on site and their certifications and training; (9) performance reviews on the dealers' sales, service, and parts, customer satisfaction, and even the dealer's maintenance of its premises and facilities; and (10) restricting whether and to whom a dealer may sell or transfer its business.

Appx0005–Appx0006.

REASONS WHY THIS WRIT SHOULD ISSUE

I. Mandamus is Appropriate on this Improper-Venue Issue

A petition for mandamus should be granted when three conditions are satisfied:

- i. the petitioner must have a clear and undisputable right to issuance of the writ (that is, the correctness of the petitioner's position on the merits must be apparent),
- ii. the petitioner must have no adequate alternative route to the desired relief (*e.g.*, post-judgment appeal must be an insufficient remedy), and
- iii. issuance of the writ must be appropriate under the circumstances.

Cheney v. U.S. Dist. Ct. for D.C., 542 U.S. 367, 380–381 (2004).

In the context of orders denying transfer pursuant to 28 U.S.C. § 1404(a), the second factor—lack of alternative routes to relief—is “certainly satisfied,” because the petitioner in such a case will have great difficulty in avoiding the harmless-error rule by showing that the trial result would have been different in a more convenient forum. *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 318–319 (5th Cir. 2008). Thus, this Court has ruled that in the context of § 1404(a),

the test for mandamus essentially reduces to the first factor, given that the possibility of an appeal in the transferee forum following a final judgment is not an adequate alternative, and that an erroneous transfer may result in judicially sanctioned irreparable procedural injury.

In re Apple Inc., 979 F.3d 1332, 1336–37 (Fed. Cir. 2020) (quotation marks and ellipses omitted).

Exactly the same analysis should apply in the context of improper, as opposed to merely inconvenient, venue. If the case proceeds to judgment in the wrong venue, a post-judgment appeal of the venue decision “is not an adequate alternative,” *id.*, regardless of whether it is the patent venue statute or the convenience factors of § 1404(a) that causes venue to be improperly laid. The wrong venue is the wrong venue.

The Supreme Court approves of the use of mandamus in the improper-venue context. *See TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 137 S.Ct. 1514 (2017). This Court also has granted mandamus several times to correct an improper-venue decision. *See In re Google*, 949 F.3d 1338 (Fed. Cir. 2020); *In re ZTE (USA), Inc.*, 890 F.3d 1008 (Fed. Cir. 2018); *In re BigCommerce, Inc.*, 890 F.3d 978 (Fed. Cir. 2018); *In re Micron*, 875 F.3d 1091; *In re Cray Inc.*, 871 F.3d 1355, 1358-60 (Fed. Cir. 2017).

The traditional role of mandamus has been described to be confining a district court to its prescribed “jurisdiction.” *Cheney*, 542 U.S. at 380. But in considering the appropriateness of mandamus, “courts have not confined themselves to an arbitrary and technical definition of ‘jurisdiction.’” *In re Micron Tech., Inc.*, 875 F.3d at 1095 (quoting *Cheney*, 542 U.S. at 380); *see also, e.g.*, 14D Charles Alan

Wright & Arthur R. Miller, Federal Practice and Procedure § 3801 (4th ed.) (“Venue laws give added protection to defendants beyond those provided by the statutory and constitutional prerequisites of personal jurisdiction.”)

In addition to the three-factor test discussed above, mandamus is also appropriate when it presents “issues important to proper judicial administration,” or when there is “uncertainty” or a “need for greater uniformity” on a legal issue. *In re Cray*, 871 F.3d at 1358–59.⁵ In this case, as explained more fully below, district courts in Georgia and California have held that automotive dealerships are not the manufacturer’s or distributor’s place of business, while two district courts in Texas in three cases have held the opposite (one of those decisions was later vacated; one is a companion case to this one; this case is the third).⁶ Moreover, at least seven

⁵ Compare *In re Google*, No. 2018-152, 2018 WL 5536478, at *2 (Fed. Cir. Oct. 29, 2018) (denying mandamus for lack of “basic, unsettled, recurring legal issues over which there is considerable litigation producing disparate results”), with *In re Google*, 949 F.3d 1338 (Fed. Cir. 2020) (granting mandamus in part because of six conflicting district-court decisions on patent-venue issues).

⁶ Compare *Blitzsafe Tex., LLC v. BMW of N. Am., LLC*, No. 2:17-cv-00418-JRG, 2018 WL 4849345 (E.D. Tex. Sep. 6, 2018), vacated by *Blitzsafe Tex. LLC v. Mitsubishi Elec. Corp.*, No. 2:17-cv-00430-JRG, 2019 WL 3494359 (E.D. Tex., Aug. 1, 2019), with *Omega Pats., LLC v. Bayerische Motoren Werke AG*, 508 F. Supp. 3d 1336, 1340–41 (N.D. Ga. 2020), and *West View Rsch., LLC v. BMW of N. Am., LLC*, 16-cv-2590 JLS (AGS), No. 2018 WL 4367378 (S.D. Cal. Feb. 5, 2018).

venue motions on the same issue are pending.⁷ This Court's review is necessary to provide uniformity and to discourage forum shopping.

II. The District Court's Decision that Venue is Proper is Indisputably Wrong

The sole basis for the district court's decision that venue is proper is the presence of Volkswagen- and Audi-brand dealers in the Western District of Texas. Two district courts outside of Texas have considered the same situation and concluded that automotive dealerships are not places of business for corporations that supply those dealers with vehicles to sell. *Omega*, 508 F. Supp. 3d 1336; *West View*, 2018 WL 4367378. Those two courts correctly applied the "place of business" requirement, while the district court in this case did not.

Notably, the district court in this case relied exclusively on the vacated *Blitzsafe* opinion, which found venue proper for an auto manufacturer/distributor based on the presence of dealerships in the Eastern District of Texas. The district

⁷ *Arigna Tech. Ltd. v. Bayerische Motoren Werke AG*, No. 2:21-cv-00172 (E.D. Tex.), D.I. 25 (Defendant BMW of North America, LLC's Motion to Dismiss for Improper Venue); *id.*, D.I. 50 (Defendant VWGoA's Motion to Dismiss for Improper Venue); *id.*, D.I. 56 (Defendant American Honda Motor Co., Inc.'s Motion to Dismiss for Improper Venue); *Arigna Tech. Ltd. v. Volkswagen AG*, No. 2:21-cv-00054 (E.D. Tex. May 3, 2020), D.I. 85 (Defendant BMW of North America, LLC's Motion to Dismiss for Improper Venue); *id.*, D.I. 91 (Defendant Mercedes-Benz USA, LLC's Motion to Dismiss for Improper Venue); *id.*, D.I. 138 (Defendant VWGoA's Motion to Dismiss for Improper Venue); *Arigna Tech. Ltd. v. Daimler AG*, No. 2:21-cv-00175 (E.D. Tex.), D.I. 32 (Defendant Mercedes-Benz USA, LLC's Motion to Dismiss for Improper Venue).

court's opinion makes no effort to distinguish the *Omega* and *West View* cases. Indeed, the district court's only reference to the *Omega* and *West View* opinions was to dismiss VWGoA's citations to those cases as "conclusory statements that two other district courts' rulings are right (because they are in its favor) and a third court's ruling is wrong (because it is not in its favor)." Appx0008. The district court ignored, for example, that in its opening brief VWGoA pointed out that the *Omega* court explicitly considered, and explicitly rejected, the *Blitzsafe* opinion upon which the district court wrongly relied in this case.

In reaching its incorrect conclusion, the district court made two errors. First, the district court wrongly held that VWGoA has *ratified* the dealerships as its own place of business. Appx0004–Appx0008. Second, the district court wrongly held that the dealers are *agents* of VWGoA. Appx0008–Appx0010. Those two holdings were independent prerequisites to the district court's venue decision; under the district court's reasoning, if either one is wrong, the venue decision is wrong. Appx0003 at n.1 ("this court treats the *Google* requirement [of "the regular, physical presence of an employee or other agent of the defendant conducting the defendant's business"] as a fourth requirement in addition to the three *Cray* requirements").⁸

⁸ *Google*'s requirement that at least one of the defendant's employees or agents be present at the alleged place of business could also be read as a necessary, but not sufficient, component of the third *Cray* factor (that the place of business must be the defendant's own, *see Cray* at 1363). 949 F.3d at 1344. Regardless of how the tests are characterized, it is clear that (i) per *Google*, the defendant must have an

A. VWGoA Has Not Ratified the Dealerships as Its Own Place of Business

In its *Cray* opinion, this Court held that for venue to be proper, “the defendant must establish or ratify the place of business.” 871 F.3d at 1363. There appears to be no dispute that VWGoA did not establish the dealerships. Instead, the district court found that VWGoA had ratified the dealerships as its own place of business. Appx0004–Appx0008.

There is no question in this case that VWGoA and the dealers are separate corporations, not alter egos.⁹ Instead, the district court based its ratification finding on a combination of three theories: (1) that VWGoA “exercises control over the dealerships’ places,” Appx0005; (2) that VWGoA can disapprove of dealers’ decisions to change locations, Appx0006; and (3) that VWGoA “represents to the public that it has a place of business” in the district, Appx0006.

The district court referred to, but did not consider, what it identified as the fourth *Cray* factor: “the nature and activity of the alleged place of business of the

employee or agent at the place, and (ii) per *Cray*, the place must be “a place of the defendant,” *Cray* at 1363 (emphasis in original).

⁹ See *Andra Grp., LP v. Victoria’s Secret Stores, L.L.C.*, 6 F.4th 1283, 1289 (Fed. Cir. 2021) (“[W]here related companies have maintained corporate separateness, the place of business of one corporation is not imputed to the other for venue purposes.”).

defendant in the district in comparison with that of the other places of business of the defendant in other venues.” Appx0004.¹⁰

1. VWGoA Does Not Control the Dealers’ Places of Business

At the outset, venue clearly “is not one of those vague principles which, in the interests of some overriding policy, is to be given a liberal construction.” *Cray*, 871 F.3d at 1361 (quoting *Schnell v. Peter Eckrich & Sons, Inc.*, 365 U.S. 260, 264 (1961)). The point of enacting the patent-venue statute was “to eliminate the abuses engendered by previous venue provisions allowing such suits to be brought in any district in which the defendant could be served.” *Id.* (internal quotation marks omitted). For that reason, merely doing business in the district (as VWGoA is alleged to do) does not give rise to patent venue. As this Court further advised in *Cray*:

Courts should be mindful of this history in applying the statute and be careful not to conflate showings that may be sufficient for other purposes, *e.g.*, personal jurisdiction or the general venue statute, with the necessary showing to establish proper venue in patent cases. . . . “[T]he **regular and established place of business standard requires more than** the minimum contacts necessary for establishing personal jurisdiction or for **satisfying the**

¹⁰ This ignored fourth factor weighs heavily in favor of VWGoA, which certainly does maintain places of business elsewhere that are actually its own, *e.g.*, its customer relations and after-sales support center in the Eastern District of Michigan. Appx0021 (¶ 11). VWGoA has places of business in other districts as well, *e.g.*, a factory in Chattanooga that sits on 1,400 acres and comprises almost 3.5 *million* square feet, *see* <https://www.volkswagengroupofamerica.com/en-us/chattanooga-facts> (last visited on Oct. 19, 2021), and an Innovation and Engineering Center in Belmont, California, *see* <https://vwiecc.com> (last visited on October 28, 2021).

doing business standard of the general venue provision, 28 U.S.C. § 1391(c)."

Id. (emphasis added).

The district court listed ten alleged facts to support its holding that VWGoA has ratified the dealerships as its own places of business. Appx0005–Appx0006.¹¹ But none of those ten facts has to do with whether VWGoA controls the dealers' places of business, *i.e.*, “whether the defendant owns or leases the place, or exercises other attributes of possession or control over the place.” Appx0004 (quoting *Cray*, 871 F.3d at 1362). For example, there is no doubt that VWGoA employees would be trespassing if they entered one of the dealerships uninvited at a time when it is closed to the public. VWGoA does not control those places.

What VWGoA allegedly controls, as the district court describes, are various aspects of how the dealers go about their businesses. A dealer allegedly must have a suitable facility in an approved location,¹² must maintain a suitable inventory of vehicles and parts, and, *e.g.*, must have a suitable number of properly trained employees. *See* Appx0005–Appx0006. These quality controls—for which VWGoA

¹¹ Again, it is unclear what alleged control the district court was referring to in the item numbered 1, if not the facts described in items 2–9. For clarity, VWGoA notes that it does not own or lease the dealers' premises (or any other real estate in the District), and has no control over those premises.

¹² Merely approving a dealer's location is not ratifying that place as a VWGoA facility, as opposed to the dealer's own facility. Approving the location does not communicate to the public that the dealer's place of business is VWGoA's.

allegedly contracts in concert with licensing Volkswagen trademarks to the dealers—do not indicate control of the dealers’ places as the venue statute requires.

In *Andra*, this Court considered whether venue was proper based on assertions that “Non-Store Defendants” (like VWGoA) ratified as their own places of business the locations of the “Stores” defendant (like the dealers) through their control of the Stores. *See Andra*, 6 F.4th at 1289–90.¹³ Applying *Cray*, this Court rejected Andra’s theory of ratification even though Andra argued: (i) “the Non-Store Defendants maintain a ‘unified business model’ with Stores,” (ii) “the entities work together in some aspects,” (iii) the entities share the use of Victoria Secret trademarks, (iv) one of the Non-Store Defendants has “control over store operations,” and (v) one of the Non-Store Defendants holds “out store locations as its own” and “direct[s] customers to store locations using the ‘Find a Store’ feature.” *Id.* According to the Court, “Andra has not shown that the Non-Store Defendants actually engage in business at Stores locations.” *Id.*

Similarly, in *Omega*, the United States District Court for the Northern District of Georgia considered facts almost identical to the facts in this case. *Compare Omega*, 508 F. Supp. 3d at 1339–43, with Appx0005–Appx0006. It concluded that

¹³ VWGoA cited the *Andra* opinion to the district court as supplemental authority on August 10, more than a month before the district court issued its venue decision. The district court did not cite *Andra* in its opinion.

a distributor of BMW vehicles did not ratify the locations of its dealerships. *Omega*, 508 F. Supp. 3d at 1340–41 (noting that the Federal Circuit did not intend “its *Cray* holding to be interpreted so broadly as to encompass independent entities in the absence of an alter-ego relationship”). That was despite the following facts: (i) the distributor’s “business and marketing efforts are intertwined with the dealerships,” and (ii) “[c]ommon insignia and logos are displayed, website links are created, marketing strategies are dispatched, and agreements are executed all to ultimately facilitate the sale of BMW-branded vehicles to customers.” *Id.* at 1342. *Omega* also held that “common marketing strategies and some modicum of control over the dealerships’ macro-level operations” by the distributor did not “transform [the dealerships’] location into [the distributor’s] own places of business.” *Id.* at 1343.

Similarly, in *West View*, the United States District Court for the Southern District of California considered BMW’s arrangements with its dealerships and reached the same conclusion as the *Omega* court. 2018 WL 4367378. As in *Omega*, the *West View* court considered facts that are highly similar to those at issue here, including “at least thirty examples of [the distributor’s] control” of its dealerships and that the distributor “prominently advertises” its brand in the dealerships. *Id.* at *7–8 (collecting cases, and holding that “[t]his theory ignores the separate corporate forms of Defendants and the dealerships”); *see also Reflection, LLC v. Spire Collective LLC*, No. 17-cv-1603-GPC(BGS), 2018 WL 310184, at *2 (S.D. Cal. Jan.

5, 2018) (“[D]istributors and even subsidiaries, that are independently owned and operated, that are located in the forum and work with the accused infringer, [are] not sufficient to show that the accused infringer has a regular and established business under § 1400(b).”).

The same logic applies here. But the district court failed to consider any factor beyond its finding that “Volkswagen boasts a broad scope of *de facto* control over its dealerships,” ignoring the factors that weighed against ratification in *Andra*, *Omega*, and *West View*. Appx0005–Appx0006. For example, as in *Andra*:

- * VWGoA does not own or lease the locations of the dealerships in the District, Appx0020 (Hahn Decl., ¶ 4),
- * the dealerships lease and perform all operations at their locations, *id.*, ¶¶ 5, 7, 9, 10,
- * the dealerships have a different business function than VWGoA (the dealerships sell automobiles that they own to consumers, whereas VWGoA is responsible for distribution and some marketing, *id.*, ¶¶ 8, 9, 10),
- * VWGoA’s website identifies the dealerships’ locations as such (and not as its own, as the district court found, Appx007; *see also* Appx0025 (Compl., ¶ 12 (“[T]he websites can . . . identify a franchised dealer in their area.”))),

- * VWGoA does not display its legal name (Volkswagen Group of America, Inc.) at the dealerships' locations, Appx0024–0026 (Compl., ¶ 11 (“[D]ealerships . . . display Volkswagen . . . trademarks[.]”)); and
- * the dealerships' use of Volkswagen trademarks and branding does not detract from the separateness of the business.

See Andra, 6 F.4th at 1289–90.¹⁴

Overall, the district court failed to give “reasoned consideration to all relevant factors or attributes of the relationship” between VWGoA and its dealerships. *Id.*

2. VWGoA’s Alleged Right to Veto Ownership or Location Does Not Show Ratification

In support of its holding that venue is proper, the district court found that “Defendant’s relationship with the dealerships is conditioned on the dealerships’ continued presence in this District.” Appx0006. This refers to a quality-control

¹⁴ Many other courts have found no venue even when separate and distinct corporate relatives shared a common trademark. *See Bd. of Regents v. Medtronic PLC*, No. A-17-CV-0942-LY, 2018 WL 4179080, at *2 (W.D. Tex. July 19, 2018) (finding no venue for Medtronic due to the presence of a “Medtronic” sign on the exterior of a subsidiary’s building); *Post Consumer Brands, LLC v. Gen. Mills, Inc.*, No. 4:17-CV-2471-SNLJ, 2017 WL 4865936, at *2 (E.D. Mo. Oct. 27, 2017) (finding no venue over parent General Mills, Inc. in the district when a subsidiary displayed a General Mills branded sign); *Symbology Innovations, LLC v. Lego Sys.*, 282 F. Supp. 3d 916, 930-33 (E.D. Va. 2017) (finding subsidiary’s Lego brand stores in the district were insufficient for venue over parent Lego Systems, Inc. absent a lack of formal corporate separateness); *Interactive Toybox v. Walt Disney Co.*, No. 1:17-CV-1137-RP, 2018 WL 5284625, at *3 (W.D. Tex. Oct. 24, 2018) (same for Disney retail stores).

provision that allegedly gives VWGoA the general power to approve locations and ownership; contrary to the implication in the language of the district court's finding, it has not been alleged that there are any district-based distinctions in VWGoA's quality-control agreement with the dealers.

Merely approving a dealer's location is not ratifying that place as a VWGoA facility, as opposed to the dealer's own facility, because approving the location does not communicate to the public that the dealer's place of business is VWGoA's.

The district court's conclusion is implicitly linked to this Court's instruction in *Cray* that "[a]nother consideration might be whether the defendant conditioned employment on an employee's continued residence in the district or the storing of materials at a place in the district so that they can be distributed or sold from that place." 871 F.3d at 1363; *see also* Appx0004. This instruction is a useful reminder that, in its opinion, the *Cray* court was addressing the question of whether an employee's home office was a place of business of his employer. The obvious difference in this case is that the dealers are not VWGoA employees. Although *Cray* considered it important whether a defendant's **employees** are required to work at a particular place, that says nothing about whether it is important that VWGoA allegedly has input into the location of its **customers** (the dealers).

3. VWGoA Has Never Represented to the Public that It Has a Place of Business in the District

The district court's third and last argument is that VWGoA "represents to the public that it has a place of business in" the Western District. Appx0006.

The district court based its analysis on the VWGoA website, which directs consumers to Volkswagen- and Audi-brand dealers, and on VWGoA's trademark licenses that allow Volkswagen- and Audi-brand dealers to display Volkswagen trademarks. But there is no allegation that VWGoA ever approved a dealer's sign that read "Volkswagen Group of America"; instead, the dealers display various Volkswagen trademarks, under license. Nor does the dealer-locator feature of VWGoA's website indicate that any dealer's place of business is a VWGoA place of business. Such allegations are insufficient to show that VWGoA ratified the dealership's locations as its own. *See Omega*, 508 F. Supp. 3d at 1342 (finding that the distributor did not ratify the dealerships where "[c]ommon insignia and logos are displayed, website links are created, marketing strategies are dispatched, and agreements are executed all to ultimately facilitate the sale of BMW-branded vehicles to customers"); *West View*, 2018 WL 4367378, at *6 (same, where distributor "prominently advertises the BMW brand at the dealerships"); *see also Andra*, 6 F.4th at 1290 (finding no ratification where the distributor defendant did "not display their corporate names in the retail locations").

As the district court correctly noted, an essential requirement under *Cray* for ratification is that “the defendant . . . actually engage in business from [the] location” in the district. Appx0007 (citing *In re Cray*, 871 F.3d at 1364). Allegedly applying that requirement, the district court incorrectly found that “Volkswagen actually conducts business from the locations of its dealerships in this District.” Appx0007. The district court pointed to VWGoA’s distribution of vehicles to the dealers, and to the warranty services that the dealers provide and for which VWGoA reimburses them. *Id.* The court also pointed to a Texas statute that says one who reimburses warranty repair-service charges “is engaged in business in this state.” *Id.* (citing Tex. Occ. Code § 2301.251(c)).

This confuses jurisdiction with venue. Selling cars to dealers before they are even delivered to the dealers is not doing business at the dealers’ locations. Those sales from VWGoA to the independent dealers might create the minimum contacts necessary for the district court to exercise personal jurisdiction over VWGoA, and may constitute doing business in Texas, but minimum contacts is not the test for venue. As this Court held in *Cray*, “the regular and established place of business standard requires more than the minimum contacts necessary for establishing personal jurisdiction or for satisfying the doing business standard of the general venue provision, 28 U.S.C. § 1391(c).” 871 F.3d at 1361.

Because VWGoA has no employees, nor inventory, in the District, the district court's finding unreasonably expands the patent venue statute to cover the simple act of shipping a product from one location outside a district (including from overseas locations) to another inside the district. *See Andra*, 6 F.4th 1283 (finding that a distributor based outside the district that distributed goods to stores in the district did not itself engage in business in the district). The effect of such expansion would be that distributors could be sued for patent infringement in any district in the United States, so long as those distributors ship their products to those districts. This result is inconsistent with the patent venue statute, which has no "remedial" purpose and should be given a narrow construction. *See In re Google*, 949 F.3d at 1346.

Contrary to the district court's clearly erroneous finding, VWGoA does not engage in distribution activities in the District. Appx0020 (Hahn Decl., ¶¶ 7–9). VWGoA's employees who manage the distribution activities are not located in the District. *Id.* And VWGoA does not own or keep an inventory of vehicles or parts at warehouses or other facilities in the District. *Id.* (¶¶ 6, 8). *See Andra*, 6 F.4th 1283 (finding that a distributor based outside the district that distributed goods to stores in the district did not itself engage in business in the district).

Reimbursing Texas dealers for warranty service charges, although it may be considered doing business in the state of Texas and thus may give rise to personal jurisdiction over VWGoA, is not doing business **at the dealerships** for purposes of

venue. Notably, VWGoA has no employees at the dealerships. Appx0020 (Hahn Decl., ¶ 7); *cf. Google*, 949 F.3d at 1345 (requiring the presence of employees as a prerequisite for patent venue). The district court’s reliance on the Texas warranty statute is especially inappropriate because, as this Court has repeatedly found, the patent venue inquiry must be conducted under Federal Circuit law. *See, e.g., In re ZTE*, 890 F.3d at 1012 (“Whether venue is proper under § 1400(b) is an issue unique to patent law and is governed by Federal Circuit law.”).¹⁵

Again, these are precisely the facts the *Omega* and *West View* courts explicitly analyzed and found insufficient to support venue. *See Omega*, 508 F. Supp. 3d 1336; *West View*, 2018 WL 4367378.

¹⁵ Merely offering a warranty for a product that third-party dealerships honor does not transform independently owned and operated dealerships into VWGoA’s places of business or establish venue in this District. *See Knapp-Monarch Co. v. Casco Prods. Corp.*, 342 F.2d 622, 625 (7th Cir. 1965) (“[T]he fact that [defendant’s] warranties against defective products were honored by its dealers and its authorized repair station does not mean that the company had a regular and established place of business.”); *Omega*, 508 F. Supp. 3d at 1343 (rejecting plaintiff’s argument that providing new car warranty services at dealerships establishes venue for the distributor); *Zaxcom, Inc. v. Lectrosonics, Inc.*, No. 17-CV-3408(NGG)(SJB), 2019 WL 418860, at *9 (E.D.N.Y. Feb. 1, 2019) (“The facts here demonstrate that Defendant has contracted with Jaycee over a period of years to provide non-exclusive repair and maintenance services on certain of Defendant’s products, which have been purchased by customers through third-party dealers, and which may or may not be under warranty. This does not, without more, render Jaycee’s location a place of business of Defendant.”).

B. The Dealers Are Not VWGoA's Agents

In assessing whether a party is the defendant's agent for the purpose of patent venue, this Court explained in *Google* that agency is a “fiduciary relationship that arises when one person (a ‘principal’) manifests assent to another person (an ‘agent’) that the agent shall act on the principal’s behalf and subject to the principal’s control, and the agent manifests assent or otherwise consents to act.” *In re Google*, 949 F.3d at 1345; *see also Andra*, 6 F.4th at 1287–88. *Google* also identified three “essential elements of agency . . . (1) the principal’s right to direct or control the agent’s actions, (2) the manifestation of consent by the principal to the agent that the agent shall act on his behalf, and (3) the consent by the agent to act.” *In re Google*, 949 F.3d at 1345 (internal citations, quotations, and alterations omitted) (quoting *Meyer v. Holley*, 537 U.S. 280, 286, 123 S.Ct. 824, 154 L.Ed.2d 753 (2003)).

The district court in this case focused its agency analysis on the contract-based quality controls VWGoA allegedly has over Volkswagen- and Audi-brand dealers. But VWGoA does not have “the right to direct or control” the dealerships, or the dealerships’ employees, so as to create an agency relationship. In *Andra*, this Court considered, and explicitly rejected, a similar argument. There, the distributor-defendant was alleged to “closely control[] the distribution and sales of its products exclusively available through store locations and [a] [w]ebsite.” *Andra*, 6 F.4th at 1288–89 (applying *Google*, 949 F.3d at 1345, and holding that the distributor

defendant's "close control of its products and the website does not equate to 'the right to direct or control' employees at the physical [] locations in the [d]istrict.").

Applying *Andra*, the dealerships clearly are not VWGoA's agents. *See also Herremans v. BMW of N. Am., LLC*, No. CV 14-02363 MMM PJWX, 2014 WL 5017843, at *6 (C.D. Cal. Oct. 3, 2014) (holding that automotive "dealers are not 'agents' of manufacturers."); *Bushendorf v. Freightliner Corp.*, 13 F.3d 1024, 1026 (7th Cir. 1993) (noting an automobile dealer who "merely buys goods from manufacturers or other suppliers for resale to the consuming public[] is not his supplier's agent"); *Arnson v. Gen. Motors Corp.*, 377 F. Supp. 209, 212 (N.D. Ohio 1974) ("[T]he weight of authority . . . support[s] the view that a franchised automobile dealer, with regard to the sale of new vehicles, is an independent merchant and not an agent of the manufacturer.").

The district court does not cite any legal authority finding otherwise. The two cases cited that purportedly show "it is not uncommon for a district court to find a principal-agency relationship between an auto manufacturer and its dealers" fail to do so. Appx0009–Appx0010 (citing *Morano v. BMW of N. Am., LLC*, 928 F. Supp. 2d 826, 837-38 (D.N.J. 2013); *Kent v. Celozzi-Ettleson Chevrolet, Inc.*, No. 99 C 2868, 1999 WL 1021044, at *4 (N.D. Ill. Nov. 3, 1999)). In *Kent*, on a Rule 12(b)(6) motion to dismiss, the court refused to dismiss fraud-related claims against a vehicle distributor even though it was "unlikely that [plaintiff] will be able to establish that

[the distributor] made [the dealership] its agent with respect to the sale of extended warranties, or that an apparent agency existed as that term is defined in the law,” only because “it is not out of the question that she will be able to do so.” 1999 WL 1021044, at *4. In *Morano*, the court, also on a Rule 12(b)(6) motion to dismiss, did not dismiss breach of service-contract claims against a vehicle distributor, finding that a lack of privity between the distributor and the retail customer did not bar relief. In the context of an allegation that the distributor directed the dealer to reject warranty claims, the *Morano* court opined that “it stands to reason that the dealer acted as [distributor’s] agent, or at least that the two acted together” in rejecting the warranty claims, which is certainly not a general finding of agency with respect to issuance of the warranty. 928 F. Supp. 2d at 838.¹⁶

Further, no fiduciary relationship exists between VWGoA and the dealerships, which is an essential element of agency. *See ARA Auto. Grp. v. Cent. Garage, Inc.*, 124 F.3d 720, 726 (5th Cir. 1997) (“No Texas case . . . has affirmed a fiduciary obligation in the context of a franchisor-franchisee, manufacturer-distributor

¹⁶ Similarly, *Stevens*, another decision addressing a Rule 12(b)(6) motion on which the district court relies, *see* Appx0009, did not find an agency relationship between a vehicle distributor and a dealership. *See Stevens v. Ford Motor Co.*, No. 2:18-CV-456, 2020 U.S. Dist. LEXIS 256298, *17-18 (S.D. Tex. Nov. 2, 2020) (noting “it is not—as a matter of law—impossible to find a specific agency relationship” and further remarking that “dealership agency is not essential to the Court’s disposition of the motion to dismiss”).

relationship, or other transactional setting involving experienced managers.”); *Google*, 949 F.3d at 1345 (noting the “agency relationship is a fiduciary relationship”).

The district court held “the agreements between Volkswagen and its dealerships clearly show that there is manifestation of consent by Volkswagen to the dealerships that the dealerships shall act on Volkswagen’s behalf, and the consent by the dealerships to act.” Appx0009. But this holding directly contradicts the parties’ contractual relationship, which explicitly states the dealers are not VWGoA’s agents. Those agreements expressly and repeatedly disclaim agency, another fact the district court failed to consider.¹⁷

The district court also incorrectly stated that VWGoA “is in the business of manufacturing and distributing vehicles to consumers.” Appx010. That is manifestly

¹⁷ See Appx0088 (Article 17(1)) (“Dealer Not Agent. Dealer will conduct all Dealer’s Operations on its own behalf and for its own account. Dealer has no power or authority to act for the Manufacturer or VWoA.”); Appx0137 (Article 17(1)) (same); Appx0167 (Article 17(1)) (same); Appx0071 (Article 8(6)) (“Dealer’s personnel are not employees, contractors or agents of VWoA.”); Appx0119 (Article 8(6)) (same); Appx0153 (Article 8(6)) (same). Moreover, automobile distributors are prohibited from entering into an agency relationship with their franchise dealerships in Texas. See *Ford Motor Co. v. Texas Dep’t of Transp.*, 264 F.3d 493, 507 (5th Cir. 2001) (statute “provides that a manufacturer may not directly or indirectly, operate or control a dealer or act in the capacity of a dealer”); Tex. Occ. Code § 2301.476(c) (“[A] manufacturer or distributor may not directly or indirectly . . . operate or control . . . a franchised dealer or dealership.”).

untrue. VWGoA is in the business of selling vehicles to dealers, not to consumers. Appx0020 (Hahn Decl., ¶¶ 6, 8–10). As alleged in the complaint, “[o]n information and belief, the Volkswagen Group’s new Volkswagen and Audi vehicles are available for purchase through its authorized dealers only.” Appx0313 (Compl., ¶ 10).

CONCLUSION

As the United States District Court for the Eastern District of Texas did in the later-vacated *Blitzsafe* opinion—but contrary to the *Omega* and *West View* opinions the district court did not analyze (and also contrary to this Court’s *Andra* decision, which the district court also did not analyze)—the district court in this case eviscerated the place-of-business requirement, conflated personal jurisdiction with venue, and thus effected a tremendous expansion of the patent venue statute, which was explicitly intended to be narrower than the set of districts where accused infringers might be subject to jurisdiction, *see, e.g., Cray*, 871 F.3d at 1361. *See, e.g., Omega*, 2020 WL 8184342 at *6 (“A finding that venue is proper in this District ... would, in this Court’s view, significantly expand the scope of § 1400(b).”).

If not corrected by this Court, the district court’s holding that selling products to retailers who are licensed to use a manufacturer’s trademarks, identifying those retailers on the manufacturer’s website, and reimbursing the retailers for warranty repairs transforms the retailers’ places of business into the manufacturers’ own

places of business means that manufacturers/distributors are subject to suit wherever their customers (the retailers) are located. This reads the place-of-business restriction out of the venue statute and, at least for manufacturers/distributors, invites the “abuses engendered” by earlier law permitting patent defendants to be sued wherever they are subject to service of process. *See Cray*, 871 F.3d at 1361 (quoting *Schnell*, 365 U.S. at 262).

Each of the district court’s holdings (ratification and agency) is clearly wrong. The Court should grant the petition, vacate the district court’s decision denying VWGoA’s motion to dismiss or transfer, and direct the district court to dismiss this action or transfer it to the United States District Court for the Eastern District of Michigan.

Respectfully submitted,

Dated: November 1, 2021

/s/ Mark Hannemann

Mark Hannemann
Thomas Makin
Eric Lucas
Ahmed ElDessouki
SHEARMAN & STERLING LLP
599 Lexington Avenue
New York, NY 10022
212.848.4000

*Attorneys for Petitioner Volkswagen Group
of America, Inc.*

FORM 19. Certificate of Compliance with Type-Volume Limitations

Form 19
July 2020

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS

Case Number: _____

Short Case Caption: In re: Volkswagen Group of America, Inc.

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Date: 11/01/2021

Signature: /s/ Mark Hannemann

Name: Mark Hannemann

FORM 30. Certificate of Service

Form 30
July 2020

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF SERVICE

Case Number _____

Short Case Caption In re Volkswagen Group of America, Inc.

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by U.S. Mail Hand Delivery Email Facsimile
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Person Served	Service Location (Address, Facsimile, Email)
Jonathan Lamberson	White & Case LLP 3000 El Camino Real, 2 Palo Alto Square, #900, Palo Alto, CA 94306 lamberson@whitecase.com
Henry Yee-Der Huang	White & Case LLP 3000 El Camino Real, 2 Palo Alto Square, #900, Palo Alto, CA 94306 henry.huang@whitecase.com
Michael Songer	White & Case LLP 701 13th Street, NW, Washington, DC 20005 michael.songer@whitecase.com
Charles Larsen	White & Case LLP 75 State Street, Boston, MA 02109 charles.larsen@whitecase.com
Daniel S. Sternberg	White & Case LLP 75 State Street, Boston, MA 02109 dan.sternberg@whitecase.com

 Additional pages attached.Date: 11/01/2021Signature: /s/ Mark HannemannName: Mark Hannemann

Person Served	Service Location
Corby R. Vowell	Friedman, Suder & Cooke 604 East 4th Street, Suite 200, Fort Worth, TX 76102 vowell@fsclaw.com
Hon. Alan D. Albright United States District Court for the Western District of Texas	800 Franklin Avenue, Room 301, Waco, Texas 76701 Suzanne Miles: Suzanne_Miles@txwd.uscourts.gov Law Clerks: TXWDml_LawClerks_JudgeAlbright@txwd.uscourts.gov

No. _____

**United States Court of Appeals
for the Federal Circuit**

IN RE VOLKSWAGEN GROUP OF AMERICA, INC.,

Petitioner

On Petition for a Writ of Mandamus to the
United States District Court for the Western District of Texas
No. 6:20-cv-01131
Judge Alan D. Albright

**APPENDIX IN SUPPORT OF
PETITION FOR A WRIT OF MANDAMUS**

Mark A. Hannemann
Thomas R. Makin
Eric S. Lucas
Ahmed ElDessouki
SHEARMAN & STERLING LLP
599 Lexington Avenue
New York, NY 10022
212.848.4000

*Attorneys for Petitioner
Volkswagen Group of America*

November 1, 2021

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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

STRATOSAUDIO, INC.,
Plaintiff

-vs-

VOLKSWAGEN GROUP OF AMERICA,
INC.,
Defendant

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6:20-CV-01131-ADA

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant Volkswagen Group of America, Inc.’s (“Volkswagen”) Rule 12(b)(3) Motion to dismiss or transfer for improper venue pursuant to 28 U.S.C. §§ 1400(b) and 1406(a). Dkt. 16. After careful consideration of the relevant facts, applicable law, and the parties’ briefs and oral arguments, the Court **DENIES** Volkswagen’s Motion.

I. BACKGROUND

Plaintiff StratosAudio, Inc. (“StratosAudio”) filed this action against Volkswagen on December 11, 2020, asserting infringement of seven patents by Volkswagen’s vehicles with certain infotainment systems. Dkt. 1. On February 19, 2021, Volkswagen moved to dismiss or transfer the action for improper venue under Rule 12(b)(3). Dkt. 16.

StratosAudio is a Delaware corporation headquartered in Kirkland, Washington. Dkt. 1 at 1, ¶ 2. Volkswagen is a New Jersey corporation with its principal place of business in Herndon, Virginia. *Id.* at 2, ¶ 7. Volkswagen may be served through its registered agent for service in Austin, Texas, within this District, and has been registered to do business in the State of Texas since at least June 7, 1973. *Id.*

For propriety of venue, Plaintiff alleges that Volkswagen conducts its business of the exclusive distribution of new Volkswagen and Audi automobiles to consumers in this District

through its authorized dealers in Austin and Waco and exercises control over those dealerships. *Id.* at 3–5, ¶¶ 10–14.

II. LEGAL STANDRD

Federal Rule of Civil Procedure 12(b)(3) allows a party to move to dismiss an action for “improper venue.” FED. R. CIV. P. 12(b)(3). 28 U.S.C. § 1440(b) is the “sole and exclusive provision controlling venue in patent infringement actions.” *TC Heartland LLC v. Kraft Foods Group Brands LLC*, 137 S. Ct. 1514, 1519 (2017). “Whether venue is proper under § 1400(b) is an issue unique to patent law and is governed by Federal Circuit law,” rather than regional circuit law. *In re ZTE (USA) Inc.*, 890 F.3d 1008, 1012 (Fed. Cir. 2018). “[U]pon motion by the Defendant challenging venue in a patent case, the Plaintiff bears the burden of establishing proper venue.” *Id.* at 1013–14. Plaintiff may carry this burden by establishing facts that, if taken to be true, establish proper venue. *Castaneda v. Bradzoil, Inc.*, No. 1:20-CV-1039-RP, 2021 WL 1390423, at *1 (W.D. Tex. Apr. 13, 2021). “On a Rule 12(b)(3) motion to dismiss for improper venue, the court must accept as true all allegations in the complaint and resolve all conflicts in favor of the plaintiff.” *Id.* (citing *Braspetro Oil Servs. Co. v. Moddec (USA), Inc.*, 240 F.App’x 612, 615 (5th Cir. 2007) (per curiam)). In determining whether venue is proper, “the Court may look beyond the complaint to evidence submitted by the parties.” *Ambraco, Inc. v. Bossclib, B.V.*, 570 F.3d 233, 237–38 (5th Cir. 2009).

Section 1400(b) provides that venue in patent cases is proper “[1] where the defendant resides, or [2] where the defendant [a] has committed acts of infringement and [b] has a regular and established place of business.” 28 U.S.C. § 1400(b). Under the first prong, the Supreme Court has held that “a domestic corporation ‘resides’ only in its State of incorporation for purposes of the patent venue statute.” *TC Heartland*, 137 S. Ct. at 1517. Under the second prong, the Federal

Circuit interpreted, in *In re Cray Inc.*, 871 F.3d 1355 (Fed. Cir. 2017), “regular and established place of business” to impose three general requirements: “(1) there must be a physical place in the district; (2) it must be a regular and established place of business; and (3) it must be the place of the defendant.” *Id.* at 1360. Regarding the first requirement, a “place” refers to a “‘building or a part of a building set apart for any purpose’ or ‘quarters of any kind’ from which business is conducted.” *Id.* at 1362 (citations omitted). Regarding the second requirement, “regular” means that the business must operate in a “‘steady, uniform, orderly, and methodical’ manner,” and “sporadic activity cannot create venue.” *Id.* (citations omitted). And the third requirement means that the place cannot be solely a place of the defendant’s employee – “the defendant must establish or ratify the place of business.” *Id.* at 1363.

Subsequently, in *In re Google LLC*, 949 F.3d 1338 (Fed. Cir. 2020), the Federal Circuit added a fourth requirement: “a ‘regular and established place of business’ requires the regular, physical presence of an employee or other agent of the defendant conducting the defendant’s business at the alleged ‘place of business.’”¹ *Id.* at 1345.

III. DISCUSSION

The main dispute before the Court is whether Volkswagen has “a regular and established place of business” in this District. The parties do not dispute that Volkswagen does not “reside” in this District and therefore the first prong of Section 1400(b) does not apply. Under the second prong, the parties do not dispute that Plaintiff has plausibly pled that “defendant has committed acts of infringement” and the parties also do not dispute that the dealerships are “physical places”

¹ In *Google*, Federal Circuit considered this requirement as part of the second *Cray* factor. *In re Google LLC*, 949 F.3d 1338, 1344 (Fed. Cir. 2020) (“We agree . . . that under the second *Cray* factor, a ‘place of business’ generally requires an employee or agent of the defendant to be conducting business at that place.”). However, this *Google* requirement is essentially a different requirement than the original second *Cray* requirement, which places more focus on the phrase “regular and established.” Therefore, this Court treats the *Google* requirement as a fourth requirement in addition to the three *Cray* requirements.

in this District and are “regular and established” under the first and second *Cray* requirements. Therefore, the Court discusses below whether the third and fourth requirements are met in this case to establish proper venue in this District.

A. Ratification

Under the third *Cray* requirement, a plaintiff must show that the place of business at issue is “the place of the defendant.” *In re Cray*, 871 F.3d at 1360. To meet this requirement, “the defendant must establish or ratify the place of business.” *Id.* at 1363. There is no bright-line rule for this inquiry. *Id.* at 1362 (“In deciding whether a defendant has a regular and established place of business in a district, no precise rule has been laid down and each case depends on its own facts.”). The Federal Circuit set forth a number of considerations to determine whether the defendant has ratified the place of business, including: (1) “whether the defendant owns or leases the place, or exercises other attributes of possession or control over the place”; (2) “whether the defendant conditioned employment on an employee’s continued residence in the district or the storing of materials at a place in the district so that they can be distributed or sold from that place”; (3) whether the defendant has made “representations that it has a place of business in the district”; and (4) “the nature and activity of the alleged place of business of the defendant in the district in comparison with that of other places of business of the defendant in other venues.” *Id.* at 1363-64. These considerations are not exhaustive but are more illustrative in nature. *Blitzsafe Texas, LLC v. Bayerische Motoren Werke AG*, No. 2:17-CV-00418-JRG, 2018 WL 4849345, at *6 (E.D. Tex. Sept. 6, 2018).

More recently, the Federal Circuit found additional factors relevant to this analysis, including: “the nature of [the defendant’s] relationship with [its] representatives [in the District], or whether it has any other form of control over any of them”; “whether [the defendant] possesses,

owns, leases, or rents the [facility] . . . or owns any of the equipment located there”; “whether any signage on, about, or relating to the [facility] associates the space as belonging to [the defendant]”; and “whether the location of the [facility] was specified by the defendant or whether [a third party] would need permission from the defendant to move [the facility] outside of the . . . District or to stop working for [the defendant].” *In re ZTE (USA) Inc.*, 890 F.3d 1008, 1015–16 (Fed. Cir. 2018).

1. Defendant exercises control over the dealerships’ places in this District.

For this factor, Volkswagen’s main argument is a one-sentence statement in its Reply, stating that it is “forbidden to ‘operate or control’ the dealerships” under Texas law. Dkt. 16 at 3–4; Tex. Occ. Code § 2301.476(c) (“[A] manufacturer or distributor may not directly or indirectly . . . operate or control . . . a franchised dealer or dealership.”). However, this does not mean that Volkswagen does not exercise *de facto* control over the dealerships to some degree, nor does it mean that the dealerships are not places of Volkswagen as a matter of law. *See, e.g., Blitzsafe*, 2018 WL 4849345, at *7.

As Plaintiff points out, Volkswagen controls numerous aspects of its dealerships’ operations through a number of agreements with its dealerships. Dkt. 22 at 8-15. Volkswagen’s alleged control over its dealers include: (1) the dealers’ premises and facilities and their use and maintenance; (2) the dealers’ use of Volkswagen trademarks and trade names in advertising and marketing; (3) the price and terms upon which its dealers purchase its vehicles; (4) the dealers’ inventory of vehicles and parts; (5) the terms and scope of warranties to be included in its vehicle sales, the manner in which its dealers provide notice and advertise such warranties, and the rate or price at which a Volkswagen or Audi dealer will be reimbursed for services; (6) monthly reporting from the dealers of their finances and operations; (7) the IT equipment such as computers that its dealers must use and maintain; (8) the number of personnel that its dealers must have on site and

their certifications and training; (9) performance reviews on the dealers' sales, service, and parts, customer satisfaction, and even the dealer's maintenance of its premises and facilities; and (10) restricting whether and to whom a dealer may sell or transfer its business. *Id.* As the list goes on, it is not hard to find that Volkswagen boasts a broad scope of *de facto* control over its dealerships. Therefore, the Court is not persuaded by Volkswagen's argument that Texas law deters it from exercising control over its dealerships.

2. Defendant's relationship with the dealerships is conditioned on the dealerships' continued presence in this District.

Under Texas law, Volkswagen is not permitted to directly sell vehicles to consumers in this District. Tex. Occ. Code § 2301.476(c) (“[A] manufacturer or distributor may not directly or indirectly . . . act in the capacity of a franchised or nonfranchised dealer.”). Therefore, the only way that Volkswagen can sell its vehicles to consumers in this District is through authorized dealerships that it currently has in the District. As Plaintiff alleges, new Volkswagen vehicles are available for purchase exclusively through these authorized dealers. Dkt. 22 at 3. Thus, it is not surprising that Volkswagen imposed stringent restrictions on the locations and ownership transfer of its authorized dealership in this District: “If Dealer chooses to transfer its principal assets or change owners, VWoA has the right to approve the proposed transferees . . . and . . . their premises. . . . VWoA will notify Dealer in writing of the approval or disapproval of a proposal by Dealer for transfer of principal assets or change of owners.” *Id.* at 15.

3. Defendant represents to the public that it has a place of business in this District.

Under this factor, “[p]otentially relevant inquiries include whether the defendant lists the alleged place of business on a website, or in a telephone or other directory; or places its name on a sign associated with or on the building itself.” *In re Cray*, 871 F.3d at 1363–64. “But the mere

fact that a defendant has advertised that it has a place of business or has even set up an office is not sufficient; the defendant must actually engage in business from that location.” *Id.* at 1364. “Marketing or advertisements also may be relevant, but only to the extent they indicate that the defendant itself holds out a place for its business.” *Id.* at 1363.

Volkswagen represents to the public that it has a place of business in the Western District of Texas. When a user searches for Volkswagen dealerships in the District, Volkswagen’s website displays a list of its authorized dealerships, allows the user to search for these dealerships’ inventory, and gives the user an opportunity to schedule a test drive. Dkt. 22 at 3–4. Volkswagen also allows all its dealerships in this District to display the “Volkswagen” or “Audi” logo and use Volkswagen’s and Audi’s trademarks and tradenames. *Id.* at 3.

In fact, Volkswagen actually engages in business from the locations of its dealerships in this District. First, Volkswagen conducts business in this District by distributing Volkswagen vehicles to its authorized dealers. Second, and more importantly, Volkswagen provides new purchase warranties to consumers at the dealerships in this District. Dkt. 1 at 5, ¶ 13; Dkt. 22 at 12-13. Particularly, Plaintiff alleges, and Volkswagen does not deny, that Volkswagen “establishes the procedures for processing warranty claims and returning and disposing of defective parts” and “determines the rate or price at which a Volkswagen or Audi dealer will be reimbursed for services.” Dkt. 22 at 12–13. Under Texas law, that means Volkswagen engages business in the state. Tex. Occ. Code § 2301.251(c) (“A manufacturer or distributor that directly or indirectly reimburses another person to perform warranty repair services on a vehicle is engaged in business in this state regardless of whether the manufacturer sells or offers for sale new motor vehicles in this state.”).

In its five-page Motion, Volkswagen does not present any persuasive argument on why it does not ratify its dealerships in this District, other than its conclusory statements that two other district courts' rulings are right (because they are in its favor) and a third court's ruling is wrong (because it is not in its favor). Dkt. 16 (discussing *Blitzsafe; Omega Patents, LLC v. BMW of North America et al.*, 1:20-cv-01907-SDG, 2020 WL 8184342 (N.D. Ga. December 21, 2020); *West View Research, LLC v. BMW of North America, LLC et al*, 16-cv-2590 JLS (AGS), 2018 WL 4367378 (S.D. Cal. February 5, 2018)). Similarly, in its seven pages of rambling in the Reply, cobbled together with block citations from the *West View* and *Omega* cases, Volkswagen does not effectively refute that Plaintiff's allegations are insufficient to establish that Volkswagen ratifies its dealerships in this District.

In view of the above, the Court finds that Volkswagen ratifies the places of business of its authorized dealerships in this District and those dealerships are therefore "place[s] of the defendant" under the third *Cray* requirements.

B. Agents Conducting Defendant's Business in this District

In *In re Google*, the Federal Circuit also ruled that "a 'regular and established place of business' requires the regular, physical presence of an employee or other agent of the defendant conducting the defendant's business at the alleged 'place of business.'" *In re Google*, 949 F.3d at 1345.

1. The authorized dealers are Volkswagen's agents.

"An agency relationship is a 'fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent or otherwise consents to act.'" *Id.* at 1345 (citing Restatement (Third) of Agency § 1.01). "The essential elements of

agency are (1) the principal’s right to direct or control the agent’s actions, (2) the manifestation of consent by the principal to the agent that the agent shall act on his behalf, and (3) the consent by the agent to act.” *Id.* (citing *Meyer v. Holley*, 537 U.S. 280, 286 (2003)) (internal quotation marks omitted). Agency is a fact-dependent relationship. *In re MyFord Touch Consumer Litig.*, 46 F. Supp. 3d 936, 956 (N.D. Cal. 2014). “While cases generally find that dealership agreements do not create general principal-agent relationships, it is not—as a matter of law—impossible to find a specific agency relationship as to matters subject to manufacturer control.” *Stevens v. Ford Motor Co.*, 2020 U.S. Dist. LEXIS 256298, *17 (S.D. Tex. Nov. 2, 2020).

Volkswagen argues that the dealerships are not Volkswagen’s agents because “[t]hey don’t act ‘on the alleged principal’s behalf.’” Dkt. 41 at 2. However, as discussed above, Volkswagen exercises a broad scope of control over its authorized dealerships in this District through their agreements. Among others, Volkswagen requires monthly reports from the dealerships, restricts the locations and ownership transfers of the dealerships, and provides warranty services to consumers through the dealers. Indeed, Volkswagen does not deny that it exercises control over its dealerships; instead, it argues that “control is only one aspects of the test” and the remaining two elements are not met. *Id.* at 2. However, the agreements between Volkswagen and its dealerships clearly show that there is manifestation of consent by Volkswagen to the dealerships that the dealerships shall act on Volkswagen’s behalf, and the consent by the dealerships to act. Therefore, the Court finds that Volkswagen’s authorized dealerships in this District are agents of Volkswagen at least for venue purposes.

In fact, it is not uncommon for a district court to find a principal-agency relationship between an auto manufacturer and its dealers. For example, the District of New Jersey found that “the dealer acted as BMWNA’s agent, or at least that the two acted together.” *Morano v. BMW of*

N. Am., LLC, 928 F. Supp. 2d 826, 837-38 (D.N.J. 2013); *see also Kent v. Celozzi-Ettleson Chevrolet, Inc.*, No. 99 C 2868, 1999 WL 1021044, at *4 (N.D. Ill. Nov. 3, 1999) (“While it is certainly true that the mere fact that Celozzi–Ettleson is an authorized General Motors dealer does not make it General Motors’ agent, it is equally true that an automobile dealership may under certain circumstances be an agent of the manufacturer.”). Particularly, the *Morano* court found that “BMWNA and the dealer function as an integrated, two-part seller” because BMWNA makes all of its consumer sales or leases through its authorized dealers and services the vehicles through BMWNA’s Warranty or Maintenance Program, while the dealers handle the mechanics of the sale or lease and the warranty services. *Morano*, 928 F. Supp. 2d at 837-38.

2. *The authorized dealers conduct Volkswagen’s business.*

The authorized dealerships are also conducting Volkswagen’s business in this District. Volkswagen is in the business of manufacturing and distributing vehicles to consumers. As explained above, the only way that Volkswagen can distribute its vehicles to consumers in this District is through its authorized dealerships in this District. Further, Volkswagen provides new purchase warranties and services to the consumers through its dealerships. It establishes the procedures for processing warranty claims and returning and disposing of defective parts and requires its dealers to comply with such procedures. Dkt. 22 at 12. It also determines the rate or price at which a Volkswagen or Audi dealer will be reimbursed for services. *Id.* at 13. These are sufficient to establish that Volkswagen conducts business at the dealerships under Texas law. Tex. Occ. Code § 2301.251(c).

Therefore, the Court finds that the authorized Volkswagen dealerships in this District are agents of Volkswagen conducting Volkswagen’s business in this District.

IV. CONCLUSION

For the reasons above, the Court finds that Defendant has a “regular and established place of business” in the Western District of Texas and venue is proper in this District under Section 1400(b). The Court therefore **DENIES** Defendant’s Motion to Dismiss or Transfer.

SIGNED this 20th day of September, 2021.



ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE

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**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

STRATOSAUDIO, INC.,

Plaintiff,

v.

VOLKSWAGEN GROUP OF AMERICA,
INC.,

Defendant.

Case No. 6:20-CV-1131

**DECLARATION OF CHRISTOPHER HAHN IN SUPPORT OF VOLKSWAGEN
GROUP OF AMERICA, INC.’S MOTION TO DISMISS OR TRANSFER FOR
IMPROPER VENUE**

I, Christopher Hahn, declare as follows:

1. I hold the position of Director of Real Estate and Facility Services at Volkswagen Group of America, Inc. (“VWGoA”).

2. VWGoA is a corporation organized and existing under the laws of the State of New Jersey.

3. I understand that the Western District of Texas includes the following counties: Bastrop, Blanco, Burleson, Burnet, Caldwell, Gillespie, Hays, Kimble, Lampasas, Lee, Llano, Mason, McCulloch, San Saba, Travis, Washington, and Williamson; Bell, Bosque, Coryell, Falls, Freestone, Hamilton, Hill, Leon, Limestone, McLennan, Milam, Robertson, and Somervell; El Paso; Atascosa, Bandera, Bexar, Comal, Dimmit, Frio, Gonzales, Guadalupe, Karnes, Kendall, Kerr, Medina, Real, and Wilson; Edwards, Kinney, Maverick, Terrell, Uvalde, Val Verde, and Zavalla; Brewster, Culberson, Jeff Davis, Hudspeth, Loving, Pecos, Presidio,

Reeves, Ward, and Winkler; and Andrews, Crane, Ector, Martin, Midland, and Upton.

4. VWGoA does not own or lease any real estate in the Western District of Texas.

5. VWGoA does not have any offices, warehouses, or other places of business within the Western District of Texas.

6. VWGoA does not have ownership of an inventory of vehicles or parts at warehouses or other facilities in the Western District of Texas.

7. VWGoA does not regularly employ any personnel stationed in the Western District of Texas, nor does it create, maintain, or store any documents at any location in the Western District of Texas.

8. VWGoA does not service or sell vehicles directly to consumers in the Western District of Texas.

9. Approximately 650 Volkswagen and Audi brand (collectively, “VW-brand”) VWGoA dealerships are located all around the country. VWGoA’s distribution, marketing, and support activities reach throughout the country, but VWGoA does not have any special or unique interactions with the Western District of Texas as compared to any other location in which VW-brand dealerships are located.

10. The VW-brand dealerships located in the Western District of Texas are owned and operated by entities independent of VWGoA (and Volkswagen altogether). VWGoA has no ownership interest in any of the dealerships in the Western District of Texas. In fact, the

state laws of Texas prohibit VWGoA from owning or operating any dealerships in the state of Texas.

11. VWGoA maintains a place of business (a customer relations and after sales support center) in Auburn Hills, Michigan.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February ____, 2021.

Hahn Christopher
VWPKI
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Digitally signed by Hahn Christopher VWPKI
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Date: 2021.02.17 14:28:15 -05'00'

Christopher Hahn

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

STRATOSAUDIO, INC.,

Plaintiff,

v.

VOLKSWAGEN GROUP OF AMERICA,
INC.,

Defendant.

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Case No. 6:20-cv-1131

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

This is an action for patent infringement arising under the Patent Laws of the United States of America, 35 U.S.C. § 1 *et seq.*, in which Plaintiff StratosAudio, Inc. (“Plaintiff” or “StratosAudio”) makes the following actions against Defendant Volkswagen Group of America, Inc. (“Defendant” or “Volkswagen Group”):

INTRODUCTION

1. This complaint arises from Defendant’s unlawful infringement of the following U.S. Patents owned by StratosAudio, Inc.: U.S. Patent No. 8,166,081; U.S. Patent No. 8,688,028; U.S. Patent No. 8,903,307; U.S. Patent No. 9,584,843; U.S. Patent No. 8,200,203; U.S. Patent No. 9,294,806; and U.S. Patent No. 9,355,405 (collectively the “Asserted Patents”).

PARTIES

2. StratosAudio is a privately held company incorporated under the laws of Delaware. StratosAudio was founded in 2001 and is headquartered in Kirkland, Washington.

3. StratosAudio is a pioneer in the field of media enhancement systems, especially as it relates to interactive advertising, programming, and other data manipulation that enables the identification of broadcast media content using data transmitted in an associated datastream, the combination of such streams used in personalized media distribution, with widely applicable adaptation in commercial media and entertainment systems including vehicle head unit consoles.

4. Based on years of research and development, StratosAudio has created an international patent portfolio comprising more than seventy (70) issued patents broadly directed to media enhancement systems.

5. StratosAudio has, over the years, invested millions of dollars innovating and creating audio media enhancement systems of the type described in StratosAudio's patents.

6. StratosAudio is partly owned by an individual located in this judicial district in Temple, Texas. This individual is also a named inventor on a number of the asserted patents.

7. Volkswagen Group is a New Jersey corporation with its principal place of business in Herndon, Virginia. Volkswagen Group may be served through its registered agent for service in the State of Texas, Corporation Service Company D/B/A CSC Lawyers Inco., 211 E. 7th Street Suite 620, Austin, TX 78701. Volkswagen Group is registered to do business in the State of Texas and has been since at least June 7, 1973.

JURISDICTION AND VENUE

8. This action arises under the patent laws of the United States, 35 U.S.C. § 1, et seq., including § 271. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9. This Court has personal jurisdiction over Defendant because, among other things, Defendant has done business in this District, and has committed and continues to commit acts of

patent infringement in this District giving rise to this action, and has established minimum contacts with this forum such that the exercise of jurisdiction over Defendant would not offend traditional notions of fair play and substantial justice. Defendant, directly and indirectly through subsidiaries and intermediaries, has committed and continues to commit acts of infringement in this District by, among other things, making, using, selling, offering to sell, and importing products that infringe the asserted patents.

10. Venue is proper in this District under 28 U.S.C. § 1400(b) because, among other things, Defendant has transacted business in this District and has committed acts of infringement in and has a regular and established place of business in this judicial district. For example, the Volkswagen Group conducts its business of the exclusive distribution of new Volkswagen and Audi automobiles to the consuming public in this judicial district through its authorized dealers in this judicial district, including selling automobiles, directly and/or indirectly, to and through, for example, Volkswagen of Waco, located at 2301 W. Loop 340, Waco TX, 76712; Onion Creek Volkswagen, located at 10812 S IH 35 Frontage Road, Austin TX, 78748; Hewlett Volkswagen, located at 7951 Hewlett Loop Road, Georgetown, TX, 78626; Audi North Austin, located at 12971 Pond Springs Road, Austin TX 78729-7798, and Audi South Austin, located at 4738 S IH 35 Frontage Road, Austin TX 78745. On information and belief, the Volkswagen Group's new Volkswagen and Audi vehicles are available for purchase through its authorized dealers only, such as Volkswagen of Waco, Onion Creek Volkswagen, Hewlett Volkswagen, Audi North Austin, and Audi South Austin.

11. The Volkswagen Group's dealerships in this judicial district are all named with the "Volkswagen" or "Audi" designation (e.g., Volkswagen of Waco and Audi North Austin). The Volkswagen and Audi dealerships in this judicial district all prominently display Volkswagen and

Audi trademarks, respectively, including the Volkswagen and Audi logos, with no reservations or disclaimers. The Volkswagen Group authorizes its Volkswagen and Audi dealers in this judicial district to utilize Volkswagen's and Audi's trademarks, trade name, and other intellectual property associated with the distribution and sale of automobiles and provision of related services.

12. Volkswagen and Audi dealerships in this judicial district are held out to the consuming public as places of Volkswagen and Audi, respectively, where the Volkswagen Group, through its dealers, sells Volkswagen and Audi cars. Volkswagen's website (www.vw.com) and Audi's website (www.audiusa.com/us/web/en.html) direct users to enter their zip code so that the websites can display to the website user Volkswagen and Audi vehicles, respectively, available in inventory in their area, so that Volkswagen and Audi can identify a franchised dealer in their area. For both Volkswagen and Audi, the user can contact a franchised dealer through the website by inputting their contact details, or can select to navigate to a franchised dealer in their area. Once the user selects a franchised dealer website from the Volkswagen or Audi website, the user can view inventory, view trade-in information, apply for financing, and arrange a test drive at the franchised Volkswagen and Audi dealerships in their area, including dealerships in this judicial district. Upon input of zip code information from this judicial district, Volkswagen and Audi name and ratify their respective dealers in this judicial district, such as Volkswagen of Waco and Audi North Austin, as their places of business where: 1) the user of a website may test drive its cars; 2) a website user may review inventory and schedule a test drive at a dealer in this judicial district; 3) it collects customer information and provides that information to its dealers in this judicial district; Volkswagen and Audi enable website users to solicit quotes to purchase a vehicle from dealers in this judicial district; and 4) to apply for financing from dealers in this judicial district.

13. The Volkswagen Group also conducts business through its authorized Volkswagen and Audi dealers in this judicial district by providing new purchase warranties and service pursuant to those warranties to the consuming public. The Volkswagen Group further delegates maintenance responsive to vehicle safety recalls to its authorized dealers in this judicial district by informing Volkswagen and Audi owners of the defect and directing Volkswagen and Audi owners to their respective authorized dealers for repair of the defect.

14. Volkswagen and Audi also control the sale of automobiles in this judicial district by, among other items, establishing criteria and certifying vehicles as part of a “Volkswagen Certified Pre-Owned Vehicles” program or as part of an “Audi Certified Pre-Owned Vehicles” program. The Volkswagen Group directly controls aspects of employees of its authorized dealers by training service technicians. The Volkswagen Group also provides direct and indirect financial input into the operations of its authorized dealers in this district by, on information and belief, offering vehicle financing through Volkswagen Credit and Audi Financial Services, and by offering “floor plan” loans directly to its authorized dealers in this judicial district. On information and belief, The Volkswagen Group further conducts business through its control over the sale and/or ownership transfer of its authorized dealers in this judicial district, which includes the right to refuse any transfer of ownership of its authorized dealers, and through its control of specific geographic areas in which its authorized dealers in this judicial district may operate.

COUNT I – INFRINGEMENT OF THE ‘081 PATENT

15. Plaintiff realleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

16. Plaintiff is the owner and assignee of all rights, title and interest in and to U.S. Patent No. 8,166,081 entitled “System and Method for Advertisement Transmission and Display”

(the “‘081 patent”), issued on April 24, 2012. A true and correct copy of the ‘081 patent is attached hereto as **Exhibit 1**.

17. Defendant makes, uses, offers for sale, sells, and/or imports into the United States certain products and services that directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the ‘081 patent, including but not limited to claims 9-11 and 23, and continue to do so since the issuance of the ‘081 patent. By way of illustrative example, these infringing products and services include, without limitation, vehicle communication and entertainment systems with head unit consoles that incorporate or otherwise enable Apple Carplay, and at least one of the following: HD radio, SiriusXM radio and/or FM radio with RBDS (the “Accused Consoles”).

18. Defendant has had knowledge of the ‘081 patent from a date no later than the date of the filing of this Complaint. Defendant has known how the Accused Consoles operate and/or are used and has known, or has been willfully blind to the fact, that making, using, offering to sell, and selling the Accused Consoles within the United States, or importing the Accused Consoles into the United States, would constitute infringement.

19. Defendant has induced, and continues to induce, infringement of one or more claims of the ‘081 patent by actively encouraging others (including distributors, dealers, and customers) to use, offer to sell, sell, and import the Accused Consoles. On information and belief these acts include providing information and instructions supporting sales by others, providing the Accused Consoles to others, and indemnifying patent infringement within the United States.

20. Defendant has also infringed, and continues to infringe, one or more claims of the ‘081 patent by offering to commercially distribute, commercially distributing, making, and/or importing the Accused Consoles, which are used in practicing the process, or using the systems,

of the patent, and constitute a material part of the invention. Defendant knows the articles of the Accused Consoles to be especially made or especially adapted for use in infringement of the patent, not a staple article, and not a commodity of commerce suitable for substantial noninfringing use. Accordingly, Defendant has been, and currently is, contributorily infringing the '081 patent in violation of 35 U.S.C. § 271(c).

21. The Accused Consoles satisfy all the claim limitations of one or more claims of the '081 patent. For example, **Appendix A** sets forth in more detail the Accused Consoles and their operation in Volkswagen and Audi vehicles for a representative claim of the '081 patent.

22. By making, using, offering for sale, selling, and/or importing into the United States the Accused Consoles, Defendant has injured Plaintiff and is liable for infringement of the '081 patent pursuant to 35 U.S.C. § 271.

23. As a result of Defendant's infringement of the '081 patent, Plaintiff is entitled to monetary damages in an amount adequate to compensate for Defendant's infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendant, together with interest and costs fixed by the Court.

24. Defendant's infringing activities have injured and will continue to injure Plaintiff, unless and until this Court enters an injunction prohibiting further infringement of the '081 patent, and specifically enjoining further manufacture, sale, use, importation, and/or offers for sale that come within the scope of the patent claims.

COUNT II – INFRINGEMENT OF THE '028 PATENT

25. Plaintiff realleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

26. Plaintiff is the owner and assignee of all rights, title and interest in and to U.S. Patent No. 8,688,028 entitled “Broadcast Response System” (the “’028 patent”), issued on April 1, 2014. A true and correct copy of the ‘028 patent is attached hereto as **Exhibit 2**.

27. Defendant makes, uses, offers for sale, sells, and/or imports into the United States certain products and services that directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the ‘028 patent, including but not limited to claims 11, 14-16, and 18, and continue to do so since the issuance of the ‘028 patent. By way of illustrative example, these infringing products and services include, without limitation, vehicle communication and entertainment systems with head unit consoles that incorporate or otherwise enable Apple Carplay with Apple Music streaming services playing live radio such as Beats 1 and/or Apple Music 1 Radio, HD radio, FM radio with RBDS, or SiriusXM radio with iTunes tagging functionality (the “Accused Consoles”).

28. Defendant has had knowledge of the ‘028 patent from a date no later than the date of the filing of this Complaint. Defendant has known how the Accused Consoles operate and/or are used and has known, or has been willfully blind to the fact, that making, using, offering to sell, and selling the Accused Consoles within the United States, or importing the Accused Consoles into the United States, would constitute infringement.

29. Defendant has induced, and continues to induce, infringement of one or more claims of the ‘028 patent by actively encouraging others (including distributors, dealers, and customers) to use, offer to sell, sell, and import the Accused Consoles. On information and belief these acts include providing information and instructions supporting sales by others, providing the Accused Consoles to others, and indemnifying patent infringement within the United States.

30. Defendant has also infringed, and continues to infringe, one or more claims of the '028 patent by offering to commercially distribute, commercially distributing, making, and/or importing the Accused Consoles, which are used in practicing the process, or using the systems, of the patent, and constitute a material part of the invention. Defendant knows the articles of the Accused Consoles to be especially made or especially adapted for use in infringement of the patent, not a staple article, and not a commodity of commerce suitable for substantial noninfringing use. Accordingly, Defendant has been, and currently is, contributorily infringing the '028 patent in violation of 35 U.S.C. § 271(c).

31. The Accused Consoles satisfy all the claim limitations of one or more claims of the '028 patent. For example, **Appendix B** sets forth in more detail the Accused Consoles and their operation in Volkswagen and Audi vehicles for a representative claim of the '028 patent.

32. By making, using, offering for sale, selling, and/or importing into the United States the Accused Consoles, Defendant has injured Plaintiff and is liable for infringement of the '028 patent pursuant to 35 U.S.C. § 271.

33. As a result of Defendant's infringement of the '028 patent, Plaintiff is entitled to monetary damages in an amount adequate to compensate for Defendant's infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendant, together with interest and costs fixed by the Court.

34. Defendant's infringing activities have injured and will continue to injure Plaintiff, unless and until this Court enters an injunction prohibiting further infringement of the '028 patent, and specifically enjoining further manufacture, sale, use, importation, and/or offers for sale that come within the scope of the patent claims.

COUNT III – INFRINGEMENT OF THE '307 PATENT

35. Plaintiff realleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

36. Plaintiff is the owner and assignee of all rights, title and interest in and to U.S. Patent No. 8,903,307 entitled “Broadcast Response System” (the “‘307 patent”), issued on December 2, 2014. A true and correct copy of the ‘307 patent is attached hereto as **Exhibit 3**.

37. Defendant makes, uses, offers for sale, sells, and/or imports into the United States certain products and services that directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the ‘307 patent, including but not limited to claims 11 and 15-18, and continue to do so since the issuance of the ‘307 patent. By way of illustrative example, these infringing products and services include, without limitation, vehicle communication and entertainment systems with head unit consoles that incorporate or otherwise enable Apple Carplay with Apple Music streaming services playing live radio such as Beats 1 and/or Apple Music 1 Radio, HD radio, FM radio with RBDS, or SiriusXM radio with iTunes tagging functionality (the “Accused Consoles”).

38. Defendant has had knowledge of the ‘307 patent from a date no later than the date of the filing of this Complaint. Defendant has known how the Accused Consoles operate and/or are used and has known, or has been willfully blind to the fact, that making, using, offering to sell, and selling the Accused Consoles within the United States, or importing the Accused Consoles into the United States, would constitute infringement.

39. Defendant has induced, and continues to induce, infringement of one or more claims of the ‘307 patent by actively encouraging others (including distributors, dealers, and customers) to use, offer to sell, sell, and import the Accused Consoles. On information and belief

these acts include providing information and instructions supporting sales by others, providing the Accused Consoles to others, and indemnifying patent infringement within the United States.

40. Defendant has also infringed, and continues to infringe, one or more claims of the '307 patent by offering to commercially distribute, commercially distributing, making, and/or importing the Accused Consoles, which are used in practicing the process, or using the systems, of the patent, and constitute a material part of the invention. Defendant knows the articles of the Accused Consoles to be especially made or especially adapted for use in infringement of the patent, not a staple article, and not a commodity of commerce suitable for substantial noninfringing use. Accordingly, Defendant has been, and currently is, contributorily infringing the '307 patent in violation of 35 U.S.C. § 271(c).

41. The Accused Consoles satisfy all the claim limitations of one or more claims of the '307 patent. For example, **Appendix C** sets forth in more detail the Accused Consoles and their operation in Volkswagen and Audi vehicles for a representative claim of the '307 patent.

42. By making, using, offering for sale, selling, and/or importing into the United States the Accused Consoles, Defendant has injured Plaintiff and is liable for infringement of the '307 patent pursuant to 35 U.S.C. § 271.

43. As a result of Defendant's infringement of the '307 patent, Plaintiff is entitled to monetary damages in an amount adequate to compensate for Defendant's infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendant, together with interest and costs fixed by the Court.

44. Defendant's infringing activities have injured and will continue to injure Plaintiff, unless and until this Court enters an injunction prohibiting further infringement of the '307 patent,

and specifically enjoining further manufacture, sale, use, importation, and/or offers for sale that come within the scope of the patent claims.

COUNT IV – INFRINGEMENT OF THE ‘843 PATENT

45. Plaintiff realleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

46. Plaintiff is the owner and assignee of all rights, title and interest in and to U.S. Patent No. 9,584,843 entitled “Systems, Methods, and Devices for Scanning Broadcasts” (the “‘843 patent”), issued on February 28, 2017. A true and correct copy of the ‘843 patent is attached hereto as **Exhibit 4**.

47. Defendant makes, uses, offers for sale, sells, and/or imports into the United States certain products and services that directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the ‘843 patent, including but not limited to claims 10, 11, 133, and 15, and continue to do so since the issuance of the ‘843 patent. By way of illustrative example, these infringing products and services include, without limitation, vehicle communication and entertainment systems with head unit consoles that incorporate or otherwise enable Apple Carplay with Apple Music streaming services playing live radio such as Beats 1 and/or Apple Music 1 Radio, HD radio, FM radio with RBDS, or SiriusXM radio with iTunes tagging functionality (the “Accused Consoles”).

48. Defendant has had knowledge of the ‘843 patent from a date no later than the date of the filing of this Complaint. Defendant has known how the Accused Consoles operate and/or are used and has known, or has been willfully blind to the fact, that making, using, offering to sell, and selling the Accused Consoles within the United States, or importing the Accused Consoles into the United States, would constitute infringement.

49. Defendant has induced, and continues to induce, infringement of one or more claims of the '843 patent by actively encouraging others (including distributors, dealers, and customers) to use, offer to sell, sell, and import the Accused Consoles. On information and belief these acts include providing information and instructions supporting sales by others, providing the Accused Consoles to others, and indemnifying patent infringement within the United States.

50. Defendant has also infringed, and continues to infringe, one or more claims of the '843 patent by offering to commercially distribute, commercially distributing, making, and/or importing the Accused Consoles, which are used in practicing the process, or using the systems, of the patent, and constitute a material part of the invention. Defendant knows the articles of the Accused Consoles to be especially made or especially adapted for use in infringement of the patent, not a staple article, and not a commodity of commerce suitable for substantial noninfringing use. Accordingly, Defendant has been, and currently is, contributorily infringing the '843 patent in violation of 35 U.S.C. § 271(c).

51. The Accused Consoles satisfy all the claim limitations of one or more claims of the '028 patent. For example, **Appendix D** sets forth in more detail the Accused Consoles and their operation in Volkswagen and Audi vehicles for a representative claim of the '843 patent.

52. By making, using, offering for sale, selling, and/or importing into the United States the Accused Consoles, Defendant has injured Plaintiff and is liable for infringement of the '843 patent pursuant to 35 U.S.C. § 271.

53. As a result of Defendant's infringement of the '843 patent, Plaintiff is entitled to monetary damages in an amount adequate to compensate for Defendant's infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendant, together with interest and costs fixed by the Court.

54. Defendant's infringing activities have injured and will continue to injure Plaintiff, unless and until this Court enters an injunction prohibiting further infringement of the '843 patent, and specifically enjoining further manufacture, sale, use, importation, and/or offers for sale that come within the scope of the patent claims.

COUNT V – INFRINGEMENT OF THE '203 PATENT

55. Plaintiff realleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

56. Plaintiff is the owner and assignee of all rights, title and interest in and to U.S. Patent No. 8,200,203 entitled "Broadcast Response Method and System" (the "'203 patent"), issued on June 12, 2012. A true and correct copy of the '203 patent is attached hereto as **Exhibit 5**.

57. Defendant makes, uses, offers for sale, sells, and/or imports into the United States certain products and services that directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the '203 patent, including but not limited to claims 43, 47, 48, 51, 52, 55, 56, and 62, and continue to do so since the issuance of the '203 patent. By way of illustrative example, these infringing products and services include, without limitation, vehicle communication and entertainment systems with head unit consoles that incorporate or otherwise enable Apple Carplay with Apple Music streaming services playing live radio such as Beats 1 and/or Apple Music 1 Radio, HD radio, FM radio with RBDS or SiriusXM radio with iTunes tagging functionality (the "Accused Consoles").

58. Defendant has had knowledge of the '203 patent from a date no later than the date of the filing of this Complaint. Defendant has known how the Accused Consoles operate and/or are used and has known, or has been willfully blind to the fact, that making, using, offering to sell,

and selling the Accused Consoles within the United States, or importing the Accused Consoles into the United States, would constitute infringement.

59. Defendant has induced, and continues to induce, infringement of one or more claims of the '203 patent by actively encouraging others (including distributors, dealers, and customers) to use, offer to sell, sell, and import the Accused Consoles. On information and belief these acts include providing information and instructions supporting sales by others, providing the Accused Consoles to others, and indemnifying patent infringement within the United States.

60. Defendant has also infringed, and continues to infringe, one or more claims of the '203 patent by offering to commercially distribute, commercially distributing, making, and/or importing the Accused Consoles, which are used in practicing the process, or using the systems, of the patent, and constitute a material part of the invention. Defendant knows the articles of the Accused Consoles to be especially made or especially adapted for use in infringement of the patent, not a staple article, and not a commodity of commerce suitable for substantial noninfringing use. Accordingly, Defendant has been, and currently is, contributorily infringing the '203 patent in violation of 35 U.S.C. § 271(c).

61. The Accused Consoles satisfy all the claim limitations of one or more claims of the '203 patent. For example, **Appendix E** sets forth in more detail the Accused Consoles and their operation in Volkswagen and Audi vehicles for a representative claim of the '203 patent.

62. By making, using, offering for sale, selling, and/or importing into the United States the Accused Consoles, Defendant has injured Plaintiff and is liable for infringement of the '203 patent pursuant to 35 U.S.C. § 271.

63. As a result of Defendant's infringement of the '203 patent, Plaintiff is entitled to monetary damages in an amount adequate to compensate for Defendant's infringement, but in no

event less than a reasonable royalty for the use made of the invention by Defendant, together with interest and costs fixed by the Court.

64. Defendant's infringing activities have injured and will continue to injure Plaintiff, unless and until this Court enters an injunction prohibiting further infringement of the '203 patent, and specifically enjoining further manufacture, sale, use, importation, and/or offers for sale that come within the scope of the patent claims.

COUNT VI – INFRINGEMENT OF THE '806 PATENT

65. Plaintiff realleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

66. Plaintiff is the owner and assignee of all rights, title and interest in and to U.S. Patent No. 9,294,806 entitled "Systems, Methods, and Devices for Scanning Broadcasts" (the "'806 patent"), issued on March 22, 2016. A true and correct copy of the '806 patent is attached hereto as **Exhibit 6**.

67. Defendant makes, uses, offers for sale, sells, and/or imports into the United States certain products and services that directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the '806 patent, including but not limited to claims 5-10 and 13, and continue to do so since the issuance of the '806 patent. By way of illustrative example, these infringing products and services include, without limitation, vehicle communication and entertainment systems with head unit consoles that incorporate or otherwise enable Apple Carplay with Apple Music streaming services playing live radio such as Beats 1 and/or Apple Music 1 Radio, HD radio, FM radio with RBDS, or SiriusXM radio with iTunes tagging functionality (the "Accused Consoles").

68. Defendant has had knowledge of the '806 patent from a date no later than the date of the filing of this Complaint. Defendant has known how the Accused Consoles operate and/or are used and has known, or has been willfully blind to the fact, that making, using, offering to sell, and selling the Accused Consoles within the United States, or importing the Accused Consoles into the United States, would constitute infringement.

69. Defendant has induced, and continues to induce, infringement of one or more claims of the '806 patent by actively encouraging others (including distributors, dealers, and customers) to use, offer to sell, sell, and import the Accused Consoles. On information and belief these acts include providing information and instructions supporting sales by others, providing the Accused Consoles to others, and indemnifying patent infringement within the United States.

70. Defendant has also infringed, and continues to infringe, one or more claims of the '806 patent by offering to commercially distribute, commercially distributing, making, and/or importing the Accused Consoles, which are used in practicing the process, or using the systems, of the patent, and constitute a material part of the invention. Defendant knows the articles of the Accused Consoles to be especially made or especially adapted for use in infringement of the patent, not a staple article, and not a commodity of commerce suitable for substantial noninfringing use. Accordingly, Defendant has been, and currently is, contributorily infringing the '806 patent in violation of 35 U.S.C. § 271(c).

71. The Accused Consoles satisfy all the claim limitations of one or more claims of the '203 patent. For example, **Appendix F** sets forth in more detail the Accused Consoles and their operation in Volkswagen and Audi vehicles for a representative claim of the '806 patent.

72. By making, using, offering for sale, selling, and/or importing into the United States the Accused Consoles, Defendant has injured Plaintiff and is liable for infringement of the '806 patent pursuant to 35 U.S.C. § 271.

73. As a result of Defendant's infringement of the '806 patent, Plaintiff is entitled to monetary damages in an amount adequate to compensate for Defendant's infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendant, together with interest and costs fixed by the Court.

74. Defendant's infringing activities have injured and will continue to injure Plaintiff, unless and until this Court enters an injunction prohibiting further infringement of the '806 patent, and specifically enjoining further manufacture, sale, use, importation, and/or offers for sale that come within the scope of the patent claims.

COUNT VII – INFRINGEMENT OF THE '405 PATENT

75. Plaintiff realleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

76. Plaintiff is the owner and assignee of all rights, title and interest in and to U.S. Patent No. 9,355,405 entitled "System and Method for Advertisement Transmission and Display" (the "'405 patent'"), issued on May 31, 2016. A true and correct copy of the '405 patent is attached hereto as **Exhibit 7**.

77. Defendant makes, uses, offers for sale, sells, and/or imports into the United States certain products and services that directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the '405 patent, including but not limited to claims 12-16, and continue to do so since the issuance of the '405 patent. By way of illustrative example, these infringing products and services include, without limitation, vehicle communication and

entertainment systems with head unit consoles that incorporate or otherwise enable Apple Carplay, and at least one of the following: HD radio, SiriusXM radio and/or FM radio with RBDS (the “Accused Consoles”).

78. Defendant has had knowledge of the ‘405 patent from a date no later than the date of the filing of this Complaint. Defendant has known how the Accused Consoles operate and/or are used and has known, or has been willfully blind to the fact, that making, using, offering to sell, and selling the Accused Consoles within the United States, or importing the Accused Consoles into the United States, would constitute infringement.

79. Defendant has induced, and continues to induce, infringement of one or more claims of the ‘405 patent by actively encouraging others (including distributors, dealers, and customers) to use, offer to sell, sell, and import the Accused Consoles. On information and belief these acts include providing information and instructions supporting sales by others, providing the Accused Consoles to others, and indemnifying patent infringement within the United States.

80. Defendant has also infringed, and continues to infringe, one or more claims of the ‘405 patent by offering to commercially distribute, commercially distributing, making, and/or importing the Accused Consoles, which are used in practicing the process, or using the systems, of the patent, and constitute a material part of the invention. Defendant knows the articles of the Accused Consoles to be especially made or especially adapted for use in infringement of the patent, not a staple article, and not a commodity of commerce suitable for substantial noninfringing use. Accordingly, Defendant has been, and currently is, contributorily infringing the ‘405 patent in violation of 35 U.S.C. § 271(c).

81. The Accused Consoles satisfy all the claim limitations of one or more claims of the '405 patent. For example, **Appendix G** sets forth in more detail the Accused Consoles and their operation in Volkswagen and Audi vehicles for a representative claim of the '405 patent.

82. By making, using, offering for sale, selling, and/or importing into the United States the Accused Consoles, Defendant has injured Plaintiff and is liable for infringement of the '405 patent pursuant to 35 U.S.C. § 271.

83. As a result of Defendant's infringement of the '405 patent, Plaintiff is entitled to monetary damages in an amount adequate to compensate for Defendant's infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendant, together with interest and costs fixed by the Court.

84. Defendant's infringing activities have injured and will continue to injure Plaintiff, unless and until this Court enters an injunction prohibiting further infringement of the '405 patent, and specifically enjoining further manufacture, sale, use, importation, and/or offers for sale that come within the scope of the patent claims.

PRAYER FOR RELIEF

WHEREFORE, StratosAudio prays for the following relief:

- a. a judgment declaring that Defendant infringes any and/or all of the Asserted Patents;
- b. that this Court permanently enjoin Defendant and its officers, directors, agents, servants, affiliates, divisions, branches, subsidiaries, parents, licensees, successors, and assigns, and all persons acting in concert or privity with any of them, from further infringement of any and/or all of the Asserted Patents;

c. an award of damages, enhanced damages, costs, expenses, pre-judgment interest, and post-judgment interest as to infringement of and and/or all of the Asserted Patents;

d. an order accounting for damages incurred by Plaintiff and to pay supplemental damages, including without limitation pre-judgment and post-judgment interest;

e. a judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding Plaintiff its reasonable attorney's fees against Defendant; and

f. such other relief to which it may be entitled in law or equity and which this Court deems to be just or proper.

DEMAND FOR JURY TRIAL

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Dated: December 11, 2020

Respectfully submitted,

/s/ Corby R. Vowell

FRIEDMAN, SUDER & COOKE

604 East 4th Street, Suite 200

Fort Worth, TX 76102

817-334-0400

Fax: 817-334-0401

vowell@fsclaw.com

WHITE & CASE LLP

Michael Songer (Pro Hac Vice to be filed)

701 Thirteenth Street, NW

Washington DC, 20005

202.626.3600

michael.songer@whitecase.com

Charles Larsen (Pro Hac Vice to be filed)

75 State Street

Boston, MA 02109

617.979.9300

charles.larsen@whitecase.com

Ryuk Park (Pro Hac Vice to be filed)
2 Palo Alto Square, 3000 El Camino Real, #900
Palo Alto, CA 94306
650.213.0300
ryuk.park@whitecase.com

**ATTORNEYS FOR PLAINTIFF
STRATOSAUDIO, INC.**

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

STRATOSAUDIO INC.,)	
)	Case No. 6:20-CV-01131-ADA
Plaintiff,)	
)	
v.)	JURY TRIAL DEMANDED
)	
VOLKSWAGEN GROUP OF)	
AMERICA, INC.,)	
)	
Defendant.)	

DECLARATION OF RYUK PARK

1. My name is Ryuk Park. I am an attorney at White & Case LLP, counsel of record for Plaintiff StratosAudio, Inc. in the above-captioned matter.

2. I submit this declaration in support of StratosAudio, Inc.’s Opposition to Defendant Volkswagen Group of America, Inc.’s Motion to Dismiss for Improper Venue, concurrently filed herewith.

3. I have personal knowledge of the statements set forth in this declaration and, if called as a witness, would testify competently thereto.

4. Attached as **Exhibit A** is a true and correct copy of an excerpt from an exhibit filed in *Volkswagen of America, Inc. v. Maverick Auto Group 2, LLC*, No. 2:13-cv-00802-JAM-EFB, ECF No. 1-2 (E.D. Cal. Apr. 24, 2013). The first page of **Exhibit A** bears the title “Volkswagen Dealer Agreement.”

5. Attached as **Exhibit B** is a true and correct copy of another excerpt from the same exhibit filed in *Volkswagen of America, Inc. v. Maverick Auto Group 2, LLC*, No. 2:13-cv-

00802-JAM-EFB, ECF No. 1-2 (E.D. Cal. Apr. 24, 2013). The first page of **Exhibit B** bears the title “Volkswagen Dealer Agreement Standard Provisions.”

6. Attached as **Exhibit C** is a true and correct copy of an excerpt from two exhibits filed in *Volkswagen of America, Inc. v. GPB Capital Holdings, LLC* No. 1:20-cv-01043, ECF Nos. 8-6 & 8-7 (E.D. Cal. Apr. 24, 2013). The first page of **Exhibit C** bears the title “2007 Volkswagen Operating Standards.”

7. Attached as **Exhibit D** is a true and correct copy of an excerpt from an exhibit filed in *In re Riverside Motor Car, LLC*, No. 09-cv-31422-MS, ECF No. 16 (Bankr. D.N.J. Aug. 20, 2009). The first page of **Exhibit D** bears the title “Audi Dealer Agreement.”

8. Attached as **Exhibit E** is a true and correct copy of another excerpt from the same exhibit filed in *In re Riverside Motor Car, LLC*, No. 09-cv-31422-MS, ECF No. 16 (Bankr. D.N.J. Aug. 20, 2009). The first page of **Exhibit E** bears the title “Audi Dealer Agreement Standard Provisions.”

9. Attached as **Exhibit F** is a true and correct copy of another excerpt from the same exhibit filed in *In re Riverside Motor Car, LLC*, No. 09-cv-31422-MS, ECF No. 16 (Bankr. D.N.J. Aug. 20, 2009). The first page of **Exhibit F** bears the title “Audi of America Dealer Operating Standards.”

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10. The table, below, summarizes the titles of each Exhibit:

Exhibit	Title
Exhibit A	Volkswagen Dealer Agreement
Exhibit B	Volkswagen Dealer Agreement Standard Provisions
Exhibit C	2007 Volkswagen Operating Standards
Exhibit D	Audi Dealer Agreement
Exhibit E	Audi Dealer Agreement Standard Provisions
Exhibit F	Audi of America Dealer Operating Standards

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Dated: March 5, 2021

/s/ Ryuk Park
Ryuk Park

EXHIBIT A

Case 6:20-cv-01131-ADA Document 22-2 Filed 03/05/21 Page 2 of 11
Case 2:13-cv-00802-JAM-EFB Document 1-2 Filed 04/24/13 Page 2 of 46



VOLKSWAGEN DEALER AGREEMENT

1. **APPOINTMENT.** Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA"), having a place of business at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171 appoints **Maverick Auto Group 2 LLC**, doing business under the fictitious name, **Volkswagen of Fairfield**, having its place of business at **2855 Auto Mall Pkwy, Fairfield, CA 94533**, as an authorized dealer in Volkswagen brand motor vehicles and genuine parts and accessories therefore. Accordingly, the parties agree as follows:

2. **STANDARD PROVISIONS.** The Dealer Agreement Standard Provisions (the "Standard Provisions"), the Dealer Operating Plan (the "Operating Plan") and the Volkswagen Dealer Operating Standards (the "Operating Standards") are part of this Agreement. Any term not defined in this Agreement has the meaning given such term in the Standard Provisions.

3. **OWNERSHIP AND MANAGEMENT.** To induce VWoA to enter into this Agreement, Dealer represents that the persons identified in the Statement of Ownership and Management, which is attached as Exhibit A, are Dealer's Owners and Executives. VWoA is entering into this Agreement in reliance upon these representations, and upon the continued provision by such persons of their personal services in fulfillment of Dealer's obligations under this Agreement. Accordingly, Dealer agrees there will be no change in Dealer's Owners without VWoA's prior written consent, and no change in Dealer's Executives without prior notice to VWoA.

4. **MINIMUM FINANCIAL REQUIREMENTS.** Dealer agrees to comply and maintain compliance with the minimum financial requirements established for Dealer annually in accordance with the Operating Plan and the Operating Standards. Throughout the term of this Agreement those minimum financial requirements are subject to revision by VWoA, after review with Dealer, in light of operating conditions and the development of Dealer's business and business potential.

5. **DEALER'S PREMISES.** VWoA has approved the location of Dealer's Premises as specified in the Dealer Premises Addendum, attached as Exhibit B. Dealer agrees that, without VWoA's prior written consent, it will not (a) make any major structural change in any of Dealer's Premises, (b) change the location of any of Dealer's Premises or (c) establish any additional premises for Dealer's Operations.

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VOLKSWAGEN

6. **EXCLUSION OF WARRANTIES.** EXCEPT FOR DISTRIBUTOR'S WARRANTIES, AND EXCEPT AS PROVIDED IN ARTICLE 9(1) OF THE STANDARD PROVISIONS, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR OBLIGATIONS OF THE MANUFACTURER OR DISTRIBUTOR AS TO THE QUALITY OR CONDITION OF AUTHORIZED PRODUCTS, OR AS TO THEIR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND, TO THE EXTENT PERMITTED BY LAW, DEALER WILL EXCLUDE ANY AND ALL SUCH WARRANTIES AND OBLIGATIONS IN ITS SALES OF AUTHORIZED PRODUCTS.

7. **TERM.** The term of this Agreement begins on the date of its delivery to Dealer or on January 1, 1997, whichever is later. This Agreement shall continue in effect until terminated by either party or superseded by a new Dealer Agreement with VVoA, whichever is earlier.

8. **GOVERNING LAW.** This Agreement will be construed in accordance with the laws of the State of California. Should the performance of any obligation under this Agreement violate any valid law of such jurisdiction, then this Agreement shall be deemed modified to the minimum extent necessary to comply with such law.

9. **ADDITIONAL TERMS AND CONDITIONS.** The Addenda attached hereto as Exhibits A through C are part of this Agreement, and are incorporated into this Agreement by this reference. Each may be canceled or superseded at any time by mutual agreement of Dealer and VVoA, through the later execution by both parties of a replacement, which then shall be deemed part of this Agreement.

DATED: Jan. 12th, 20 11.

VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF
VOLKSWAGEN GROUP OF AMERICA, INC.

BY: [Signature]
Werner Mersch
Director – Western Region

BY: [Signature]
Robert H. Kim
General Manager – Network Operations

DEALER
BY: [Signature]
Rahim Hassanally
Manager



VOLKSWAGEN

EXHIBIT A
TO DEALER AGREEMENT DATED
1/12, 2011.

STATEMENT OF OWNERSHIP AND MANAGEMENT

- 1. Dealer entity name:
Maverick Auto Group 2 LLC d/b/a Volkswagen of Fairfield
- 2. Principal place of business:
2855 Auto Mall Pkwy, Fairfield, CA 94533

- 3. Dealer is a
 - Proprietorship
 - Partnership
 - Limited Liability Company
 - Corporation, incorporated on N/A under the laws of the State of California.
 - Other:

- 4. The following persons are the beneficial and record owners of Dealer:

Name and Address of Each Record and Beneficial Owner of Dealer	If a Corporation, Number and Class of Shares		Percentage of Ownership of Record in Dealer
	Number	Class	
Rahim Hassanally 150 Alamo Springs Drive Alamo, California 94507	100	Preferred	100.0 %

- 5. The following persons are Dealer's Officers:

Name and Address	Title
Rahim Hassanally 150 Alamo Springs Drive Alamo, California 94507	Manager

- 6. The following person is the Authorized Representative of Dealer. As such, this person is an agent of Dealer, and VWoA is entitled to rely on this person's authority to make all decisions on behalf of Dealer with respect to Dealer's Operations.

Name	Title
Rahim Hassanally 150 Alamo Springs Drive Alamo, California 94507	Manager

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VOLKSWAGEN

Dealer hereby certifies that the foregoing information is true and complete as of the date below. VWoA has entered into this Agreement in reliance upon the qualifications, and the continued provision of personal services in the ownership and management of Dealer by, the persons identified above.

This Exhibit cancels any prior Statement of Ownership and Management.

DATED: Jan. 12th, 2011.

VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF
VOLKSWAGEN GROUP OF AMERICA, INC.

BY: [Signature]
Werner Mersch
Director – Western Region

BY: [Signature]
Robert H. Kim
General Manager – Network Operations

DEALER
BY: [Signature]
Rahim Hassanally
Manager



VOLKSWAGEN

EXHIBIT B
TO DEALER AGREEMENT DATED
1/12, 2011.

DEALER PREMISES ADDENDUM

1. Dealer entity name:
Maverick Auto Group 2 LLC d/b/a Volkswagen of Fairfield.
2. VWoA has approved the location of the following premises, and no others, for Dealer's Operations:
 - a. Sales Facilities:
2855 Auto Mall Pkwy, Fairfield, CA 94533
 - b. Authorized Automobile Storage Facilities:
2855 Auto Mall Pkwy, Fairfield, CA 94533
 - c. Service Facilities:
2855 Auto Mall Pkwy, Fairfield, CA 94533
 - d. Genuine Parts Storage Facilities:
2855 Auto Mall Pkwy, Fairfield, CA 94533
 - e. Used Car Lot:
2855 Auto Mall Pkwy, Fairfield, CA 94533

Dealer hereby certifies that the foregoing information is true and complete as of the date below.

This Exhibit cancels any prior Dealer Premises Addendum.

DATED: Jan 12th, 20 11.

VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF
VOLKSWAGEN GROUP OF AMERICA, INC.

BY: [Signature]
Werner Mersch
Director - Western Region

BY: [Signature]
Robert H. Kim
General Manager - Network Operations

DEALER
BY: [Signature]
Rahim Hassanally
Manager

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EXHIBIT C
ADDENDUM TO
VOLKSWAGEN DEALER AGREEMENT

This Addendum to the Volkswagen Dealer Agreement (“**Addendum**”) is entered into by Maverick Auto Group 2 LLC, dba Volkswagen of Fairfield (“**Dealer**”), and Volkswagen of America, Inc. (“**VWoA**”). This Addendum shall be effective as of the date Dealer and VWoA enter into a Volkswagen Dealer Agreement (“**Agreement**”) for Dealer’s authorized Volkswagen dealership (“**Dealership**”) at 2855 Auto Mall Parkway, Fairfield, California 94533 (“**Fairfield Facility**”), and is hereby incorporated into the Agreement between Dealer and VWoA. All capitalized terms in this Addendum shall have the same meaning as defined in the Agreement, unless otherwise defined herein. Dealer and VWoA agree as follows.

1. **Purpose of Addendum.** Dealer has agreed to enter into this Addendum for the express purpose of inducing VWoA to enter into the Agreement and appoint Dealer as an authorized Volkswagen dealer at the Fairfield Facility, subject to the terms and conditions in the Agreement and this Addendum.

2. **Reliance by VWoA.** Dealer acknowledges and agrees with VWoA as follows: (a) each and every representation, warranty and agreement of Dealer in this Addendum (**time being of the essence**) is intended by Dealer to induce VWoA to enter into the Agreement and appoint Dealer as an authorized Volkswagen dealer at the Fairfield Facility subject to the terms and conditions in this Addendum; (b) VWoA has relied on all of the representations, warranties and agreements of Dealer in this Addendum (**time being of the essence**) to enter into the Agreement and appoint Dealer as an authorized Volkswagen dealer at the Fairfield Facility subject to the terms and conditions in this Addendum; and (c) VWoA would not have entered into the Agreement or appointed Dealer as an authorized Volkswagen dealer at the Fairfield Facility without being able to rely on each and every representation, warranty and agreement of Dealer in this Addendum (**time being of the essence**), including without limitation the complete and timely performance of all of Dealer's obligations by the deadlines set forth in this Addendum.

3. **White Frame Facility.** Dealer agrees to construct a new or renovated Volkswagen dealership facility at the Fairfield Facility that complies in full with all of VWoA’s requirements for a White Frame Facility (“**White Frame Facility**”), including without limitation sufficient square footage to meet White Frame Facility requirements, Corporate Identification, Branding Elements, full compliance with all current Volkswagen Dealer Operating Standards (“**Operating Standards**”), and the following minimum White Frame Facility requirements:

(a) **Sales.** An exclusive Volkswagen new vehicle showroom with a minimum display area of one thousand two hundred (1,200) square feet, at all times displaying not less than four (4) new Volkswagen vehicles. The new vehicle showroom will include a minimum of five (5) sales offices, and will be used exclusively for Dealer’s new Volkswagen sales operations.

(b) **Fixed Operations.** Dealer shall have the right to dual its Volkswagen service and parts operations with one other brand; provided the Volkswagen service

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and parts operations meet VWoA's minimum standards, including without limitation a minimum of ten (10) dedicated work stalls with hoists for the exclusive repair of Volkswagen vehicles, a minimum of two thousand two hundred (2,200) square feet of parts storage reserved exclusively for Volkswagen parts, and a separate service write-up area exclusively for Volkswagen service customers. VWoA in its sole discretion may conduct periodic reviews and audits of Dealer's service capacity. If average service wait times exceed the Area average, Dealer agrees to resolve service capacity shortfall.

4. **Construction Deadlines.** In constructing the White Frame Facility at the Fairfield Facility, Dealer agrees to fully perform each of the following obligations on or before the following deadlines (collectively, "**Construction Deadlines**");

(a) **Design Criteria Document.** Within ninety (90) days of the date the Dealership commences full operations as an authorized Volkswagen dealership at the Fairfield Facility pursuant to the Agreement and this Addendum ("**Fairfield Commencement Date**"), VWoA shall receive Dealer's written agreement to the Design Criteria Document prepared by VWoA and submitted to Dealer.

(b) **Construction Drawings.** Within one hundred twenty (120) days of VWoA's receipt of Dealer's written agreement to the Design Criteria Document, Dealer shall complete and submit to VWoA for its review and approval, a 100% complete set of construction drawings for the White Frame Facility. If VWoA submits comments to Dealer on the construction drawings, then, within fifteen (15) business days of Dealer's receipt of such comments, Dealer shall complete and submit to VWoA for its review and approval revised construction drawings for the White Frame Facility that incorporate and address all of VWoA's comments.

(c) **Permit Applications.** Within ten (10) business days of Dealer's receipt of VWoA's approval of the construction drawings, Dealer shall submit to the appropriate entities of the appropriate local authority, the approved construction drawings together with any and all other required applications, documentation and information (collectively, "**Permit Applications**"), in order to obtain all necessary planning approvals, building permits, and other permits and licenses for the construction and completion of the White Frame Facility consistent with the construction drawings approved by VWoA (collectively, "**Permits**"). Dealer shall comply promptly with each requirement of each such entity.

(d) **Complete Construction.** Notwithstanding anything herein to the contrary, on or before the date that is twenty-four (24) months after the Fairfield Commencement Date, Dealer shall have completed construction of the White Frame Facility, the White Frame Facility shall comply in full with all of VWoA's White Frame Facility requirements and Operating Standards, and Dealer shall have begun full Volkswagen dealership operations in the White Frame Facility ("**White Frame Commencement Date**").

(e) **Monthly Reports.** Beginning on the Fairfield Commencement Date and continuing through the White Frame Commencement Date, Dealer agrees to provide VWoA with monthly status reports on the design and construction of the White Frame Facility,

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including without limitation monthly updated estimates of the White Frame Commencement Date.

(f) **Extension of Time.** If Dealer fails to fully perform any obligations by the Construction Deadlines due to acts of God such as earthquakes, fires and floods, or other circumstances or events that are completely outside of Dealer's control (collectively, "**Force Majeure Events**"), and Dealer has used its good faith best efforts to meet the Construction Deadlines, then, Dealer may request an extension of the Construction Deadlines by delivering a written extension request to VWoA as soon as reasonably practicable prior to the applicable Construction Deadline, which shall include specific reasons for the failure to meet the Construction Deadline and a new proposed Construction Deadline for full compliance with the obligation ("**Extension Request**"). Dealer shall be entitled to one guaranteed 60-day extension, provided Dealer has delivered an Extension Request prior to the Construction Deadline and the Extension Request includes reasonable documentation that the failure to meet the Construction Deadline was due to a Force Majeure Event and Dealer in fact used its good faith best efforts to meet the Construction Deadline. Dealer may submit additional Extension Requests from time to time, in which case VWoA in its sole and absolute discretion will decide whether to grant additional extensions of the Construction Deadlines.

5. **5-Year Commitment.** Regardless of any change of ownership or management of the Dealership from time to time, for a period of not less than five (5) years after the White Frame Commencement Date, the Dealership shall remain open for business and fully operational as a Volkswagen dealership in the White Frame Facility, continuously and without interruption, in compliance with all of VWoA's then current Operating Standards, including without limitation an exclusive Volkswagen showroom and a sales staff dedicated exclusively to new Volkswagen vehicles (collectively, the "**5-Year Commitment**").

6. **Capital Contribution.** Dealer acknowledges and agrees that, in reliance on all representations, warranties and agreements of Dealer in this Addendum, including without limitation the timely construction of the White Frame Facility and the 5-Year Commitment, VWoA made a one-time only capital contribution ("**Capital Contribution**") toward Dealer's purchase of the Dealership and construction of the White Frame Facility in the aggregate amount of Six Hundred Thousand Dollars (\$600,000) which was comprised of Five Hundred Thousand Dollars (\$500,000) pursuant to VWoA's minority assistance program, plus One Hundred Thousand Dollars (\$100,000) of additional funds. Dealer further acknowledges and agrees that VWoA relied upon Dealer's timely construction of the White Frame Facility and the 5-Year Commitment in making the Capital Contribution, and that VWoA would not have made the Capital Contribution without the timely construction of the White Frame Facility and the 5-Year Commitment.

(a) **Vesting of Capital Contribution.** If Dealer complies in full with the Construction Deadlines, and the White Frame Commencement Date occurs by the deadline in paragraph 4(d) of this Addendum, and the Dealership complies in full with the 5-Year Commitment, then, Dealer shall have no obligation to repay the Capital Contribution.

(b) **Repayment of Capital Contribution.** Notwithstanding anything in this Addendum to the contrary, Dealer shall repay the entire \$600,000 Capital Contribution to

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VWoA, immediately upon written notice from VWoA, if for any reason Dealer fails to comply in full with the Construction Deadlines, or the White Frame Commencement Date fails for any reason to occur by the deadline in paragraph 4(d) of this Addendum, or the Dealership fails for any reason to comply in full with the 5-Year Commitment regardless of any change of ownership of the Dealership.

7. **Strict Deadlines.** Dealer acknowledges and agrees that: (a) **time is of the essence** with respect to each and every deadline in this Addendum, including without limitation each and every Construction Deadline and the deadline for the White Frame Commencement Date; (b) the Construction Deadlines and the deadline for the White Frame Commencement Date give Dealer ample opportunity to perform all of its obligations in a timely manner; and (c) all deadlines in this Addendum are strict deadlines, including without limitation all Construction Deadlines and the deadline for the White Frame Commencement Date.

8. **Binding on Successor Dealers.** This Addendum shall be incorporated automatically into all new Agreements (if any) entered into by VWoA, on the one hand, and Dealer or any purchaser, transferee, assignee or successor-in-interest to the Dealership ("**Successor Dealer**"), on the other hand. To qualify for consideration by VWoA as a proposed Successor Dealer, any proposed Successor Dealer must agree in writing to comply with all of the provisions of this Addendum as part of the proposed Successor Dealer's Agreement. Dealer agrees to require any proposed Successor Dealer to provide such written agreement as a condition precedent to the proposed sale or transfer of the Dealership, and a condition precedent to VWoA's consideration of the proposed Successor Dealer as an authorized Volkswagen dealer.

9. **Survival of Representations and Warranties.** All representations, warranties and agreements of Dealer in this Addendum shall survive the expiration or termination of the Agreement, this Addendum, and all other Agreements (if any) entered into by VWoA, on the one hand, and Dealer or any Successor Dealer, on the other hand.

10. **Miscellaneous.** Dealer acknowledges and represents and warrants to VWoA that Dealer has consulted with and received the advice of Dealer's attorney prior to executing this Addendum, and that Dealer has executed this Addendum without coercion or undue influence. As amended by this Addendum, all provisions of the Agreement remain unchanged and in full force and effect.


[End of page 4; signatures begin on page 5]

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The parties have executed this Addendum as of the date Dealer and VWoA entered into the Agreement for the Dealership at the Fairfield Facility.

MAVERICK AUTO GROUP 2 LLC

VOLKSWAGEN OF AMERICA, INC.

By: 
Rahim Hassanally
Managing Member

By: 
Werner Mersch
Director, Western Region


By: 
Robert H. Kim, General Manager,
Network Operations

EXHIBIT B

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VOLKSWAGEN of America, Inc.



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Article 1

Basic Obligations of VWoA

Supply of Authorized Products

- (1) VWoA will sell and deliver Authorized Products to Dealer in accordance with this Agreement.

Assistance

- (2) VWoA will actively assist Dealer in all aspects of Dealer's Operations through such means as VWoA considers appropriate, including:
 - (a) Annual reviews of Dealer's compliance with this Agreement, the Operating Standards;
 - (b) Recommendations; and
 - (c) Schools, special training and meetings for Dealer's personnel.

Compliance with Ethical Standards

- (3) In the conduct of its business, VWoA will:
 - (a) Safeguard and promote the reputation of Authorized Products and the Manufacturer;
 - (b) Refrain from all conduct which might be harmful to the reputation or marketing of Authorized Products or inconsistent with the public interest; and
 - (c) Avoid all discourteous, deceptive, misleading, unprofessional or unethical practices.
-

Article 2

Basic Obligations of Dealer

Sales, Service and Parts Supply

- (1) Dealer assumes the responsibility in Dealer's Area for the promotion and sale of Authorized Products and for the supply of Genuine Parts and customer service for Authorized Products. This Agreement does not give Dealer any exclusive right to sell or service Authorized Products in any area or territory.

Compliance with Ethical Standards

- (2) In the conduct of its business, Dealer will:
 - (a) Safeguard and promote the reputation of Authorized Products, the Manufacturer and VWoA;
 - (b) Refrain from all conduct which might be harmful to the reputation or marketing of Authorized Products or inconsistent with the public interest; and
 - (c) Avoid all discourteous, deceptive, misleading, unprofessional or unethical practices.

Operating Standards and Operating Plan

- (3) The Operating Standards and Operating Plan are part of this Agreement and are incorporated herein by this reference.

Disclaimer of Further Liability by VWoA

- (4) Except as expressly provided in this Agreement, VWoA is not liable for any expenditure made or liability incurred by Dealer in connection with Dealer's performance of its obligations under this Agreement.
-

Article 3

General Management and Facility Requirements

Dealer's General Management

- (1) In the conduct of its business, Dealer will have the following minimum staff:
 - (a) An Authorized Representative (provided, that such Authorized Representative may be one of Dealer's Owners); and
 - (b) Such additional department managers and other employees as set forth in the Operating Standards and the Operating Plan.

Dealer's Premises

- (2) Dealer's Premises, in sales, service and parts, will conform to the requirements of this Agreement, the Operating Standards, the Operating Plan and such other reasonable standards as VWoA may prescribe from time to time, after review with Dealer.
 - (3) Unless otherwise agreed by VWoA in writing, Dealer will operate Dealer's Premises during the customary business hours of the trade in Dealer's Area.
-

Article 4

Identification; Advertising

Use of Authorized Trademarks

- (1) VWoA will supply Dealer, from time to time, with trademark standards to assist Dealer in the proper usage of Authorized Trademarks. Dealer will use Authorized Trademarks only in connection with the promotion and sale of new Authorized Products and customer service for Authorized Products pursuant to this Agreement, and only in the manner and for the purposes VWoA specifies. Dealer will not use any Authorized Trademark as part of its corporate or business name without the prior written consent of VWoA. Dealer also may use Authorized Trademarks in connection with the sale of used automobiles if Dealer complies fully with VWoA's requirements relating to used car sales under the Authorized Trademarks. If Dealer does not comply fully with these requirements, Dealer may not use any Authorized Trademarks in connection with its used car sales, except that Dealer may use the word "Volkswagen" to describe Authorized Automobiles, if this word appears in characters and colors different from those usually employed by the Manufacturer, VWoA and authorized dealers of VWoA. This Agreement does not grant Dealer any license or permission to use Authorized Trademarks except as mentioned herein, and Dealer has no right to grant any such permission or interest.

Signs

- (2) Dealer will display conspicuously at Dealer's Premises such Authorized Signs at such locations as VWoA reasonably may require. Dealer will use its best efforts to obtain all governmental approvals necessary for such display. If Dealer transfers any of Dealer's Premises to another location, Dealer immediately will remove all Authorized Signs and other references to Authorized Products displayed at or around the prior location.

Stationery

- (3) All stationery and business forms used in Dealer's Operations will be prepared in accordance with Recommendations. Dealer's use of Authorized Trademarks on stationery and business forms will be in accordance with trademark standards supplied by VWoA.

Advertising

- (4) Dealer will advertise Authorized Products and customer service for Authorized Products only in accordance with reasonable guidelines and policies established by VWoA. Dealer will refrain from all false, deceptive, misleading or unlawful advertising. Dealer's advertising will include, among other things, a listing in a principal local classified telephone directory in Dealer's Area. Authorized Trademarks will be used for identification in all product and customer service advertising, in accordance with the provisions of this Agreement. VWoA will provide or sell to Dealer sufficient quantities of all legally required brochures, as well as all current sales, service and parts literature and promotional materials, and Dealer shall prominently display them and make them readily available.
-

Article 5

Sales

Sales Promotion

- (1) Dealer will use its best efforts to promote the sale of Authorized Automobiles in Dealer's Area, through regular contacts with owners, users, and prospective owners and users of Authorized Products; through promotion, prospecting, and follow-up programs; and through such means and at such levels as may be indicated from time to time by the Operating Standards, Operating Plan and Recommendations.

Sales Performance

- (2) Dealer will achieve the best sales performance possible in Dealer's Area for each model and type of Authorized Automobile. The measurement for Dealer's yearly sales performance will be the objective established in the applicable annual Operating Plan.

Sales Outside Area

- (3) Subject to Dealer's performance of its obligations under Article 5(2), VWoA does not restrict Dealer's sale of Authorized Products within the 50 United States. VWoA hereby informs Dealer, however, that VWoA has no authority to sell any products for distribution outside the United States, and it is VWoA's policy not to do so. Dealer acknowledges its understanding that this is intended to preserve the integrity of the orderly worldwide distribution network for the products supplied to VWoA, and to maximize customer satisfaction by ensuring that Authorized Products meet the certification and operational standards to which they were designed. Dealer therefore is authorized to sell new Authorized Products only in the 50 United States, and is not authorized to, and agrees it will not, sell any new Authorized Product for sale or use elsewhere.

Defective or Damaged Authorized Products

- (4) If any Authorized Product sold by VWoA to Dealer should become defective or damaged prior to its delivery by Dealer to a customer, Dealer agrees to repair such defect or damage so that such Authorized Product is placed in first-class salable condition prior to such delivery. Dealer immediately will notify VWoA of any substantial defects or damage and will follow such procedures for making damage claims as VWoA may establish from time to time. VWoA shall have the option to repurchase any Authorized Products with substantial defects or damage at the price at which they were originally sold by VWoA, less any prior refunds or allowances made by VWoA and less any insurance proceeds received by Dealer in respect of such defect or damage. VWoA will make an equitable adjustment with respect to damage which Dealer can demonstrate occurred prior to the time of delivery to Dealer. VWoA will disclose to Dealer as may be required any damage which VWoA repaired before delivering an Authorized Automobile to Dealer. Dealer will properly disclose such repair prior to delivering such Authorized Automobile to a customer, and will hold VWoA harmless from any claims that required disclosure was not made.

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Changes by Dealer to Authorized Products

- (5) VVoA may request Dealer to make changes, or not to make changes, to Authorized Products, and Dealer agrees to comply promptly with such requests. Dealer also agrees to take such steps as VVoA may direct it to take to comply with any law or regulation pertaining to safety, emissions, noise, fuel economy or vehicle labeling. VVoA will reimburse Dealer at the then-current rate of reimbursement specified by VVoA for Dealer for Genuine Parts and for labor which may be used by Dealer in making such required changes on Authorized Products. Parts and other materials necessary to make such changes may be shipped to Dealer without Dealer's authorization and Dealer will accept them. Dealer will receive credit for parts so shipped which prove unnecessary, provided they are returned or disposed of in accordance with VVoA's instructions. If the laws of the state in which Dealer is located or a vehicle is to be registered require motor vehicles to carry equipment not installed or supplied as standard equipment by the Manufacturer or VVoA, upon VVoA's request Dealer will, prior to selling any Authorized Automobiles on which such installation is required, properly install at its own or its customers' expense equipment conforming to such laws and to VVoA's standards. Dealer agrees to indemnify the Manufacturer and VVoA and hold them harmless against and from any and all liabilities that may arise out of Dealer's failure or alleged failure to comply with any obligation assumed by Dealer in this paragraph.

Product Changes by Dealer Neither Requested by VVoA nor Required by Law

- (6) If Dealer installs on a new Authorized Automobile any equipment, accessory or part other than a Genuine Part; sells any new Authorized Automobile which has been modified; or sells in conjunction with a new Authorized Automobile a service contract not offered or specifically endorsed in writing by VVoA, then Dealer will advise the customer of the identity of the warrantor of such modification, equipment, accessory or part, or, in the case of a service contract, of the identity of the provider of its coverage. Dealer will indemnify VVoA against claims that may be asserted against VVoA in any action by reason of such modification, equipment, accessory, part or service contract. **ANY UNAUTHORIZED MODIFICATION TO AUTHORIZED PRODUCTS BY DEALER WHICH ADVERSELY AFFECTS THE SAFETY OR EMISSIONS OF AN AUTHORIZED AUTOMOBILE WILL BE A VIOLATION OF THIS AGREEMENT AND CAUSE FOR TERMINATION PURSUANT TO ARTICLE 14(3).**

Used Car Operations

- (7) Dealer will use its best efforts to acquire, promote, and sell at retail used Authorized Automobiles and other used automobiles. Dealer's used car operations will conform to the requirements of the Operating Standards, Operating Plan, Recommendations and such other reasonable standards as VVoA may prescribe, after review with Dealer.
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Article 6

Parts

Parts Promotion

- (1) Dealer will use its best efforts to promote the sale of Genuine Parts in Dealer's Area, through regular contacts with owners, users, and prospective owners and users of Authorized Products; through promotion, prospecting and follow-up programs; and through such means as may be indicated from time to time by Recommendations.
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Parts Department

- (2) Dealer's parts department will conform to the requirements of the Operating Standards, the Operating Plan and such other reasonable standards as VWoA may prescribe, after review with Dealer.

Sale of Non-genuine Parts

- (3) Dealer will not sell any parts which are not equivalent in quality and design to Genuine Parts, if such parts are necessary to the mechanical operation of Authorized Automobiles. Dealer will not represent as new Genuine Parts any parts which are not new Genuine Parts. If Dealer sells a part or accessory which is not a Genuine Part, Dealer will advise the customer of the identity of the warrantor of such part or accessory.

Parts Inventory

- (4) Dealer will maintain an inventory of Genuine Parts which is sufficient to perform reasonably anticipated warranty service and wholesale trade requirements in Dealer's Area for Genuine Parts. VWoA will make Recommendations for Dealer's inventory of Genuine Parts based on particular conditions in Dealer's Area, and Dealer will give due consideration to such Recommendations.
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Article 7

Service

Quality and Promotion of Service

- (1) Dealer will provide the best possible customer service for all owners of Authorized Automobiles and automobiles of the same make formerly sold by VWoA, and will use its best efforts to promote its customer service. Dealer's service facilities, equipment, and personnel will conform to the requirements of the Operating Standards, Operating Plan and such other reasonable standards as VWoA may prescribe, after review with Dealer.

Tools and Equipment

- (2) Special tools and general workshop equipment meeting VWoA's standards shall be available at Dealer's Premises in working condition. VWoA's minimum standards shall be found in the Operating Standards and the Operating Plan, which will be updated from time to time.

Use of Non-genuine Parts

- (3) Dealer will not use in the repair or servicing of Authorized Automobiles any parts which are not equivalent in quality and design to Genuine Parts, if such parts are necessary to the mechanical operation of such Authorized Automobiles. **DEALER WILL USE ONLY GENUINE PARTS IN PERFORMING WARRANTY SERVICE ON AUTHORIZED AUTOMOBILES. DEALER WILL NOT REPRESENT AS NEW GENUINE PARTS ANY PARTS USED BY IT IN THE REPAIR OR SERVICING OF AUTHORIZED AUTOMOBILES WHICH ARE NOT NEW GENUINE PARTS.**
-

Owner's Documents

- (4) Upon delivering a new Authorized Automobile to a customer, Dealer will provide the Owner's Documents supplied by VWoA for such Authorized Automobile, properly completed by Dealer. Dealer will take all steps required prior to delivery of the Authorized Automobile, and, in particular, will perform properly the pre-delivery services specified by VWoA.

Maintenance and Other Services Without Customer Charge

- (5) In accordance with bulletins issued from time to time by VWoA and VWoA's Warranties, certain maintenance services and other repairs following delivery of a new Authorized Automobile may be free of charge to the customer. Upon presentation of an appropriate Owner's Document, Dealer will perform properly the services required, whether or not the Authorized Automobile to be serviced was sold by Dealer. Upon the submission of appropriate claims, VWoA will reimburse Dealer for performing such services at the then-current rate of reimbursement specified by VWoA for Dealer. VWoA will establish procedures for submitting and processing such claims and transmitting reimbursements to Dealer. Dealer agrees to comply with these procedures.

Repeated Repairs

- (6) Dealer will notify VWoA in writing or by electronic mail of repairs to Authorized Automobiles pursuant to VWoA's Warranties under each of the following circumstances:
 - (a) The Authorized Automobile has been brought to Dealer a specified number of times for the same complaint; or
 - (b) The Authorized Automobile has been in Dealer's custody for all repairs pursuant to VWoA's Warranties a specified number of days.

Such notification shall be made at the times and by the means VWoA may have instructed in any then-current dealer warranty manual issued by VWoA.

Article 8

Dealer's Purchases and Inventories

Purchase Prices

- (1) VWoA will sell Authorized Products to Dealer at prices and upon terms established by VWoA from time to time. If VWoA increases its established prices, Dealer may cancel all orders for Authorized Products affected by the increase which are unfilled at the time Dealer receives notice of the increase, by giving VWoA written notice of cancellation within ten days from the time Dealer receives notice of the price increase.

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Orders and Acceptance

- (2) Dealer will transmit orders for Authorized Products to VVoA electronically, at the times and for the periods, that VVoA reasonably requires. With each order, Dealer represents that it is solvent. VVoA may accept orders in whole or in part. Except as otherwise expressly provided in Article 8(1), all orders of Dealer will be binding upon it until they are rejected in writing by VVoA; however, in the event of a partial acceptance by VVoA, Dealer will not be bound by the portion of the order not accepted.

Inventories

- (3) Dealer will maintain in inventory at all times the assortment and quantity of Authorized Products required by the Operating Standards, Operating Plan or Recommendations.

Product Allocation

- (4) Dealer recognizes that certain Authorized Products may not be available in sufficient supply from time to time because of factors such as product importation, consumer demand, component shortages, manufacturing constraints, governmental regulations, or other causes. VVoA will endeavor to make a fair and equitable allocation and distribution of the Authorized Products available to it.

Taxes

- (5) Dealer is responsible for any and all sales taxes, use taxes, excise taxes (including luxury taxes) and other governmental charges imposed, levied, or based upon the sale of Authorized Products by VVoA to Dealer. Dealer represents and warrants, as of the date of the purchase of each Authorized Product, that all Authorized Products purchased from VVoA are purchased by Dealer for resale in the ordinary course of Dealer's business and that Dealer has complied with all laws relating to the collection and payment of all sales taxes, use taxes, excise taxes (including luxury taxes) and other governmental charges applicable to the purchase of such products and will furnish evidence thereof upon request. If any Authorized Products are put to taxable use by Dealer, or are purchased by Dealer for purposes other than resale in the ordinary course of Dealer's business, Dealer will make timely return and payment to the appropriate taxing authorities of all applicable taxes and other governmental charges imposed, levied, or based upon the sale of such Authorized Products by VVoA to Dealer and will hold VVoA harmless with respect thereto.

Payments to Dealer or Dealer's Personnel

- (6) From time to time, VVoA may conduct incentive programs which involve payments to Dealer or to Dealer's personnel. Dealer acknowledges that regardless of the nature of such programs or payments, Dealer's personnel are not employees, contractors or agents of VVoA. All matters relating to the employment or retention of Dealer's personnel are solely Dealer's responsibility. In the case of payments by VVoA to Dealer, Dealer alone will be responsible for the payment of any and all applicable taxes. In the case of payments to Dealer's personnel, VVoA will make appropriate information or other returns to appropriate taxing authorities. In the event Dealer does not want VVoA to make direct payments to Dealer's personnel, Dealer will notify VVoA to that effect in writing. After receiving such written notice, VVoA will pay directly to Dealer any subsequent payments coming due Dealer's personnel. Dealer represents and warrants that it will pass such payments directly through to Dealer's personnel as intended; that it will make any necessary returns to any taxing authority; and that it will hold VVoA harmless from any claims whatsoever that such payments were not received by the intended recipients or that appropriate withholdings were not made. In the event it is determined by any taxing authority that VVoA should not have made payments to Dealer's personnel or that VVoA should have collected taxes in respect of such payments, then VVoA will be responsible for such taxes.

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Payment by Dealer

- (7) Dealer will pay for Authorized Products in the manner, at the time, and upon the conditions specified in the terms of payment established from time to time by VWoA. Delivery of instruments of payment other than cash will not constitute payment until VWoA has collected the full amount in cash. Dealer will pay all collection charges, including reasonable attorney's fees, and costs of exchange, if any, incurred in connection with its payments.

Passing of Title; Security Interest

- (8) Title to Authorized Products will remain with VWoA until VWoA has collected their full purchase price in cash. Dealer will execute and deliver, and VWoA is authorized to execute and deliver on behalf of Dealer or, to the extent permitted by law, to file without the signature of Dealer, all financing statements and other instruments which VWoA may deem necessary to evidence its ownership of such Authorized Products. Dealer hereby grants VWoA a purchase money security interest in all Authorized Products for which VWoA has not collected in full, authorizes VWoA to take such steps as VWoA deems necessary to perfect such security interests, and agrees to cooperate fully with VWoA in connection therewith. VWoA may take possession at any time of Authorized Products to which it has title.

Passing of Risks

- (9) Authorized Products will be at Dealer's risk and peril from the time of their delivery to Dealer or Dealer's agent. It will be up to Dealer to insure such risks for its benefit and at its expense.

Responsibility for Defects and Damage

- (10) VWoA assumes responsibility for the quality and condition of Authorized Products, to the extent of (a) defects caused by its own negligence and (b) damage caused or repaired prior to delivery of the Authorized Products to Dealer or Dealer's agent. VWoA will make any required disclosure thereof to Dealer. If VWoA has insured against such defects in or damage to Authorized Products, VWoA's liability to Dealer for such damage will be limited to the amount actually paid by the insurance carrier to VWoA by reason of such defect of damage, together with any deductible amount applicable to such claim. Dealer may decline to accept any Authorized Products delivered to Dealer in damaged condition or with respect to which VWoA has notified Dealer that VWoA has repaired damage; however, should Dealer accept such Authorized Product Dealer will, subject to the provisions of Article 5(5), repair all such defects and damage fully as required by VWoA before any defective or damaged Authorized Product is delivered to a customer. Dealer will make any required disclosure to Dealer's customers of damage or repairs, and will hold VWoA harmless with respect thereto. VWoA will notify Dealer promptly of the amount thereof, or any other amount due from VWoA pursuant to this paragraph, following Dealer's submission of such proof of repair as VWoA may require.

Claims for Incomplete Delivery

- (11) Dealer will make all claims for incomplete delivery of Authorized Products (including the delivery of Authorized Products with damage) in writing not later than three business days after Dealer's receipt of shipment; **provided, however,** that Dealer will make claims as to Genuine Parts within the period specified in policies established by VWoA from time to time; and **provided, further,** that Dealer will note claims for visible damage to Authorized Automobiles on the delivery receipt.

Changes of Specifications

- (12) VWoA will deliver Authorized Products to Dealer in accordance with specifications applicable at the time of their manufacture. In the event of any change or modification with respect to any Authorized Products, Dealer will not be entitled to have such change or modification made to any Authorized Products manufactured prior to the introduction of such change or modification. VWoA expressly reserves, and Dealer acknowledges, the right to make such changes and modifications, and Dealer's only right in such event shall be the cancellation of any orders for Authorized Products affected by the change or modification and not yet accepted by VWoA.

Failure of or Delay in Delivery by VWoA

- (13) VWoA will not be liable to Dealer for failure of or delay in delivery under orders of Dealer accepted by VWoA, other than failure or delay resulting from willful misconduct or gross negligence of VWoA.

Return or Diversion on Dealer's Failure to Accept

- (14) If Dealer fails or refuses for any reason to accept delivery of any Authorized Products ordered by Dealer (except as permitted under Article 8(11)), Dealer will be liable to VWoA for all expenses incurred as a result of such failure or refusal, and will store such Authorized Products at no charge to VWoA until VWoA can arrange for their removal. Dealer's liability pursuant to this paragraph will be in addition to, and not in lieu of, any other liabilities which may arise from Dealer's failure or refusal to accept delivery.
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Article 9

Warranty to Customers

VWoA's Warranties

- (1) VWoA warrants each new Authorized Product as set forth in VWoA's Warranties.

Incorporation of VWoA's Warranties in Dealer's Sales

- (2) Dealer will make all sales of Authorized Automobiles and Genuine Parts in such a way that its customers acquire all rights in accordance with VWoA's Warranties and, to the extent permitted by law, no other express or implied warranties. Dealer will make the text of VWoA's Warranties part of its contracts for the sale of Authorized Products and will display the text of the warranties of all products it sells in customer contact areas where Authorized Products are offered.

Warranty Procedures

- (3) Dealer agrees to comply with the provisions of the various dealer warranty manuals which VWoA may issue from time to time, and will follow the procedures established by VWoA for processing warranty claims and returning and disposing of defective Genuine Parts. Dealer will also comply with all requests of VWoA for the performance of services pursuant to warranty claims and will maintain detailed records of time and parts consumption and any other records used as the basis for submitting warranty claims. Dealer will submit warranty claims to VWoA electronically, and in
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accordance with procedures established by VWoA. Upon Dealer's compliance with such requests and maintenance of such records, VWoA will reimburse Dealer within a reasonable time for warranty claims at the then-current rate of reimbursement specified by VWoA for Dealer. Strict adherence to the procedures and means established for processing warranty claims is necessary for VWoA to process such claims fairly and expeditiously. VWoA will be under no obligation with respect to warranty claims not submitted electronically and not made strictly in accordance with such procedures.

Article 10

Dealer's Record Keeping and Reports; Inspection of Dealer's Operations

Dealer's Forms, Business Machines, Office Equipment and Bookkeeping

- (1) Dealer will use accounting, sales, bookkeeping and service workshop forms; business machines; data processing and transmission equipment; and other office equipment which meets specifications, and which enables Dealer and VWoA to communicate electronically for all purposes and which otherwise provides information and functions in the manner prescribed by VWoA and its affiliates in the Operating Standards, the Operating Plan and by other means. VWoA will advise Dealer, or ensure that suppliers to VWoA advise Dealer, periodically of the hardware and software requirements, communications protocols, and other specifications which Dealer's data processing and transmission equipment must meet in order to satisfy the requirements of this paragraph, and Dealer will timely adhere to such requirements, protocols and specifications. Dealer will keep accurate and current records in accordance with VWoA's uniform accounting system and with accounting practices and procedures reasonably satisfactory to VWoA, in order to enable VWoA to develop comparative data and to furnish Dealer business management assistance.

Financial Statements to be Supplied by Dealer

- (2) Dealer will transmit to VWoA (a) on or before the tenth day of each calendar month, in such form and by such methods as VWoA reasonably may require, a financial and operating statement reflecting the consolidated operations of Dealer for the preceding month and from the beginning of the calendar year to the end of the preceding month and (b) within three and one-half months after the close of Dealer's fiscal or calendar year, a consolidated balance sheet and profit and loss statement of Dealer, which documents shall be certified by a certified public accountant if so requested by VWoA at least 30 days prior to the close of Dealer's fiscal or calendar year. DEALER'S FAILURE TO PROVIDE FINANCIAL AND OPERATING STATEMENTS IN THE FORMAT AND BY THE METHOD REQUIRED BY VWoA MAY RESULT IN THE REVOCATION OF DEALER'S OPEN PARTS AND ACCESSORIES ACCOUNT.

Reports to be Supplied by Dealer

- (3) Dealer will furnish to VWoA, on such forms and by such methods as VWoA reasonably may require, accurate timely reports of dealer's sales and transfers of new Authorized Automobiles. Dealer also will furnish to VWoA, on a timely and accurate basis, such other reports and financial statements as VWoA reasonably may require.

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Inspection of Dealer's Operations and Records

- (4) Until the expiration or termination of this Agreement, and thereafter until consummation of all transactions referred to in Article 15, VWoA, through its employees and other designees, at all reasonable times during regular business hours, may inspect Dealer's Operations, Dealer's Premises and the methods, records and accounts of Dealer relating to Dealer's Operations.
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Article 11

Dealer Performance Review

Evaluation and Assistance

- (1) Each year, VWoA will prepare objectives for Dealer and will use them as a basis for evaluating Dealer's performance of its obligations in each of the areas described in this Article 11 and in the Operating Standards and the Operating Plan. VWoA may evaluate Dealer's performance during the year through periodic reviews. VWoA's evaluations of Dealer shall take place at least annually. VWoA will review its evaluations with Dealer, so that Dealer may take prompt action, if necessary, to improve its performance to such levels as VWoA reasonably may require. Any written comments received from Dealer on VWoA's evaluation of Dealer will become a part of such evaluation.

Evaluation of Dealer's Vehicle Sales, Service and Parts Performance

- (2) VWoA will evaluate the effectiveness of Dealer's vehicle sales, service and parts performance in accordance with factors and measures set forth in the Operating Standards, the Operating Plan and Recommendations.

Evaluation of Dealer's Premises

- (3) VWoA will evaluate Dealer's performance of its responsibilities pertaining to Dealer's Premises, analyzing both separately and collectively Dealer's sales facilities, service facilities, parts facilities, administrative offices, storage, parking and signage. In making such evaluation, VWoA will consider the factors set forth in the Operating Standards, the Operating Plan and Recommendations.

Evaluation of Dealer's Customer Satisfaction

- (4) VWoA will evaluate Dealer's performance of its responsibilities pertaining to customer satisfaction, analyzing both separately and collectively the satisfaction of customers with Dealer's sales activities and service activities. In making such evaluation, VWoA will utilize a uniform measure of customer satisfaction, which will be disclosed to Dealer, and will consider the factors set forth in the Operating Standards, the Operating Plan and Recommendations.

Dealer's Evaluation of VWoA

- (5) VWoA will implement measures by which Dealer may periodically evaluate the performance of VWoA, and in particular the performance of those VWoA employees who are responsible for administering VWoA's relationship with Dealer.
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Article 12

Succeeding Dealers

Procedure

- (1) If Dealer chooses to transfer its principal assets or change owners, VWoA has the right to approve the proposed transferees, the new owners and executives and, if different from Dealer's, their premises. VWoA will consider in good faith any such proposal Dealer may submit to it during the term of this Agreement. In determining whether the proposal is acceptable to it, VWoA will take into account factors such as the personal, business and financial qualifications of the proposed new owners and executives as well as the proposal's effect on competition. In such evaluation, VWoA may consult with the proposed new owners and executives on any aspect of the transaction of their proposed dealership operations. Notwithstanding anything set forth in this paragraph to the contrary, VWoA shall not be obligated to consider such proposal if it previously had notified Dealer in writing that it would not appoint a succeeding dealer in Dealer's Area; **provided, however**, that such notice shall be given only if there is good cause for discontinuing representation of Authorized Automobiles in Dealer's Area.

Approvals

- (2) VWoA will notify Dealer in writing of the approval or disapproval of a proposal by Dealer for transfer of principal assets or change of owners within 45 business days, or the exercise by VWoA of its right of first refusal under Article 12(3) within 30 calendar days, after Dealer has furnished to VWoA all applications and information reasonably requested by VWoA to evaluate such proposal. If VWoA approves Dealer's proposal, VWoA shall be obligated to grant the proposed transferees only a Dealer Agreement in substantially the same form as this Agreement. If VWoA had previously notified Dealer in writing that VWoA would not appoint a succeeding dealer in Dealer's Premises, then VWoA's approval of Dealer's proposal may be conditioned on the proposed transferees agreeing to provide different facilities for their dealership operations. Upon the consummation of Dealer's approved proposal, Dealer will deliver to VWoA a voluntary termination of this Agreement, a general release in favor of VWoA and payment in full for any net balance then owing from Dealer to VWoA.

Right of First Refusal

- (3) Whenever Dealer proposes to transfer its principal assets or change owners of a majority interest, VWoA shall have the right to purchase such assets or ownership interest, as follows:
 - (a) VWoA may elect to exercise its purchase right by written notice to Dealer within 30 calendar days after Dealer has furnished to VWoA all applications and information reasonably requested by VWoA to evaluate Dealer's proposal.
 - (b) If Dealer's proposed sale or transfer was to a successor approved in advance by VWoA, to any of Dealer's Owners, to Dealer's employees as a group or to Dealer's spouse, children or heirs, then Dealer may withdraw its proposal within 30 calendar days following receipt of VWoA's notice of election of its purchase right.

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- (c) VWoA's right under this Article 12(3) shall be a right of first refusal, permitting VWoA to:
 - (i) assume the proposed transferee's rights and obligations under its agreement with Dealer; and
 - (ii) cancel this Agreement and all rights granted Dealer hereunder.

Except to the extent specifically inconsistent with the terms of this Agreement, the price and all other terms of VWoA's purchase shall be as set forth in any bona fide written purchase and sale agreement between Dealer and its proposed transferee and in any related documents.

- (d) Dealer shall furnish to VWoA copies of all applicable liens, mortgages, encumbrances, leases, easements, licenses or other documents affecting any of the property to be transferred, and shall assign to VWoA any permits or licenses necessary for the continued conduct of Dealer's Operations.
- (e) VWoA may assign its right of first refusal to any party it chooses, but in that event VWoA will remain primarily liable for payment of the purchase price to Dealer.
- (f) If VWoA exercises its purchase right, VWoA will reimburse Dealer's proposed transferee for reasonable documented actual expenses which such proposed transferee incurred through the date of such exercise which are directly and solely attributable to the transaction Dealer proposed.
- (g) Nothing contained in this Article 12(3) shall require VWoA to exercise its right of first refusal in any case, nor restrict any right VWoA may have to refuse to approve Dealer's proposed transfer.

Succession

- (4) Article 14(1)(a) notwithstanding, in the event of the death of any of Dealer's Owners, VWoA will not terminate this Agreement by reason of such death if:
 - (a) The owner's interest in Dealer passes directly as specified in any Successor Addendum to this Agreement; or
 - (b) The owner's interest in Dealer passes directly to his or her surviving spouse or children, or any of them, and (i) Dealer's Authorized Representative remains as stated in the Statement of Ownership and Management or (ii) within 90 days after the death of such owner Dealer appoints another qualified individual as Dealer's Authorized Representative; **provided, however,** that in this event VWoA will evaluate Dealer's performance during the 12 months following the owner's death. After the expiration of this 12-month period and VWoA's evaluation of the performance of Dealer's management during such period, VWoA will review with Dealer the changes, if any, in the management or equity interests of Dealer required by VWoA as a condition of extending this Dealer Agreement with Dealer. Any new Dealer Agreement entered into pursuant to this paragraph will be in substantially the same form as the Dealer Agreements then currently offered by VWoA to its dealers in Authorized Automobiles generally.

Modification of Terms of Payment

- (5) Upon receipt of an application for a replacement dealer agreement, VWoA may modify its terms of payment with respect to Dealer to the extent VWoA deems appropriate, irrespective of Dealer's credit standing or payment history.
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Article 13

Dispute Resolution

General Policy

- (1) VWoA and Dealer agree as a general matter to work together to minimize disputes between them. **While understanding that certain Federal and state courts and agencies may be available to resolve any disputes, VWoA and Dealer agree that it is in their mutual best interests to attempt to resolve certain controversies first through arbitration. VWoA and Dealer therefore agree that the dispute resolution process outlined in this Article shall be used before seeking legal redress in a court of law or before an administrative agency, for all disputes arising under the following: Article 9(3) (Warranty Procedures), Article 12 (Succeeding Dealers), Article 14 (Termination), Article 15 (Rights and Liabilities Upon Termination) and payments to Dealer in connection with VWoA incentive programs.** In the event that a dispute arises in connection with any other provision of this Agreement, VWoA and Dealer may mutually agree to first submit the dispute to arbitration, in accordance with the provisions of this Article. Both VWoA and Dealer agree that the ultimate mutual goal of arbitration is to obtain a fair hearing and prompt decision of the dispute, in an efficient and cost-effective manner, and both agree to work toward that goal at all times hereunder.

Involuntary Non-Binding Arbitration

- (2) Upon the written request of either VWoA or Dealer, a dispute arising in connection with this Agreement may be submitted to non-binding arbitration.

Voluntary Binding Arbitration

- (3) As an alternative to Article 13(2) above, upon the written request of Dealer, a dispute arising in connection with this Agreement will be submitted to binding arbitration.

Rules of Conduct

- (4) Arbitrations will be adjudicated under the auspices and in accordance with the rules of the American Arbitration Association or another mutually acceptable arbitration service, as well as the following provisions:
 - (a) Written requests for arbitration shall set forth a clear and complete statement of the nature of the claim and its basis; the amount involved, if any; and the remedy sought.
 - (b) The place of arbitration shall be the state in which Dealer's Premises are located, or such other place as may be agreed upon by the parties.

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- (c) Both parties shall make every reasonable attempt to agree upon one arbitrator, but if they are unable to agree each shall appoint an arbitrator and these two shall appoint a third arbitrator.
- (d) Expenses of arbitration shall be divided equally between the parties. The prevailing party shall not be entitled to reasonable attorneys fees.
- (e) The arbitrator(s) shall pass finally upon all questions, both of law and fact, and his or her (or their) findings shall be conclusive.
- (f) Pre-arbitration discovery shall be available to both parties and shall be governed by the Federal Rules of Civil Procedure. Information obtained by either party during the course of discovery shall be kept confidential, shall not be disclosed to any third party, shall not be used except in connection with the arbitration proceeding, and at the conclusion of the proceeding, shall be returned to the other party. Both Dealer and VWoA shall make their agents and employees available upon reasonable times and places for pre-trial depositions without the necessity of subpoenas or other court orders. Such discovery may be used as evidence in the arbitration proceeding to the same extent as if it were a court proceeding.

Time for Decision

- (5) Unless VWoA and Dealer specifically agree to the contrary, and subject to the rules and procedures of the arbitration service chosen, the arbitration hearing shall be concluded not more than 60 days after the date of the written request to arbitrate, and the arbitration decision shall be rendered not more than 90 days after the written request to arbitrate.

Provisional Remedies

- (6) Either VWoA or Dealer may, without prejudice to the above procedures, file a complaint if in its sole judgment such action is necessary to avoid irreparable damage or to preserve the status quo. Despite such action the parties will continue to participate in good faith in the procedures specified in this Article 13.

Tolling Statute of Limitations

- (7) All applicable statutes of limitation and defenses based upon passage of time shall be tolled while the procedures specified in this Article 13 are pending. The parties will take such action, if any, required to effectuate such tolling.

Performance to Continue

- (8) VWoA and Dealer agree to continue to perform their respective obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement.
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Article 14

Termination

Immediate Termination by VWoA

- (1) Except to the extent a greater notice period is required by any applicable statute, VWoA has the right to terminate this Agreement for cause, with immediate effect, by sending notice of termination to Dealer, if any of the following should occur:
 - (a) Death of any of Dealer's Owners or any change, whether voluntary or by operation of law, in the record or beneficial ownership of Dealer without VWoA's prior written consent; any change in Dealer's Executives without prior notice to VWoA; or the failure of Dealer's Executives to continue to manage Dealer's Operations (unless, in any of these cases, the provisions of Article 12(4) above have been satisfied);
 - (b) Dissolution or liquidation of Dealer, if a partnership or corporation;
 - (c) Insolvency of Dealer or voluntary institution by Dealer of any proceeding under the Bankruptcy Act or state insolvency law; or the involuntary institution against Dealer of any proceeding under the Bankruptcy Act or state insolvency law which is not vacated within ten days from the institution thereof; or the appointment of a receiver or other officer having similar powers for Dealer or Dealer's business who is not removed within ten days of his appointment; or any levy under attachment, execution or similar process which is not within ten days vacated or removed by payment or bonding.
 - (d) Any attempted transfer of this Agreement by Dealer, in whole or in part, without VWoA's prior written consent;
 - (e) Any change in the location of any of Dealer's Premises or the establishment of any additional premises for Dealer's Operations without VWoA's prior written consent;
 - (f) Failure of Dealer to continue to operate any of Dealer's Premises in the usual manner for a period of five consecutive business days, unless caused by an Act of God, war, riot, strike, lockout, fire, explosion or similar event;
 - (g) Dealer's failure, for a period of ten consecutive business days, to have any license necessary for the conduct of Dealer's Operations;
 - (h) Conviction of Dealer or any of Dealer's Owners or Executives of a felony or any misdemeanor involving fraud, deceit or an unfair business practice, if in VWoA's opinion such conviction may adversely affect the conduct of Dealer's business, or be harmful to the good will of the Manufacturer or VWoA or to the reputation and marketing of Authorized Products;
 - (i) Any material misrepresentation by any of Dealer's Owners or Executives as to any fact relied upon by VWoA in entering into this Agreement;
 - (j) Submission by Dealer of fraudulent or knowingly false report or statement or claim for reimbursement, refund or credit; or
 - (k) Failure or refusal of Dealer or Dealer's Owners, Executives, agents or employees to provide VWoA, upon request, with access to and the opportunity to inspect and copy all books, papers, instruments, certificates or other documents evidencing the record or beneficial ownership of Dealer.

Termination by VWoA on 30 Days' Notice

- (2) Except to the extent a greater notice period is required by any applicable statute, VWoA has the right to terminate this Agreement upon 30 days' notice if any of the following shall occur:
 - (a) Any disagreement or personal difficulties of Dealer's Owners or Executives which in VWoA's opinion may adversely affect the conduct of Dealer's business, or the presence in the management of Dealer of any person who in VWoA's opinion does not have appropriate qualifications for their position;
 - (b) Impairment of the reputation or financial standing of Dealer or any of Dealer's Owners or Executives or ascertainment by VWoA of any fact existing at or prior to the time of execution of this Agreement which tends to impair such reputation or financial standing; or
 - (c) The failure of Dealer to meet its minimum customer satisfaction requirements, including, but not necessarily limited to, measures for sales satisfaction and service satisfaction, as established by VWoA for its dealers generally, from time to time, and as set forth in then-current Operating Standards issued by VWoA to its dealers generally, within 180 days after notice by VWoA to Dealer that Dealer has not met such requirements.

Termination by VWoA on 90 Days' Notice

- (3) Except to the extent a greater notice period is required by any applicable statute, VWoA has the right to terminate this Agreement upon 90 days' notice in the event of the breach by Dealer of any obligation of Dealer pursuant to this Agreement or any other agreement between VWoA or any of its subsidiaries or affiliates and Dealer, other than those enumerated in Articles 14(1) or 14(2) above.

Discussions with Dealer

- (4) Upon learning that any event or situation which would give VWoA grounds to terminate this Agreement has occurred, VWoA will endeavor to discuss such event or situation with Dealer. Thereafter, VWoA may give Dealer written notice of termination.

Modification of Terms of Payment

- (5) During the period a situation specified in Article 14(1), 14(2) or 14(3) continues to exist, VWoA may modify its terms of payment with respect to Dealer to such extent as VWoA may consider appropriate, irrespective of Dealer's credit standing or payment record.

No Waiver by Failure to Terminate

- (6) Should VWoA be entitled to terminate this Agreement but fail to do so, such failure shall not be considered a waiver of VWoA's right to terminate this Agreement unless the situation entitling VWoA to terminate this Agreement has ceased to exist and (a) six months have elapsed from the time VWoA obtained knowledge of such situation or (b) VWoA has entered into a subsequent written agreement with Dealer superseding this Agreement. Nevertheless, any situation entitling VWoA to terminate this Agreement may be considered at any subsequent time together with any subsequent events in determining VWoA's right to terminate this Agreement.

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Termination by Dealer

- (7) Dealer has the right to terminate this Agreement without cause by VWoA giving 60 days' written notice of such termination. Upon receipt of Dealer's notice of termination, VWoA may, at VWoA's option, waive in writing the 60 day notice period. In the event Dealer, in connection with its termination of this Agreement, also wishes to terminate any other agreement between Dealer and VWoA or any of VWoA's subsidiaries or affiliates, Dealer must do so separately and subject to the provisions of Article 14(10) below.

Continuation of Business Relations after Termination

- (8) Any business relations between VWoA and Dealer after the termination of this Agreement without a written extension or renewal or a new written dealer agreement will not operate as an extension or renewal of this Agreement or as a new dealer agreement. Nevertheless, all such business relations, so long as they are continued, will be governed by terms identical with the provisions of this Agreement.

Superseding Agreements

- (9) If any superseding form of Dealer Agreement is offered by VWoA to its authorized dealers generally at any time, VWoA may, by written notice to Dealer, terminate this Agreement and replace it with a Dealer Agreement in the superseding form.

Agreements with Affiliates of VWoA

- (10) The termination of this Agreement by either party does not necessarily waive or terminate any other agreement between Dealer and VWoA or any of its subsidiaries or affiliates. Such other agreements may be terminated only in accordance with their terms, and the parties' respective obligations under any such other agreements will continue in accordance with their terms until terminated.
-

Article 15**Rights and Liabilities upon Termination****VWoA's Obligations**

- (1) Within 90 days after the termination of this Agreement pursuant to Article 14, VWoA will purchase from Dealer and (subject to the provisions of Article 15(4) below) Dealer will sell to VWoA all the following:

New Authorized Automobile Inventory

- (a) All new, undamaged current model year Authorized Automobiles (introduced in the United States no earlier than 12 months prior to the date of such expiration or termination and not superseded by a later model year) in Dealer's inventory on the date of such expiration or termination which are in first-class salable condition, provided they (i) have 200 or fewer actual miles; (ii) were sold by VWoA and purchased by Dealer from VWoA (or in the ordinary course of business from other dealers of Authorized Automobiles appointed by VWoA) and (iii) have never been sold by Dealer. The price for such Authorized Automobiles will be the price at which they were originally sold by VWoA, less all prior refunds or allowances made by VWoA, if any.

New Genuine Parts Inventory

- (b) All the following new, unused and undamaged articles listed in VWoA's current Genuine Parts Price List (other than articles listed as obsolete) in Dealer's inventory on the date of such expiration or termination which are in first-class salable condition and complete, provided they were purchased by Dealer from VWoA and never sold by Dealer:
 - (i) New parts and new factory remanufactured replacement parts supplied by VWoA for Authorized Automobiles;
 - (ii) accessories considered by VWoA to be suitable for installation in the current model year Authorized Automobiles specified in Article 15(1)(a); and
 - (iii) other accessories, provided that VWoA has made sales of identical articles during six of the last twelve full calendar months immediately preceding such expiration or termination.

The price for all such articles will be the price then last established by VWoA for the sale of identical articles, less a handling charge equal to ten percent of such amount and less all prior refunds or allowances made by VWoA;

Tools and Equipment

- (c) All special tools and equipment for servicing Authorized Automobiles owned by Dealer on the date of expiration or termination which are in operating condition and complete, provided they were purchased by Dealer from VWoA or pursuant to written requests of VWoA. The price for such tools and equipment will be the fair market value thereof; and

Authorized Signs

- (d) All Authorized Signs which Dealer displayed publicly or at Dealer's Premises. The price for such Authorized Signs will be the fair market value thereof.

Terms of Sale

- (2) Any and all items to be sold by Dealer to VWoA pursuant to this paragraph will be delivered by Dealer to VWoA at Dealer's place of business suitably packed for transportation. For such periods of time as VWoA reasonably may determine, VWoA may enter Dealer's Premises for the purpose of taking an inventory of all or any part of Dealer's stock of Authorized Products and special tools and equipment. At the request of VWoA, Dealer will comply in all respects with the provisions of all applicable bulk sales acts or similar statutes protecting a transferee of personal property with respect to liabilities of the transferor. Promptly following performance by Dealer of all its obligations pursuant to this Article 15, the completion by VWoA of all steps required to obtain possession of such items and the delivery to VWoA of a bill of sale, documents of title and a general release of VWoA and the Manufacturer from Dealer and Dealer's Owners, all in form satisfactory to VWoA, VWoA will pay Dealer the specified prices for the said items, less all amounts owed by Dealer to VWoA, its subsidiaries or affiliates. VWoA will not be required to purchase any item from Dealer pursuant to this paragraph unless Dealer is able to convey to VWoA, within such 90-day period, title to such item free and clear of all liens, claims, encumbrances and security interests.

Pending Orders and Dealer's Obligations

- (3) Upon the expiration or termination of this Agreement, all pending orders of Dealer for Authorized Products previously accepted by VWoA will be canceled and Dealer immediately will:

Removal of Authorized Signs

- (a) Remove at its own expense all Authorized Signs which it displayed publicly or at its premises;

Authorized Trademarks

- (b) Cease all usage of the Authorized Trademarks, cease to hold itself out as an authorized dealer in Authorized Automobiles, destroy all stationery and other printed material bearing any Authorized Trademark, and, if its corporate or business name contains any Authorized Trademark, take all steps to remove the same therefrom;

Orders and Files

- (c) Transfer to VWoA
- (i) all orders for sale by Dealer of Authorized Products then pending with Dealer,
 - (ii) all deposits made thereon, whether in cash or property;
 - (iii) all Dealer's warranty records for Authorized Products or complete copies of all such records and files; and
 - (iv) all Dealer's customer service files. Upon the written request of Dealer, VWoA will return such customer service files to Dealer after VWoA has made copies of such files at VWoA's expense;

Customer Lists

- (d) Make available to VWoA in writing the names and addresses of all its service customers and prospective customers for Authorized Products; and

Literature

- (e) Deliver to VWoA at Dealer's place of business, free of charge, all technical or service literature, advertising and other printed material relating to Authorized Products, including sales instruction manuals or promotional material, then in Dealer's possession and which were acquired by Dealer from VWoA.

None of the foregoing will result in any liability of VWoA to Dealer for damages, commissions, loss of profits or compensation for services, or in any other liability of VWoA to Dealer of any kind of nature whatsoever.

Direct Sales by Dealer

- (4) Upon Dealer's written request, VWoA may waive Dealer's obligation to sell certain assets to VWoA and will consent to Dealer's sale of any of or all its assets to any party of Dealer's choosing; **provided, however**, that Dealer may not sell any new Authorized Automobile, Authorized Sign nor any new Genuine Parts to any person or entity other than another dealer in the same line-make authorized by VWoA.

Specific Performance

- (5) Since Dealer's obligations under this Article 15 are of such a nature that it is impossible to measure in money the damages which will be suffered by VWoA if Dealer should fail to perform any of them, Dealer agrees that, in the event of any such failure of performance on its part, VWoA will be entitled to maintain an action to compel the specific performance by Dealer of these obligations and Dealer agrees not to assert in any such action the defense that VWoA has an adequate remedy at law.
-

Article 16

Definitions

Throughout this Agreement various abbreviations and abbreviated phrases have been used. Their meanings are:

Authorized Automobiles

- (1) "Authorized Automobiles" means motor vehicles of the Volkswagen brand and comprising such models and types as may be supplied by VWoA during the term of this Agreement.

Authorized Products

- (2) "Authorized Products" means Authorized Automobiles and Genuine Parts.

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Authorized Representative

- (3) "Authorized Representative" means a qualified representative of Dealer whose full-time professional efforts are devoted to the conduct of Dealer's Operations and who is authorized on behalf of Dealer to execute documents, make all operational decisions with respect to Dealer's Operations, and on whose authority VWoA is entitled to rely.

Authorized Signs

- (4) "Authorized Signs" means displays of any Authorized Trademark, in such material, type, presentation and colors as VWoA may prescribe from time to time.

Authorized Trademarks

- (5) "Authorized Trademarks" means any trademark, service mark or trade name now or any other time hereafter used or claimed by the Manufacturer or VWoA.

Dealer's Area

- (6) "Dealer's Area" means the area designated by VWoA in the Operating Plan for Dealer's Operations, corresponding to U.S. census tract information.

Dealer's Executives

- (7) "Dealer's Executives" means all the persons named in Paragraphs 5 and 6 of the Statement of Ownership and Management as officers or the Authorized Representative of Dealer, as well as any other person who succeeds to any position in Dealer referred to in such paragraphs in accordance with the provisions of this Agreement.

Dealer's Operations

- (8) "Dealer's Operations" means all activities of Dealer relating to the promotion and sale of Authorized Products, the supply of Genuine Parts, customer service for Authorized Products and all other activities of Dealer pursuant to this Agreement.

Dealer's Owners

- (9) "Dealer's Owners" means all the persons named in Paragraph 4 of the Statement of Ownership and Management as beneficial or record owners of Dealer, as well as any other person who acquires or succeeds to any beneficial interest or record ownership in Dealer in accordance with the provisions of this Agreement.

Dealer's Premises

- (10) "Dealer's Premises" means all premises referred to in the Dealer Premises Addendum and used by Dealer for or in connection with Dealer's Operations, including sales facilities, service workshops, offices, facilities for storage of Authorized Automobiles and Genuine Parts, used car sales facilities and parking facilities.

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Genuine Parts

- (11) "Genuine Parts" means new and factory rebuilt replacement parts, accessories and optional equipment for Authorized Automobiles if such parts, accessories and optional equipment are supplied by VVoA.

Manufacturer

- (12) "Manufacturer" means any supplier of Authorized Products to VVoA, including as appropriate, but not limited to, Audi AG, a German corporation, and Volkswagen AG, a German corporation.

Net Working Capital, Owner's Equity and Wholesale Credit

- (13) "Net Working Capital," "Owner's Equity" and "Wholesale Credit" shall have the meanings set forth in the Operating Standards, the Operating Plan and in accordance with generally accepted accounting principles.

Operating Plan

- (14) "Operating Plan" means the Dealer Operating Plan then-currently established by VVoA for dealers of Authorized products, determined in cooperation with Dealer, as well as any amendments thereof or additions thereto by VVoA during the term of this Agreement.

Operating Standards

- (15) "Operating Standards" means the Volkswagen Dealer Operating Standards issued by VVoA to its Volkswagen dealers, including any amendments, revisions or additions, from time to time during the term of this Agreement.

Owner's Documents

- (16) "Owner's Documents" means all the documents which are supplied by VVoA in respect of each Authorized Automobile and which are intended for the customer, including, but not limited to, the Owner's Manual, Warranty Booklet and Maintenance Booklet.

Recommendations

- (17) "Recommendations" means written suggestions provided by VVoA to Dealer from time to time during the term of this Agreement, as well as all currently applicable written suggestions previously provided by VVoA.

VVoA

- (18) "VVoA" means Volkswagen of America, Inc., a New Jersey corporation, and includes, as appropriate, all divisions of that corporation.

VWoA's Warranties

- (19) "VWoA's Warranties" means, with respect to each Authorized Product, those express written warranties provided with such product or as set forth in the Dealer Warranty Manual for Authorized Products in effect at the time such product is first sold at retail, as well as any express written warranties which VWoA may issue with respect to any product during the course of its service life.
-

Article 17

General Provisions

Dealer Not an Agent

- (1) Dealer will conduct all Dealer's Operations on its own behalf and for its own account. Dealer has no power or authority to act for the Manufacturer or VWoA.

Authority to Sign

- (2) Dealer acknowledges that only an Area Executive is authorized on behalf of VWoA to execute this Agreement or to agree to any variation, modification or amendment of any of its provisions or to sign any notice of termination, and that such Agreement, variation, modification, amendment or notice of termination must be countersigned by the President, a Vice President, the Secretary, an Assistant Secretary or a Regional Team Leader of VWoA.

Variations; Modifications; Amendments

- (3) This Agreement may not be varied, modified or amended except by an express instrument in writing to that effect signed on behalf of both VWoA and Dealer.

Entire Agreement

- (4) This instrument contains the entire agreement between the parties. No representations or statements other than those expressly set forth or referred to herein were made or relied upon in entering into this Agreement.

Release of Claims under Prior Agreement

- (5) This Agreement terminates and supersedes all prior agreements with respect to Authorized Products between the parties, if any. The parties hereby waive, abandon and relinquish any and all claims of any kind and nature arising out of or in connection with any such prior agreement, except for any accounts payable by one party to the other as a result of the purchase of any Authorized Products, audit adjustments or reimbursement for any services.

Agreement Non-transferable

- (6) No part of this Agreement nor any interest in this Agreement may be transferred by Dealer without the prior written consent of VWoA.

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Defense and Indemnification

- (7) VWoA will, upon Dealer's written request:
 - (a) Defend Dealer against any and all claims for breach of VWoA's Warranties, bodily injury or death, or for physical damage to or destruction of property, that, during the term of this Agreement, may be asserted against Dealer in any action solely by reason of a manufacturing defect or design deficiency in
 - (i) an Authorized Product; or
 - (ii) a product of the same line-make formerly supplied by VWoA pursuant to a former dealer agreement; and
 - (b) Hold Dealer harmless from any and all settlements made and final judgments rendered with respect to such claims;

provided, that in each case Dealer promptly notifies VWoA in writing of the commencement of such action against Dealer and cooperates fully in the defense of such action in such manner and to such extent as VWoA may require. However, such defense and indemnification by VWoA will not be required if any fact indicates that any negligence, error, omission, act, failure, breach, statement or representation of Dealer may have caused or contributed to the claim asserted against Dealer or if VWoA determines that such action seeks recovery for allegations other than those described in Article 17(7)(a).

Notices

- (8) Any notices under or pursuant to the provisions of this Agreement will be directed to the respective addresses of the parties stated herein, or, if either party shall have specified another address by notice in writing to the other party, to the address thus last specified. Unless otherwise provided herein, notices shall be deemed effective if sent by certified mail with return receipt requested; by overnight service having a reliable means of confirming delivery; or by personal delivery to any of Dealer's Owners or Executives. Notices shall be deemed effective when received.

Waivers

- (9) The waiver by either party of any breach or violation of or default under any provision of this Agreement will not operate as a waiver of such provision or of any subsequent breach or violation thereof or default thereunder. The failure or refusal of VWoA to exercise any right or remedy shall not be deemed to be a waiver or abandonment of any such right or remedy.

Titles

- (10) The titles appearing in this Agreement have been inserted for convenient reference only and do not in any way affect the construction, interpretation or meaning of the text.



EXHIBIT C



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VOLKSWAGEN OF AMERICA, INC.

EXHIBIT 6

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EXHIBIT 6

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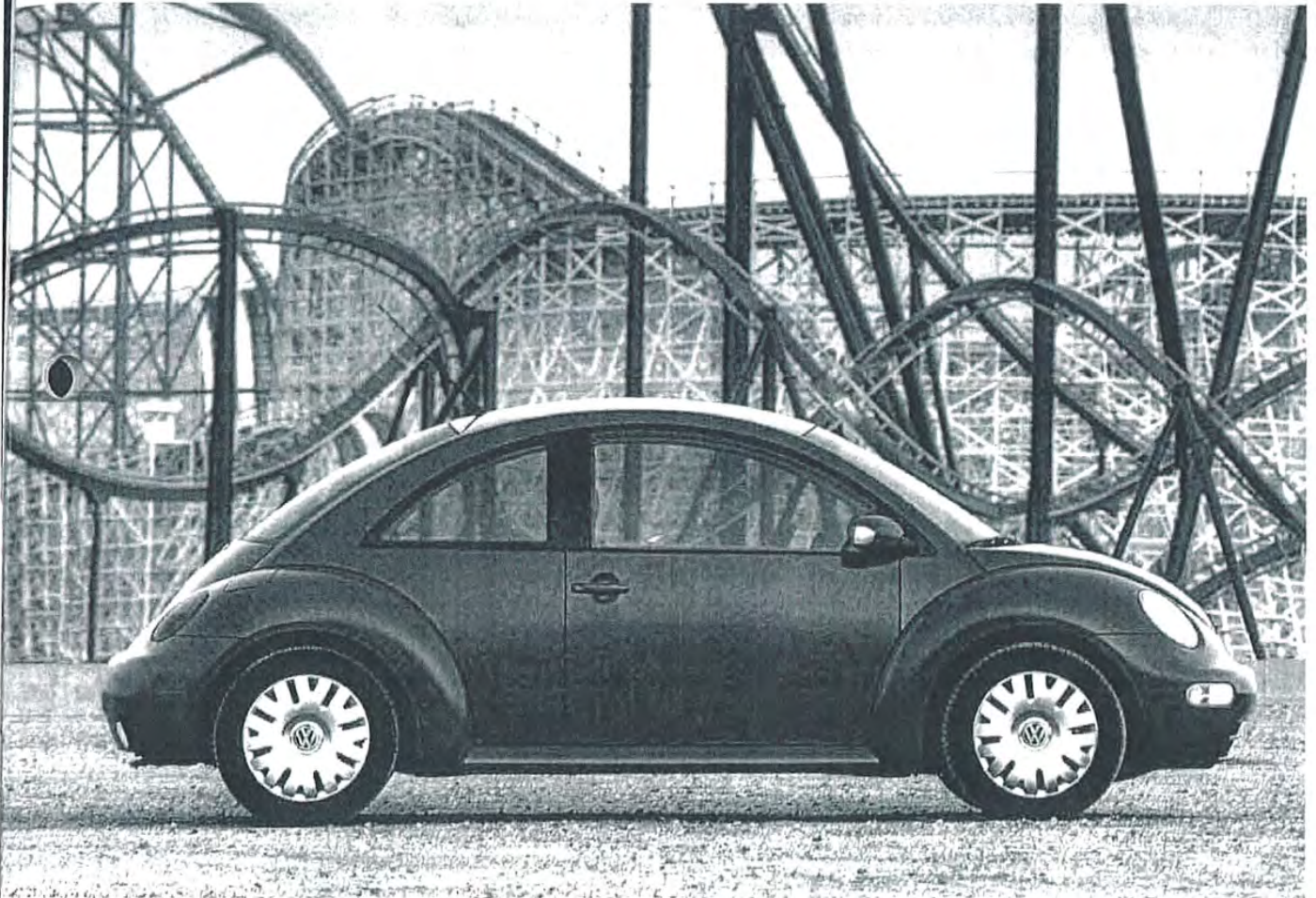
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2007 VOLKSWAGEN OPERATING STANDARDS

EXHIBIT 6

2007 VOLKSWAGEN OPERATING STANDARDS

Legal Effect

The Volkswagen Dealer Agreement (the "Agreement") incorporates by reference the Volkswagen Dealer Operating Standards (the "Operating Standards"). The Operating Standards incorporate by reference the Volkswagen Facility Supplement (the "Facility Supplement") and the Volkswagen Corporate Identification and Trademark Supplement (the "Corporate Identification and Trademark Supplement"). Adherence to the Operating Standards by every Volkswagen Dealer is required. Failure to comply with the Operating Standards is a material breach of the Agreement and is cause for termination of the Agreement in accordance with its terms and those of applicable law. Compliance with the Operating Standards by any Dealer will determine the extent to which Dealer will be entitled to participate in any discretionary program offered by VWoA.

In the case of any conflict between the Operating Standards, the Facility Supplement, the Corporate Identification and Trademark Supplement and the Agreement, the terms of the Agreement shall control.

NEW FACILITIES, RELOCATIONS, CHANGES OF OWNERSHIP & RENOVATIONS

All new facilities and relocations shall conform in all respects to the Operating Standards, including the Volkswagen Marketplace concept and minimum facility guidelines as specifically detailed in Appendix A of the Facility Supplement.

In the case of a change of majority ownership of Dealer, the new Dealer will be required to conform in all respects to the Operating Standards, including the Volkswagen Marketplace concept and minimum facility guidelines as specifically detailed in Appendix A of the Facility Supplement.

All facility renovations shall conform in all respects to the Operating Standards, including the minimum exterior and interior Corporate Identity elements of the Volkswagen Marketplace concept as outlined in these standards and as specifically detailed in Appendix A of the Facility Supplement.

2007 VOLKSWAGEN OPERATING STANDARDS

DEALER OPERATING STANDARDS BUSINESS PLAN

The Operating Standards recognize that there are six basic inputs that Dealers can apply toward achieving the desired levels of customer loyalty: General Management, Facility, Sales, Service, Parts and Continuous Improvement. Accordingly, the Operating Standards are organized to describe Dealers' obligations as to each of those inputs.

The Dealer and the Area Team will, not less frequently than annually, cooperate to prepare an Operating Standards Business Plan (the "Operating Plan") in the form currently used by VWoA. The Operating Plan will be reviewed with the Dealer from time to time. Through these reviews of the Operating Plan, Dealer and the Area Team, working together, can quantify Dealer's success in meeting certain performance requirements and develop an action plan for resolving any deficiency.

CUSTOMER LOYALTY

With the guidance and assistance of VWoA representatives, Dealer will take such steps as are necessary to ensure that all customers are treated courteously, efficiently and responsibly. Dealer will act with the clear intent and belief that increasing customer loyalty is fundamental to ensuring repeat and referral business and our mutual long-term future. Dealer will be notified from time to time of VWoA's customer loyalty measurement process and required levels of performance.

2007 VOLKSWAGEN OPERATING STANDARDS

General Management: Financials

- 1 Dealer meets 100 percent of the required Net Working Capital as defined in Dealer's Operating Standards Business Plan.
- 2 Dealer meets 100 percent of the required Owner's Equity as defined in Dealer's Operating Standards Business Plan.
- 3 Dealer meets 100 percent of the required Wholesale Line of Credit as defined in Dealer's Operating Standards Business Plan and has a letter on file with Volkswagen stating that Dealer meets the required amount and has an open and unrestricted wholesale line of credit.

General Management: Inventory

- 4 Dealer stocks a minimum of 45 days' inventory of Genuine Parts and Accessories as defined in Dealer's Operating Standards Business Plan.
- 5 Dealer stocks and displays a representation of the full model range of Authorized Vehicles, subject to availability, on premises and conforms to 60-days' inventory from port stock to in-dealer stock as defined in Dealer's Operating Standards Business Plan.
- 6 Dealer stocks a minimum of three CPO vehicles at all times and prominently displays a minimum of one CPO vehicle in either the new or used car display area.
- 7 Demonstrator cars are clean, in good condition and well cared for.

General Management: Training

- 8 Dealer's personnel meet the training requirements (Retail Readiness Requirements) established in Dealer's current year Volkswagen Operating Standards Business Plan.
- 9 Volkswagen Sales Consultants are knowledgeable about Volkswagen-advertised financing, leasing, marketing programs and product information and can communicate effectively with all shoppers, including Internet shoppers.
- 10 MAX is accessible by all employees in a designated training or employee area on- or off-site.

General Management: Human Resources

- 11 A General Manager, approved by VWoA, is required.
- 12 Dealer has such staff as to meet or exceed customer expectations as defined in Dealer's Operating Standards Business Plan.
- 13 All customer contact personnel are dressed in accordance with Dealer's dress code.

General Management: Technology

- 14 Dealer is required to meet VWoA IT/Internet Standards as published from time to time in the Technology Requirement and Guideline book, published on *vwhub.com*. At Operating Standards, this includes, but is not limited to, persistent Internet access with firewalls on at least one computer in each department (Sales, F&I, Service and Parts), and ALL access must be high-speed.
- 15 Dealer has a Volkswagen-sponsored Web site that is linked to *vw.com* and conforms to Corporate Identity Standards as defined in the Corporate Identification and Trademark Supplement.
- 16 Dealer displays through *vw.com* a selection of new and used authorized Volkswagen automobiles.
- 17 Dealer has at least two extranet administrators registered for *vwhub.com* at all times.
- 18 Dealer utilizes a Volkswagen Certified Lead Management tool for all Volkswagen-program leads.

Facility

- 19 Dealer complies with the facility requirements as defined in the Volkswagen Facility Supplement. Marketplace Dealers must also comply with additional components specific to their Marketplace level.
- 20 All primary and secondary signs have been installed and conform to Volkswagen's Corporate Identity and Trademark Requirements as defined in the Volkswagen Corporate Identification and Trademark Supplement.
- 21 Authorized Volkswagen trademarks, including the distinctive logo, will be used exclusively for the identification, advertising and promotion of Volkswagen products and services as defined in the Volkswagen Corporate Identification and Trademark Supplement.
- 22 Dealer's hours of operation for Sales, Service and Parts meet or exceed competitive market average as determined by Dealer and Region Team.
- 23 Dealer utilizes either a live or electronic answering service that directs customers to requested department/person in a timely manner.

2007 VOLKSWAGEN OPERATING STANDARDS

Sales

- 24** Dealer has a documented Sales process for Internet Inquiry, Meet & Greet, Needs Discovery, Product Presentation, Negotiation, Delivery and Follow-up that includes, but is not limited to:
- a. Responding to all Internet sales inquiries.
 - b. Greeting customers courteously and promptly.
 - c. Discovering and understanding customer needs and preferences.
 - d. Customizing product presentations to fit each customer's needs.
 - e. Offering all qualified customers a test-drive.
 - f. Utilizing a consistent negotiation process.
 - g. Explaining the trade-in process and criteria for arriving at a fair trade-in value.
 - h. Explaining all F&I options (credit applications and contracts) by a qualified employee.
 - i. Providing customer a detailed car that is clean, inside and out, and free of problems at time of delivery.
 - j. Discussing all limited warranties, roadside assistance, service and maintenance intervals with customer at time of delivery.
 - k. Completing a Volkswagen Perfect Delivery Checklist (all three sections completed), including signatures, with a copy given to the customer at time of delivery.
 - l. Following up with all customers (sold and prospects) in a timely manner.

Service

- 25 Dealer has a documented Service process for Internet Inquiry, Service Appointment, Meet & Greet, Service Write-up, Customer Communication during repair, Service Dispatch, Vehicle Diagnosis & Repair, Quality Check, Delivery and Follow-up that includes, but is not limited to:
- a. Responding to all Internet service inquiries.
 - b. Answering all calls to the service department promptly and courteously.
 - c. Utilizing a formal appointment scheduling process that includes appointments throughout the day (paper or electronic) and scheduling of all maintenance and repair appointments within one week of customer's request.
 - d. Greeting all customers arriving for service promptly and courteously.
 - e. Effectively questioning customers by Service Advisor to ensure understanding of the required repair by customer and Technician.
 - f. Proactively informing the customer of status during repair process.
 - g. Utilizing a formalized paper or electronic dispatching process.
 - h. Testing by Technicians and using proper tools and procedures to complete repairs as listed on the R.O.
 - i. Utilizing a formal quality check process.
 - j. Reviewing the invoice prior to or at time of delivery with all customers by a knowledgeable person.
 - k. Utilizing a formalized follow-up process.
- 26 All Service, Parts and Warranty literature is complete and up to date, and Technicians have access to all electronic technical information.
- 27 Service department is equipped with all the minimum required tools as defined by VWoA from time to time.
- 28 Service Manager conducts an annual tool inventory and has a process in place to ensure regular maintenance is conducted on tools and equipment.

2007 VOLKSWAGEN OPERATING STANDARDS

Parts

- 29 Dealer has a documented Parts process for Meet & Greet, Provide and/or Order Parts, Parts Receiving & Stocking and Technician/Wholesale/Retail Customer Follow-up that includes, but is not limited to:
- a. Greeting and handling retail counter customers in a prompt and courteous manner.
 - b. Utilizing a formal ordering process, including special orders.
 - c. Making customers aware of applicable limited warranties for all parts purchased.
 - d. Ensuring timely delivery of parts to Technicians with appropriately completed paperwork.
 - e. Ensuring parts are inspected before issuing to Technicians and counter customers.
 - f. Communicating parts receipt to Technicians and wholesale and retail customers.
 - g. Communicating to customers when special-order parts have been received.
 - h. Noting parts from external sources on customer invoices.
- 30 Dealer updates Parts literature electronically as required by VWoA.

Continuous Improvement

- 31 Dealer will be notified from time to time of VWoA's Customer Loyalty Measurement process and required levels of performance.
- 32 Dealer has a greeting process in place that includes escorting customers to appropriate areas and departments.



APPENDIX

EXHIBIT 6

APPENDIX

Facility Checklist

The following is a list of items that are inherent in Operating Standard #19. All Volkswagen Dealers must meet each element in order to be compliant with Operating Standards. Details of the items below can be found in the Facility Supplement.

OPERATING STANDARD #19

All Dealers will comply with the facility requirements as indicated in the Volkswagen Facility Supplement. Marketplace Dealers must also comply with additional components specific to their Marketplace level. See Appendix A in the Volkswagen Facility Supplement for specific details on Marketplace versus non-Marketplace requirements.

In order to meet this Standard, every Dealer must meet all of the following criteria:

- Dealer's Premises are clean and maintained at all times.
- On-site parking and customer access areas are properly graded, hard-surfaced, lined and identified. Ample parking is available to accommodate Sales, Service and Parts customers as identified in the Facility Supplement.
- Dealer's Premises are clearly identifiable at night as a Volkswagen Dealership (as permitted by local codes).
- Dealer's hours of operation for all departments and the roadside assistance number are clearly posted at main customer entrances and on Dealer's VWoA-sponsored Web site and meet the guidelines as detailed in the Volkswagen Corporate Identification and Trademark Supplement. Brushed aluminum sign required on Marketplace Portal.
- The main entrance to Dealer's Premise is easily accessible by all customers.
- Dealer's Premises prominently displays Volkswagen branding elements as outlined in the Facility Supplement.
- Dealer provides an enclosed showroom or Volkswagen-approved new-vehicle display area, in each case having space dedicated to Volkswagen products. Such area is of sufficient size to display the number of models in the Volkswagen vehicle line as outlined in Appendix A.

APPENDIX

- Dealer provides a storage area as identified in the Facility Supplement. All off-site storage sites must be approved by VWoA and may only display signage approved by VWoA.
- Used vehicle display space is sufficient to display a 30-day supply of used vehicles based on Dealer's annual used-vehicle sales objective as identified in the Dealer's annual Operating Standards Business Plan.
- Separate used-vehicle facilities meet the color and material guidelines as detailed in the Facility Supplement.
- Dealer's Premises have a designated customer waiting area that reasonably and professionally accommodates the needs of customers who choose to remain at the facility while their vehicle is serviced.
- The VW Service Reception and Write-up areas are clearly identified and readily apparent to the customer. Service Reception is sized and designed to permit customers to conveniently leave vehicles on the premises for service, without the need to search for a parking place.
- Dealer utilizes the Volkswagen literature/brochure display rack to display up-to-date Volkswagen product brochures and promotional materials as provided by VWoA.
- Promotional displays are updated as new materials are provided by VWoA and outdated materials have been removed.
- Dealer meets the service capacity requirements as defined in the Operating Standards Business Plan.
- Dealer has a retail parts counter, separate from that used by the Service Department, and has a retail accessory display area.
- Interior windows are free from writing, logos, etc. Frosted tape (without logos) may be installed as a safety feature.

APPENDIX

Corporate Identification and Trademark Checklist

The following is a list of items that are inherent in Operating Standards #20 and #21. All Volkswagen Dealers must meet each element in order to be compliant with Operating Standards. Details of the items below can be found in the Corporate Identification and Trademark Supplement.

Operating Standard #20

All primary and secondary signs will conform to Volkswagen's Corporate Identity and Trademark Requirements as defined in the Volkswagen Corporate Identification and Trademark Supplement.

Operating Standard #21

Authorized Volkswagen trademarks, including the distinctive logo, will be used exclusively for the identification, advertising and promotion of Volkswagen products and services as defined in the Volkswagen Corporate Identification and Trademark Supplement.

In order to meet Operating Standards #20 and #21, all Dealers must meet each of the following criteria:

- The minimum VWoA exterior corporate identity elements consist of the Ground Sign, Dealer signs, Dealer Nameplate and building fascia Clip as well as approved building colors, subject to local sign restrictions.
- VWoA corporate components cannot be used in conjunction with unauthorized identification elements, including but not limited to, Dealer Nameplates, Dealer-specific Symbols and Logos. Dealer will observe this restriction with respect to all Dealer product advertising (new, used, service, parts), Dealer's stationery and forms and in such other documents as VWoA may direct. Such use will at all times be in accordance with the Volkswagen Corporate Identification and Trademark Supplement.
- Dealer must not display any unauthorized Volkswagen logos.
- Dealer must not display any unauthorized banners, bunting, streamers, window painting, painted wall signs or balloons.
- All signs displayed are in accordance with the Volkswagen Corporate Identification and Trademark Supplement.
- As needed, interior signage clearly directs customers to Dealership Sales, Service and Parts departments and to key customer amenities, such as the service reception, waiting areas, children's play area and restrooms.

SHOWROOM SPACE ANALYSIS

New Vehicle Sales Objective	Units	Display (Sq. Ft.)	Marketplace Participation Level (Facility Type)	Marketplace Participation Level Intercorporate Dual
< 200	4	1200	D	Dual D
200 - 349	4	1800	C	Dual D
350 - 499	5	2250	C	Dual C
500 - 599	5	2250	A or B	Dual C
600 - 699	6	2700	A or B	Dual C
700 - 999	7	3150	A	Dual C
> 1000	8	3600	A	Dual C

- Minimum indoor display requirement is four cars and 1,200 square feet.
- Minimum display square footage requirement is for display area only. Offices and sales areas are not included.
- New points must construct, at a minimum, a Type "C" facility up to a 500 PV, a Type "B" for BPVs of 500 to 700, and a type "A" for BPVs above 700.
- Marketplace Participation Level and Display area requirements are for new construction and relocations, and are guidelines for renovations of existing buildings. Dealers who are renovating their current, approved facility must at a minimum meet "D" level requirements. (Four cars, 1,200 square feet is a minimum for all dealership facilities.) Incoming Dealers who agree to remain at an approved facility location which at the time of purchase does not meet Marketplace participation level and display area requirements must, at a minimum, renovate to a "D" level.

Incoming Dealers who relocate from the approved facility location must meet the Marketplace participation level and display area requirements as set forth above.

- < 100 PV: Physical separation in the showroom. Minimum display space requirements remain. No portal or focal wall.

All requirements are subject to approval from local municipalities.

EXHIBIT 6

VOLKSWAGEN of America, Inc.



Volkswagen

Volkswagen Dealer Agreement Standard Provisions

EXHIBIT 6

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STANDARD PROVISIONS

ARTICLE 1

BASIC OBLIGATIONS OF VWOA

Supply of Authorized Products

- (1) VWOA will sell and deliver Authorized Products to Dealer in accordance with this Agreement.

Assistance

- (2) VWOA will actively assist Dealer in all aspects of Dealer's Operations through such means as VWOA considers appropriate, including:
 - (a) Annual reviews of Dealer's compliance with this Agreement, the Operating Standards;
 - (b) Recommendations; and
 - (c) Schools, special training and meetings for Dealer's personnel.

Compliance with Ethical Standards

- (3) In the conduct of its business, VWOA will:
 - (a) Safeguard and promote the reputation of Authorized Products and the Manufacturer;
 - (b) Refrain from all conduct which might be harmful to the reputation or marketing of Authorized Products or inconsistent with the public interest; and
 - (c) Avoid all discourteous, deceptive, misleading, unprofessional or unethical practices.
-

ARTICLE 2

BASIC OBLIGATIONS OF DEALER

Sales, Service and Parts Supply

- (1) Dealer assumes the responsibility in Dealer's Area for the promotion and sale of Authorized Products and for the supply of Genuine Parts and customer service for Authorized Products. This Agreement does not give Dealer any exclusive right to sell or service Authorized Products in any area or territory.

STANDARD PROVISIONS

Compliance with Ethical Standards

- (2) In the conduct of its business, Dealer will:
 - (a) Safeguard and promote the reputation of Authorized Products, the Manufacturer and VWoA;
 - (b) Refrain from all conduct which might be harmful to the reputation or marketing of Authorized Products or inconsistent with the public interest; and
 - (c) Avoid all discourteous, deceptive, misleading, unprofessional or unethical practices.

Operating Standards and Operating Plan

- (3) The Operating Standards and Operating Plan are part of this Agreement and are incorporated herein by this reference.

Disclaimer of Further Liability by VWoA

- (4) Except as expressly provided in this Agreement, VWoA is not liable for any expenditure made or liability incurred by Dealer in connection with Dealer's performance of its obligations under this Agreement.
-

ARTICLE 3

GENERAL MANAGEMENT AND FACILITY REQUIREMENTS

Dealer's General Management

- (1) In the conduct of its business, Dealer will have the following minimum staff:
 - (a) A qualified representative whose full-time professional efforts are devoted to the conduct of Dealer's Operations and who is authorized to make all operational decisions on behalf of the Dealer (provided, that such authorized representative may be one of Dealer's Owners); and
 - (b) Such additional department managers and other employees as set forth in the Operating Standards and the Operating Plan.

Dealer's Premises

- (2) Dealer's Premises, in sales, service and parts, will conform to the requirements of this Agreement, the Operating Standards, the Operating Plan and such other reasonable standards as VWoA may prescribe from time to time, after review with Dealer.
 - (3) Unless otherwise agreed by VWoA in writing, Dealer will operate Dealer's Premises during the customary business hours of the trade in Dealer's Area.
-

STANDARD PROVISIONS

ARTICLE 4

IDENTIFICATION; ADVERTISING

Use of Authorized Trademarks

- (1) VWoA will supply Dealer, from time to time, with trademark standards to assist Dealer in the proper usage of Authorized Trademarks. Dealer will use Authorized Trademarks only in connection with the promotion and sale of new Authorized Products and customer service for Authorized Products pursuant to this Agreement, and only in the manner and for the purposes VWoA specifies. Dealer will not use any Authorized Trademark as part of its corporate or business name without the prior written consent of VWoA. Dealer also may use Authorized Trademarks in connection with the sale of used automobiles if Dealer complies fully with VWoA's requirements relating to used car sales under the Authorized Trademarks. If Dealer does not comply fully with these requirements, Dealer may not use any Authorized Trademarks in connection with its used car sales, except that Dealer may use the word "Volkswagen" to describe Authorized Automobiles, if this word appears in characters and colors different from those usually employed by the Manufacturer, VWoA and authorized dealers of VWoA. This Agreement does not grant Dealer any license or permission to use Authorized Trademarks except as mentioned herein, and Dealer has no right to grant any such permission or interest.

Signs

- (2) Dealer will display conspicuously at Dealer's Premises such Authorized Signs at such locations as VWoA reasonably may require. Dealer will use its best efforts to obtain all governmental approvals necessary for such display. If Dealer transfers any of Dealer's Premises to another location, Dealer immediately will remove all Authorized Signs and other references to Authorized Products displayed at or around the prior location.

Stationery

- (3) All stationery and business forms used in Dealer's Operations will be prepared in accordance with Recommendations. Dealer's use of Authorized Trademarks on stationery and business forms will be in accordance with trademark standards supplied by VWoA.

Advertising

- (4) Dealer will advertise Authorized Products and customer service for Authorized Products only in accordance with reasonable guidelines and policies established by VWoA. Dealer will refrain from all false, deceptive, misleading or unlawful advertising. Dealer's advertising will include, among other things, a listing in a principal local classified telephone directory in Dealer's Area. Authorized Trademarks will be used for identification in all product and customer service advertising, in accordance with the provisions of this Agreement. VWoA will provide or sell to Dealer sufficient quantities of all legally required brochures, as well as all current sales, service and parts literature and promotional materials, and Dealer shall prominently display them and make them readily available.

STANDARD PROVISIONS

ARTICLE 5**SALES****Sales Promotion**

- (1) Dealer will use its best efforts to promote the sale of Authorized Automobiles in Dealer's Area, through regular contacts with owners, users, and prospective owners and users of Authorized Products; through promotion, prospecting, and follow-up programs; and through such means and at such levels as may be indicated from time to time by the Operating Standards, Operating Plan and Recommendations.

Sales Performance

- (2) Dealer will achieve the best sales performance possible in Dealer's Area for each model and type of Authorized Automobile. The measurement for Dealer's yearly sales performance will be the objective established in the applicable annual Operating Plan.

Sales Outside Area

- (3) Subject to Dealer's performance of its obligations under Article 5(2), VWoA does not restrict Dealer's sale of Authorized Products within the 50 United States. VWoA hereby informs Dealer, however, that VWoA has no authority to sell any products for distribution outside the United States, and it is VWoA's policy not to do so. Dealer acknowledges its understanding that this is intended to preserve the integrity of the orderly worldwide distribution network for the products supplied to VWoA, and to maximize customer satisfaction by ensuring that Authorized Products meet the certification and operational standards to which they were designed. Dealer therefore is authorized to sell new Authorized Products only in the 50 United States, and is not authorized to, and agrees it will not, sell any new Authorized Product for sale or use elsewhere.

Defective or Damaged Authorized Products

- (4) If any Authorized Product sold by VWoA to Dealer should become defective or damaged prior to its delivery by Dealer to a customer, Dealer agrees to repair such defect or damage so that such Authorized Product is placed in first-class salable condition prior to such delivery. Dealer immediately will notify VWoA of any substantial defects or damage and will follow such procedures for making damage claims as VWoA may establish from time to time. VWoA shall have the option to repurchase any Authorized Products with substantial defects or damage at the price at which they were originally sold by VWoA, less any prior refunds or allowances made by VWoA and less any insurance proceeds received by Dealer in respect of such defect or damage. VWoA will make an equitable adjustment with respect to damage which Dealer can demonstrate occurred prior to the time of delivery to Dealer. VWoA will disclose to Dealer as may be required any damage which VWoA repaired before delivering an Authorized Automobile to Dealer. Dealer will properly disclose such repair prior to delivering such Authorized Automobile to a customer, and will hold VWoA harmless from any claims that required disclosure was not made.

STANDARD PROVISIONS

Changes by Dealer to Authorized Products

- (5) VWoA may request Dealer to make changes, or not to make changes, to Authorized Products, and Dealer agrees to comply promptly with such requests. Dealer also agrees to take such steps as VWoA may direct it to take to comply with any law or regulation pertaining to safety, emissions, noise, fuel economy or vehicle labeling. VWoA will reimburse Dealer at the then-current rate of reimbursement specified by VWoA for Dealer for Genuine Parts and for labor which may be used by Dealer in making such required changes on Authorized Products. Parts and other materials necessary to make such changes may be shipped to Dealer without Dealer's authorization and Dealer will accept them. Dealer will receive credit for parts so shipped which prove unnecessary, provided they are returned or disposed of in accordance with VWoA's instructions. If the laws of the state in which Dealer is located or a vehicle is to be registered require motor vehicles to carry equipment not installed or supplied as standard equipment by the Manufacturer or VWoA, upon VWoA's request Dealer will, prior to selling any Authorized Automobiles on which such installation is required, properly install at its own or its customers' expense equipment conforming to such laws and to VWoA's standards. Dealer agrees to indemnify the Manufacturer and VWoA and hold them harmless against and from any and all liabilities that may arise out of Dealer's failure or alleged failure to comply with any obligation assumed by Dealer in this paragraph.

Product Changes by Dealer Neither Requested by VWoA nor Required by Law

- (6) If Dealer installs on a new Authorized Automobile any equipment, accessory or part other than a Genuine Part; sells any new Authorized Automobile which has been modified; or sells in conjunction with a new Authorized Automobile a service contract not offered or specifically endorsed in writing by VWoA, then Dealer will advise the customer of the identity of the warrantor of such modification, equipment, accessory or part, or, in the case of a service contract, of the identity of the provider of its coverage. Dealer will indemnify VWoA against claims that may be asserted against VWoA in any action by reason of such modification, equipment, accessory, part or service contract. **ANY UNAUTHORIZED MODIFICATION TO AUTHORIZED PRODUCTS BY DEALER WHICH ADVERSELY AFFECTS THE SAFETY OR EMISSIONS OF AN AUTHORIZED AUTOMOBILE WILL BE A VIOLATION OF THIS AGREEMENT AND CAUSE FOR TERMINATION PURSUANT TO ARTICLE 14(2).**

Used Car Operations

- (7) Dealer will use its best efforts to acquire, promote, and sell at retail used Authorized Automobiles and other used automobiles. Dealer's used car operations will conform to the requirements of the Operating Standards, Operating Plan, Recommendations and such other reasonable standards as VWoA may prescribe, after review with Dealer.

ARTICLE 6

PARTS

Parts Promotion

- (1) Dealer will use its best efforts to promote the sale of Genuine Parts in Dealer's Area, through regular contacts with owners, users, and prospective owners and users of Authorized Products; through promotion, prospecting and follow-up programs; and through such means as may be indicated from time to time by Recommendations.

STANDARD PROVISIONS

Parts Department

- (2) Dealer's parts department will conform to the requirements of the Operating Standards, the Operating Plan and such other reasonable standards as VWoA may prescribe, after review with Dealer.

Sale of Non-genuine Parts

- (3) Dealer will not sell any parts which are not equivalent in quality and design to Genuine Parts, if such parts are necessary to the mechanical operation of Authorized Automobiles. Dealer will not represent as new Genuine Parts any parts which are not new Genuine Parts. If Dealer sells a part or accessory which is not a Genuine Part, Dealer will advise the customer of the identity of the warrantor of such part or accessory.

Parts Inventory

- (4) Dealer will maintain an inventory of Genuine Parts which is sufficient to perform reasonably anticipated warranty service and wholesale trade requirements in Dealer's Area for Genuine Parts. VWoA will make Recommendations for Dealer's inventory of Genuine Parts based on particular conditions in Dealer's Area, and Dealer will give due consideration to such Recommendations.
-

ARTICLE 7

SERVICE

Quality and Promotion of Service

- (1) Dealer will provide the best possible customer service for all owners of Authorized Automobiles and automobiles of the same make formerly sold by VWoA, and will use its best efforts to promote its customer service. Dealer's service facilities, equipment, and personnel will conform to the requirements of the Operating Standards, Operating Plan and such other reasonable standards as VWoA may prescribe, after review with Dealer.

Tools and Equipment

- (2) Special tools and general workshop equipment meeting VWoA's standards shall be available at Dealer's Premises in working condition. VWoA's minimum standards shall be found in the Operating Standards and the Operating Plan, which will be updated from time to time.

Use of Non-genuine Parts

- (3) Dealer will not use in the repair or servicing of Authorized Automobiles any parts which are not equivalent in quality and design to Genuine Parts, if such parts are necessary to the mechanical operation of such Authorized Automobiles. **DEALER WILL USE ONLY GENUINE PARTS IN PERFORMING WARRANTY SERVICE ON AUTHORIZED AUTOMOBILES. DEALER WILL NOT REPRESENT AS NEW GENUINE PARTS ANY PARTS USED BY IT IN THE REPAIR OR SERVICING OF AUTHORIZED AUTOMOBILES WHICH ARE NOT NEW GENUINE PARTS.**

STANDARD PROVISIONS

Owner's Documents

- (4) Upon delivering a new Authorized Automobile to a customer, Dealer will provide the Owner's Documents supplied by VWoA for such Authorized Automobile, properly completed by Dealer. Dealer will take all steps required prior to delivery of the Authorized Automobile, and, in particular, will perform properly the pre-delivery services specified by VWoA.

Maintenance and Other Services Without Customer Charge

- (5) In accordance with bulletins issued from time to time by VWoA and VWoA's Warranties, certain maintenance services and other repairs following delivery of a new Authorized Automobile may be free of charge to the customer. Upon presentation of an appropriate Owner's Document, Dealer will perform properly the services required, whether or not the Authorized Automobile to be serviced was sold by Dealer. Upon the submission of appropriate claims, VWoA will reimburse Dealer for performing such services at the then-current rate of reimbursement specified by VWoA for Dealer. VWoA will establish procedures for submitting and processing such claims and transmitting reimbursements to Dealer. Dealer agrees to comply with these procedures.

Repeated Repairs

- (6) Dealer will notify VWoA in writing or by electronic mail of repairs to Authorized Automobiles pursuant to VWoA's Warranties under each of the following circumstances:
 - (a) The Authorized Automobile has been brought to Dealer a specified number of times for the same complaint; or
 - (b) The Authorized Automobile has been in Dealer's custody for all repairs pursuant to VWoA's Warranties a specified number of days.

Such notification shall be made at the times and by the means VWoA may have instructed in any then-current dealer warranty manual issued by VWoA.

ARTICLE 8

DEALER'S PURCHASES AND INVENTORIES

Purchase Prices

- (1) VWoA will sell Authorized Products to Dealer at prices and upon terms established by VWoA from time to time. If VWoA increases its established prices, Dealer may cancel all orders for Authorized Products affected by the increase which are unfilled at the time Dealer receives notice of the increase, by giving VWoA written notice of cancellation within ten days from the time Dealer receives notice of the price increase.

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STANDARD PROVISIONS

Orders and Acceptance

- (2) Dealer will transmit orders for Authorized Products to VVoA electronically, at the times and for the periods, that VVoA reasonably requires. With each order, Dealer represents that it is solvent. VVoA may accept orders in whole or in part. Except as otherwise expressly provided in Article 8(1), all orders of Dealer will be binding upon it until they are rejected in writing by VVoA; however, in the event of a partial acceptance by VVoA, Dealer will not be bound by the portion of the order not accepted.

Inventories

- (3) Dealer will maintain in inventory at all times the assortment and quantity of Authorized Products required by the Operating Standards, Operating Plan or Recommendations.

Product Allocation

- (4) Dealer recognizes that certain Authorized Products may not be available in sufficient supply from time to time because of factors such as product importation, consumer demand, component shortages, manufacturing constraints, governmental regulations, or other causes. VVoA will endeavor to make a fair and equitable allocation and distribution of the Authorized Products available to it.

Taxes

- (5) Dealer is responsible for any and all sales taxes, use taxes, excise taxes (including luxury taxes) and other governmental charges imposed, levied, or based upon the sale of Authorized Products by VVoA to Dealer. Dealer represents and warrants, as of the date of the purchase of each Authorized Product, that all Authorized Products purchased from VVoA are purchased by Dealer for resale in the ordinary course of Dealer's business and that Dealer has complied with all laws relating to the collection and payment of all sales taxes, use taxes, excise taxes (including luxury taxes) and other governmental charges applicable to the purchase of such products and will furnish evidence thereof upon request. If any Authorized Products are put to taxable use by Dealer, or are purchased by Dealer for purposes other than resale in the ordinary course of Dealer's business, Dealer will make timely return and payment to the appropriate taxing authorities of all applicable taxes and other governmental charges imposed, levied, or based upon the sale of such Authorized Products by VVoA to Dealer and will hold VVoA harmless with respect thereto.

Payments to Dealer or Dealer's Personnel

- (6) From time to time, VVoA may conduct incentive programs which involve payments to Dealer or to Dealer's personnel. Dealer acknowledges that regardless of the nature of such programs or payments, Dealer's personnel are not employees, contractors or agents of VVoA. All matters relating to the employment or retention of Dealer's personnel are solely Dealer's responsibility. In the case of payments by VVoA to Dealer, Dealer alone will be responsible for the payment of any and all applicable taxes. In the case of payments to Dealer's personnel, VVoA will make appropriate information or other returns to appropriate taxing authorities. In the event Dealer does not want VVoA to make direct payments to Dealer's personnel, Dealer will notify VVoA to that effect in writing. After receiving such written notice, VVoA will pay directly to Dealer any subsequent payments coming due Dealer's personnel. Dealer represents and warrants that it will pass such payments directly through to Dealer's personnel as intended; that it will make any necessary returns to any taxing authority; and that it will hold VVoA harmless from any claims whatsoever that such payments were not received by the intended recipients or that appropriate withholdings were not made. In the event it is determined by any taxing authority that VVoA should not have made payments to Dealer's personnel or that VVoA should have collected taxes in respect of such payments, then VVoA will be responsible for such taxes.

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STANDARD PROVISIONS

Payment by Dealer

- (7) Dealer will pay for Authorized Products in the manner, at the time, and upon the conditions specified in the terms of payment established from time to time by VWoA. Delivery of instruments of payment other than cash will not constitute payment until VWoA has collected the full amount in cash. Dealer will pay all collection charges, including reasonable attorney's fees, and costs of exchange, if any, incurred in connection with its payments.

Passing of Title; Security Interest

- (8) Title to Authorized Products will remain with VWoA until VWoA has collected their full purchase price in cash. Dealer will execute and deliver, and VWoA is authorized to execute and deliver on behalf of Dealer or, to the extent permitted by law, to file without the signature of Dealer, all financing statements and other instruments which VWoA may deem necessary to evidence its ownership of such Authorized Products. Dealer hereby grants VWoA a purchase money security interest in all Authorized Products for which VWoA has not collected in full, authorizes VWoA to take such steps as VWoA deems necessary to perfect such security interests, and agrees to cooperate fully with VWoA in connection therewith. VWoA may take possession at any time of Authorized Products to which it has title.

Passing of Risks

- (9) Authorized Products will be at Dealer's risk and peril from the time of their delivery to Dealer or Dealer's agent. It will be up to Dealer to insure such risks for its benefit and at its expense.

Responsibility for Defects and Damage

- (10) VWoA assumes responsibility for the quality and condition of Authorized Products, to the extent of (a) defects caused by its own negligence and (b) damage caused or repaired prior to delivery of the Authorized Products to Dealer or Dealer's agent. VWoA will make any required disclosure thereof to Dealer. If VWoA has insured against such defects in or damage to Authorized Products, VWoA's liability to Dealer for such damage will be limited to the amount actually paid by the insurance carrier to VWoA by reason of such defect of damage, together with any deductible amount applicable to such claim. Dealer may decline to accept any Authorized Products delivered to Dealer in damaged condition or with respect to which VWoA has notified Dealer that VWoA has repaired damage; however, should Dealer accept such Authorized Product Dealer will, subject to the provisions of Article 5(5), repair all such defects and damage fully as required by VWoA before any defective or damaged Authorized Product is delivered to a customer. Dealer will make any required disclosure to Dealer's customers of damage or repairs, and will hold VWoA harmless with respect thereto. VWoA will notify Dealer promptly of the amount thereof, or any other amount due from VWoA pursuant to this paragraph, following Dealer's submission of such proof of repair as VWoA may require.

Claims for Incomplete Delivery

- (11) Dealer will make all claims for incomplete delivery of Authorized Products (including the delivery of Authorized Products with damage) in writing not later than three business days after Dealer's receipt of shipment; **provided, however**, that Dealer will make claims as to Genuine Parts within the period specified in policies established by VWoA from time to time; and **provided, further**, that Dealer will note claims for visible damage to Authorized Automobiles on the delivery receipt.

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Changes of Specifications

- (12) VWoA will deliver Authorized Products to Dealer in accordance with specifications applicable at the time of their manufacture. In the event of any change or modification with respect to any Authorized Products, Dealer will not be entitled to have such change or modification made to any Authorized Products manufactured prior to the introduction of such change or modification. VWoA expressly reserves, and Dealer acknowledges, the right to make such changes and modifications, and Dealer's only right in such event shall be the cancellation of any orders for Authorized Products affected by the change or modification and not yet accepted by VWoA.

Failure of or Delay in Delivery by VWoA

- (13) VWoA will not be liable to Dealer for failure of or delay in delivery under orders of Dealer accepted by VWoA, other than failure or delay resulting from willful misconduct or gross negligence of VWoA.

Return or Diversion on Dealer's Failure to Accept

- (14) If Dealer fails or refuses for any reason to accept delivery of any Authorized Products ordered by Dealer (except as permitted under Article 8(11)), Dealer will be liable to VWoA for all expenses incurred as a result of such failure or refusal, and will store such Authorized Products at no charge to VWoA until VWoA can arrange for their removal. Dealer's liability pursuant to this paragraph will be in addition to, and not in lieu of, any other liabilities which may arise from Dealer's failure or refusal to accept delivery.

ARTICLE 9**WARRANTY TO CUSTOMERS****VWoA's Warranties**

- (1) VWoA warrants each new Authorized Product as set forth in VWoA's Warranties.

Incorporation of VWoA's Warranties in Dealer's Sales

- (2) Dealer will make all sales of Authorized Automobiles and Genuine Parts in such a way that its customers acquire all rights in accordance with VWoA's Warranties and, to the extent permitted by law, no other express or implied warranties. Dealer will make the text of VWoA's Warranties part of its contracts for the sale of Authorized Products and will display the text of the warranties of all products it sells in customer contact areas where Authorized Products are offered.

Warranty Procedures

- (3) Dealer agrees to comply with the provisions of the various dealer warranty manuals which VWoA may issue from time to time, and will follow the procedures established by VWoA for processing warranty claims and returning and disposing of defective Genuine Parts. Dealer will also comply with all requests of VWoA for the performance of services pursuant to warranty claims and will maintain detailed records of time and parts consumption and any other records used as the basis for submitting warranty claims. Dealer will submit warranty claims to VWoA electronically, and in accordance with procedures established by VWoA. Upon Dealer's compliance with such requests and maintenance of such records, VWoA will reimburse Dealer within a reasonable time for warranty claims at the then-current rate of reimbursement specified

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by VWoA for Dealer. Strict adherence to the procedures and means established for processing warranty claims is necessary for VWoA to process such claims fairly and expeditiously. VWoA will be under no obligation with respect to warranty claims not submitted electronically and not made strictly in accordance with such procedures.

ARTICLE 10**DEALER'S RECORD KEEPING AND REPORTS; INSPECTION OF DEALER'S OPERATIONS****Dealer's Forms, Business Machines, Office Equipment and Bookkeeping**

- (1) Dealer will use accounting, sales, bookkeeping and service workshop forms; business machines; data processing and transmission equipment; and other office equipment which meets specifications, and which enables Dealer and VWoA to communicate electronically for all purposes and which otherwise provides information and functions in the manner prescribed by VWoA and its affiliates in the Operating Standards, the Operating Plan and by other means. VWoA will advise Dealer, or ensure that suppliers to VWoA advise Dealer, periodically of the hardware and software requirements, communications protocols, and other specifications which Dealer's data processing and transmission equipment must meet in order to satisfy the requirements of this paragraph, and Dealer will timely adhere to such requirements, protocols and specifications. Dealer will keep accurate and current records in accordance with VWoA's uniform accounting system and with accounting practices and procedures reasonably satisfactory to VWoA, in order to enable VWoA to develop comparative data and to furnish Dealer business management assistance.

Financial Statements to be Supplied by Dealer

- (2) Dealer will transmit to VWoA (a) on or before the tenth day of each calendar month, in such form and by such methods as VWoA reasonably may require, a financial and operating statement reflecting the consolidated operations of Dealer for the preceding month and from the beginning of the calendar year to the end of the preceding month and (b) within three and one-half months after the close of Dealer's fiscal or calendar year, a consolidated balance sheet and profit and loss statement of Dealer, which documents shall be certified by a certified public accountant if so requested by VWoA at least 30 days prior to the close of Dealer's fiscal or calendar year. DEALER'S FAILURE TO PROVIDE FINANCIAL AND OPERATING STATEMENTS IN THE FORMAT AND BY THE METHOD REQUIRED BY VWoA MAY RESULT IN THE REVOCATION OF DEALER'S OPEN PARTS AND ACCESSORIES ACCOUNT.

Reports to be Supplied by Dealer

- (3) Dealer will furnish to VWoA, on such forms and by such methods as VWoA reasonably may require, accurate timely reports of dealer's sales and transfers of new Authorized Automobiles. Dealer also will furnish to VWoA, on a timely and accurate basis, such other reports and financial statements as VWoA reasonably may require.

STANDARD PROVISIONS

Inspection of Dealer's Operations and Records

- (4) Until the expiration or termination of this Agreement, and thereafter until consummation of all transactions referred to in Article 15, VWoA, through its employees and other designees, at all reasonable times during regular business hours, may inspect Dealer's Operations, Dealer's Premises and the methods, records and accounts of Dealer relating to Dealer's Operations.
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ARTICLE 11**DEALER PERFORMANCE REVIEW****Evaluation and Assistance**

- (1) Each year, VWoA will prepare objectives for Dealer and will use them as a basis for evaluating Dealer's performance of its obligations in each of the areas described in this Article 11 and in the Operating Standards and the Operating Plan. VWoA may evaluate Dealer's performance during the year through periodic reviews. VWoA's evaluations of Dealer shall take place at least annually. VWoA will review its evaluations with Dealer, so that Dealer may take prompt action, if necessary, to improve its performance to such levels as VWoA reasonably may require. Any written comments received from Dealer on VWoA's evaluation of Dealer will become a part of such evaluation.

Evaluation of Dealer's Vehicle Sales, Service and Parts Performance

- (2) VWoA will evaluate the effectiveness of Dealer's vehicle sales, service and parts performance in accordance with factors and measures set forth in the Operating Standards, the Operating Plan and Recommendations.

Evaluation of Dealer's Premises

- (3) VWoA will evaluate Dealer's performance of its responsibilities pertaining to Dealer's Premises, analyzing both separately and collectively Dealer's sales facilities, service facilities, parts facilities, administrative offices, storage, parking and signage. In making such evaluation, VWoA will consider the factors set forth in the Operating Standards, the Operating Plan and Recommendations.

Evaluation of Dealer's Customer Satisfaction

- (4) VWoA will evaluate Dealer's performance of its responsibilities pertaining to customer satisfaction, analyzing both separately and collectively the satisfaction of customers with Dealer's sales activities and service activities. In making such evaluation, VWoA will utilize a uniform measure of customer satisfaction, which will be disclosed to Dealer, and will consider the factors set forth in the Operating Standards, the Operating Plan and Recommendations.

Dealer's Evaluation of VWoA

- (5) VWoA will implement measures by which Dealer may periodically evaluate the performance of VWoA, and in particular the performance of those VWoA employees who are responsible for administering VWoA's relationship with Dealer.
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STANDARD PROVISIONS

ARTICLE 12**SUCCEEDING DEALERS****Procedure**

- (1) If Dealer chooses to transfer its principal assets or change owners, VWoA has the right to approve the proposed transferees, the new owners and executives and, if different from Dealer's, their premises. VWoA will consider in good faith any such proposal Dealer may submit to it during the term of this Agreement. In determining whether the proposal is acceptable to it, VWoA will take into account factors such as the personal, business and financial qualifications of the proposed new owners and executives as well as the proposal's effect on competition. In such evaluation, VWoA may consult with the proposed new owners and executives on any aspect of the transaction of their proposed dealership operations. Notwithstanding anything set forth in this paragraph to the contrary, VWoA shall not be obligated to consider such proposal if it previously had notified Dealer in writing that it would not appoint a succeeding dealer in Dealer's Area; *provided, however*, that such notice shall be given only if there is good cause for discontinuing representation of Authorized Automobiles in Dealer's Area.

Approvals

- (2) VWoA will notify Dealer in writing of the approval or disapproval of a proposal by Dealer for transfer of principal assets or change of owners within 45 business days, or the exercise by VWoA of its right of first refusal under Article 12(3) within 30 calendar days, after Dealer has furnished to VWoA all applications and information reasonably requested by VWoA to evaluate such proposal. If VWoA approves Dealer's proposal, VWoA shall be obligated to grant the proposed transferees only a Dealer Agreement in substantially the same form as this Agreement. If VWoA had previously notified Dealer in writing that VWoA would not appoint a succeeding dealer in Dealer's Premises, then VWoA's approval of Dealer's proposal may be conditioned on the proposed transferees agreeing to provide different facilities for their dealership operations. Upon the consummation of Dealer's approved proposal, Dealer will deliver to VWoA a voluntary termination of this Agreement, a general release in favor of VWoA and payment in full for any net balance then owing from Dealer to VWoA.

Right of First Refusal

- (3) Whenever Dealer proposes to transfer its principal assets or change owners of a majority interest, VWoA shall have the right to purchase such assets or ownership interest, as follows:
 - (a) VWoA may elect to exercise its purchase right by written notice to Dealer within 30 calendar days after Dealer has furnished to VWoA all applications and information reasonably requested by VWoA to evaluate Dealer's proposal.
 - (b) If Dealer's proposed sale or transfer was to a successor approved in advance by VWoA, to any of Dealer's Owners, to Dealer's employees as a group or to Dealer's spouse, children or heirs, then Dealer may withdraw its proposal within 30 calendar days following receipt of VWoA's notice of election of its purchase right.

STANDARD PROVISIONS

- (c) VWoA's right under this Article 12(3) shall be a right of first refusal, permitting VWoA to:
- (i) assume the proposed transferee's rights and obligations under its agreement with Dealer; and
 - (ii) cancel this Agreement and all rights granted Dealer hereunder.

Except to the extent specifically inconsistent with the terms of this Agreement, the price and all other terms of VWoA's purchase shall be as set forth in any bona fide written purchase and sale agreement between Dealer and its proposed transferee and in any related documents.

- (d) Dealer shall furnish to VWoA copies of all applicable liens, mortgages, encumbrances, leases, easements, licenses or other documents affecting any of the property to be transferred, and shall assign to VWoA any permits or licenses necessary for the continued conduct of Dealer's Operations.
- (e) VWoA may assign its right of first refusal to any party it chooses, but in that event VWoA will remain primarily liable for payment of the purchase price to Dealer.
- (f) If VWoA exercises its purchase right, VWoA will reimburse Dealer's proposed transferee for reasonable documented actual expenses which such proposed transferee incurred through the date of such exercise which are directly and solely attributable to the transaction Dealer proposed.
- (g) Nothing contained in this Article 12(3) shall require VWoA to exercise its right of first refusal in any case, nor restrict any right VWoA may have to refuse to approve Dealer's proposed transfer.

Succession

- (4) Article 14(1)(a) notwithstanding, in the event of the death of any of Dealer's Owners, VWoA will not terminate this Agreement by reason of such death if:
- (a) The owner's interest in Dealer passes directly as specified in any Successor Addendum to this Agreement; or
 - (b) The owner's interest in Dealer passes directly to his or her surviving spouse or children, or any of them, and (i) Dealer's authorized representative remains as stated in the Statement of Ownership and Management or (ii) within 90 days after the death of such owner Dealer appoints another qualified individual as Dealer's authorized representative; **provided, however**, that in this event VWoA will evaluate Dealer's performance during the 12 months following the owner's death. After the expiration of this 12-month period and VWoA's evaluation of the performance of Dealer's management during such period, VWoA will review with Dealer the changes, if any, in the management or equity interests of Dealer required by VWoA as a condition of extending this Dealer Agreement with Dealer. Any new Dealer Agreement entered into pursuant to this paragraph will be in substantially the same form as the Dealer Agreements then currently offered by VWoA to its dealers in Authorized Automobiles generally.

STANDARD PROVISIONS

Modification of Terms of Payment

- (5) Upon receipt of an application for a replacement dealer agreement, VWoA may modify its terms of payment with respect to Dealer to the extent VWoA deems appropriate, irrespective of Dealer's credit standing or payment history.

ARTICLE 13

DISPUTE RESOLUTION

General Policy

- (1) VWoA and Dealer agree as a general matter to work together to minimize disputes between them. **While understanding that certain Federal and state courts and agencies may be available to resolve any disputes, VWoA and Dealer agree that it is in their mutual best interests to attempt to resolve certain controversies first through arbitration. VWoA and Dealer therefore agree that the dispute resolution process outlined in this Article shall be used before seeking legal redress in a court of law or before an administrative agency, for all disputes arising under the following: Article 9(3) (Warranty Procedures), Article 12 (Succeeding Dealers), Article 14 (Termination), Article 15 (Rights and Liabilities Upon Termination) and payments to Dealer in connection with VWoA incentive programs.** In the event that a dispute arises in connection with any other provision of this Agreement, VWoA and Dealer may mutually agree to first submit the dispute to arbitration, in accordance with the provisions of this Article. Both VWoA and Dealer agree that the ultimate mutual goal of arbitration is to obtain a fair hearing and prompt decision of the dispute, in an efficient and cost-effective manner, and both agree to work toward that goal at all times hereunder.

Involuntary Non-Binding Arbitration

- (2) Upon the written request of either VWoA or Dealer, a dispute arising in connection with this Agreement may be submitted to non-binding arbitration.

Voluntary Binding Arbitration

- (3) As an alternative to Article 13(2) above, upon the written request of Dealer, a dispute arising in connection with this Agreement will be submitted to binding arbitration.

Rules of Conduct

- (4) Arbitrations will be adjudicated under the auspices and in accordance with the rules of the American Arbitration Association or another mutually acceptable arbitration service, as well as the following provisions:
 - (a) Written requests for arbitration shall set forth a clear and complete statement of the nature of the claim and its basis; the amount involved, if any; and the remedy sought.
 - (b) The place of arbitration shall be the state in which Dealer's Premises are located, or such other place as may be agreed upon by the parties.

STANDARD PROVISIONS

- (c) Both parties shall make every reasonable attempt to agree upon one arbitrator, but if they are unable to agree each shall appoint an arbitrator and these two shall appoint a third arbitrator.
- (d) Expenses of arbitration shall be divided equally between the parties. The prevailing party shall not be entitled to reasonable attorneys fees.
- (e) The arbitrator(s) shall pass finally upon all questions, both of law and fact, and his or her (or their) findings shall be conclusive.
- (f) Pre-arbitration discovery shall be available to both parties and shall be governed by the Federal Rules of Civil Procedure. Information obtained by either party during the course of discovery shall be kept confidential, shall not be disclosed to any third party, shall not be used except in connection with the arbitration proceeding, and at the conclusion of the proceeding, shall be returned to the other party. Both Dealer and VWoA shall make their agents and employees available upon reasonable times and places for pre-trial depositions without the necessity of subpoenas or other court orders. Such discovery may be used as evidence in the arbitration proceeding to the same extent as if it were a court proceeding.

Time for Decision

- (5) Unless VWoA and Dealer specifically agree to the contrary, and subject to the rules and procedures of the arbitration service chosen, the arbitration hearing shall be concluded not more than 60 days after the date of the written request to arbitrate, and the arbitration decision shall be rendered not more than 90 days after the written request to arbitrate.

Provisional Remedies

- (6) Either VWoA or Dealer may, without prejudice to the above procedures, file a complaint if in its sole judgment such action is necessary to avoid irreparable damage or to preserve the status quo. Despite such action the parties will continue to participate in good faith in the procedures specified in this Article 13.

Tolling Statute of Limitations

- (7) All applicable statutes of limitation and defenses based upon passage of time shall be tolled while the procedures specified in this Article 13 are pending. The parties will take such action, if any, required to effectuate such tolling.

Performance to Continue

- (8) VWoA and Dealer agree to continue to perform their respective obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement.

STANDARD PROVISIONS

ARTICLE 14

TERMINATION

Immediate Termination by VWoA

- (1) Except to the extent a greater notice period is required by any applicable statute, VWoA has the right to terminate this Agreement for cause, with immediate effect, by sending notice of termination to Dealer, if any of the following should occur:
 - (a) Death of any of Dealer's Owners or any change, whether voluntary or by operation of law, in the record or beneficial ownership of Dealer without VWoA's prior written consent; any change in Dealer's Executives without prior notice to VWoA; or the failure of Dealer's Executives to continue to manage Dealer's Operations (unless, in any of these cases, the provisions of Article 12(4) above have been satisfied);
 - (b) Dissolution or liquidation of Dealer, if a partnership or corporation;
 - (c) Insolvency of Dealer or voluntary institution by Dealer of any proceeding under the Bankruptcy Act or state insolvency law; or the involuntary institution against Dealer of any proceeding under the Bankruptcy Act or state insolvency law which is not vacated within ten days from the institution thereof; or the appointment of a receiver or other officer having similar powers for Dealer or Dealer's business who is not removed within ten days of his appointment; or any levy under attachment, execution or similar process which is not within ten days vacated or removed by payment or bonding.
 - (d) Any attempted transfer of this Agreement by Dealer, in whole or in part, without VWoA's prior written consent;
 - (e) Any change in the location of any of Dealer's Premises or the establishment of any additional premises for Dealer's Operations without VWoA's prior written consent;
 - (f) Failure of Dealer to continue to operate any of Dealer's Premises in the usual manner for a period of five consecutive business days, unless caused by an Act of God, war, riot, strike, lockout, fire, explosion or similar event;
 - (g) Dealer's failure, for a period of ten consecutive business days, to have any license necessary for the conduct of Dealer's Operations;
 - (h) Conviction of Dealer or any of Dealer's Owners or Executives of a felony or any misdemeanor involving fraud, deceit or an unfair business practice, if in VWoA's opinion such conviction may adversely affect the conduct of Dealer's business, or be harmful to the good will of the Manufacturer or VWoA or to the reputation and marketing of Authorized Products;
 - (i) Any material misrepresentation by any of Dealer's Owners or Executives as to any fact relied upon by VWoA in entering into this Agreement;
 - (j) Submission by Dealer of fraudulent or knowingly false report or statement or claim for reimbursement, refund or credit; or
 - (k) Failure or refusal of Dealer or Dealer's owners, executives, agents or employees to provide VWoA, upon request, with access to and the opportunity to inspect and copy all books, papers, instruments, certificates or other documents evidencing the record or beneficial ownership of Dealer.

STANDARD PROVISIONS

Termination by VWoA on 30 Days' Notice

- (2) Except to the extent a greater notice period is required by any applicable statute, VWoA has the right to terminate this Agreement upon 30 days' notice if any of the following shall occur:
- (a) Any disagreement or personal difficulties of Dealer's Owners or Executives which in VWoA's opinion may adversely affect the conduct of Dealer's business, or the presence in the management of Dealer of any person who in VWoA's opinion does not have appropriate qualifications for their position;
 - (b) Impairment of the reputation or financial standing of Dealer or any of Dealer's Owners or Executives or ascertainment by VWoA of any fact existing at or prior to the time of execution of this Agreement which tends to impair such reputation or financial standing; or
 - (c) The failure of Dealer to meet its minimum customer satisfaction requirements, including, but not necessarily limited to, measures for sales satisfaction and service satisfaction, as established by VWoA for its dealers generally, from time to time, and as set forth in then-current Operating Standards issued by VWoA to its dealers generally, within 180 days after notice by VWoA to Dealer that Dealer has not met such requirements.

Termination by VWoA on 90 Days' Notice

- (3) Except to the extent a greater notice period is required by any applicable statute, VWoA has the right to terminate this Agreement upon 90 days' notice in the event of the breach by Dealer of any obligation of Dealer pursuant to this Agreement or any other agreement between VWoA or any of its subsidiaries or affiliates and Dealer, other than those enumerated in Articles 14(1) or 14(2) above.

Discussions with Dealer

- (4) Upon learning that any event or situation which would give VWoA grounds to terminate this Agreement has occurred, VWoA will endeavor to discuss such event or situation with Dealer. Thereafter, VWoA may give Dealer written notice of termination.

Modification of Terms of Payment

- (5) During the period a situation specified in Article 14(1), 14(2) or 14(3) continues to exist, VWoA may modify its terms of payment with respect to Dealer to such extent as VWoA may consider appropriate, irrespective of Dealer's credit standing or payment record.

No Waiver by Failure to Terminate

- (6) Should VWoA be entitled to terminate this Agreement but fail to do so, such failure shall not be considered a waiver of VWoA's right to terminate this Agreement unless the situation entitling VWoA to terminate this Agreement has ceased to exist and (a) six months have elapsed from the time VWoA obtained knowledge of such situation or (b) VWoA has entered into a subsequent written agreement with Dealer superseding this Agreement. Nevertheless, any situation entitling VWoA to terminate this Agreement may be considered at any subsequent time together with any subsequent events in determining VWoA's right to terminate this Agreement.

STANDARD PROVISIONS

Termination by Dealer

- (7) Dealer has the right to terminate this Agreement without cause by VWoA giving 60 days' written notice of such termination. Upon receipt of Dealer's notice of termination, VWoA may, at VWoA's option, waive in writing the 60 day notice period. In the event Dealer, in connection with its termination of this Agreement, also wishes to terminate any other agreement between Dealer and VWoA or any of VWoA's subsidiaries or affiliates, Dealer must do so separately and subject to the provisions of Article 14(10) below.

Continuation of Business Relations after Termination

- (8) Any business relations between VWoA and Dealer after the termination of this Agreement without a written extension or renewal or a new written dealer agreement will not operate as an extension or renewal of this Agreement or as a new dealer agreement. Nevertheless, all such business relations, so long as they are continued, will be governed by terms identical with the provisions of this Agreement.

Superseding Agreements

- (9) If any superseding form of Dealer Agreement is offered by VWoA to its authorized dealers generally at any time, VWoA may, by written notice to Dealer, terminate this Agreement and replace it with a Dealer Agreement in the superseding form.

Agreements with Affiliates of VWoA

- (10) The termination of this Agreement by either party does not necessarily waive or terminate any other agreement between Dealer and VWoA or any of its subsidiaries or affiliates. Such other agreements may be terminated only in accordance with their terms, and the parties' respective obligations under any such other agreements will continue in accordance with their terms until terminated.

ARTICLE 15

RIGHTS AND LIABILITIES UPON TERMINATION

VWoA's Obligations

- (1) Within 90 days after the termination of this Agreement pursuant to Article 14, VWoA will purchase from Dealer and (subject to the provisions of Article 15(4) below) Dealer will sell to VWoA all the following:

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STANDARD PROVISIONS

New Authorized Automobile Inventory

- (a) All new, undamaged current model year Authorized Automobiles (introduced in the United States no earlier than 12 months prior to the date of such expiration or termination and not superseded by a later model year) in Dealer's inventory on the date of such expiration or termination which are in first-class salable condition, provided they (i) have 200 or fewer actual miles; (ii) were sold by VWoA and purchased by Dealer from VWoA (or in the ordinary course of business from other dealers of Authorized Automobiles appointed by VWoA) and (iii) have never been sold by Dealer. The price for such Authorized Automobiles will be the price at which they were originally sold by VWoA, less all prior refunds or allowances made by VWoA, if any.

New Genuine Parts Inventory

- (b) All the following new, unused and undamaged articles listed in VWoA's current Genuine Parts Price List (other than articles listed as obsolete) in Dealer's inventory on the date of such expiration or termination which are in first-class salable condition and complete, provided they were purchased by Dealer from VWoA and never sold by Dealer:
- (i) New parts and new factory remanufactured replacement parts supplied by VWoA for Authorized Automobiles;
 - (ii) accessories considered by VWoA to be suitable for installation in the current model year Authorized Automobiles specified in Article 15(1)(a); and
 - (iii) other accessories, provided that VWoA has made sales of identical articles during six of the last twelve full calendar months immediately preceding such expiration or termination.

The price for all such articles will be the price then last established by VWoA for the sale of identical articles, less a handling charge equal to ten percent of such amount and less all prior refunds or allowances made by VWoA;

Tools and Equipment

- (c) All special tools and equipment for servicing Authorized Automobiles owned by Dealer on the date of expiration or termination which are in operating condition and complete, provided they were purchased by Dealer from VWoA or pursuant to written requests of VWoA. The price for such tools and equipment will be the fair market value thereof; and

Authorized Signs

- (d) All Authorized Signs which Dealer displayed publicly or at Dealer's Premises. The price for such Authorized Signs will be the fair market value thereof.

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STANDARD PROVISIONS**Terms of Sale**

- (2) Any and all items to be sold by Dealer to VWoA pursuant to this paragraph will be delivered by Dealer to VWoA at Dealer's place of business suitably packed for transportation. For such periods of time as VWoA reasonably may determine, VWoA may enter Dealer's Premises for the purpose of taking an inventory of all or any part of Dealer's stock of Authorized Products and special tools and equipment. At the request of VWoA, Dealer will comply in all respects with the provisions of all applicable bulk sales acts or similar statutes protecting a transferee of personal property with respect to liabilities of the transferor. Promptly following performance by Dealer of all its obligations pursuant to this Article 15, the completion by VWoA of all steps required to obtain possession of such items and the delivery to VWoA of a bill of sale, documents of title and a general release of VWoA and the Manufacturer from Dealer and Dealer's Owners, all in form satisfactory to VWoA, VWoA will pay Dealer the specified prices for the said items, less all amounts owed by Dealer to VWoA, its subsidiaries or affiliates. VWoA will not be required to purchase any item from Dealer pursuant to this paragraph unless Dealer is able to convey to VWoA, within such 90-day period, title to such item free and clear of all liens, claims, encumbrances and security interests.

Pending Orders and Dealer's Obligations

- (3) Upon the expiration or termination of this Agreement, all pending orders of Dealer for Authorized Products previously accepted by VWoA will be canceled and Dealer immediately will:

Removal of Authorized Signs

- (a) Remove at its own expense all Authorized Signs which it displayed publicly or at its premises;

Authorized Trademarks

- (b) Cease all usage of the Authorized Trademarks, cease to hold itself out as an authorized dealer in Authorized Automobiles, destroy all stationery and other printed material bearing any Authorized Trademark, and, if its corporate or business name contains any Authorized Trademark, take all steps to remove the same therefrom;

Orders and Files

- (c) Transfer to VWoA
- (i) all orders for sale by Dealer of Authorized Products then pending with Dealer,
 - (ii) all deposits made thereon, whether in cash or property;
 - (iii) all Dealer's warranty records for Authorized Products or complete copies of all such records and files; and
 - (iv) all Dealer's customer service files. Upon the written request of Dealer, VWoA will return such customer service files to Dealer after VWoA has made copies of such files at VWoA's expense;

STANDARD PROVISIONS

Customer Lists

- (d) Make available to VVoA in writing the names and addresses of all its service customers and prospective customers for Authorized Products; and

Literature

- (e) Deliver to VVoA at Dealer's place of business, free of charge, all technical or service literature, advertising and other printed material relating to Authorized Products, including sales instruction manuals or promotional material, then in Dealer's possession and which were acquired by Dealer from VVoA.

None of the foregoing will result in any liability of VVoA to Dealer for damages, commissions, loss of profits or compensation for services, or in any other liability of VVoA to Dealer of any kind of nature whatsoever.

Direct Sales by Dealer

- (4) Upon Dealer's written request, VVoA may waive Dealer's obligation to sell certain assets to VVoA and will consent to Dealer's sale of any of or all its assets to any party of Dealer's choosing; *provided, however*, that Dealer may not sell any new Authorized Automobile, Authorized Sign nor any new Genuine Parts to any person or entity other than another dealer in the same line-make authorized by VVoA.

Specific Performance

- (5) Since Dealer's obligations under this Article 15 are of such a nature that it is impossible to measure in money the damages which will be suffered by VVoA if Dealer should fail to perform any of them, Dealer agrees that, in the event of any such failure of performance on its part, VVoA will be entitled to maintain an action to compel the specific performance by Dealer of these obligations and Dealer agrees not to assert in any such action the defense that VVoA has an adequate remedy at law.

ARTICLE 16

DEFINITIONS

Throughout this Agreement various abbreviations and abbreviated phrases have been used. Their meanings are:

Authorized Automobiles

- (1) "Authorized Automobiles" means motor vehicles of the Volkswagen brand and comprising such models and types as may be supplied by VVoA during the term of this Agreement.

Authorized Products

- (2) "Authorized Products" means Authorized Automobiles and Genuine Parts.

STANDARD PROVISIONS

Authorized Representative

- (3) "Authorized Representative" means a qualified representative of Dealer whose full-time professional efforts are devoted to the conduct of Dealer's Operations and who is authorized on behalf of Dealer to execute documents, make all operational decisions with respect to Dealer's Operations, and on whose authority VWoA is entitled to rely.

Authorized Signs

- (4) "Authorized Signs" means displays of any Authorized Trademark, in such material, type, presentation and colors as VWoA may prescribe from time to time.

Authorized Trademarks

- (5) "Authorized Trademarks" means any trademark, service mark or trade name now or any other time hereafter used or claimed by the Manufacturer or VWoA.

Dealer's Area

- (6) "Dealer's Area" means the area designated by VWoA in the Operating Plan for Dealer's Operations, corresponding to U.S. census tract information.

Dealer's Executives

- (7) "Dealer's Executives" means all the persons named in Paragraphs 5 and 6 of the Statement of Ownership and Management as officers or the Authorized Representative of Dealer, as well as any other person who succeeds to any position in Dealer referred to in such paragraphs in accordance with the provisions of this Agreement.

Dealer's Operations

- (8) "Dealer's Operations" means all activities of Dealer relating to the promotion and sale of Authorized Products, the supply of Genuine Parts, customer service for Authorized Products and all other activities of Dealer pursuant to this Agreement.

Dealer's Owners

- (9) "Dealer's Owners" means all the persons named in Paragraph 4 of the Statement of Ownership and Management as beneficial or record owners of Dealer, as well as any other person who acquires or succeeds to any beneficial interest or record ownership in Dealer in accordance with the provisions of this Agreement.

Dealer's Premises

- (10) "Dealer's Premises" means all premises referred to in the Dealer Premises Addendum and used by Dealer for or in connection with Dealer's Operations, including sales facilities, service workshops, offices, facilities for storage of Authorized Automobiles and Genuine Parts, used car sales facilities and parking facilities.

STANDARD PROVISIONS

Genuine Parts

- (11) "Genuine Parts" means new and factory rebuilt replacement parts, accessories and optional equipment for Authorized Automobiles if such parts, accessories and optional equipment are supplied by VWoA.

Manufacturer

- (12) "Manufacturer" means any supplier of Authorized Products to VWoA, including as appropriate, but not limited to, Audi AG, a German corporation, and Volkswagen AG, a German corporation,

Net Working Capital, Owner's Equity and Wholesale Credit

- (13) "Net Working Capital," "Owner's Equity" and "Wholesale Credit" shall have the meanings set forth in the Operating Standards, the Operating Plan and in accordance with generally accepted accounting principles.

Operating Plan

- (14) "Operating Plan" means the Dealer Operating Plan then-currently established by VWoA for Dealer, determined in cooperation with Dealer and of Authorized Products, as well as any amendments thereof or additions thereto by VWoA during the term of this Agreement.

Operating Standards

- (15) "Operating Standards" means the Volkswagen Dealer Operating Standards issued by VWoA to its Volkswagen dealers, including any amendments, revisions or additions, from time to time during the term of this Agreement.

Owner's Documents

- (16) "Owner's Documents" means all the documents which are supplied by VWoA in respect of each Authorized Automobile and which are intended for the customer, including, but not limited to, the Owner's Manual, Warranty Booklet and Maintenance Booklet.

Recommendations

- (17) "Recommendations" means written suggestions provided by VWoA to Dealer from time to time during the term of this Agreement, as well as all currently applicable written suggestions previously provided by VWoA.

VWoA

- (18) "VWoA" means Volkswagen of America, Inc. a New Jersey corporation, and includes, as appropriate, all divisions of that corporation.

STANDARD PROVISIONS

VWoA's Warranties

- (19) "VWoA's Warranties" means, with respect to each Authorized Product, those express written warranties provided with such product or as set forth in the Dealer Warranty Manual for Authorized Products in effect at the time such product is first sold at retail, as well as any express written warranties which VWoA may issue with respect to any product during the course of its service life.
-

ARTICLE 17

GENERAL PROVISIONS

Dealer Not an Agent

- (1) Dealer will conduct all Dealer's Operations on its own behalf and for its own account. Dealer has no power or authority to act for the Manufacturer or VWoA.

Authority to Sign

- (2) Dealer acknowledges that only an Area Executive is authorized on behalf of VWoA to execute this Agreement or to agree to any variation, modification or amendment of any of its provisions or to sign any notice of termination, and that such Agreement, variation, modification, amendment or notice of termination must be countersigned by the President, a Vice President, the Secretary, an Assistant Secretary or a Regional Team Leader of VWoA.

Variations; Modifications; Amendments

- (3) This Agreement may not be varied, modified or amended except by an express instrument in writing to that effect signed on behalf of both VWoA and Dealer.

Entire Agreement

- (4) This instrument contains the entire agreement between the parties. No representations or statements other than those expressly set forth or referred to herein were made or relied upon in entering into this Agreement.

Release of Claims under Prior Agreement

- (5) This Agreement terminates and supersedes all prior agreements with respect to Authorized Products between the parties, if any. The parties hereby waive, abandon and relinquish any and all claims of any kind and nature arising out of or in connection with any such prior agreement, except for any accounts payable by one party to the other as a result of the purchase of any Authorized Products, audit adjustments or reimbursement for any services.

Agreement Non-transferable

- (6) No part of this Agreement nor any interest in this Agreement may be transferred by Dealer without the prior written consent of VWoA.

STANDARD PROVISIONS

Defense and Indemnification

- (7) VWoA will, upon Dealer's written request:
 - (a) Defend Dealer against any and all claims for breach of VWoA's Warranties, bodily injury or death, or for physical damage to or destruction of property, that, during the term of this Agreement, may be asserted against Dealer in any action solely by reason of a manufacturing defect or design deficiency in
 - (i) an Authorized Product; or
 - (ii) a product of the same line-make formerly supplied by VWoA pursuant to a former dealer agreement; and
 - (b) Hold Dealer harmless from any and all settlements made and final judgments rendered with respect to such claims;

provided, that in each case Dealer promptly notifies VWoA in writing of the commencement of such action against Dealer and cooperates fully in the defense of such action in such manner and to such extent as VWoA may require. However, such defense and indemnification by VWoA will not be required if any fact indicates that any negligence, error, omission, act, failure, breach, statement or representation of Dealer may have caused or contributed to the claim asserted against Dealer or if VWoA determines that such action seeks recovery for allegations other than those described in Article 17(7)(a).

Notices

- (8) Any notices under or pursuant to the provisions of this Agreement will be directed to the respective addresses of the parties stated herein, or, if either party shall have specified another address by notice in writing to the other party, to the address thus last specified. Unless otherwise provided herein, notices shall be deemed effective if sent by certified mail with return receipt requested; by overnight service having a reliable means of confirming delivery; or by personal delivery to any of Dealer's Owners or Executives. Notices shall be deemed effective when received.

Waivers

- (9) The waiver by either party of any breach or violation of or default under any provision of this Agreement will not operate as a waiver of such provision or of any subsequent breach or violation thereof or default thereunder. The failure or refusal of VWoA to exercise any right or remedy shall not be deemed to be a waiver or abandonment of any such right or remedy.

Titles

- (10) The titles appearing in this Agreement have been inserted for convenient reference only and do not in any way affect the construction, interpretation or meaning of the text.

EXHIBIT D

**Audi**

Audi Dealer Agreement

1. **APPOINTMENT.** Audi of America, Inc., a division of Volkswagen of America, Inc. ("Audi"), having a place of business at 3800 Hamlin Road, Auburn Hills, MI 48326, appoints Riverside Motor Car, LLC ("Dealer"), doing business under the fictitious name Riverside Audi, having its place of business at 6402 Kennedy Boulevard, West New York, New Jersey 07093, as an authorized dealer in Audi brand motor vehicles and genuine parts and accessories therefor. Accordingly, the parties agree as follows:

2. **STANDARD PROVISIONS.** The Audi Dealer Agreement Standard Provisions (the "Standard Provisions"), the Dealer Operating Plan (the "Operating Plan"), the Audi Business Basics (the "Business Basics"), the Audi Retail Capacity Guide (the "Retail Capacity Guide"), and the Audi Business File are part of this Agreement. Any term not defined in this Agreement has the meaning given such term in the Standard Provisions or Recommendations.

3. **OWNERSHIP AND MANAGEMENT.** To induce Audi to enter into this Agreement, Dealer represents that the persons identified in the Statement of Ownership and Management, which is attached as Exhibit A, are Dealer's Owners and Executives. Audi is entering into this Agreement in reliance upon these representations, and upon the continued provision by such persons of their personal services in fulfillment of Dealer's obligations under this Agreement. Accordingly, Dealer agrees there will be no change in Dealer's Owners without Audi's prior written consent, and no change in Dealer's Executives without prior notice to Audi.

4. **MINIMUM FINANCIAL REQUIREMENTS.** Dealer agrees to comply and maintain compliance with the minimum financial requirements established for Dealer from time to time in accordance with the Operating Plan or Recommendations. Throughout the term of this Agreement those minimum financial requirements are subject to revision by Audi, after review with Dealer, in light of operating conditions and the development of Dealer's business and business potential.

5. **DEALER'S PREMISES.** Audi has approved the location of Dealer's Premises as specified in the Dealer Premises Addendum, attached as Exhibit B. Dealer agrees that, without Audi's prior written consent, it will not (a) make any major structural change in any of Dealer's Premises, (b) change the location of any of Dealer's Premises or (c) establish any additional premises for Dealer's Operations.

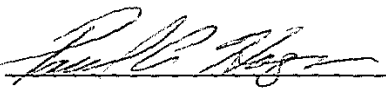
6. **EXCLUSION OF WARRANTIES.** EXCEPT FOR AUDI'S WARRANTIES, AND EXCEPT AS PROVIDED IN ARTICLE 9 (1) OF THE STANDARD PROVISIONS, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR OBLIGATIONS OF THE MANUFACTURER OR AUDI AS TO THE QUALITY OR CONDITION OF AUTHORIZED PRODUCTS, OR AS TO THEIR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND, TO THE EXTENT PERMITTED BY LAW, DEALER WILL EXCLUDE ANY AND ALL SUCH WARRANTIES AND OBLIGATIONS IN ITS SALES OF AUTHORIZED PRODUCTS.

7. **TERM.** The term of this Agreement begins on the date of its delivery to Dealer or on March 30 2004, whichever is later. This Agreement shall continue in effect until terminated by either party or superseded by a new Dealer Agreement with Audi.

8. **GOVERNING LAW.** This Agreement will be construed in accordance with the laws of the State of New Jersey. Should the performance of any obligation under this Agreement violate any valid law of such jurisdiction, then this Agreement shall be deemed modified to the minimum extent necessary to comply with such law.

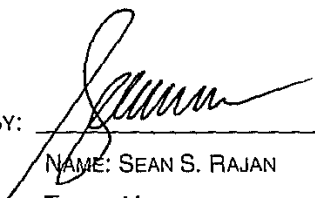
9. **TERMS AND CONDITIONS.** The Addenda attached hereto as Exhibits A through B are part of this Agreement and are incorporated into this Agreement by this reference.

AUDI OF AMERICA, INC.

BY: 
NAME: PAUL HAGAN
TITLE: NETWORK DEVELOPMENT TEAM LEADER

DATE: 4/1/04

DEALER

BY: 
NAME: SEAN S. RAJAN
TITLE: MANAGER

DATE: MARCH 24, 2004

**EXHIBIT A
AUDI DEALER AGREEMENT
STATEMENT OF OWNERSHIP AND MANAGEMENT**

1. Dealer legal Name: Riverside Motor Car, LLC
d/b/a Riverside Audi
2. Principal Place of Business: 6402 Kennedy Boulevard
West New York, NJ 07093
3. Dealer is a limited liability company, organized on November 5, 2003 under the laws of the State of New Jersey.
4. The following person(s) is/are the beneficial and record owner(s) of Dealer:

<u>Name and Address of Each Record and Beneficial Owner</u>	<u>If a corporation, Number and Class of Shares</u>	<u>Percentage of Ownership of Record in Dealer</u>
Sean S. Rajan 147 Berkshire Road Hasbrouck Heights, NJ 07604		51%
Martin J. Lucibello, Jr. 25 Tenakill Road Cresskill, NJ 07626		49%

5. The following persons are Dealer's Officers:

<u>Name and Address:</u>	<u>Title</u>
Sean S. Rajan 147 Berkshire Road Hasbrouck Heights, NJ 07604	Manager
Martin J. Lucibello, Jr. 25 Tenakill Road Cresskill, NJ 07626	Manager

6. The following person functions as the Authorized Representative of Dealer. As such he or she is an agent of Dealer and is authorized, and Audi is entitled to rely on their authority, to make all decisions on behalf of Dealer with respect to Dealer's Operations:

<u>Name and Address:</u>	<u>Title</u>
Sean S. Rajan 147 Berkshire Road Hasbrouck Heights, NJ 07604	Manager

Dealer hereby certifies that the foregoing information is true and complete as of the date below. Audi has entered into this Agreement in reliance upon the qualifications, and the continued provision of personal services in the ownership and management of Dealer by the persons identified above.

This Exhibit cancels any prior Statement of Ownership and Management.

AUDI OF AMERICA, INC.

BY: 

DATE: 4/1/04

NAME: PAUL HAGAN

TITLE: NETWORK DEVELOPMENT TEAM LEADER

DEALER

BY: 

DATE: MARCH 24, 2004

NAME: SEAN S. RAJAN

TITLE: MANAGER

**EXHIBIT B
AUDI DEALER AGREEMENT
DEALER PREMISES ADDENDUM (AMENDED JANUARY 10, 2008)**

- 1. Dealer legal Name: Riverside Motor Car, LLC
d/b/a Riverside Audi

- 2. Audi has approved the location of the following premises, and no others, for the Dealer's Operations:
 - a. Sales Facilities:
425 Route 3 East, Secaucus, NJ 07094
 - b. Authorized Automobile Storage Facilities:
425 Route 3 East, Secaucus, NJ 07094
 - c. Service Facilities:
4700 Westside Ave., North Bergen, NJ 07047
 - d. Genuine Parts Storage Facilities:
4700 Westside Ave., North Bergen, NJ 07047
 - e. Used Car Lot:
6402 Kennedy Boulevard, West NY, NJ 07093

Dealer hereby certifies that the foregoing information is true and complete as of the date below. This exhibit cancels any prior Dealer Premises Addendum.

AUDI OF AMERICA, INC.

BY: 
 NAME: REINHARD FISCHER
 TITLE: DIRECTOR, NETWORK MANAGEMENT

DATE: 4/16/09

DEALER

BY: 
 NAME: SEAN S. RAJAN
 TITLE: MANAGER

DATE: 3/31/2009

EXHIBIT E

Case 09-51622-MS Doc 16-4 Filed 08/20/09 Entered 08/20/09 18:55:44 Desc
Exhibit C - Standard Provisions Page 2 of 25



Audi Dealer Agreement Standard Provisions



ARTICLE 1

BASIC OBLIGATIONS OF AUDI

Supply of Authorized Products

- (1) Audi will sell and deliver Authorized Products to Dealer in accordance with this Agreement.

Assistance

- (2) Audi will actively assist Dealer in all aspects of Dealer's Operations through such means as Audi considers appropriate, including:
 - (a) Annual reviews of Dealer's compliance with this Agreement, the Business Basics, the Retail Capacity Guide, the Operating Standards;
 - (b) Recommendations; and
 - (c) Schools, special training and meetings for Dealer's personnel.

Compliance with Ethical Standards

- (3) In the conduct of its business, Audi will:
 - (a) Safeguard and promote the reputation of Authorized Products and the Manufacturer;
 - (b) Refrain from all conduct which might be harmful to the reputation or marketing of Authorized Products or inconsistent with the public interest; and
 - (c) Avoid all discourteous, deceptive, misleading, unprofessional or unethical practices.

ARTICLE 2

BASIC OBLIGATIONS OF DEALER

Sales, Service and Parts Supply

- (1) Dealer assumes the responsibility in Dealer's Area for the promotion and sale of Authorized Products and for the supply of Genuine Parts and customer service for Authorized Products. This Agreement does not give Dealer any exclusive right to sell or service Authorized Products in any area or territory.

Compliance with Ethical Standards

- (2) In the conduct of its business, Dealer will:
 - (a) Safeguard and promote the reputation of Authorized Products, the Manufacturer and Audi;
 - (b) Refrain from all conduct which might be harmful to the reputation or marketing of Authorized Products or inconsistent with the public interest; and
 - (c) Avoid all discourteous, deceptive, misleading, unprofessional or unethical practices.

Business Basics, Business File, Retail Capacity Guide and Operating Plan

- (3) The Business Basics, Business File, Retail Capacity Guide and Operating Plan are part of this Agreement and are incorporated herein by this reference.

Disclaimer of Further Liability by Audi

- (4) Except as expressly provided in this Agreement, Audi is not liable for any expenditure made or liability incurred by Dealer in connection with Dealer's performance of its obligations under this Agreement.

ARTICLE 3

GENERAL MANAGEMENT AND FACILITY REQUIREMENTS

Dealer's General Management

- (1) In the conduct of its business, Dealer will have the following minimum staff:
 - (a) An Authorized Representative (provided, that such Authorized Representative may be one of Dealer's Owners).
 - (b) Such additional department managers and other employees as set forth in the Business Basics or Operating Plan.

Dealer's Premises

- (2) Dealer's Premises, in sales, service and parts, will conform to the requirements of this Agreement, the Retail Capacity Guide, the Operating Plan and such other reasonable standards as Audi may prescribe from time to time, after review with Dealer.
- (3) Unless otherwise agreed by Audi in writing, Dealer will operate Dealer's Premises during the customary business hours of the trade in Dealer's Area.

ARTICLE 4

IDENTIFICATION; ADVERTISING

Use of Authorized Trademarks

- (1) Audi will supply Dealer, from time to time, with trademark standards to assist Dealer in the proper usage of Authorized Trademarks. Dealer will use Authorized Trademarks only in connection with the promotion and sale of new Authorized Products and customer service for Authorized Products pursuant to this Agreement, and only in the manner and for the purposes Audi specifies. Dealer will not use any Authorized Trademark as part of its corporate or business name without the prior written consent of Audi. Dealer also may use Authorized Trademarks in connection with the sale of used automobiles if Dealer complies fully with Audi's requirements relating to used car sales under the Authorized Trademarks. If Dealer does not comply fully with these requirements, Dealer may not use any Authorized Trademarks in connection with its used car sales, except that Dealer may use the word "Audi" to describe Authorized Automobiles, if this word appears in characters and colors different from those usually employed by the Manufacturer, Audi and authorized dealers of Audi. This Agreement does not grant Dealer any license or permission to use Authorized Trademarks except as mentioned herein, and Dealer has no right to grant any such permission or interest.

Signs

- (2) Dealer will display conspicuously at Dealer's Premises such Authorized Signs at such locations as Audi reasonably may require. Dealer will use its best efforts to obtain all governmental approvals necessary for such display. If Dealer transfers any of Dealer's Premises to another location, Dealer immediately will remove all Authorized Signs and other references to Authorized Products displayed at or around the prior location.

Stationery

- (3) All stationery and business forms used in Dealer's Operations will be prepared in accordance with Recommendations. Dealer's use of Authorized Trademarks on stationery and business forms will be in accordance with trademark standards supplied by Audi.

Advertising

- (4) Dealer will advertise Authorized Products and customer service for Authorized Products only in accordance with reasonable guidelines and policies established by Audi. Dealer will refrain from all false, deceptive, misleading or unlawful advertising. Dealer's advertising will include, among other things, a listing in a principal local classified telephone directory in Dealer's Area. Authorized Trademarks will be used for identification in all product and customer service advertising, in accordance with the provisions of this Agreement. Audi will provide or sell to Dealer sufficient quantities of all legally required brochures, as well as all current sales, service and parts literature and promotional materials, and Dealer shall prominently display them and make them readily available.

ARTICLE 5

SALES

Sales Promotion

- (1) Dealer will use its best efforts to promote the sale of Authorized Automobiles in Dealer's Area, through regular contacts with owners, users, and prospective owners and users of Authorized Products; through promotion, prospecting, and follow-up programs; and through such means and at such levels as may be indicated from time to time by the Business Basics, Operating Plan and Recommendations.

Sales Performance

- (2) Dealer will achieve the best sales performance possible in Dealer's Area for each model and type of Authorized Automobile. The measurement for Dealer's yearly sales performance will be the objective established in the applicable annual Operating Plan.

Sales Outside Area

- (3) Subject to Dealer's performance of its obligations under Article 5(2), Audi does not restrict Dealer's sale of Authorized Products within the 50 United States. Audi hereby informs Dealer, however, that Audi has no authority to sell any products for distribution outside the United States, and it is Audi's policy not to do so. Dealer acknowledges its understanding that this is intended to preserve the integrity of the orderly worldwide distribution network for the products supplied to Audi, and to maximize customer satisfaction by ensuring that Authorized Products meet the certification and operational standards to which they were designed. Dealer therefore is authorized to sell new Authorized Products only in the 50 United States, and is not authorized to, and agrees it will not, sell any new Authorized Product for sale or use elsewhere.

Defective or Damaged Authorized Products

- (4) If any Authorized Product sold by Audi to Dealer should become defective or damaged prior to its delivery by Dealer to a customer, Dealer agrees to repair such defect or damage so that such Authorized Product is placed in first-class salable condition prior to such delivery. Dealer immediately will notify Audi of any substantial defects or damage and will follow such procedures for making damage claims as Audi may establish from time to time. Audi shall have the option to repurchase any Authorized Products with substantial defects or damage at the price at which they were originally sold by Audi, less any prior refunds or

allowances made by Audi and less any insurance proceeds received by Dealer in respect of such defect or damage. Audi will make an equitable adjustment with respect to damage which Dealer can demonstrate occurred prior to the time of delivery to Dealer. Audi will disclose to Dealer as may be required any damage which Audi repaired before delivering an Authorized Automobile to Dealer. Dealer will properly disclose such repair prior to delivering such Authorized Automobile to a customer, and will hold Audi harmless from any claims that required disclosure was not made.

Changes by Dealer to Authorized Products

- (5) Audi may request Dealer to make changes, or not to make changes, to Authorized Products, and Dealer agrees to comply promptly with such requests. Dealer also agrees to take such steps as Audi may direct it to take to comply with any law or regulation pertaining to safety, emissions, noise, fuel economy or vehicle labeling. Audi will reimburse Dealer at the then-current rate of reimbursement specified by Audi for Dealer for Genuine Parts and for labor which may be used by Dealer in making such required changes on Authorized Products. Parts and other materials necessary to make such changes may be shipped to Dealer without Dealer's authorization and Dealer will accept them. Dealer will receive credit for parts so shipped which prove unnecessary, provided they are returned or disposed of in accordance with Audi's instructions. If the laws of the state in which Dealer is located or a vehicle is to be registered require motor vehicles to carry equipment not installed or supplied as standard equipment by the Manufacturer or Audi, upon Audi's request Dealer will, prior to selling any Authorized Automobiles on which such installation is required, properly install at its own or its customers' expense equipment conforming to such laws and to Audi's standards. Dealer agrees to indemnify the Manufacturer and Audi and hold them harmless from any and all liabilities that may arise out of Dealer's failure or alleged failure to comply with any obligation assumed by Dealer in this paragraph.

Product Changes by Dealer Neither Requested by Audi nor Required by Law

- (6) If Dealer installs on a new Authorized Automobile any equipment, accessory or part other than a Genuine Part; sells any new Authorized Automobile which has been modified; or sells in conjunction with a new Authorized Automobile a service contract not offered or specifically endorsed in writing by Audi, then Dealer will advise the customer of the identity of the warrantor of such modification, equipment, accessory or part, or, in the case of a service contract, of the identity of the provider of its coverage. Dealer will indemnify Audi against claims that may be asserted against Audi, in any action by reason of such modification, equipment, accessory, part or service contract. ANY UNAUTHORIZED MODIFICATION TO AUTHORIZED PRODUCTS BY DEALER WHICH ADVERSELY AFFECTS THE SAFETY OR EMISSIONS OF AN AUTHORIZED AUTOMOBILE WILL BE A VIOLATION OF THIS AGREEMENT AND CAUSE FOR TERMINATION PURSUANT TO ARTICLE 14(2).

Used Car Operations

- (7) Dealer will use its best efforts to acquire, promote, and sell at retail used Authorized Automobiles and other used automobiles. Dealer's used car operations will conform to the requirements of the Business Basics, Retail Capacity Guide, Operating Plan, Recommendations and such other reasonable standards as Audi may prescribe, after review with Dealer.

ARTICLE 6

PARTS

Parts Promotion

- (1) Dealer will use its best efforts to promote the sale of Genuine Parts in Dealer's Area, through regular contacts with owners, users, and prospective owners and users of Authorized Products; through promotion, prospecting and follow-up programs; and through such means as may be indicated from time to time by Recommendations.

Parts Department

- (2) Dealer's parts department will conform to the requirements of the Business Basics, Retail Capacity Guide, Operating Plan and such other reasonable standards as Audi may prescribe, after review with Dealer.

Sale of Non-genuine Parts

- (3) Dealer will not sell any parts which are not equivalent in quality and design to Genuine Parts, if such parts are necessary to the mechanical operation of Authorized Automobiles. Dealer will not represent as new Genuine Parts any parts which are not new Genuine Parts. If Dealer sells a part or accessory which is not a Genuine Part, Dealer will advise the customer of the identity of the warrantor of such part or accessory.

Parts Inventory

- (4) Dealer will maintain an inventory of Genuine Parts which is sufficient to perform reasonably anticipated warranty service and wholesale trade requirements in Dealer's Area for Genuine Parts. Audi will make Recommendations for Dealer's inventory of Genuine Parts based on particular conditions in Dealer's Area, and Dealer will give due consideration to such Recommendations.

ARTICLE 7

SERVICE

Quality and Promotion of Service

- (1) Dealer will provide the best possible customer service for all owners of Authorized Automobiles and automobiles of the same make formerly sold by Audi, and will use its best efforts to promote its customer service. Dealer's service facilities, equipment, and personnel will conform to the requirements of the Business Basics, Retail Capacity Guide, Operating Plan and such other reasonable standards as Audi may prescribe, after review with Dealer.

Tools

- (2) Special tools and general workshop equipment meeting Audi's standards shall be available at Dealer's Premises in working condition. Audi's minimum standards shall be found in the Business Basics and the Operating Plan, which will be updated from time to time.

Use of Non-genuine Parts

- (3) Dealer will not use in the repair or servicing of Authorized Automobiles any parts which are not equivalent in quality and design to Genuine Parts, if such parts are necessary to the mechanical operation of such Authorized Automobiles. Dealer will use only Genuine Parts in performing warranty service on Authorized Automobiles. Dealer will not represent as new Genuine Parts any parts used by it in the repair or servicing of Authorized Automobiles which are not new Genuine Parts.

Owner's Documents

- (4) Upon delivering a new Authorized Automobile to a customer, Dealer will provide the Owner's Documents supplied by Audi for such Authorized Automobile, properly completed by Dealer. Dealer will take all steps required prior to delivery of the Authorized Automobile, and, in particular, will perform properly the pre-delivery services specified by Audi.

Maintenance and Other Services Without Customer Charge

- (5) In accordance with bulletins issued from time to time by Audi and Audi's Warranties, certain maintenance services and other repairs following delivery of a new Authorized Automobile may be free of charge to the customer. Upon presentation of an appropriate Owner's Document, Dealer will perform properly the services required, whether or not the Authorized Automobile to be serviced was sold by Dealer. Upon the submission of appropriate claims, Audi will reimburse Dealer for performing such services at the then-current rate of reimbursement specified by Audi for Dealer. Audi will establish procedures for submitting and processing such claims and transmitting reimbursements to Dealer. Dealer agrees to comply with these procedures.

Repeated Repairs

- (6) Dealer will notify Audi in writing or by electronic mail of repairs to Authorized Automobiles pursuant to Audi's Warranties under each of the following circumstances:
 - (a) The Authorized Automobile has been brought to Dealer a specified number of times for the same complaint; or
 - (b) The Authorized Automobile has been in Dealer's custody for all repairs pursuant to Audi's Warranties a specified number of days.

Such notification shall be made at the times and by the means Audi may have instructed in any then-current dealer warranty manual issued by Audi.

ARTICLE 8

DEALER'S PURCHASES AND INVENTORIES

Purchase Prices

- (1) Audi will sell Authorized Products to Dealer at prices and upon terms established by Audi from time to time. If Audi increases its established prices, Dealer may cancel all orders for Authorized Products affected by the increase which are unfilled at the time Dealer receives notice of the increase, by giving Audi written notice of cancellation within ten days from the time Dealer receives notice of the price increase.

Orders and Acceptance

- (2) Dealer will transmit orders for Authorized Products to Audi electronically, at the times and for the periods, that Audi reasonably requires. With each order, Dealer represents that it is solvent. Audi may accept orders in whole or in part. Except as otherwise expressly provided in Article 8(1), all orders of Dealer will be binding upon it until they are rejected in writing by Audi; however, in the event of a partial acceptance by Audi, Dealer will not be bound by the portion of the order not accepted.

Inventories

- (3) Dealer will maintain in inventory at all times the assortment and quantity of Authorized Products required by the Operating Plan, Business Basics or Recommendations.

Product Allocation

- (4) Dealer recognizes that certain Authorized Products may not be available in sufficient supply from time to time because of factors such as product importation, consumer demand, component shortages, manufacturing constraints, governmental regulations, or other causes. Audi will endeavor to make a fair and equitable allocation and distribution of the Authorized Products available to it.

Taxes

- (5) Dealer is responsible for any and all sales taxes, use taxes, excise taxes (including luxury taxes) and other governmental charges imposed, levied, or based upon the sale of Authorized Products by Audi to Dealer. Dealer represents and warrants, as of the date of the purchase of each Authorized Product, that all Authorized Products purchased from Audi are purchased by Dealer for resale in the ordinary course of Dealer's business and that Dealer has complied with all laws relating to the collection and payment of all sales taxes, use taxes, excise taxes (including luxury taxes) and other governmental charges applicable to the purchase of such products and will furnish evidence thereof upon request. If any Authorized Products are put to taxable use by Dealer, or are purchased by Dealer for purposes other than resale in the ordinary course of Dealer's business, Dealer will make timely return and payment to the appropriate taxing authorities of all applicable taxes and other governmental charges imposed, levied, or based upon the sale of such Authorized Products by Audi to Dealer and will hold Audi harmless with respect thereto.

Payments to Dealer or Dealer's Personnel

- (6) From time to time, Audi may conduct incentive programs which involve payments to Dealer or to Dealer's personnel. Dealer acknowledges that regardless of the nature of such programs or payments, Dealer's personnel are not employees, contractors or agents of Audi. All matters relating to the employment or retention of Dealer's personnel are solely Dealer's responsibility. In the case of payments by Audi to Dealer, Dealer alone will be responsible for the payment of any and all applicable taxes. In the case of payments to Dealer's personnel, Audi will make appropriate information or other returns to appropriate taxing authorities. In the event Dealer does not want Audi to make direct payments to Dealer's personnel, Dealer will notify Audi to that effect in writing. After receiving such written notice, Audi will pay directly to Dealer any subsequent payments coming due Dealer's personnel. Dealer represents and warrants that it will pass such payments directly through to Dealer's personnel as intended; that it will make any necessary returns to any taxing authority; and that it will hold Audi harmless from any claims whatsoever that such payments were not received by the intended recipients or that appropriate withholdings were not made. In the event it is determined by any taxing authority that Audi should not have made payments to Dealer's personnel or that Audi should have collected taxes in respect of such payments, then Audi will be responsible for such taxes.

Payment by Dealer

- (7) Dealer will pay for Authorized Products in the manner, at the time, and upon the conditions specified in the terms of payment established from time to time by Audi. Delivery of instruments of payment other than cash will not constitute payment until Audi has collected the full amount in cash. Dealer will pay all collection charges, including reasonable attorney's fees, and costs of exchange, if any, incurred in connection with its payments.

Passing of Title; Security Interest

- (8) Title to Authorized Products will remain with Audi until Audi has collected their full purchase price in cash. Dealer will execute and deliver, and Audi is authorized to execute and deliver on behalf of Dealer or, to the extent permitted by law, to file without the signature of Dealer, all financing statements and other instruments which Audi may deem necessary to evidence its ownership of such Authorized Products. Dealer hereby grants Audi a purchase money security interest in all Authorized Products for which Audi has not collected in full, authorizes Audi to take such steps as Audi deems necessary to perfect such security interests, and agrees to cooperate fully with Audi in connection therewith. Audi may take possession at any time of Authorized Products to which it has title.

Passing of Risks

- (9) Authorized Products will be at Dealer's risk and peril from the time of their delivery to Dealer or Dealer's agent. It will be up to Dealer to insure such risks for its benefit and at its expense.

Responsibility for Defects and Damage

- (10) Audi assumes responsibility for the quality and condition of Authorized Products, to the extent of (a) defects caused by its own negligence and (b) damage caused or repaired prior to delivery of the Authorized Products to Dealer or Dealer's agent. Audi will make any required disclosure thereof to Dealer. If Audi has insured against such defects in or damage to Authorized Products, Audi's liability to Dealer for such damage will be limited to the amount actually paid by the insurance carrier to Audi by reason of such defect or damage, together with any deductible amount applicable to such claim. Dealer may decline to accept any Authorized Products delivered to Dealer in damaged condition or with respect to which Audi has notified Dealer that Audi has repaired damage; however, should Dealer accept such Authorized Product Dealer will, subject to the provisions of Article 5(5), repair all such defects and damage fully as required by Audi before any defective or damaged Authorized Product is delivered to a customer. Dealer will make any required disclosure to Dealer's customers of damage or repairs, and will hold Audi harmless with respect thereto. Audi will notify Dealer promptly of the amount thereof, or any other amount due from Audi pursuant to this paragraph, following Dealer's submission of such proof of repair as Audi may require.

Claims for Incomplete Delivery

- (11) Dealer will make all claims for incomplete delivery of Authorized Products (including the delivery of Authorized Products with damage) in writing not later than three business days after Dealer's receipt of shipment; provided, however, that Dealer will make claims as to Genuine Parts within the period specified in policies established by Audi from time to time; and provided, further, that Dealer will note claims for visible damage to Authorized Automobiles on the delivery receipt.

Changes of Specifications

- (12) Audi will deliver Authorized Products to Dealer in accordance with specifications applicable at the time of their manufacture. In the event of any change or modification with respect to any Authorized Products, Dealer will not be entitled to have such change or modification made to any Authorized Products manufactured prior to the introduction of such change or modification. Audi expressly reserves, and Dealer acknowledges, the right to make such changes and modifications, and Dealer's only right in such event shall be the cancellation of any orders, not yet accepted by Audi, for Authorized Products affected by the change or modification.

Failure of or Delay in Delivery by Audi

- (13) Audi will not be liable to Dealer for failure of or delay in delivery under orders of Dealer accepted by Audi, other than failure or delay resulting from willful misconduct or gross negligence of Audi.

Return or Diversion on Dealer's Failure to Accept

- (14) If Dealer fails or refuses for any reason to accept delivery of any Authorized Products ordered by Dealer (except as permitted under Article 8(11)), Dealer will be liable to Audi for all expenses incurred as a result of such failure or refusal, and will store such Authorized Products at no charge to Audi until Audi can arrange for their removal. Dealer's liability pursuant to this paragraph will be in addition to, and not in lieu of, any other liabilities which may arise from Dealer's failure or refusal to accept delivery.

ARTICLE 9

WARRANTY TO CUSTOMERS

Audi's Warranties

- (1) Audi warrants each new Authorized Product as set forth in Audi's Warranties.

Incorporation of Audi's Warranties in Dealer's Sales

- (2) Dealer will make all sales of Authorized Automobiles and Genuine Parts in such a way that its customers acquire all rights in accordance with Audi's Warranties and, to the extent permitted by law, no other express or implied warranties. Dealer will make the text of Audi's Warranties part of its contracts for the sale of Authorized Products and will display the text of the warranties of all products it sells in customer contact areas where Authorized Products are offered.

Warranty Procedures

- (3) Dealer agrees to comply with the provisions of the various dealer warranty manuals which Audi may issue from time to time, and will follow the procedures established by Audi for processing warranty claims and returning and disposing of defective Genuine Parts. Dealer will also comply with all requests of Audi for the performance of services pursuant to warranty claims and will maintain detailed records of time and parts consumption and any other records used as the basis for submitting warranty claims. Dealer will submit warranty claims to Audi electronically, and in accordance with procedures established by Audi. Upon Dealer's compliance with such requests and maintenance of such records, Audi will reimburse Dealer within a reasonable time for warranty claims at the then-current rate of reimbursement specified by Audi for Dealer. Strict adherence to the procedures and means established for processing warranty claims is necessary for Audi to process such claims fairly and expeditiously. Audi will be under no obligation with respect to warranty claims not submitted electronically and not made strictly in accordance with such procedures.

ARTICLE 10

DEALER'S RECORD KEEPING AND REPORTS; INSPECTION OF DEALER'S OPERATIONS

Dealer's Forms, Business Machines, Office Equipment and Bookkeeping

- (1) Dealer will use accounting, sales, bookkeeping and service workshop forms; business machines; data processing and transmission equipment; and other office equipment which meets specifications, and which enables Dealer and Audi to communicate electronically for all purposes and which otherwise provides information and functions in the manner prescribed by Audi and its affiliates in the Business Basics, the Operating Plan and by other means. Audi will advise Dealer, or ensure that suppliers to Audi advise Dealer, periodically of the hardware and software requirements, communications protocols, and other specifications which Dealer's data processing and transmission equipment must meet in order to satisfy the requirements of this paragraph, and Dealer will timely adhere to such requirements, protocols and specifications. Dealer will keep accurate and current records in accordance with Audi's uniform accounting system and with accounting practices and procedures reasonably satisfactory to Audi, in order to enable Audi to develop comparative data and to furnish Dealer business management assistance.

Financial Statements to be Supplied by Dealer

- (2) Dealer will transmit to Audi (a) on or before the tenth day of each calendar month, in such form and by such methods as Audi reasonably may require, a financial and operating statement reflecting the consolidated operations of Dealer for the preceding month and from the beginning of the calendar year to the end of the preceding month and (b) within three and one-half months after the close of Dealer's fiscal or calendar year, a consolidated balance sheet and profit and loss statement of Dealer, which documents shall be certified by a certified public accountant if so requested by Audi at least 30 days prior to the close of Dealer's fiscal or calendar year. DEALER'S FAILURE TO PROVIDE FINANCIAL AND OPERATING STATEMENTS IN THE FORMAT AND BY THE METHOD REQUIRED BY AUDI MAY RESULT IN THE REVOCATION OF DEALER'S OPEN PARTS AND ACCESSORIES ACCOUNT.

Reports to be Supplied by Dealer

- (3) Dealer will furnish to Audi, on such forms and by such methods as Audi reasonably may require, accurate timely reports of Dealer's sales and transfers of new Authorized Automobiles. Dealer also will furnish to Audi, on a timely and accurate basis, such other reports and financial statements as Audi reasonably may require.

Inspection of Dealer's Operations and Records

- (4) Until the expiration or termination of this Agreement, and thereafter until consummation of all transactions referred to in Article 15, Audi, through its employees and other designees, at all reasonable times during regular business hours, may inspect Dealer's Operations, Dealer's Premises and the methods, records and accounts of Dealer relating to Dealer's Operations.

ARTICLE 11

DEALER PERFORMANCE REVIEW

Evaluation and Assistance

- (1) Each year, Audi will prepare objectives for Dealer and will use them as a basis for evaluating Dealer's performance of its obligations in each of the areas described in this Article 11 and in the Business Basics, the Retail Capacity Guide, and the Operating Plan. Audi may evaluate Dealer's performance during the year through periodic reviews. Audi will review its evaluations with Dealer, so that Dealer may take prompt action, if necessary, to improve its performance to such levels as Audi reasonably may require. Any written comments received from Dealer on Audi's evaluation of Dealer will become a part of such evaluation.

Evaluation of Dealer's Vehicle Sales, Service and Parts Performance

- (2) Audi will evaluate the effectiveness of Dealer's vehicle sales, service and parts performance in accordance with factors and measures set forth in the Business Basics, the Operating Plan and Recommendations.

Evaluation of Dealer's Premises

- (3) Audi will evaluate Dealer's performance of its responsibilities pertaining to Dealer's Premises, analyzing both separately and collectively Dealer's sales facilities, service facilities, parts facilities, administrative offices, storage, parking and signage. In making such evaluation, Audi will consider the factors set forth in the Business Basics, the Retail Capacity Guide, the Operating Plan and Recommendations.

Evaluation of Dealer's Customer Satisfaction

- (4) Audi will evaluate Dealer's performance of its responsibilities pertaining to customer satisfaction, analyzing both separately and collectively the satisfaction of customers with Dealer's sales activities and service activities. In making such evaluation, Audi will utilize a uniform measure of customer satisfaction, which will be disclosed to Dealer, and will consider the factors set forth in the Business Basics, the Operating Plan and Recommendations.

ARTICLE 12

SUCCEEDING DEALERS

Procedure

- (1) If Dealer chooses to transfer its principal assets or change owners, Audi has the right to approve the proposed transferees, the new owners and executives and, if different from Dealer's, their premises. Audi will consider in good faith any such written proposal Dealer may submit to Audi during the term of this Agreement. In determining whether the proposal is acceptable to it, Audi will take into account factors such as the personal, business and financial qualifications of the proposed new owners and executives as well as the proposal's effect on competition. In such evaluation, Audi may consult with the proposed new owners and executives on any aspect of the transaction of their proposed dealership operations. Notwithstanding anything set forth in this paragraph to the contrary, Audi shall not be obligated to consider such proposal if it previously had notified Dealer in writing that it would not appoint a succeeding dealer in Dealer's Area; provided, however, that such notice shall be given only if there is good cause for discontinuing representation of Authorized Automobiles in Dealer's Area.

Approvals

- (2) Audi will notify Dealer in writing of the approval or disapproval of a proposal by Dealer for transfer of principal assets or change of owners within 45 business days, or the exercise by Audi of its right of first refusal under Article 12(3) within 30 calendar days, after Dealer has furnished to Audi all applications and information reasonably requested by Audi to evaluate such proposal. If Audi approves Dealer's proposal, Audi shall be obligated to grant the proposed transferees only a Dealer Agreement in substantially the same form as this Agreement. If Audi had previously notified Dealer in writing that Audi would not appoint a succeeding dealer in Dealer's Premises, then Audi's approval of Dealer's proposal may be conditioned on the proposed transferees agreeing to provide different facilities for their dealership operations. Upon the consummation of Dealer's approved proposal, Dealer will deliver to Audi Audi's form of voluntary termination of this Agreement and a general release in favor of Audi.

Right of First Refusal

- (3) Whenever Dealer proposes to transfer its principal assets or change owners of a majority interest, Audi shall have the right to purchase such assets or ownership interest, as follows:
- (a) Audi may elect to exercise its purchase right by written notice to Dealer within 30 calendar days after Dealer has furnished to Audi all applications and information reasonably requested by Audi to evaluate Dealer's proposal.
 - (b) If Dealer's proposed sale or transfer was to a successor approved in advance by Audi, to any of Dealer's Owners, to Dealer's employees as a group or to Dealer's spouse, children or heirs, then Dealer may withdraw its proposal within 30 calendar days following receipt of Audi's notice of election of its purchase right.
 - (c) Audi's right under this Article 12(3) shall be a right of first refusal, permitting Audi to
 - (i) assume the proposed transferee's rights and obligations under its agreement with Dealer and
 - (ii) cancel this Agreement and all rights granted Dealer hereunder.Except to the extent specifically inconsistent with the terms of this Agreement, the price and all other terms of Audi's purchase shall be as set forth in any bona fide written purchase and sale agreement between Dealer and its proposed transferee and in any related documents.
 - (d) Dealer shall furnish to Audi copies of all applicable liens, mortgages, encumbrances, leases, easements, licenses or other documents affecting any of the property to be transferred, and shall assign to Audi any permits or licenses necessary for the continued conduct of Dealer's Operations.
 - (e) Audi may assign its right of first refusal to any party it chooses, but in that event Audi will remain primarily liable for payment of the purchase price to Dealer.
 - (f) If Audi exercises its purchase right, Audi will reimburse Dealer's proposed transferee for reasonable documented actual expenses which such proposed transferee incurred through the date of such exercise which are directly and solely attributable to the transaction Dealer proposed.
 - (g) Nothing contained in this Article 12(3) shall require Audi to exercise its right of first refusal in any case, nor restrict any right Audi may have to refuse to approve Dealer's proposed transfer.

Succession

- (4) Article 14(1)(a) notwithstanding, in the event of the death of any of Dealer's Owners, Audi will not terminate this Agreement by reason of such death if:
- (a) The owner's interest in Dealer passes directly as specified in any Successor Addendum to this Agreement; or
 - (b) The owner's interest in Dealer passes directly to his or her surviving spouse or children, or any of them, and (i) Dealer's Authorized Representative remains as stated in the Statement of Ownership and Management or (ii) within 90 days after the death of such owner Dealer appoints another qualified individual as Dealer's Authorized Representative; provided, however, that in this event Audi will evaluate Dealer's performance during the 12 months following the owner's death. After the expiration of this 12-month period and Audi's evaluation of the performance of Dealer's management during such period, Audi will review with Dealer the changes, if any, in the management or equity interests of Dealer required by Audi as a condition of continuing this Dealer Agreement with Dealer. Any new Dealer Agreement entered into pursuant to this paragraph will be in substantially the same form as the Dealer Agreements then currently offered by Audi to its dealers in Authorized Automobiles generally.

Modification of Terms of Payment

- (5) Upon receipt of an application for a replacement dealer agreement, Audi may modify its terms of payment with respect to Dealer to the extent Audi deems appropriate, irrespective of Dealer's credit standing or payment history.

ARTICLE 13

DISPUTE RESOLUTION

General Policy

- (1) Audi and Dealer agree as a general matter to work together to minimize disputes between them. While understanding that certain Federal and state courts and agencies may be available to resolve any disputes, Audi and Dealer agree that it is in their mutual best interests to attempt to resolve certain controversies first through arbitration. Audi and Dealer therefore agree that the dispute resolution process outlined in this Article shall be used before seeking legal redress in a court of law or before an administrative agency, for all disputes arising under the following: Article 9(3) (Warranty Procedures), Article 12 (Succeeding Dealers), Article 14 (Termination), Article 15 (Rights and Liabilities Upon Termination) and payments to Dealer in connection with Audi incentive programs. In the event that a dispute arises in connection with any other provision of this Agreement, Audi and Dealer may mutually agree to first submit the dispute to arbitration, in accordance with the provisions of this Article. Both Audi and Dealer agree that the ultimate mutual goal of arbitration is to obtain a fair hearing and prompt decision of the dispute, in an efficient and cost-effective manner, and both agree to work toward that goal at all times hereunder.

Involuntary Non-Binding Arbitration

- (2) Upon the written request of either Audi or Dealer, a dispute arising in connection with this Agreement may be submitted to non-binding arbitration.

Voluntary Binding Arbitration

- (3) As an alternative to Article 13(2) above, upon the written request of Dealer, a dispute arising in connection with this Agreement will be submitted to binding arbitration.

Rules of Conduct

(4) Arbitrations will be adjudicated under the auspices and in accordance with the rules of the American Arbitration Association or another mutually acceptable arbitration service, as well as the following provisions:

- (a) Written requests for arbitration shall set forth a clear and complete statement of the nature of the claim and its basis; the amount involved, if any, and the remedy sought.
- (b) The place of arbitration shall be the state in which Dealer's Premises are located, or such other place as may be agreed upon by the parties.
- (c) Both parties shall make every reasonable attempt to agree upon one arbitrator, but if they are unable to agree each shall appoint an arbitrator and these two shall appoint a third arbitrator.
- (d) Expenses of arbitration shall be divided equally between the parties. The prevailing party shall not be entitled to reasonable attorneys fees.
- (e) The arbitrator(s) shall pass finally upon all questions, both of law and fact, and his or her (or their) findings shall be conclusive.
- (f) Pre-arbitration discovery shall be available to both parties and shall be governed by the Federal Rules of Civil Procedure. Information obtained by either party during the course of discovery shall be kept confidential, shall not be disclosed to any third party, shall not be used except in connection with the arbitration proceeding, and at the conclusion of the proceeding, shall be returned to the other party. Both Dealer and Audi shall make their agents and employees available upon reasonable times and places for pre-trial depositions without the necessity of subpoenas or other court orders. Such discovery may be used as evidence in the arbitration proceeding to the same extent as if it were a court proceeding.

Time for Decision

(5) Unless Audi and Dealer specifically agree to the contrary, and subject to the rules and procedures of the arbitration service chosen, the arbitration hearing shall be concluded not more than 60 days after the date of the written request to arbitrate, and the arbitration decision shall be rendered not more than 90 days after the written request to arbitrate.

Provisional Remedies

(6) Either Audi or Dealer may, without prejudice to the above procedures, file a complaint if in its sole judgment such action is necessary to avoid irreparable damage or to preserve the status quo. Despite such action the parties will continue to participate in good faith in the procedures specified in this Article 13.

Tolling Statute of Limitations

(7) All applicable statutes of limitation and defenses based upon passage of time shall be tolled while the procedures specified in this Article 13 are pending. The parties will take such action, if any, required to effectuate such tolling.

Performance to Continue

(8) Audi and Dealer agree to continue to perform their respective obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement.

ARTICLE 14

TERMINATION

Immediate Termination by Audi

- (1) Except to the extent a greater notice period is required by any applicable statute, Audi has the right to terminate this Agreement for cause, with immediate effect, by sending notice of termination to Dealer, if any of the following should occur:
 - (a) Death of any of Dealer's Owners or any change, whether voluntary or by operation of law, in the record or beneficial ownership of Dealer without Audi's prior written consent; any change in Dealer's Executives without prior notice to Audi; or the failure of Dealer's Executives to continue to manage Dealer's Operations;
 - (b) Dissolution or liquidation of Dealer, if a partnership or corporation;
 - (c) Insolvency of Dealer or voluntary institution by Dealer of any proceeding under the Bankruptcy Act or state insolvency law; or the involuntary institution against Dealer of any proceeding under the Bankruptcy Act or state insolvency law which is not vacated within ten days from the institution thereof; or the appointment of a receiver or other officer having similar powers for Dealer or Dealer's business who is not removed within ten days of his appointment; or any levy under attachment, execution or similar process which is not within ten days vacated or removed by payment or bonding.
 - (d) Any attempted transfer of this Agreement by Dealer, in whole or in part, without Audi's prior written consent;
 - (e) Any change in the location of any of Dealer's Premises or the establishment of any additional premises for Dealer's Operations without Audi's prior written consent;
 - (f) Failure of Dealer to continue to operate any of Dealer's Premises in the usual manner for a period of five consecutive business days, unless caused by an Act of God, war, riot, strike, lockout, fire, explosion or similar event;
 - (g) Dealer's failure, for a period of ten consecutive business days, to have any license necessary for the conduct of Dealer's Operations;
 - (h) Conviction of Dealer or any of Dealer's Owners or Executives of a felony or any misdemeanor involving fraud, deceit or an unfair business practice, if in Audi's opinion such conviction may adversely affect the conduct of Dealer's business, or be harmful to the good will of the Manufacturer or Audi or to the reputation and marketing of Authorized products;
 - (i) Any material misrepresentation by any of Dealer's Owners or Executives as to any fact relied upon by Audi in entering into this Agreement;
 - (j) Submission by Dealer of a fraudulent or knowingly false report or statement or claim for reimbursement, refund or credit; or
 - (k) Failure or refusal of Dealer or Dealer's Owners, Executives, agents or employees to provide Audi, upon request, with access to and the opportunity to inspect and copy all books, papers, instruments, certificates or other documents evidencing the record or beneficial ownership of Dealer.

Termination by Audi on 30 Days' Notice

- (2) Except to the extent a greater notice period is required by any applicable statute, Audi has the right to terminate this Agreement upon 30 days' notice if any of the following shall occur:
- Any disagreement or personal difficulties of Dealer's Owners or Executives which in Audi's opinion may adversely affect the conduct of Dealer's business, or the presence in the management of Dealer of any person who in Audi's opinion does not have appropriate qualifications for their position;
 - Impairment of the reputation or financial standing of Dealer or any of Dealer's Owners or Executives or ascertainment by Audi of any fact existing at or prior to the time of execution of this Agreement which tends to impair such reputation or financial standing; or
 - Any breach of any obligation of Dealer pursuant to this Agreement or any other agreement between Audi or any of its subsidiaries or affiliates and Dealer.

Discussions with Dealer

- (3) Upon learning that any event or situation which would give Audi grounds to terminate this Agreement has occurred, Audi will endeavor to discuss such event or situation with Dealer. Thereafter, Audi may give Dealer written notice of termination.

Modification of Terms of Payment

- (4) During the period a situation specified in Article 14(1) or 14(2) continues to exist, Audi may modify its terms of payment with respect to Dealer to such extent as Audi may consider appropriate, irrespective of Dealer's credit standing or payment record.

No Waiver by Failure to Terminate

- (5) Should Audi be entitled to terminate this Agreement but fail to do so, such failure shall not be considered a waiver of Audi's right to terminate this Agreement unless the situation entitling Audi to terminate this Agreement has ceased to exist and (a) six months have elapsed from the time Audi obtained knowledge of such situation or (b) Audi has entered into a subsequent written agreement with Dealer superseding this Agreement. Nevertheless, any situation entitling Audi to terminate this Agreement may be considered at any subsequent time together with any subsequent events in determining Audi's right to terminate this Agreement.

Termination by Dealer

- (6) Dealer has the right to terminate this Agreement without cause by giving Audi 60 days written notice of such termination. Upon receipt of Dealer's notice of termination, Audi may, at Audi's option, waive in writing the 60-day notice period. In the event Dealer, in connection with its termination of this Agreement, also wishes to terminate any other agreement between Dealer and Audi or any of Audi's subsidiaries or affiliates, Dealer must do so separately and subject to the provisions of Article 14(9) below.

Continuation of Business Relations after Termination

- (7) Any business relations between Audi and Dealer after the termination of this Agreement without a written extension or renewal or a new written dealer agreement will not operate as an extension or renewal of this Agreement or as a new dealer agreement. Nevertheless, all such business relations, so long as they are continued, will be governed by terms identical with the provisions of this Agreement.

Superseding Agreements

- (8) If any superseding form of Dealer Agreement is offered by Audi to its authorized dealers generally at any time, Audi may, by written notice to Dealer, terminate this Agreement and replace it with a Dealer Agreement in the superseding form.

Agreements with Affiliates of Audi

- (9) The termination of this Agreement by either party does not necessarily waive or terminate any other agreement between Dealer and Audi or any of its subsidiaries or affiliates. Such other agreements may be terminated only in accordance with their terms, and the parties' respective obligations under any such other agreements will continue in accordance with their terms until terminated.

ARTICLE 15

RIGHTS AND LIABILITIES UPON TERMINATION

Audi's Obligations

- (1) Within 90 days after the termination of this Agreement pursuant to Article 14, Audi will purchase from Dealer and (subject to the provisions of Article 15, Paragraph 4 below) Dealer will sell to Audi all the following:

New Authorized Automobile Inventory

- (a) All new, undamaged current model year Authorized Automobiles (introduced in the United States no earlier than 12 months prior to the date of such expiration or termination and not superseded by a later model year) in Dealer's inventory on the date of such expiration or termination which are in first-class salable condition, provided they
- (i) have 200 or fewer actual miles;
 - (ii) were sold by Audi and purchased by Dealer from Audi (or in the ordinary course of business from other dealers of Authorized Automobiles appointed by Audi) and
 - (iii) have never been sold by Dealer.

The price for such Authorized Automobiles will be the price at which they were originally sold by Audi, less all prior refunds or allowances made by Audi, if any.

New Genuine Parts Inventory

- (b) All the following new, unused and undamaged articles listed in Audi's current Genuine Parts Price List (other than articles listed as obsolete) in Dealer's inventory on the date of such expiration or termination which are in first-class salable condition and complete, provided they were purchased by Dealer from Audi and never sold by Dealer:
- (i) New parts and new factory remanufactured replacement parts supplied by Audi for Authorized Automobiles;
 - (ii) accessories considered by Audi to be suitable for installation in the current model year Authorized Automobiles specified in Article 15(1)(a); and
 - (iii) other accessories, provided that Audi has made sales of identical articles during six of the last twelve full calendar months immediately preceding such expiration or termination.

The price for such articles will be the price then last established by Audi for the sale of identical articles, less a handling charge equal to ten percent of such amount and less all prior refunds or allowances made by Audi;

Tools and Equipment

- (c) All special tools and equipment for servicing Authorized Automobiles owned by Dealer on the date of expiration or termination which are in operating condition and complete, provided they were purchased by Dealer from Audi or pursuant to written requests of Audi. The price for such tools and equipment will be the fair market value thereof; and

Authorized Signs

- (d) All Authorized Signs which Dealer displayed publicly or at Dealer's Premises. The price for such Authorized Signs will be the fair market value thereof.

Terms of Sale

- (2) Any and all items to be sold by Dealer to Audi pursuant to this paragraph will be delivered by Dealer to Audi at Dealer's place of business suitably packed for transportation. For such periods of time as Audi reasonably may determine, Audi may enter Dealer's Premises for the purpose of taking an inventory of all or any part of Dealer's stock of Authorized Products and special tools and equipment. At the request of Audi, Dealer will comply in all respects with the provisions of all applicable bulk sales acts or similar statutes protecting a transferee of personal property with respect to liabilities of the transferor. Promptly following performance by Dealer of all its obligations pursuant to this Article 15, the completion by Audi of all steps required to obtain possession of such items and the delivery to Audi of a bill of sale, documents of title and a general release of Audi and the Manufacturer from Dealer and Dealer's Owners, all in form satisfactory to Audi, Audi will pay Dealer the specified prices for the said items, less all amounts owed by Dealer to Audi, its subsidiaries or affiliates. Audi will not be required to purchase any item from Dealer pursuant to this paragraph unless Dealer is able to convey to Audi, within such 90-day period, title to such item free and clear of all liens, claims, encumbrances and security interests.

Pending Orders and Dealer's Obligations

- (3) Upon the expiration or termination of this Agreement, all pending orders of Dealer for Authorized Products previously accepted by Audi will be canceled and Dealer immediately will:

Removal of Authorized Signs

- (a) Remove at its own expense all Authorized Signs which it displayed publicly or at its premises;

Authorized Trademarks

- (b) Cease all usage of the Authorized Trademarks, cease to hold itself out as an authorized dealer in Authorized Automobiles, destroy all stationery and other printed material bearing any Authorized Trademark, and, if its corporate or business name contains any Authorized Trademark, take all steps to remove the same therefrom;

Orders and Files

- (c) Transfer to Audi
- (i) all orders for sale by Dealer of Authorized Products then pending with Dealer;
 - (ii) all deposits made thereon, whether in cash or property;
 - (iii) all Dealer's warranty records for Authorized Products or complete copies of all such records and files; and
 - (iv) all Dealer's customer service files. Upon the written request of Dealer, Audi will return such customer service files to Dealer after Audi has made copies of such files at Audi's expense;

Customer Lists

- (d) Make available to Audi in writing the names and addresses of all its service customers and prospective customers for Authorized Products; and

Literature

- (e) Deliver to Audi at Dealer's place of business, free of charge, all technical or service literature, advertising and other printed material relating to Authorized Products, including sales instruction manuals or promotional material, then in Dealer's possession and which were acquired by Dealer from Audi. None of the foregoing will result in any liability of Audi to Dealer for damages, commissions, loss of profits or compensation for services, or in any other liability of Audi to Dealer of any kind of nature whatsoever.

Direct Sales by Dealer

- (4) Upon Dealer's written request, Audi will waive Dealer's obligation to sell certain assets to Audi and will consent to Dealer's sale of any or all of its assets to any party of Dealer's choosing; provided, however, that Dealer may not sell any new Authorized Automobile nor any new Genuine Parts to any person or entity other than another dealer in the same line-make authorized by Audi.

Specific Performance

- (5) Since Dealer's obligations under this Article 15 are of such a nature that it is impossible to measure in money the damages which will be suffered by Audi if Dealer should fail to perform any of them, Dealer agrees that, in the event of any such failure of performance on its part, Audi will be entitled to maintain an action to compel the specific performance by Dealer of these obligations and Dealer agrees not to assert in any such action the defense that Audi has an adequate remedy at law.

ARTICLE 16

DEFINITIONS

Throughout this Agreement various abbreviations and abbreviated phrases have been used. Their meanings are:

Audi

- (1) "Audi" means Volkswagen of America, Inc., a New Jersey corporation, and includes, as appropriate, all divisions of that corporation.

Audi's Warranties

- (2) "Audi's Warranties" means, with respect to each Authorized Product, those express written warranties provided with such product or as set forth in the Dealer Warranty Manual for Authorized Products in effect at the time such product is first sold at retail.

Authorized Automobiles

- (3) "Authorized Automobiles" means motor vehicles of the Audi brand and comprising such models and types as may be supplied by Audi during the term of this Agreement.

Authorized Products

- (4) "Authorized Products" means Authorized Automobiles and Genuine Parts.

Authorized Representative

- (5) "Authorized Representative" means a qualified representative of Dealer whose full-time professional efforts are devoted to the conduct of Dealer's Operations and who is authorized to execute documents and make all operational decisions on behalf of Dealer.

Authorized Signs

- (6) "Authorized Signs" means displays of any Authorized Trademark, in such material, type, presentation and colors as Audi may prescribe from time to time.

Authorized Trademarks

- (7) "Authorized Trademarks" means any trademark, service mark or trade name now or any other time hereafter used or claimed by the Manufacturer or Audi.

Business Basics, Business File, and Retail Capacity Guide

- (8) "Business Basics", "Business File" and "Retail Capacity Guide" mean those documents which set forth Audi's terms of trade, programs and certain operational requirements.

Dealer's Area

- (9) "Dealer's Area" means the area designated by Audi in the operating plan for Dealer's Operations, corresponding to U.S. census tract information.

Dealer's Executives

- (10) "Dealer's Executives" means all the persons named in Paragraphs 5 and 6 of the Statement of Ownership and Management as officers or other executives of Dealer, as well as any other person who succeeds to any position in Dealer referred to in such paragraphs in accordance with the provisions of this Agreement.

Dealer's Operations

- (11) "Dealer's Operations" means all activities of Dealer relating to the promotion and sale of Authorized Products, the supply of Genuine Parts, customer service for Authorized Products and all other activities of Dealer pursuant to this Agreement.

Dealer's Owners

- (12) "Dealer's Owners" means all the persons named in Paragraph 4 of the Statement of Ownership and Management as beneficial or record owners of Dealer, as well as any other person who acquires or succeeds to any beneficial interest or record ownership in Dealer in accordance with the provisions of this Agreement.

Dealer's Premises

- (13) "Dealer's Premises" means all premises referred to in the Dealer Premises Addendum and used by Dealer for or in connection with Dealer's Operations, including sales facilities, service workshops, offices, facilities for storage of Authorized Automobiles and Genuine Parts, used car sales facilities and parking facilities.

Genuine Parts

- (14) "Genuine Parts" means new and factory rebuilt replacement parts, accessories and optional equipment for Authorized Automobiles if such parts, accessories and optional equipment are supplied by Audi.

Manufacturer

- (15) "Manufacturer" means any supplier of Authorized Products to Audi, including as appropriate, but not limited to, Audi AG, a German corporation, and Volkswagen AG, a German corporation.

Net Working Capital, Owner's Equity and Wholesale Credit

- (16) "Net Working Capital," "Owner's Equity" and "Wholesale Credit" shall have the meanings set forth in the Business Basics, the Operating Plan and in accordance with generally accepted accounting principles.

Operating Plan

- (17) "Operating Plan" means the Dealer Operating Plan then-currently established by Audi for Dealers, determined in cooperation with Dealer and of Authorized Products, as well as any amendments thereof or additions thereto by Audi during the term of this Agreement.

Owner's Documents

- (18) "Owner's Documents" means all the documents which are supplied by Audi in respect of each Authorized Automobile and which are intended for the customer, including, but not limited to, the Owner's Manual, Warranty Booklet and Maintenance Booklet.

Recommendations

- (19) "Recommendations" means written suggestions provided by Audi to Dealer from time to time during the term of this Agreement, including the Business Basics and Business File, as well as all currently applicable written suggestions previously provided by Audi.

ARTICLE 17

GENERAL PROVISIONS

Dealer Not an Agent

- (1) Dealer will conduct all Dealer's Operations on its own behalf and for its own account. Dealer has no power or authority to act for the Manufacturer or Audi.

Authority to Sign

- (2) Dealer acknowledges that only the President, a Vice President, Secretary, Assistant Secretary or Network Development Team Leader of Audi is authorized on behalf of Audi to execute this Agreement or to agree to any variation, modification or amendment of any of its provisions or to sign any notice of termination.

Variations; Modifications; Amendments

- (3) This Agreement may not be varied, modified or amended except by an express instrument in writing to that effect signed on behalf of both Audi and Dealer.

Entire Agreement

- (4) This instrument contains the entire agreement between the parties. No representations or statements other than those expressly set forth or referred to herein were made or relied upon in entering into this Agreement.

Release of Claims under Prior Agreement

- (5) This Agreement terminates and supersedes all prior agreements with respect to Authorized Products between the parties, if any. The parties hereby waive, abandon and relinquish any and all claims of any kind and nature arising out of or in connection with any such prior agreement, except for any accounts payable by one party to the other as a result of the purchase of any Authorized Products, audit adjustments or reimbursement for any services.

Agreement Non-transferable

- (6) No part of this Agreement nor any interest in this Agreement may be transferred by Dealer without the prior written consent of Audi.

Defense and Indemnification

- (7) Audi will, upon Dealer's written request:
- (a) Defend Dealer against any and all claims for breach of Audi's Warranties, bodily injury or death, or for physical damage to or destruction of property, that, during the term of this Agreement, may be asserted against Dealer in any action solely by reason of a manufacturing defect or design deficiency in
 - (i) an Authorized Product or
 - (ii) a product of the same line-make formerly supplied by Audi pursuant to a former dealer agreement; and
 - (b) Hold Dealer harmless from any and all settlements made and final judgments rendered with respect to such claims; provided Dealer promptly notifies Audi in writing of the commencement of such action against Dealer and cooperates fully in the defense of such action in such manner and to such extent as Audi may require. However, such defense and indemnification by Audi will not be required if any fact indicates that any negligence, error, omission, act, failure, breach, statement or representation of Dealer may have caused or contributed to the claim asserted against Dealer or if Audi determines that such action seeks recovery for allegations other than those described in Article 17(7)(a).

Notices

- (8) Any notices under or pursuant to the provisions of this Agreement will be directed to the respective addresses of the parties stated herein, or, if either party shall have specified another address by notice in writing to the other party, to the address thus last specified. Unless otherwise provided herein, notices shall be deemed effective if sent by certified mail with return receipt requested; by overnight service having a reliable means of confirming delivery; or by personal delivery to any of Dealer's Owners or Executives. Notices shall be deemed effective when received.

Waivers

- (9) The waiver by either party of any breach or violation of or default under any provision of this Agreement will not operate as a waiver of such provision or of any subsequent breach or violation thereof or default thereunder. The failure or refusal of Audi to exercise any right or remedy shall not be deemed to be a waiver or abandonment of any such right or remedy.

Titles

- (10) The titles appearing in this Agreement have been inserted for convenient reference only and do not in any way affect the construction, interpretation or meaning of the text.

EXHIBIT F

Audi of America Dealer Operating Standards

Version 8.2
July 2008

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Section 1: Operations

Standard 1: Audi brand image

Criteria 1.1: Audi dealership naming standards

Owner: Network development

Formula: Y or N

Note: The naming standard for Audi of America dealerships requires that dealers use the word Audi followed by the location of dealership <Audi location> or location of dealership followed by Audi <Location Audi>. Example: d/b/a: 'Audi Anytown' or 'Anytown Audi'. In the case of a buy sell or relocation, the new d/b/a needs to follow the naming policy. The d/b/a can not contain another brand or trademark. Existing d/b/a are grand-fathered as long as no other brand is used in the d/b/a and the word Audi is included in the d/b/a. The Audi trademark can never be used in the corporate name of any Audi dealership or associated company.

Criteria 1.2: Interior and exterior appearance of the dealership

Owner: Network development

Formula: Y or N

Note: All interior and exterior premises of the dealership are clean and well maintained at all times. It is especially important that landscaping, walkways, paint, bathrooms, and customer areas are continually well maintained to provide customers and employees an environment that is expected at a tier one dealership.

Criteria 1.3: Audi trademark and Audi logo usage

Owner: Network development and retail marketing

Formula: Y or N

Note: All Audi trademarks and logos must be used exclusively for the promotion of Audi products and displayed and used in strict accordance with the Audi trademark standards guide and Audi retail branding guide. This includes but is not limited to advertising, billboards, signage, branded promotional materials, branded clothing, dealership stationery and forms, web sites – both dealership and Audi sponsored sites. The Audi logo, Certified pre-owned logo, Audi colors, and vehicle logos must all be properly used.

Criteria 1.4: Marketing and advertising covenant & guidelines

Owner: Retail marketing

Formula: Y or N

Note: All dealers must adhere to the Audi marketing covenant and advertising & marketing guidelines. These guidelines can be found on accessaudi.com under the sales tab, advertising & marketing; retail advertising; Audi design Info. The new tier III co-op programs for new and Certified pre-owned cars will require the dealers to comply with the covenant and guidelines to be eligible for reimbursement.

Criteria 1.5: Product / Information brochures

Owner: Retail marketing

Formula: Y or N

Note: All dealers must have a supply of at least 10 each - New vehicle product brochures, Audi Certified pre-owned materials, promotional materials and current sales, service and parts literature available to provide to customers at all times.

Criteria 1.6: Employee personal appearance

Owner: Network development

Formula: Y or N

Note: The personal appearance of all dealership employees must create a favorable, professional impression, enhancing the customer experience and reflecting the image of Audi. The following personnel's attire must be recognized as a dealership employee: ABS, service consultant, technician, and parts consultant.

Criteria 1.7: Audi branded web site & Audi enterprise lead management system

Owner: On-line marketing

Formula: Y or N

Note: Dealer contracts with current recommended supplier (i.e. Cobalt group) and Audi of America to participate in the Audi dealer website program and the Audi lead management program. Participation in these programs ensures proper site updates and maintenance.

Standard 2: Audi business management**Criteria 2.1: Audi net-working capital**

Owner: Network development
Formula: Networking capital: total current assets minus current liabilities, plus LIFO reserve (if applicable).
Y or N
Note: All Audi dealers must meet minimum financial requirements on a monthly basis as determined by Audi for each dealership.

Criteria 2.2: Owner's equity

Owner: Network development
Formula: Owner equity: net working capital, leasehold Improvements, machinery and equipment, furniture and fixtures, company vehicles, other depreciable assets, total other assets
Y or N
Note: All Audi dealers must meet minimum financial requirements as determined by Audi.

Criteria 2.3: Wholesale line of credit

Owner: Network development
Formula: Greater than [$\$45,000 * (BPO/6)$]
Note: A separate wholesale line of credit for the sale of new Audi vehicles must be maintained with the dealer's financial institution, preferably Audi Financial Services. The minimum line of credit is sufficient to purchase a 60-day supply of new vehicles based on an annual business plan objective, (BPO). A current written letter of commitment, in a form satisfactory to Audi, has been provided to Audi by dealer's financial institution. Dealer's financial institution accommodates the vehicle drafting procedure employed by Audi.

Criteria 2.4: Open parts account payment

Owner: Network development
Formula: Y or N
Note: Open parts account is paid in full by dealer by the 15th of every month

Criteria 2.5: Accurate financial accounting

Owner: Network development
Formula: Y or N
Note: Accounting controls and procedures must be established and maintained in accordance with Audi's standard accounting procedure manual

Criteria 2.6: Financial statement reporting

Owner: Network development
Formula: Y or N
Note: Dealers must provide the dealer financial statement to Audi or its designee by the 10th business day in each month – in electronic format. Dealers unable to submit the statement in electronic format will be charged a monthly handling fee. All Audi dealers must submit a financial statement every month that breaks out the income & expense section for Audi and other brands.

Criteria 2.7: Business plan

Owner: Network Development
Formula: Y or N
Note: During the 4th quarter of every year, all Audi dealers prepare and submit a business plan to their Audi area team.

Criteria 2.8: Reporting valid customer information

Owner: Network development
Formula: Y or N
Note: A reasonable effort must be made by the Audi dealer to provide valid customer name, address, telephone numbers, and email addresses during sales reporting (new, certified pre-owned and pre-owned) and warranty claim submission (standard: 94% callable records – 90% acceptable)

Criteria 2.9: Employee satisfaction survey

Owner: Network development
Formula: Y or N
Note: Dealerships should conduct an annual employee satisfaction survey and / or employee reviews.

Standard 3: Audi sales operations

Criteria 3.1: Audi sales process

Owner: Sales operations
Formula: Y or N
Note: It is required that the dealership follows the current published Audi sales process. It can be found on accessaudi.com within the sales category. The basic stages in the process are:
1) Initial contact
2) Establishing individual customer requirements
3) New vehicle presentation
4) Test drive – all prospects offered test drive of a clean, fueled demonstrator of their choice
5) From offer to agreement – negotiation, F&I process
6) New or Certified pre-owned vehicle preparation & delivery – clean, free of problems, explanation of operating controls, and service department logistics, contacts and hours
7) Follow-up within two days and maintaining current customer contact -
8) Maintain contact with prospects & customers. Dealership must have a documented sales process that covers the 8 basic steps of the Audi sales process.

Criteria 3.2: New vehicle inventory units

Owner: Sales operations
Formula: New car BPO divided by 6
Note: Each Audi dealership is required to keep in inventory a minimum 60-day supply of new Audi vehicles to ensure that customers have an adequate inventory to select from. The inventory on ground must be a representative of all models lines offered by Audi of America. For all vehicles in inventory the dealer must follow the inventory maintenance policy as published by Audi of America. All vehicles need to be stored with the tires at higher storage pressure, transport wiper blades and correct battery voltage (use of solar panel). For details please refer to the latest published Audi of America storage policy which includes completion and record of the PDI process for vehicle preparation.

Criteria 3.3: Demonstrators

Owner: Sales operations
Formula:

Annual new vehicle BPO	Number of demonstrators
0 – 200	3 (A4 / Q7 / A6)
201 – 400	4 (add A5)
401 – 600	5 (add A8)
601 – 800	6 (add A3)
801 – 1000	7 (add TT)
1001 – 1300	8 (add A4 Cabrio)
> 1300	9 (add A4 or A6 Avant)

Note: A demonstrator fleet must be maintained by Audi dealer and needs to represent a mix of available transmission, body and engine types to optimize product offerings to the Audi customers. The demo vehicles need to be clean, fueled and in top mechanical and cosmetic condition.

When there is a new model launch (whether a brand new model or successor model), a model year change or a product update, which results in changes to the appearance of the model or technical specification, the demo vehicles must be replaced with the latest immediately, whether or not advised by Audi.

Demonstrator vehicle minimum quality requirements:

1. It is recommended that demonstrators don't exceed more than 4,000 miles and be replaced prior to reaching 6 months from in-service date
2. Demonstrators must be immaculate, cleaned daily (both inside and out) – if necessary – and maintained to the highest level at all times
3. Sales demonstrators must be free of all personal possessions at any time
4. When not in use by customer, demonstrators must be available and displayed as ready for use in a manner appropriate to the image of the Audi brand
5. Demonstrators must not have graphics applied unless approved in writing by Audi of America

Demonstrators are subject to inspection by Audi of America at any time.

Criteria 3.4: Audi (Certified) pre-owned vehicle inventory units

Owner: Sales operations
Formula: Certified pre-owned BPO divided by 8
Note: Each Audi dealership is required to keep in inventory a 45-day supply of (Certified) pre-owned Audi vehicles (based on actual (Certified) pre-owned BPO) to ensure that customers have an adequate inventory of vehicles to select from.

Criteria 3.5: Audi (Certified) pre-owned reconditioning process

Owner: Sales operations
Formula: Y or N
Note: The Audi dealership must follow the Audi inspection and reconditioning process for Audi (Certified) pre-owned vehicles.

Criteria 3.6: Audi (Certified) pre-owned merchandising

Owner: Sales operations
Formula: Y or N
Note: Dealership properly merchandises and promotes the Audi (Certified) pre-owned vehicles according to the program guidelines.

Criteria 3.7: Sales reporting

Owner: Sales operations
Formula: Y or N
Note: It is required that all sales of new, Certified pre-owned and pre-owned Audis be reported to Audi or it designee within 3 business days following the date of sale to provide up-to-date sales records.

Criteria 3.8: Traffic count log

Owner: Sales operations
Formula: Y or N
Note: Daily traffic counts should be documented by dealership sales management to monitor sales department activity and ABS performance.

Criteria 3.9: Inventory vehicles maintenance

Owner: Sales operations
Formula: Y or N
Note: Dealerships must follow Audi written guidelines (30-day maintenance policy) for maintaining new and (Certified) pre-owned vehicles in inventory. This includes maintaining batteries, tires, appearance items and rotors, etc. All new vehicles need to be stored with the tires at higher storage pressure, transport wiper blades and correct battery voltage (use of solar panel). For details please refer to the latest published Audi of America storage policy.

Criteria 3.10: Showroom display of Audi (Certified) pre-owned vehicle

Owner: Network development
Formula: Y or N
Note: Facility has an Audi Certified pre-owned display space on the showroom floor (with at least one (Certified) pre-owned vehicle) or in a prominent display area adjacent to the showroom (not covered) or in the Audi approved (Certified) pre-owned building / lot area with Audi approved signage. If on the showroom floor, vehicle counts toward showroom vehicle count requirement.

Criteria 3.11 Audi showroom focal vehicle display

Owner: Network development
Formula: Y or N
Note: The dealership has a focal vehicle display to showcase an accessorized Audi model (flagship vehicle) or specially advertised vehicle positioned in a prominent location on the showroom floor. This is included in the overall showroom vehicle space requirement.

Standard 4: Audi after-sales operations**Criteria 4.1: Audi after-sales processes**

Owner: After-sales operations

Formula: Y or N

Note: It is required that the dealership follow the current Audi after sales process as published in the Audi after sales process handbook. It can be found on accessaudi.com under the after sales tab; service & repair; Audi service process and click on Audi after sales process handbook. The basic stages in the process are:

- 1) Scheduling maintenance within 4 days and repair appointments within 2 days
- 2) Repair order preparation, review and complete RVU's and campaigns
- 3) Vehicle reception and alternate transportation needs or loaner vehicles
- 4) Vehicle repair initiation of repair, fixed right the first time and critical alert process
- 5) Quality control and service delivery internal checks
- 6) Customer handling / billing
- 7) Customer follow-up

Criteria 4.2: Audi alternate transportation (service loaner units)

Owner: After-sales operations

Formula: (# of work stalls)*3*0.4

Note: It is required that each dealership provides Audi customers one of the following options when they require alternate transportation for a maintenance or repair appointment:

a) Audi loaner vehicle (recommended that Audi loaner vehicles are available for 40% of daily service customers for both repair or maintenance visits (new and Certified pre-owned based on customer need and pre-arrangements made).

Service loaners must be Audi models

b) Shuttle service to and from customer's home or office

c) Pick up and delivery of customer's vehicle from home or office

d) Other – provide public transportation vouchers for customer's travel to and from dealership

If the dealer is enrolled and actively participating in the Audi service promise program, the dealer meets the standard.

Criteria 4.3: Collision shop affiliation

Owner: After-sales operations

Formula: Y or N

Note: All Audi dealerships should be affiliated with an authorized Audi collision shop. This can be independently owned or dealer owned to ensure that Audi vehicles with body damage are repaired according to Audi standards

Criteria 4.4: Annual physical parts inventory

Owner: After-sales operations

Formula: Y or N

Note: Dealership conducts a physical inventory at minimum once per year of parts with corresponding adjustments of records. An ongoing inventory process or other approaches are acceptable as long as they are in line with GAAP.

Criteria 4.5: Tool and equipment inventory

Owner: After-sales operations

Formula: Y or N

Note: Audi tools and equipment are maintained and inventoried on at least a yearly basis, but preferably monthly - to ensure availability and proper operation when needed. In order to meet this standard, dealership must provide documentation of their inventory and maintenance processes and have available, upon demand, five tools from the required tool list. The most current Audi listing of required factory tools is available from AccessAudi.com / ServiceNet. There is a listing for exclusive Audi dealers and one for dual Audi/VW dealers as there is overlap in the tool requirements for both brands. Please ensure only tools required for Audi are selected.

Criteria 4.6: Parts processes for special orders

Owner: After-sales operations

Formula: Y or N

Note: It is required that the dealership document and follow the critical alert process and implements an internal process to handle unit down, special parts and the delivery to the customer

Criteria 4.7: Stock order efficiency

Owner: After-sales operations

Formula: Y or N

Note: Dealership must maintain a minimum of 45 day inventory of authentic Audi parts.

Section 2: Facility

Standard 5: Corporate identity

Criteria 5.1: Audi facility type

Owner: Network development
Formula: Y or N
Note: Facility type is driven by market potential for the dealer. Over 400 units per year the facility needs to be exclusive; Between 400 and 100 the facility needs to be at least brand dedicated and under 100 units the facility needs to be at least universal.

Criteria 5.2: Audi facility architecture

Owner: Network development
Formula: Exclusive type A terminal architecture
Exclusive type B terminal architecture
Brand dedicated Audi architecture
Universal modern architecture based on dealer design
Note: All Audi dealerships must follow the Audi architectural language based on the facility type

Criteria 5.3: Audi pylon

Owner: Network development
Formula: Y or N
Note: Each Audi dealership or satellite is required to have one authorized Audi pylon or ground sign

Criteria 5.4: Audi logo sign

Owner: Network development
Formula: Y or N
Note: Each Audi dealership or satellite is required to have one authorized Audi logo sign (4 rings logo with the word Audi in red letters). The Audi clip is grand-fathered, but recommended to upgrade to new Audi logo sign

Criteria 5.5: Audi nameplate

Owner: Network development
Formula: Y or N
Note: Each Audi dealership or satellite is required to have one authorized Audi nameplate.

Criteria 5.6: Audi Certified pre-owned ground sign

Owner: Network development
Formula: Y or N
Note: Each Audi dealership or satellite is required to have one authorized Audi Certified pre-owned ground sign

Criteria 5.7: Audi interior and exterior signs

Owner: Network development
Formula: Y or N
Note: Each Audi dealership or satellite is required to have authorized Interior and exterior directional signs

Criteria 5.8: Audi furniture

Owner: Network development

Formula: Exclusive type A advanced showroom concept in all customer areas; Gen2 in all non-customer areas

Exclusive type B advanced showroom concept in all customer areas; Gen2 in all non-customer areas

Brand dedicated In top 25 markets: advanced showroom concept in all customer areas; Gen2 in non-customer areas; In tier II markets: Gen2 furniture

Universal: dealer choice; Gen2 recommended

Note: Each Audi dealership or satellite is required to have Audi approved furniture in all customer view areas

Criteria 5.9: Audi lighting

Owner: Network development

Formula: Exclusive type A/B: meets Audi requirements in all customer contact and in technician work area. Outside lighting must provide sufficient light during night time and be in line with local zoning requirements

Brand dedicated: meets Audi requirements in all customer contact and in technician work area. Outside lighting must provide sufficient light during night time and be in line with local zoning requirements

Universal: dealer design.

Note: The lighting in all customer contact area, the showroom and the technician work areas meets Audi requirements for style, provided light and environmental efficiency

Standard 6: Facility exterior space

Criteria 6.1: Site & facility

Owner: Network development
 Formula: Exclusive type A – site exclusive to Audi – no visibility of or access to another brand
 Exclusive type B – sales site exclusive to Audi – No visibility of or access to another brand – service on separate location - -can be shared with other brands but separation for Audi – service reception located with sales facility
 Brand dedicated - one site shared with other brands, but all customer contact points exclusive to Audi
 Universal - one site shared with other brands
 Note: Site & facility must fulfill certain criteria to be in compliance with Audi standards.

Criteria 6.2: New vehicle inventory display and storage area

Owner: Network development
 Formula: New Vehicle BPO divided by 6
 Note: On-site or off-site new vehicle parking space must be well maintained, paved and secure. No grass or gravel lots are acceptable for on-site or off-site new vehicle parking.

Criteria 6.3: On-site new vehicle inventory display space

Owner: Network development
 Formula: New vehicle BPO divided by 12 or minimum of 30 new vehicles on display
 Note: The primary dealership premises has a new vehicles parking area to display and view at minimum a 30 day supply or at minimum 30 new vehicles on display. Each new vehicle parking space has a minimum of 220 square feet. Additional supply of new vehicles can be located off-site.

Criteria 6.4: Demonstrator parking spaces

Owner: Network development
 Formula:

Annual new vehicle BPO	Designated demonstrators parking spaces
0 – 200	3
201 – 400	4
401 – 600	5
601 – 800	6
801 – 1000	7
1001 – 1300	8
> 1300	9

Note: Designated demonstrator parking is conveniently accessible to the showroom to showcase Audi products available for test drives. Demonstrator should be protected from the elements (extreme heat, rain, snow) to ensure customer convenience.

Criteria 6.5: Audi (Certified) pre-owned parking spaces

Owner: Network development
Formula: Certified pre-owned BPO divided by 8
Note: Facility has on-site vehicle parking space to display required (Certified) pre-owned inventory with a minimum of 220 square feet of parking space per unit. The Certified pre-owned parking area is clearly identified with appropriate signage.

Criteria 6.6: Audi On-site sales customer parking

Owner: Network development
Formula: Minimum of one or new vehicle BPO divided by 100 rounded to the next number
Note: On-site sales customer-parking areas must be on well maintained, paved surfaces. Customer parking must be lined and clearly identified and provide 200 sqft plus turning space per parking space.

Criteria 6.7: Audi service vehicle parking

Owner: Network development
Formula: Minimum of one or 1 parking space for 3 work stalls
Note: Service parking must be lined and clearly identified and provide 200 sqft plus turning area per parking space.

Criteria 6.8: Employee parking

Owner: Network development
Formula: Y or N
Note: Onsite employee parking is recommended at one space for each employee working each day. Employee parking must be lined and clearly identified and provide 200 sqft plus turning area per parking space. If the employee parking area is off-site it is recommended that the dealer provides a shuttle to get employees from and to the dealership. The number of necessary parking spaces can be reduced if employees work in shifts and / or are not at the dealership at the same time.

Criteria 7.3: Customer lounge

Owner: Network development
 Formula: Exclusive type A/B exclusive to Audi with café
 Brand dedicated can be shared with other brands
 Universal can be shared with other brands
 Note: All dealerships must have a customer lounge or quattro café that is easily accessible to service reception, the showroom, the parts retail counter and the accessory boutique. The lounge must be in good condition and large enough to accommodate the dealership's average volume of waiting customers. Furniture, flooring, lighting, wall treatment, and refreshment apparatus are kept clean at all times. It is recommended that wireless Internet access is available to customers in or near the lounge area.

Criteria 7.4: Interior display stands / interior brand elements

Owner: Network development
 Formula: Y or N
 Note: Audi offers to Audi dealers literature display stands, vehicle positioning stands, horizontal and vertical wall units, wheel stands and plaques to create an Audi retail and merchandising environment. Audi dealers select the right quantities relative to the size of the showroom following Audi's recommendation to effectively merchandise Audi point of sale literature and accessories.

Criteria 7.5: Customer vehicle delivery area

Owner: Network development
 Formula: Exclusive type A/B exclusive to Audi and close to showroom
 Brand dedicated can be shared with other brands
 Universal can be shared with other brands
 Note: Dealership provides a dedicated interior; well lit, quiet customer vehicle delivery area with a minimum of 400 square feet.

Criteria 7.6: Audi dedicated accessories boutique area

Owner: Network development
 Formula:

Annual new vehicle BPO	Minimum space for dedicated Audi boutique
<= 500	100 sqft
> 501 and <= 1000	200 sqft
> 1001	400 sqft

Exclusive type A/B: exclusive to Audi, not a replacement for retail parts counter
 Brand dedicated: exclusive to Audi, not a replacement for retail parts counter
 Universal: can be shared with other brands
 Note: Audi dealerships must have space in a dedicated boutique area to display authorized Audi accessories. The boutique should be clean and well organized at all times. The boutique must be used to display OE issued accessories.

Criteria 7.7: Audi service reception / vehicle write-up area

Owner: Network development
 Formula: Exclusive type A: exclusive to Audi and enclosed or covered
 Exclusive type B: exclusive to Audi, enclosed or covered. Located with the Audi showroom.
 Brand dedicated: exclusive to Audi and enclosed or covered.
 Separate service lanes for Audi in a shared service drive are not considered exclusive to Audi
 Universal: service reception can be shared with other brands, must be enclosed or covered
 Note: Facility has a clutter-free, well-maintained service reception and write-up area, for arriving customers, required to be enclosed or at least covered for weather conditions and separate from the shop area. This write-up area needs to be exclusive to Audi for exclusive and brand-dedicated Audi dealerships. 1,200 sq.ft minimum size (4 cars in 2 lanes).

Criteria 7.8: Audi service consultant's workstation

Owner: Network development
 Formula: 1 for every 5 work stalls, always rounded up to the next full number
 Exclusive type A/B: exclusive to Audi
 Brand dedicated: exclusive to Audi
 Universal: can be shared with other brands
 Note: Facility has a clutter-free, organized, dedicated workstation/desk for each service consultant. If "production teams" are being used, sharing of an office or counter space may be allowed. The service consultant's workstations oversee the service vehicle write-up area.

Criteria 7.9: Audi identified work stalls

Owner: Network development
 Formula: Y or N
 Note: Audi dealers that share their Audi workshop with other brands must clearly identify Audi work stalls with Audi approved signage and/or paint schemes.

Criteria 7.10: Audi work stalls space

Owner: Network development
 Formula: 7-year VIO divided by 265, always rounded up to the next full number
 Exclusive type A: exclusive to Audi
 Exclusive type B: identified as Audi work stalls
 Brand dedicated: identified as Audi work stalls
 Universal: identified as Audi work stalls
 Note: Work stall requirement and their relationship to VIO will be determined through discussions between dealer and Audi field team based on individual dealership service performance. As an industry guideline one work stall can serve 265 units per year of the 7-year VIO. At least one work stall is required with a hoist per Audi technical specialist per shift. Variances may be allowed for dealers utilizing production groups, teams or rotating schedules. The width, height and depth of work stalls and their hoists may need to be adjustable to accept future service vehicles of larger size. Work stalls must be cleaned and maintained on a regular schedule. Please refer to facility guide for floor treatments, paint schemes, decoration elements and workshop décor.

Criteria 7.11: Alignment equipment stall

Owner: Network development
 Formula: Y or N
 Note: Each Audi facility must have at least one alignment stall with the latest approved Audi alignment equipment and software. This stall may be used by other brands.

Criteria 7.12: Service equipment room

Owner: Network development
 Formula: Y or N
 Note: Dealership provides a room for service units, tools and equipment. For all new facilities, required to house internally the equipment

Criteria 7.13: Wash bays

Owner: Network development
 Formula: # of work stalls divided by 7, always rounded to the next full number
 Note: '---

Criteria 7.14: Retail parts counter

Owner: Network development
 Formula: Exclusive type A/B: exclusive to Audi in or close by sales facility
 Brand dedicated exclusive to Audi in or close by sales facility
 Universal can be shared with other brands
 Note: Facility has a retail parts counter for customers and a separate parts counter for Audi technical specialists. However, if an efficient system is employed that provides delivery of parts directly to the work bay; elimination of a 'technician counter' is allowed.

Criteria 7.15: Parts inventory storage space

Owner: Network development
 Formula: 1,000 sqft for up to 3 work stall. Add 200 sqft for every additional productive work stall
 Note: The authentic Audi parts inventory is stored in clean, orderly sufficient space that allows quick moving parts to be easily identified and accessed. Parts storage requirement will be modified if high-density storage systems are used. The general rule is a ratio of 3:1 for 48" high cabinets. Taller bins decrease requirements accordingly

Criteria 7.16: Warranty parts retention area

Owner: Network development
 Formula: 64 sqft
 Note: Facility has a secure, well-lit and ventilated warranty parts retention area with a minimum of 64 sq ft. and utilizes an organization system, i.e. 10-bin system that makes it easy to identify parts to be scrapped.

Criteria 7.17: Office / work station space for managers

Owner: Network development
 Formula: Y or N
 Note: Separate office/work station space is provided for sales, service and parts managers.

Criteria 7.18: Training area

Owner: Network development
 Formula: Y or N
 Note: Space is allocated for a training area for dealership personnel, with appropriate working training equipment.

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Audi of America Dealer Operating Standards

Criteria 7.19: Other interior facility space recommendations

Owner: Network development

Formula: Y or N

Note: Other space recommendations include the following: Business development center, break / lunch room (with space to accommodate half of the employees at the same time), key room, coat closets (based on climate zone), technician locker room (with showers), file room, F&I manager office and controller office.

Section 3: Systems / Equipment

Standard 8: Systems

Criteria 8.1: IT Standards

Owner: IT
Formula: Y or N
Note: Dealership meets current Audi dealership IT readiness requirements, and continues to upgrade software and hardware as required. Current IT standards can be viewed on accessaudi.com under operations, reports and publications

Criteria 8.2: ABS computer terminals

Owner: Network development
Formula: 1 terminal for each ABS
Note: Each Audi brand specialist (ABS) must have a computer at their workstation with an Internet connection with a minimum of 512 K speed at each terminal.

Criteria 8.3: Technician computer terminals

Owner: After sales development
Formula: 1 computer terminal for 2 technicians
Note: One computer terminal workstation for every two technicians. No more than two technicians per terminal. Minimum 512k speed per terminal.

Criteria 8.4: Service consultant and other service computer terminals

Owner: After sales development
Formula: Y or N
Note: One designated easily accessible service department computer terminal workstation with internet access with a minimum of 512 K, that meet Audi specifications and requirements for each Audi service consultant; however, variances will be allowed for dealers utilizing production groups, teams or rotating schedules. A separate computer must be available for the shop foreman and any other shop employees with access to the Internet with 512K speed at each terminal.

Criteria 8.5: Parts department computer terminal

Owner: After sales development
Formula: Y or N
Note: Exclusive parts department computer terminal with access to Audi's parts system and the Internet with a minimum of 512K speed at each terminal.

Criteria 8.6: Warranty administrator computer terminal

Owner: After sales development
Formula: Y or N
Note: The warranty administrator must have access to a computer terminal with Internet connection with a minimum of 512K speed.

Criteria 8.7: PC's with ETKA access

Owner: After sales development

Formula: 1 ETKA system required for every 8 work stalls, always rounded up to the next full number; At least one

Note: All Audi dealerships must have the required number of PCs running ETKA with access to the Internet and minimum of 512K speed at each terminal according to your number of certified technicians.

Standard 9: Tools and equipment

Criteria 9.1: General workshop equipment

Owner: After sales development

Formula: Y or N

Note: All dealerships and satellite service operations must have complete, fully functional and properly calibrated general workshop equipment according to the most recent Audi tools and equipment list. Tools and equipment must be on-site in the service shops so that vehicle repairs are not delayed.

Criteria 9.2: 5051B equipment

Owner: After sales development

Formula: At least one dedicated to Audi plus 1 5051B for every 12 technicians, always rounded up to the next full number

Note: All Audi dealerships and their separate service locations (such as service satellites and PDI centers) have at least one 5051B diagnostic tester with Internet connection with minimum 512K speed dedicated to Audi and one 5051B with Internet connection with minimum 512K speed for every 12 technicians dedicated to the Audi brand.

Criteria 9.3: 5052 equipment

Owner: After sales development

Formula: At least one dedicated to Audi; 1 5052 for every 4 technicians, always rounded up to the next full number

Note: All Audi dealerships are required to have one 5052 diagnostic tester with minimum 512K speed connection for every four (4) Audi technician. (Note: If service department has multiple shifts, this requirement pertains to number of techs per shift, not total of all shifts.) The 1 to 4 tech ratio reduces the time techs wait for use of the tool.

Section 4: Personnel

Standard 10: Training

Criteria 10.1: Training certification

Owner: Audi academy

Formula: Y or N

Note: Through the standards evaluation process the dealer principal and the area team / regions agree on a number of dealer personnel, based on the dealer operating standards but adjusted to local market conditions and the specific situation of the dealer.

The agreed upon number of dealer personnel are required to be Audi academy certified as stated in the following standards. Please refer to the annual certification program course catalog for specific training requirements by job position. Twice a year (January with December status and July with June status) the dealership will be evaluated against the training status to become or remain compliant with the standards bonus requirements.

Existing personnel must be and remain certified at any time. New hires have a special time allowance to become certified:

Certification timing for new positions: sales manager, pre-owned manager, service manager, and parts manager: Audi academy certification is required to be achieved within 120 days (4 months) of being hired into the position. Certification is then to be maintained on an annual basis according to the academy certification requirements for the position.

ABS, service consultant, Audi technical specialist, parts consultant, and warranty administrator: All employees in this position are required to achieve Audi academy certification within six months of being hired into the position. Certification is then to be maintained on an annual basis according to the academy certification requirements for the position.

Criteria 10.2: Exclusivity of personnel

Owner: Audi academy

Formula: Exclusive type A/B All positions exclusive to Audi starting with the general manager

Brand dedicated: All customer contact staff is exclusive to Audi

University: All staff shared with other brands

Note: Focus of personnel and the right training is pre-requisite for success. The separation of the personnel by brand as indicated above is key success factor.

Standard 11: Office / general personnel**Criteria 11.1: Dealer principal / general manager**

Owner: Network development

Formula: Y or N

Note: Dealership has on-site Audi senior management on a daily basis. This can be the dealer principal or an Audi general manager empowered to make daily operational decisions on behalf of the dealer. For exclusive stores this senior manager must always be exclusive to Audi – independent of size. For brand dedicated stores the senior manager can be shared with other franchises for sales volume up to 300 units, above that volume the senior manager must be exclusive to Audi.

Criteria 11.2: On-Line manager

Owner: On-line marketing

Formula: Y or N

Note: Dealership has a designated on-line manager who manages the dealership online business. The on-line manager can be located off-site.

Criteria 11.3: Showroom receptionist

Owner: Network development

Formula: Y or N

Note: All Audi showrooms must have a receptionist as a way finder and to greet customers. Showroom receptionist may also fulfill the phone receptionist in dealerships with a new vehicle BPO under 1000.

Criteria 11.4: Phone receptionist

Owner: Network development

Formula: Y or N

Note: One dedicated phone receptionist for Audi dealerships with a BPO of 1,000 or more. This is not the showroom receptionist.

Criteria 11.5: Controller

Owner: Network development

Formula: Y or N

Note: Dealership has a controller/business management manager responsible for the efficient management and control of the dealership's financial resources as well as ensuring compliance with the financial reporting requirements of Audi.

Criteria 11.6: Warranty administrator

Owner: After sales development

Formula: Y or N

Note: Dealership employs an Audi certified warranty administrator.

Standard 12: Sales personnel

Criteria 12.1: Sales manager

Owner: Network development
Formula: Y or N
Note: Dealership employs a certified new vehicle sales manager trained in Audi product, processes and customer experience. In non-exclusive dealerships, a certified new vehicle sales manager exclusive to Audi is required if their annual BPO is 200 or more. In exclusive environment an exclusive certified new vehicle sales manager is required. At 1,000 BPO a 2nd sales manager or an assistant sales manager is required.

Criteria 12.2: (Certified) pre-owned sales manager

Owner: Certified pre-owned sales operations
Formula: Y or N
Note: Dealership employs a (Certified) pre-owned vehicle sales manager when the combined BPO of new and Audi Certified pre-owned is over 660 vehicles. Manager must be Audi academy certified.

Criteria 12.3: Audi brand specialist (ABS)

Owner: Network development
Formula: 1 ABS per 100 units (new and CPO) BPO, always rounded up to the next full number, minimum of 2 ABS
Note: It is recommended that dealerships employ the suggested number of certified Audi brand specialists and certified pre-owned Audi brand specialists. The ABS requirement assumes new vehicle to Certified pre-owned sales ratio of 3 to 1 and 10 sales per month per ABS.

Criteria 12.4: On-line Audi brand specialist

Owner: On-line marketing
Formula: Y or N
Note: One dedicated On-line ABS for every 100 new car leads/month, not included in the total ABS count.

Criteria 12.5: Corporate fleet Audi brand specialist

Owner: Sales operations
Formula: Y or N
Note: It is recommended that each Audi dealership with a BPO of 250 or more employ an ABS who is trained and responsible to handle corporate (fleet) sales. This ABS is not dedicated to corporate sales.

Standard 13: After sales personnel**Criteria 13.1: Audi service manager**

Owner: After sales development

Formula: Y or N

Note: All dealerships must have a certified Audi service manager. Brand dedicated dealerships are allowed to share a certified Audi service manager up to five Audi work stalls. If six or more stalls, one exclusively dedicated certified Audi service manager is required

Criteria 13.2: Audi service consultants / service advisor

Owner: After sales development

Formula: 1 service advisor for every 5 technicians, always rounded up to the next full number

Note: Dealership employs one Audi certified service consultants for every 5 technicians; however, variances will be allowed for dealers utilizing production groups, teams or rotating schedules.

Criteria 13.3: Audi shop foreman

Owner: After sales development

Formula: 0 – 7 work stalls – no shop foreman
8 – 20 work stalls – 1 shop foreman
21 – 40 work stalls – 2 shop foreman
41 – 60 work stalls – 3 shop foreman

Note: Dealership employs the required number of certified shop foremen. Approved team concept will be considered in lieu of a shop foreman

Criteria 13.4: Audi technical specialist (Technicians)

Owner: After sales development

Formula: 1 technician for every productive work stall

Note: Dealership employs the necessary number of certified Audi technical specialists; however, variances will be allowed for dealers utilizing production groups, teams or rotating schedules. The normal ratio of technicians to work stalls is 1:1. This ratio is for planning purposes only and can be affected by shift work and hours of operation. Field and dealer input will determine the final technician and stall requirements for each dealership.

Criteria 13.5: Audi dispatcher

Owner: After sales development

Formula: 1 if # of technicians is equal or bigger than 10

Note: Dealership employs a dispatcher when technician count is 10 or more. (Note: This requirement may be met with an electronic dispatching system or advanced production system.). Approved team concept will be considered in lieu of a dispatcher.

Criteria 13.6: Audi detailers

Owner: After sales development

Formula: 1 for every 7 work stalls, always rounded up to the next number

Note: Dealership either employs the required number of Audi certified detailers or employs an outside facility which meets Audi standards. Standards for outside facility are found on accessaudi.com

Criteria 13.7: Audi parts manager

Owner: After sales development
Formula: Y or N
Note: Dealership employs an Audi certified parts manager. Parts manager must be exclusive to Audi in all exclusive facilities regardless of the number of work stalls. In brand dedicated facilities, 1 shared parts manager up to 5 Audi work stalls, 1 dedicated parts manager for 6 or more service work stalls.

Criteria 13.8: Audi parts consultants

Owner: After sales development
Formula: 2-5 work stalls, 1 parts consultant
6-10 work stalls, 2 parts consultants
11-15 work stalls, 3 parts consultants
16-22 work stalls, 4 parts consultants
23-29 work stalls, 5 parts consultants
30-37 work stalls, 6 parts consultants
38-44 work stalls, 7 parts consultants
Note: Dealership employs the recommended number of certified parts consultants. For dealerships with 10 or more Audi work stalls, the consultants should be exclusive to Audi. The formula is based on 1 parts consultant per 5 techs up to 15 techs, than increments increase due to efficiencies.

Criteria 13.9: Audi HazMat certified parts consultant

Owner: After sales development
Formula: Y or N
Note: At least one parts consultant must be HazMat certified to handle ground shipments and one person Hazmat certified for air shipments of warranty parts to meet government regulations. (This can be the same person).