# SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter "Agreement") is entered into between the State of California Air Resources Board (hereinafter "ARB"), with its principal office at 1001 "I" Street, Sacramento, California, and Buffalo Turbine LLC (Buffalo Turbine) with its principal place of business at 180 Zoar Valley Road Springville, NY 14141.

## RECITALS

1. California Code of Regulation, title 13, section 2430 (a)(2) states, "Every new off-road large spark-ignition (LSI) engine that is manufactured for sale, sold, or offered for sale in California, or that is introduced, delivered or imported into California for introduction into commerce and that is subject to any of the standards prescribed in this article and documents incorporated by reference therein, must be certified for use and sale by the manufacturer through the Air Resources Board and covered by an Executive Order, issued pursuant to Chapter 9, Article 4.5, Section 2433."

2. California Code of Regulation, title 13, section 2431 (a)(28) states, in pertinent part "Off-Road Large Spark-ignition Engines" or "LSI Engines" means any engine that produces a gross horsepower 25 and greater horsepower or is designed (e.g., through fueling, engine calibrations, valve timing, engine speed modifications, etc.) to produce 25 and greater horsepower (greater than 19 kilowatts on or after January 1, 2007).

3. Health and Safety Code section 43016 states, in pertinent part, "Any person who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part, and for which violation there is not provided in this part any other specific civil penalty or fine, shall be subject to a civil penalty not to exceed five hundred dollars ($500) per vehicle, portable fuel container, spout, engine, or other unit subject to regulation under this part, as these terms are defined in this division or state board regulations."

4. On March 5, 2015, Buffalo Turbine self-reported the sale of 13 debris blowers in California, which contained uncertified Kohler CH1000 engines rated at 37 horsepower. These sales had occurred during the previous three years, and included the sale of seven Buffalo Turbine model BT-MEGA and six of model BT-CKB3SQ.

5. ARB alleges that the manufacture for sale, sales, or offers for sale in California, or the introduction, delivery, or import into California for introduction into commerce the 13 machines listed in recital 4 of this document were unlawful and in violation of California Code of Regulations, title 13, section 2430(a)(2).

6. Buffalo Turbine promptly and fully cooperated with ARB in the investigation of this matter.

7. Buffalo Turbine has no prior enforcement record with ARB.

8. ARB alleges that if the facts described in recital paragraphs 1-5 were proven, civil penalties could be imposed against Buffalo Turbine as provided in Health and Safety Code section 43016.

9. Buffalo Turbine admits the facts as alleged in recital paragraphs 1-5, but denies any liability arising therefrom.

10. Buffalo Turbine is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with ARB. ARB accepts this Agreement in termination of this matter. Accordingly, the parties agree to resolve this matter completely by means of this Agreement, without the need for formal litigation.

## TERMS AND RELEASE

In consideration of ARB not filing a legal action against Buffalo Turbine for the violations alleged above, and in consideration of the other terms set out below, ARB and Buffalo Turbine agree as follows:

1. As a condition of this Settlement Agreement, Buffalo Turbine shall pay the total sum of four thousand eight hundred seventy five dollars ($4,875.00) to the California Air Pollution Control Fund upon execution of this Settlement Agreement. Payment shall be made in twelve payments as described below, beginning on September 7, 2015:

| Payment Due Date: | In the Amount of and Paid to: |
|---|---|
| (1) September 7, 2015 | $406.25 paid to Air Pollution Control Fund |
| (2) October 7, 2015 | $406.25 paid to Air Pollution Control Fund |
| (3) November 7, 2015 | $406.25 paid to Air Pollution Control Fund |
| (4) December 7, 2015 | $406.25 paid to Air Pollution Control Fund |
| (5) January 7, 2016 | $406.25 paid to Air Pollution Control Fund |
| (6) February 7, 2016 | $406.25 paid to Air Pollution Control Fund |
| (7) March 7, 2016 | $406.25 paid to Air Pollution Control Fund |
| (8) April 7, 2016 | $406.25 paid to Air Pollution Control Fund |
| (9) May 7, 2016 | $406.25 paid to Air Pollution Control Fund |
| (10) June 7, 2016 | $406.25 paid to Air Pollution Control Fund |
| (11) July 7, 2016 | $406.25 paid to Air Pollution Control Fund |
| (12) August 7, 2016 | $406.25 paid to Air Pollution Control Fund |

Please send the signed Settlement Agreement and any future mailings or documents required per the terms of this Settlement Agreement to:

Gregory Honzay
Air Resources Board
Enforcement Division
8340 Ferguson Avenue
Sacramento, California 95829

Please send the payment along with the attached Settlement Agreement Payment Transmittal Form (Attachment A) to:

California Air Resources Board
Accounting Office
P.O. Box 1436
Sacramento, California 95812

2. If the Attorney General files a civil action to enforce this settlement agreement, Buffalo Turbine shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

3. Buffalo Turbine represents that it understands the legal requirements applicable to selling small off-road engines in California and agrees that it will not manufacture for sale, sell, or offer for sale in California, or introduce, deliver, or import into California for introduction into commerce any small off-road engine unless ARB certification has first been obtained.

4. This Agreement shall apply to and be binding upon Buffalo Turbine and its principals, officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

5. Now, therefore, in consideration of the payment by Buffalo Turbine to the California Air Pollution Control Fund in the amount specified above, ARB hereby releases Buffalo Turbine and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, predecessors, and retail customers from any and all claims that ARB may have based on the facts and allegations described in recital paragraphs 1-10, above. The undersigned represent that they have the authority to enter this Agreement.

6. This Agreement constitutes the entire agreement and understanding between ARB and Buffalo Turbine concerning the claims and settlement in this Agreement, and this Agreement fully supersedes and replaces any and all prior negotiations and agreement of any kind or nature, whether written or oral, between ARB and Buffalo Turbine concerning these claims.

7. No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all parties to this Agreement.

8. Advice of Counsel. Each Party to this Agreement has reviewed the Agreement independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this Agreement, and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this Agreement.

9. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice of law rules.

10. Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect to the extent necessary to fulfill the Agreement's purpose and the intent of the parties.

11. Waiver. The failure of any Party to enforce any provision of this Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Agreement or otherwise provided by law.

12. This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either party on the ground that said party drafted it.

13. This Agreement may be signed in counterparts, and its validity shall not be challenged on that basis. True and correct copies of signed counterparts shall be deemed effective as originals for all purposes.

**14. SB 1402 Statement**

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010, Health and Safety Code section 39619.7) requires the ARB to provide information on the basis for the penalties it seeks. This required information, which is provided throughout this settlement agreement, is summarized here.

**The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.**

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in Health and Safety Code section 43024.

The maximum per unit penalty in this case is $500 per unit per strict liability violation. The penalty obtained in this case is $375.00 per unit for 13 units. This reflects the facts that this was an unintentional, first time violation of this type; and Buffalo Turbine's diligent efforts to comply and to promptly and fully cooperate with the investigation.

**The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.**

ARB alleges that the penalty provision being applied in this case, Health and Safety Code section 43016, is appropriate because Buffalo Turbine allegedly imported and sold machines containing large spark ignition engines in California that were not certified by ARB.

**Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.**

The provisions cited above do not prohibit emissions above a specified level. It is not practicable to quantify these emissions, because the information necessary to do so, such as emission rates and time of use, is not available. There are no testing results available that would indicate how much emissions increased as a result of the use of the uncertified large spark ignition engines. However, since the large spark ignition engines were not certified for sale in California, emissions attributable to them are illegal. The parties had adequate opportunity to conduct such testing, but elected not to do so in the interests of settlement and because of the time and expense involved.

15. Buffalo Turbine acknowledges that ARB has complied with SB 1402 in prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at Health and Safety Code section 43024, has explained the manner in which the penalty amount was calculated (including a per unit or per vehicle penalty, if appropriate), has identified the provision of law under which the penalty is being assessed, and has considered and determined that this penalty is not being assessed under a provision of law that prohibits the emission of pollutants at a specified level.

16. Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar case negotiation, and the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a certain period of time, considered together with the complete circumstances of this case. Penalties in future cases might be smaller or larger on a per unit basis.

17. The penalty in this case was based in part on confidential business information provided by Buffalo Turbine that is not retained by ARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between ARB and Buffalo Turbine that ARB does not retain in the ordinary course of business either. The penalty also reflects ARB's assessment of the relative strength of its case against Buffalo Turbine, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Buffalo Turbine may have secured from its alleged actions.

**CALIFORNIA AIR RESOURCES BOARD**

By: _____

Name: Dr. Todd P. Sax, Chief

Title: Chief, Enforcement Division

Date: 8/25/15

**BUFFALO TURBINE, LLC.**

By: _____

Name: PAUL SYRACUSE

Title: GENERAL MANAGER

Date: 20 AUG 2015