SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB") 1001 I Street, Sacramento, California 95814, and ESW TECHNOLOGIES (hereinafter "ESWT"), 200 Progress Drive, Montgomeryville, Pennsylvania 18936.

I. RECITALS

(1) The Verification Procedure for In-Use Strategies to Control Emissions from Diesel Engines, California Code of Regulations, title 13, sections 2700-2711 ("Verification Procedure," 13 CCR §§ 2700-2711) provides in § 2702 that if the Executive Officer of ARB grants verification of a diesel emission control strategy, he or she will issue an Executive Order (EO) to the strategy's applicant identifying the verified emission reduction level and any conditions that must be met for the Diesel Emission Control Strategy (DECS) to function properly. The Verification Procedure itself also places conditions on applicants and diesel emissions control strategies.

(2) The Verification Procedure provides in § 2706(q) that no person or entity shall advertise, sell, lease, supply, offer for sale, represent, or install any device, apparatus, mechanism, or fuel based system as a verified DECS for or on any engine, vehicle or equipment that does not meet the terms and conditions of the strategy's EO. The applicant, distributor, and/or installer must ensure that each verified DECS is supplied, sold, leased, and installed pursuant to the provisions of the EO.

(3) The Verification Procedure provides in § 2706(t) that "The applicant or authorized installer (i.e., the party conducting the pre-installation compatibility assessment) must be able to demonstrate, to the satisfaction of the Executive Officer, that a candidate engine being considered for retrofit is compatible with the verified DECS by ensuring that each candidate engine meets all the terms and conditions of the EO prior to installation." The Verification Procedure also provides in § 2706(u) requirements for installers of DECS.

(4) The Executive Orders DE-09-010, with extensions 01 through 04, issued by ARB to ESWT for the ThermaCat™ Diesel Particulate Filter (DPF), provide the terms and conditions that the verification is subject to, as well as a list of ARB-approved Engine Family Names in its attachment.

(5) If a DECS or the application it is used in does not meet the conditions specified in the Verification Procedure or the applicable EO, it is a violation of the Verification Procedure, and the DECS is not verified for that application, rendering it an illegal, non-exempt add-on part.

(6) ARB Enforcement Division staff, with the cooperation of ESWT, has alleged certain violations of the Verification Procedure and the applicable EOs, with respect to ESWT's DECS in California that do not conform to the conditions specified in the Verification Procedure and the applicable EOs. In particular, these alleged violations involve selling and installing six improperly sized ThermaCat™ DPFs onto off-road equipment operating in California.

(7) California Health and Safety Code sections 39674 (a) and (b) (HSC §§ 39674 (a) and (b)) authorize civil penalties for the violation of the programs for the regulation of toxic air contaminants not to exceed one thousand dollars ($1,000) or ten thousand dollars ($10,000), respectively, for each day in which the violation occurs.

(8) In order to resolve these alleged violations, ESWT has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, ARB accepts this Agreement in termination and settlement of this matter.

(9) In consideration of the foregoing, and of the promises and facts set forth herein, the parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed violations, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, ARB and ESWT agree as follows:

II. TERMS AND RELEASE

In consideration of ARB not filing a legal action against ESWT for the alleged violations referred to above, and ESWT's payment of the penalties set forth in Section 1 below, ARB and ESWT agree as follows:

(1) Upon execution of this Agreement, ESWT shall pay a civil penalty of $60,000.00. Payment shall be made in 2 payments as described below, beginning on **May 13, 2016**.

Payment Due Date:	In the Amount of and Payable to:
May 13, 2016	**$15,000.00** to the **San Joaquin Valley Air Pollution Control District,** with the following notation in the memo line of the check: **"For the School Bus and Diesel Emission Reduction SEP"** **$22,500.00** to **the Air Pollution Control Fund**
May 13, 2017	**$22,500.00** to **the 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:

Mr. Christopher Patno
Air Resources Engineer
California Air Resources Board
Enforcement Division
9480 Telstar Avenue Suite 4
El Monte, California 91731

Please submit each payment by the applicable payment due date along with the corresponding "Settlement Agreement Payment Transmittal Form" (Attachment A) to:

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

(2) Effect of Untimely Payment. If any payment is more than 15 days late, the entire remaining balance becomes immediately due and payable. In addition, if the Attorney General files a civil action to enforce this settlement agreement, ESWT shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

(3) It is agreed that if ESWT, including its subsidiary or parent company, at any time becomes insolvent, or makes an assignment for the benefit of creditors or similar action adversely involving ESWT, its subsidiary, or parent company, or a proceeding or petition under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt, or receivership law or statute is filed by or against ESWT, its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of ESWT's, its subsidiary, or parent company's properties, or if any deposit account or other property of ESWT, its subsidiary, or parent company be attempted to be obtained or held by writ of execution, garnishment, attachment, condemnation, levy, forfeiture or other legal process, or ESWT, its subsidiary, or parent company takes any action to authorize any of the foregoing, the entire remaining balance becomes immediately due and payable without notice or demand.

(4) It is further agreed that the penalties described in "Terms and Release", paragraph 1 are punitive in nature, rather than compensatory. Furthermore, the penalty is intended to deter and punish ESWT for violations of state environmental statutes, and these penalties are payable to and for the benefit of ARB, a governmental unit. Therefore, it is agreed that these penalties imposed

on ESWT by ARB arising from the facts described in recital paragraphs (1) through (7) are non-dischargeable under 11 United States Code § 523 (a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty or forfeiture payable to and for benefit of governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.

(5) ESWT shall not violate the Verification Procedure (13 CCR §§ 2700-2711) or any EOs issued by ARB.

(6) ESWT shall ensure that the terms and conditions specified in the applicable EOs are met prior to installing, selling, offering for sale, or advertising any DECS in California.

(7) ESWT shall comply with the DECS warranty requirements set forth in the 13 CCR § 2707.

(8) ESWT must inspect and opacity test each of the ThermaCat™ DPFs described in the Audit table, to determine if the DECS parts and control logic meet the terms of the verification Procedure and that each DECS is in proper working condition. Any DECS found to be in non-compliance shall be removed or repaired. In the event that the unit is removed, ESW shall arrange to return the engine to OEM configuration or reimburse the owner for original price. Further, ESWT shall revise all of its installation protocols and ensure proper horsepower of the engines (per the certification EO), address durability and (NO2) emissions impact. ESWT must provide an extended warranty period that extends the warranty coverage as described in section 2707 of the Verification Procedure by 1 year from the date of this agreement execution and with no hour limitation. Any request(s) for service on the DECS within this extended warranty period must be documented and reported to ESWT and ARB. This report must include detailed information on the cause of the problem, and possible solutions. ESWT shall submit this report to ARB within 30 days of notification of an issue. DECS covered by this settlement can only be redesignated to a vehicle which is fully compliant with the Verification Procedure. In addition, ESWT must honor the warranty claims on the 12 DECS systems installed onto buses operated by the Merced Union High School District listed in the Audit table.

(9) This Agreement shall apply to and be binding upon ESWT, and its 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.

(10) This Agreement constitutes the entire agreement and understanding between ARB and ESWT concerning the subject matter hereof, and supersedes and

replaces all prior negotiations and agreements between ARB and ESWT concerning the subject matter hereof.

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

(12) 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.

(13) 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.

(14) 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.

(15) Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires ARB to provide information on the basis for the penalties it seeks (HSC § 39619.7). This 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 HSC §§ 42403 and 43024. The per unit or per vehicle penalty in this case is a maximum of $1,000 per unit per day for strict liability violations and $10,000 per unit per day for negligent or intentional violations. The total penalty amount in this case is $60,000.00, for six noncompliant units for a per unit penalty of $10,000.00 (based on the discounted price of ESWT's ThermaCat™ DPFs) over an unspecified number of days of violation.

The penalty was discounted based on the fact that the violator made diligent efforts to comply and to cooperate with the investigation.

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

The penalty provision being applied in this case is HSC § 39674 because ESWT failed to comply with the Verification Procedure, 13 CCR §§ 2700-2711, which was adopted under authority of HSC § 39600, et seq.

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 prohibit emissions above a specified level. However, since the hours of operation of the noncompliant units involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

(16) ESWT acknowledges that ARB has complied with Senate Bill 1402 in prosecuting or settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC § 43024, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed and has considered and determined that this penalty is being assessed under a provision of law that prohibits the emission of pollutants at a specified level.

(17) 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 cases, and the potential costs and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger on a per unit basis.

(18) The penalty was based on confidential settlement communications between ARB and ESWT that ARB does not retain in the ordinary course of business. The penalty is the product of an arms length negotiation between ARB and ESWT and reflects ARB's assessment of the relative strength of its case against ESWT, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that ESWT may have secured from its actions.

(19) Now therefore, in consideration of the payment on behalf of ESWT to the Air Pollution Control Fund and the San Joaquin Valley Air Pollution Control District, ARB hereby releases ESWT and their principals, officers, agents, predecessors and successors from any and all claims, ARB may have or have in the future based on the circumstances described in paragraphs (1) through (7) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

Signature: _____

Print Name: Ellen M. Peter

Title: Chief Counsel

Date: 6/12/2016

ESW Technologies

Signature: _____

Print Name: PATRICK BARGE

Title: Chief Executive Officer

Date: 5/21/2016