SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into by and between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB"), with its principal office at 1001 I Street, Sacramento, California 95814, and HYPERTECH, INC. (hereinafter "HYPERTECH") with its principal place of business at 3215 Appling Road, Bartlett, Tennessee 38133-3999, collectively, "The Parties."

RECITALS

1. California Vehicle Code section 27156(c) provides, in pertinent part, that "No person shall install, sell, offer for sale, or advertise any device intended for use with, or as a part of, any required motor vehicle pollution control device or system which alters or modifies the original design or performance of any such motor vehicle pollution control device or system."

2. California Vehicle Code section 27156(h) provides, in pertinent part, that this section shall not apply to an alteration, modification, or modifying device found by resolution of ARB to either not reduce the effectiveness of any required motor vehicle pollution control device or result in emissions from any such modified or altered vehicle which are at levels that comply with existing state or federal standards for the model year of the vehicle being modified or converted.

3. California Code of Regulations, title 13, section 2222(b)(2) provides, in pertinent part, that "no person or company doing business in interstate commerce shall advertise in California any device, apparatus, or mechanism which alters or modifies the original design or performance of any required motor vehicle pollution control device or system and not exempted from Vehicle Code section 27156 unless each advertisements contains a legally adequate disclaimer."

4. California Code of Regulations, title 13, section 2222(e) provides, "The Executive Officer may exempt add-on and modified parts based on an evaluation conducted in accordance with the 'Procedures for Exemption of Add-on and Modified Parts.' [The Procedures] adopted by the state board on November 4, 1977, as amended June 1, 1990."

5. The Procedures provide, "Examples of emission related parts are shown in Appendix 1 of these procedures. Such parts require an exemption from the prohibitions of section 27156 and 38391 of the Vehicle Code...in order to be legally advertised, offered for sale, sold, or installed in California."

6. California Code of Regulations, title 13, section 2222(f) provides, "Each person engaged in the business of retail sale or installation of an add-on modified part which has not been exempted from Vehicle Code section 27156 shall maintain records of such activity which indicate date of sale, purchaser name and address, vehicle model and work performed if applicable. Such records shall be open for reasonable

inspection by the Executive Order or his/her representative. All such records shall be maintained for four years from the date of sale or installation."

7. In addition, California Code of Regulations, title 13, section 2225(a) provides, in pertinent part, that the Executive Officer may seek fines for violations of California Vehicle Code Section 27156 or other laws or regulations, as applicable.

8. California 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."

9. ARB alleges that during calendar years 2011 through 2013, HYPERTECH sold, offered for sale, and/or advertised certain add-on and modified aftermarket parts for use on highway motor vehicles, but these parts were not exempted by ARB pursuant to California Code of Regulations, title 13, section 2220 et seq. (hereinafter "Subject Parts").

11. ARB alleges that the Subject Parts altered or modified the original design or performance of devices, apparatuses, or mechanisms intended for use with, or as part of, required highway vehicles, engines, or motor vehicle pollution control devices or systems.

12. ARB alleges that the advertisements, offers for sale, sales, and installation of the Subject Parts were unlawful and in violation of California Vehicle Code section 27156(c), and California Code of Regulations, title 13, section 2220 et seq.

13. HYPERTECH is a Tennessee corporation.

14. HYPERTECH promptly and fully cooperated with ARB throughout its investigation.

15. HYPERTECH has no prior enforcement record with ARB.

16. HYPERTECH provided ARB with financial statements for the past several years, which were intended to demonstrate a financial hardship for the company.

17. ARB alleges that if the facts described in recital paragraphs 1 through 12 were proven, civil penalties could be imposed against HYPERTECH pursuant to California Health and Safety Code section 43016.

18. HYPERTECH admits the facts in recital paragraphs 1 through 12, but denies any liability arising thereunder.

19. HYPERTECH 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 HYPERTECH for the violations alleged above, and in consideration of the other terms set out below, ARB and HYPERTECH agree as follows:

1. As a condition of this Agreement, HYPERTECH shall pay the total sum of two hundred twenty-five thousand dollars ($225,000.00) as a civil penalty to the **California Air Pollution Control Fund**. This penalty amount shall be payable in full within thirty (30) days of the execution of this Agreement.

   Please send a copy of the signed Agreement and each payment using the attached "Settlement Agreement Payment Transmittal Form" (ATTACHMENT A) to:

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

   With notification to:

   Dean Hermano, Staff Air Pollution Specialist
   Air Resources Board, Enforcement Division
   9480 Telstar Avenue, Suite 4
   El Monte, CA 91731

2. Effect of Untimely Payment. If the penalty payment is more than fifteen (15) days late, the entire remaining balance shall become immediately due and payable without notice or demand. In addition, if the Attorney General files a civil action to enforce this settlement agreement, HYPERTECH 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 HYPERTECH at any time becomes insolvent, or makes an assignment for the benefit of creditors or similar action adversely involving HYPERTECH, 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 HYPERTECH, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of HYPERTECH's properties, or if any deposit account or other property of HYPERTECH be attempted to be obtained or held by writ of execution, garnishment, attachment, condemnation, levy,

forfeiture or other legal process, or HYPERTECH 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 agreed that the penalty described in terms and release paragraph 1 is punitive in nature, rather than compensatory. Furthermore, the penalty is intended to deter and punish HYPERTECH for violations of state environmental statutes, and this penalty is payable to and for the benefit of ARB, a governmental unit. Therefore, it is agreed that this penalty imposed on HYPERTECH by ARB arising from the facts described in recital paragraphs 1 through 12 are nondischargeable under 11 U.S.C § 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. HYPERTECH agrees to develop and implement a compliance plan to ensure that its distributors, dealers, and customers understand which add-on and modified aftermarket parts are legal or illegal for specific applications, including both street use and for racing vehicles. As part of the compliance plan, HYPERTECH has agreed to work with its distributors, dealers, and customers to implement a buyback program and/or perform corrective actions with respect to the Subject Parts listed in ATTACHMENT B that were purchased and installed on California motor vehicles. As part of HYPERTECH's buyback program, HYPERTECH agrees to mail each end user in California a written notice which, in coordination with ARB, contains the substantive provisions of the attached sample notice provided in ATTACHMENT C. In addition, HYPERTECH agrees to work with its dealers and distributors in California to contact each owner of a Subject Part by mailing a copy of the notice.

6. HYPERTECH shall not install, sell, offer for sale, or advertise in California any add-on or modified aftermarket part in violation of California Code of Regulations, title 13, section 2220 et seq. or California Vehicle Code section 27156.

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

8. Now therefore, contingent on the payment in full by HYPERTECH to the California Air Pollution Control Fund, ARB hereby releases HYPERTECH and its principals, officers, agents, employees, shareholders, subsidiaries, predecessors and successors from any and all claims for any and all violations of California Code of Regulations, title 13, section 2220 et seq., and California Vehicle Code section 27156 that ARB may assert based on the facts and allegations described in paragraphs 1 through 12 of the Recitals. Subject to full payment as described above, ARB further releases HYPERTECH's distributors or dealers, but only with regard to the Subject Parts. The undersigned represent that they have the authority to enter this

Agreement.

9. This Agreement constitutes the entire agreement and understanding between ARB and HYPERTECH 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 HYPERTECH concerning these claims.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. Captions. The captions by which the sections and subsections of this Agreement are identified are for convenience only, and shall have no effect whatsoever upon their interpretation.

16. The parties agree that this Agreement may be executed by facsimile and in multiple counterparts by the Parties and their representatives, and the counterparts shall collectively constitute a single, original, document, notwithstanding the fact that the signatures may not appear on the same page.

17. 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.

18. **Senate Bill 1402 Statement**

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010, California Health and Safety Code section 39619.7) requires ARB to provide information on the basis for the penalties it seeks. This required information, which is provided throughout this 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 California Health and Safety Code section 43024.

The per unit penalty in this case is a maximum of $500.00 per unit per strict liability violation. The penalty obtained in this case is approximately $375 per unit for 600 units. This reflects the fact that this was an unintentional, first time violation by HYPERTECH, HYPERTECH's cooperation with the investigation, and the financial hardship demonstrated by HYPERTECH.

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, California Health and Safety Code section 43016, is appropriate because HYPERTECH allegedly sold, and/or offered for sale, and/or advertised the Subject Parts that were not exempted pursuant to California Code of Regulations, title 13, section 2220 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 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 Subject Parts. However, since the Subject Parts were not exempted by ARB, emissions attributable to them are illegal and in excess as well. 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.

19. HYPERTECH acknowledges that ARB has complied with Senate Bill 1402 in prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at California 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.

20. 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. The penalty was discounted in this matter based on the fact that this was an innocent, first time violation and because HYPERTECH made diligent efforts to comply and to cooperate with ARB's investigation. Penalties in future cases might be smaller or larger on a per unit basis.

21. The penalty in this case was based in part on confidential business information provided by HYPERTECH 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 HYPERTECH 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 HYPERTECH, the desire to avoid the uncertainty, burden, and expense of litigation, obtain swift compliance with the law, and remove any unfair advantage that HYPERTECH may have secured from its alleged actions.

California Air Resources Board	**HYPERTECH, INC.**
By: _____	By: _____
Name: Richard Corey	Name: Amy Faulk
Title: Executive Officer	Title: CEO
Date: 6/2/2016	Date: 04-14-16

ATTACHMENT B

General Motors Vehicles

GASOLINE ENGINES: ALL L4, V6, V8

VEHICLES: 1981-2007 Passenger Cars, Trucks, and SUVs

PRODUCT: 160/170/180 Degree Thermostat
HYPERTECH PART NUMBERS:
1000, 1001, 1002, 1003, 1004, 1005, 1006, 107, 1008, 1009, 1010, 1013, 1014, 1015, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1027, 1028

PRODUCT: Air Charger, Power Charger
HYPERTECH PART NUMBERS: **4000, 4001**

PRODUCT: Adjustable Fuel Pressure Regulator
HYPERTECH PART NUMBERS: **4002, 4008, 4009, 4010, 4014**

PRODUCT: Universal Power Pump, Installation Kit
HYPERTECH PART NUMBERS: **4018, 4020**

PRODUCT: Engine Tuning Chip
HYPERTECH PART NUMBERS:
11031, 11041, 11042, 11051, 11152, 11181, 11242, 11341, 11342, 11401, 11402, 11411, 11412, 11521, 11542, 11551, 11552, 11561, 11562, 11571, 11582, 11612, 11642, 11721, 11722, 12002, 12061, 21592, 41371, 120012, 120052, 120071, 120072, 120092, 120101, 120121, 120122, 120151, 120201, 120221, 120231, 120232, 120252, 120321, 120332, 120382, 120392, 120461, 120491, 121071, 121072, 121091, 121122, 121221, 121291, 121292, 121321, 121331, 121332, 121341, 121361, 121362, 121381, 121392, 121451, 121601, 121602, 121622, 121712, 122061, 122102, 122121, 122122, 122221, 122222, 122292, 122321, 122322, 122351, 122352, 122361, 122382, 122392, 122441, 122451, 123061, 123092, 123101, 123322, 123352, 123382, 123712, 124001, 124032, 124092, 124121, 124122, 124151, 124202, 124221, 124222, 124291, 126001, 126022, 126031, 126032, 126062, 127042, 127051, 127062, 127082, 127112, 127132, 127171, 128051, 128052, 128131, 128192, 128432, 128821, 128841, 128851, 128872, 128881, 128882, 128921, 128922, 128932, 128961, 128981, 128982, 128992, 129151, 129152, 154081, 155302, 155372, 226022, 226062, 323002, 351521, 351721, 351751, 351752, 351771, 351792, 353321, 354832, 358821, 358832, 360202, 423001, 424012, 425012

PRODUCT: Power Programmer
HYPERTECH PART NUMBERS: **30005, 30023, 30024, 30025, 30026, 30027, 30028**

DIESEL ENGINES: 6.6L Duramax Diesel

VEHICLES: 2001-2010 Trucks, Passenger Vans, and Incomplete

PRODUCTS: Power Programmer, Max Energy, Max Energy ECON, HYPERPAC
HYPERTECH PART NUMBERS: **30029, 32001, 33001, 33003, 83004, 83005, 83011, 88000**

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ATTACHMENT B

Ford, Lincoln, Mercury Vehicles

GASOLINE ENGINES: ALL I6, V8, V10

VEHICLES: 1994-2000 Passenger Cars, Trucks, and SUVs

PRODUCT: 160/180 Degree Thermostat
HYPERTECH PART NUMBERS: **1011, 1025**

PRODUCT: Universal Power Pump, Installation Kit
HYPERTECH PART NUMBERS: **4018, 4020**

PRODUCT: Power Programmer
HYPERTECH PART NUMBERS: **41004, 41026, 41034, 88000**

PRODUCT: Engine Tuning Chip
HYPERTECH PART NUMBERS:
450091, 454311, 456711, 458231, 468231, 554311, 600011, 600151, 600311, 620021, 620211, 638121, 640031, 640161, 640711, 640721, 640831, 650001, 654021, 681211, 693021, 698021

DIESEL ENGINES: 7.3L, 6.0L Power Stroke Diesel

VEHICLES: 1995-2006 Trucks, SUVs, Vans, and Incomplete

PRODUCT: Power Programmer, Max Energy, Max Energy ECON, HyperPAC
HYPERTECH PART NUMBERS:
41009, 41039, 41040, 41044, 42001, 42002, 43001, 43002, 84004, 88000

PRODUCT: Hypertech In-Line Device
HYPERTECH PART NUMBERS: **41042, 41045**

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ATTACHMENT B

Dodge, Chrysler, Jeep Vehicles

GASOLINE ENGINES: ALL V6, V8

VEHICLES: 1989-2014 Trucks, and SUVs

PRODUCT: 160/180 Degree Thermostat
HYPERTECH PART NUMBERS: **1012, 1026**

PRODUCT: Universal Power Pump, Installation Kit
HYPERTECH PART NUMBERS: **4018, 4020**

PRODUCT: Power Programmer, Max Energy ECON, HYPERPAC
HYPERTECH PART NUMBERS:
50002, 50003, 50004, 50005, 50008, 50012, 53500, 53501, 53501, 88000

PRODUCT: Interceptor, Interceptor with Enhance Features
HYPERTECH PART NUMBERS:
705001, 705002, 705003, 705004, 705005, 705006, 705007, 755006

DIESEL ENGINES: 5.9L, 6.7L Cummins

VEHICLES: 1998-2010 Trucks and Incomplete Vehicles

PRODUCT: Power Programmer, Max Energy ECON, HYPERPAC
HYPERTECH PART NUMBERS:
52003, 52004, 52005, 52006, 52007, 52008, 52009, 52502, 52503, 53003, 53004, 53006, 53007, 53008, 53009, 53502, 53503, 88000

Toyota, Lexus Vehicles

GASOLINE ENGINES: 4.7L, 5.7L V8

VEHICLES: 2007-2014 Trucks, and SUVs

PRODUCT: Interceptor
HYPERTECH PART NUMBERS: **706001**

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