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 MAKITA U.S.A., INC. (hereinafter "MAKITA") with its principal place of business at 14930 Northam St., La Mirada, California 90638 (collectively, the "parties").

RECITALS

1. California Code of Regulations, title 13, section 2400(a)(2) states, in pertinent part "Every new small off-road 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 must be covered by an Executive Order, issued pursuant to this article."

2. California Code of Regulations, title 13, section 2401(a)(39) defines "small off-road engine" as "any engine that produces a gross horsepower less than 25 horsepower (at or below 19 kilowatts for 2005 and later model year), or is designed (e.g., through fuel feed, valve timing, etc.) to produce less than 25 horsepower (at or below 19 kilowatts for 2005 and later model year), that is not used to propel a licensed on-road motor vehicles, an off-road motorcycle, an all-terrain vehicle, a marine vessel, a snowmobile, a model airplane, a model car, or a model boat... Uses for small off-road engines include, but are not limited to, applications such as lawn mowers, weed trimmers, chain saws, golf carts, specialty vehicles, generators and pumps."

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 April 29, 2014, MAKITA self-reported to ARB they had sold uncertified small off-road engines with engine families EFNXS.0254GA, EFNXS.0344GA EFNXS.0344GB, and EFNXS.0765GA in California. These engines were being used in various 2013 and 2014 model year garden and lawn equipment, such as cutters, trimmers and hand blowers.

5. MAKITA subsequently reported sales of 2,272 uncertified small off-road engines in California.

6. 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 were unlawful and in violation of California Code of Regulations, title 13, section 2400(a)(2).

7. MAKITA promptly and fully cooperated with ARB in the investigation of this matter.

8. MAKITA has no prior enforcement record with ARB.

9. ARB alleges that if the allegations described in recital paragraphs 1-6 were proven, civil penalties could be imposed against MAKITA as provided in Health and Safety Code section 43016.

10. MAKITA neither admits nor denies the allegations made in this Agreement.

11. MAKITA 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 settlement of any and all claims that ARB has against MAKITA for the violations alleged above, and in consideration of ARB not filing a legal action as well as the other terms set out below, ARB and MAKITA agree as follows:

1. As a condition of this Settlement Agreement, MAKITA shall pay the total sum of two hundred and thirty thousand dollars ($230,000.00) as a penalty. Payments shall be made by cashier's checks as follows:

   a. Within 30 days of the execution of this Agreement, thirty thousand dollars ($30,000) payable to the Supplemental Environmental Project (SEP) titled "**Foundation for California Community Colleges Small Engine Maintenance and Repair Courses**". "Small Engine SEP Fund" shall be annotated in the note or Memo line on the check.

   b. Within 30 days of the execution of this Agreement, two hundred thousand dollars ($200,000) payable to the **California 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:

Tony Zeng/Air Resources Engineer
Air Resources Board, Enforcement Division
9480 Telstar Avenue, Suite 4
El Monte, CA 91731

Please send the signed Settlement Agreement and 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

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

3. MAKITA 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. MAKITA shall clearly mark any and all small off-road engines in its possession that are not certified by ARB with the following: "Not for Sale or Use in California."

4. This Agreement shall apply to and be binding upon MAKITA 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 payment by MAKITA to the California Air Pollution Control Fund in the amount specified above, ARB hereby releases MAKITA and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and predecessors, from any and all claims that ARB may have based on the facts and allegations described in recital paragraphs 1-6, 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 MAKITA 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 MAKITA concerning these claims.

7. No agreement to modify, 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 39617) 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 per unit penalty in this case is a maximum of $500 per unit per strict liability violation. The penalty obtained in this case is approximately $100 per unit for 2,272 units. This reflects the facts that this was an unintentional, first time

violation of this type; and MAKITA'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 MAKITA allegedly sold, and/or offered for sale, and/or advertised small off-road 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 critical emission control parts. However, since the small off-road engines were not certified for sale in California, emissions attributable to them are illegal. In the interests of settlement and because of the time and expense involved, the parties elected not to do such testing.

15. MAKITA 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 MAKITA 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 MAKITA 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 MAKITA, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that MAKITA may have secured from its alleged actions.

California Air Resources Board	**MAKITA U.S.A., Inc.**
By: _____	By: _____
Name: Richard W. Corey	Name: Hiroshi Tsujimura
Title: Executive Officer	Title: President
Date: 10/20/2015	Date: September 21, 2015