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 Mitsubishi Engine North America, Inc. (hereinafter "MITSUBISHI") with its principal place of business at 2 Pierce Place, 11th Floor, Itasca, Illinois 60143, collectively, "The Parties."

RECITALS

1. California Code of Regulations, title 13, section 2420(a)(3) provides "Every new off-road compression-ignition engine that is manufactured for sale, sold, offered for sale, introduced or delivered for introduction into commerce, or imported into California and that is subject to any of the standards prescribed in this article and documents incorporated by reference therein, is required to 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, Section 2423."

2. California Code of Regulations, title 13, section 2423(d)(1)(C) provides "A manufacturer may produce equipment and vehicles with engines that are exempt from meeting current model year emission standards for a portion of its California-directed production volume."

3. California Code of Regulations, title 13, section 2423 (d)(7) provides "As a prerequisite to using any Tier 4 flexibility allowances, the equipment manufacturer shall notify the ARB of its intent to use such allowances. The manufacturer shall also send an annual report after each year that flexibility allowances have been used to verify that the allowances claimed do not exceed the number of allowances permitted."

4. 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."

5. In 2013, MITSUBISHI manufactured for sale, offered for sale, or labeled for introduction into commerce into California 1 model year 2013 off-road compression-ignition engine (engine family CMVXL03.3AAH) that was not reported to ARB pursuant to California Code of Regulations, title 13, section 2423 (d)(7). An

executive order was obtained for the engine family in question after the date it was sold into California.

6. At the time of manufacture, the emission label on the off-road compression-ignition engine incorrectly indicated that they "COMPL[Y] WITH CALIFORNIA EMISSION REQUIREMENTS UNDER 13 CCR 2423(d)."

7. The advertisements, offers for sale, and labels thereon, were unlawful and in violation of California Code of Regulations, title 13, section 2423 *et seq*.

8. MITSUBISHI promptly and fully cooperated with ARB throughout its investigation.

9. ARB alleges that if the facts described in recital paragraphs 1-7 were proven, civil penalties could be imposed against MITSUBISHI as provided in Health and Safety Code section 43016.

10. MITSUBISHI admits the facts described in recital paragraphs 1-7, but denies any liability arising therefrom.

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

1. As a condition of this Settlement Agreement, MITSUBISHI shall pay the total sum of five hundred dollars ($500.00) as a penalty to the California Air Pollution Control Fund upon execution of this settlement agreement. Payment shall be by certified check, payable to the **California Air Pollution Control Fund,** and addressed to:

   Gretchen Ratliff, Air Pollution Specialist
   Air Resources Board
   9480 Telstar Avenue, Suite 4
   El Monte, California 91731

2. MITSUBISHI shall not sell, offer for sale, advertise, or label for introduction into commerce into California any new off-road compression-ignition engine in violation of California Code of Regulations, title 13, section 2423 *et seq*.

3. This Agreement shall apply to and be binding upon MITSUBISHI 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.

4. Now, therefore, in consideration of the payment by MITSUBISHI to the California Air Pollution Control Fund in the amount specified above, ARB hereby releases MITSUBISHI and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and predecessors from any and all claims for past violations of California Code of Regulations, title 13, section 2420 et seq. and Code of Federal Regulations, title 40, section 1039.135(c)(9) the ARB may have based on the events described in recital paragraphs 1-7. The undersigned represent that they have the authority to enter this Agreement.

5. This Agreement constitutes the entire agreement and understanding between ARB and MITSUBISHI 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 MITSUBISHI concerning these claims.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

13. 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.

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 $500.00 per unit per strict liability violation. The penalty obtained in this case is $500.00 because this was not a first time violation for the company.

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 MITSUBISHI allegedly manufactured for sale, offered for sale, labeled for introduction into commerce into California, and/or advertised the subject non-California certified new off-road compression-ignition engine that were not properly reported pursuant to California Code of Regulations, title 13, section 2423 *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 uncertified engine. Since the engine was not certified for sale in California, emissions attributable to it are illegal and excess.

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

18. This Settlement Agreement by and between the STATE OF CALIFORNIA AIR RESOURCES BOARD and MITSUBISHI ENGINE NORTH AMERICA, INC. consists of 6 pages, 11 recitals, and 18 terms and release.

The undersigned represent that they have the authority to enter this Agreement.

California Air Resources Board

By: _____
Name: Dr. Todd P. Sax
Title: Chief, Enforcement Division
Date: 9/28/16

Mitsubishi Engine North America, Inc.

By: _____
Name: Samson Ayele
Title: Engineering Manager
Date: 9/19/2016