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 MTD SOUTHWEST INC (hereinafter "MTDSW") with its principal place of business at 9235 S. McKemy Street, Tempe, Arizona 85284-2938.

I. RECITALS

(1) California Code of Regulations, title 13, section 2400(a)(2) states, "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 Health and Safety Code section 43016 states, "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 of 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. Any penalty collected pursuant to this section shall be payable to the State Treasurer for deposit in the Air Pollution Control Fund."

(3) MTDSW manufacturers a variety of handheld lawn care products that utilize small off-road engines. MTDSW discovered, in 2012 while preparing certification documentation, unexpected emissions increases with its –MTDS.0254SM engine family, which had Executive Orders U U 020 0154 and U U 20 174 issued for Model Years 2011 and 2012, respectively. MTDSW immediately launched an internal investigation to determine the root cause. MTDSW determined that minor product improvement design modifications, including a material change believed to be insignificant and inconsequential, incorporated for 2011 and subsequent year models had an unintentional, unexpected, unforeseen, and undesired effect on engine emissions.

(4) MTDSW, upon conclusion of its internal investigation, performed a voluntary self-disclosure, and took immediate corrective action.

(5) Thereafter, MTDSW implemented improved quality control measures and processes as well as additional quality and environmental internal auditing and verification procedures and processes. As a result of those improvements, MTDSW discovered an additional fuel system component certification concern hereinafter "Concern") during ARB's investigation into the voluntary self-disclosure.

(6) MTDSW, upon discovering the Concern, immediately investigated further to determine one of its suppliers, while under contractual agreement to supply regulatory compliant product, had misrepresented the fuel system components supplied to MTDSW as ARB certified.

(7) Based on its supplier contractual requirement and corresponding presumption of compliance, MTDSW unknowingly and unintentionally utilized non-compliant fuel system components in their –MTDS.0274FS which had Executive Orders U-U-020-0147 and U-U-020-0178 , and –MTDS.0294DG, which had Executive Orders U-U-020-0148 and U-U-020-0182, for Model Years 2011 and 2012, respectively.

(8) MTDSW took immediate corrective action regarding the Concern, including issuance of a stop shipment order and a California sales hold for products with non-certified fuel system components, as well as a voluntary self-disclosure to the California Environmental Protection Agency (Cal/EPA).

(9) MTDSW fully cooperated with ARB in the investigation and resolution of this matter, including all communication, disclosure, and remediation.

II. TERMS AND RELEASE

In consideration of the ARB not filing a legal action against MTDSW for the alleged violations referred to above, ARB and MTDSW agree as follows:

(1) As a condition of this Agreement, MTDSW shall pay the total sum of three hundred twenty-six thousand two hundred and fifty dollars ($326,250.00) as a penalty upon execution of this Agreement. Payment shall be made by certified check payable to the **California Air Pollution Control Fund**.

(2) As a further condition of this Agreement, MTDSW shall pay an additional amount of one hundred eight thousand seven hundred and fifty dollars ($108,750) to the Foundation for California Community Colleges Small Engine Supplemental Environmental Project (FCCC Small Engine SEP) upon execution of this Agreement. Payment shall be made by certified check to "**The Foundation for California Community Colleges**" and "For FCCC Small Engine SEP" shall be annotated in the Note or Memo line on the check.

(3) Both checks and the attached **"Settlement Agreement Payment Transmittal Form" (Attachment A)** shall be mailed to the following address:

California Air Resources Board
Accounting Office
PO Box 1436
Sacramento, CA 95812-1436

(4) **The signed Settlement Agreement** and any future mailings or documents required per the terms of this Settlement Agreement shall be mailed to the following address:

Mr. Jeremiah Bearden/Air Resources Engineer
Air Resources Board, Enforcement Division
PO Box 2815
Sacramento, CA 95812-2815

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

(6) MTDSW represents that it understands the legal requirements applicable to selling engines in California and agrees that it will not introduce products into commerce unless ARB certification has first been obtained. MTDSW agrees that it will not manufacture, acquire, offer for sale or sell new, non-California certified engines for use or registration in California and MTDSW promises that any engines in its possession not certified to California emission standards will be clearly marked: "Not for Sale or Use in California".

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

(8) Now, therefore, in consideration of the payment by MTSDW to the California Air Pollution Control Fund and The Foundation for California Community Colleges in the amounts specified above, ARB hereby releases MTDSW and its principals, officers, directors, agents, trustees, employees, shareholders, dealers, distributors, subsidiary and parent corporations, predecessors and successors from any and all claims for past violations of California Code of Regulations, title 13, section 2400 *et seq.*; related to MTDSW engines families BMTDS.0254SM, CMTDS.0254SM, BMTDS.0274FS, CMTDS.0274FS, BMTDS.0294DG, and CMTDS.0294DG; the ARB may have based on the events described in paragraphs (1) – (9) of the Recitals. The undersigned represent that they have the authority to enter this Agreement.

(9) This Agreement constitutes the entire agreement and understanding between ARB and MTDSW 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 MTDSW 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.

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

(16) **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 $33.87 per unit for 12,844 units. The penalty amount was reduced because this was an unintentional, first time violation, of which some portion resulted from the actions of MTDSW's supplier; MTDSW's immediate corrective actions taken

and exceptionally diligent efforts to comply promptly, fully cooperate with the investigation, and implement quality assurance improvements to minimize future violations; and the nature and means of discovery of the violations under MTDSW's voluntary self-disclosure.

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 MTDSW allegedly sold engines not certified by ARB in violation of requirements of Title 13 California Code of Regulations for which no other specific penalty or fine is provided for by Part 5 of Division 26 of the Health and Safety Code.

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. However, since the small off-road engines involved in this case are illegal for use or sale in California, all of the emissions attributable to them are illegal and excess as well.

(17) MTDSW 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.

(18) 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.

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

California Air Resources Board

By: _____
Name: Richard W. Corey
Title: Executive Officer
Date: 10/17/2014

MTD Southwest Inc

By: _____
Name: James Milinski
Title: Treasurer
Date: 8-25-14