

## SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into by and between the CALIFORNIA AIR RESOURCES BOARD (hereinafter "CARB"), with its principal office at 1001 I Street, Sacramento, California 95814 and Mitsubishi Turbocharger and Engine America, Inc. (hereinafter "MITSUBISHI") with its principal place of business at 2 Pierce Place, Suite 1100, Itasca, Illinois 60143 (collectively, "The Parties").

### RECITALS

1. The California Health and Safety Code mandates the reduction of the emission of air pollution from off-road engines. (Health & Saf. Code §§ 43013; 43018).
2. CARB adopted the "*Off-Road Compression-Ignition Engines and Equipment Regulation*" (Cal. Code Regs. §§ 2420-2427) (Off-Road CI Regulation) in 1993 to reduce emissions of Oxides of Nitrogen (NOx), Hydrocarbons (HC), Carbon Monoxide (CO) and Particulate Matter (PM) from these off-road engines.
3. California Code of Regulations, title 13, section 2420(a)(3) requires manufacturers of new off-road compression-ignition engines that are manufactured for sale, sold, offered for sale, introduced or delivered for introduction into commerce, or imported into California to certify these engines and obtain an Executive Order (EO) from CARB.
4. To certify and obtain an EO, manufacturers must show the engines meet the emission standards (either through a direct standard or through a family engine level or "FEL" under the averaging, banking, and trading or "ABT" program) (Cal. Code Regs. § 2423); labeling requirements (Cal. Code Regs. § 2424); based on the model year (MY) and maximum engine power.
5. Manufacturers may produce equipment and engines that are exempt from meeting current model year emission standards for a portion of their California-directed production volume using flexible allowances. (Cal. Code Regs. § 2423(d)(1)(C)).
6. As a prerequisite to using any Tier 4 flexibility allowances, the manufacturer is required to notify CARB of its intent to use such allowances, label the engines or equipment, and submit an annual report after each year to CARB that indicates "flexibility allowances have been used to verify that the allowances claimed do not exceed the number of allowances permitted." (Cal. Code Regs. § 2423 (d)(5)&(7)).
7. To meet the labeling requirements, manufacturers must comply with California Code of Regulations, Title 13, section 2424(c)(3), which incorporates 40 CFR Part 1039.135 and 40 CFR Part 1068.45. This requires manufacturers to affix a

permanent emission control label so “no one can remove it without destroying or defacing it.”

8. Failure to comply with any requirement of the Off-Road CI Regulation is a violation of state law that may result in penalties up to thirty-seven thousand five hundred dollars (\$37,500) for each action. (Health & Saf. Code, §§ 43016; Cal. Code Regs., tit.13, § 2420 et seq.)
9. MITSUBISHI manufactured for sale, offered for sale, or labeled for introduction into commerce into California, one model year 2016 and one model year 2017 off-road compression-ignition engines (engine family CMVXL05.0AAD) that were not reported to CARB pursuant to California Code of Regulations, title 13, section 2423(d)(7).
10. The emission label on each of the off-road compression-ignition engine identified in paragraph 9 of the Recitals incorrectly stated the “ENGINE COMPLIES WITH CALIFORNIA EMISSION REQUIREMENTS UNDER 13 CCR 2423(d)” and therefore, were unlawful.
11. In 2017, CARB tested and determined that one type of emission control label being used by MITSUBISHI did not comply with the requirements of California Code of Regulations, title 13, section 2424(c)(3), affecting 314 engines.
12. MITSUBISHI promptly and fully cooperated with CARB throughout its investigation.
13. CARB alleges that if the facts described in recital paragraphs 1-11 were proven, civil penalties could be imposed against MITSUBISHI as provided in Health and Safety Code section 43016.
14. MITSUBISHI admits the facts described in recital paragraphs 1-11, but denies any liability arising therefrom.
15. In consideration of the foregoing, and of the promises and facts set forth herein, the Parties desire to settle and resolve the claims, disputes, and obligations relating to the above-listed alleged violations and voluntarily agree to resolve this matter by means of this Agreement, without the need for formal litigation. MITSUBISHI has taken or agrees to take the actions enumerated below within the Terms and Release for the purpose of settlement and resolution of this matter. CARB accepts this Agreement in termination of this matter.

### **TERMS AND RELEASE**

In consideration of CARB not filing a legal action against MITSUBISHI for the violations alleged above, and in consideration of the other terms set out below, CARB and MITSUBISHI agree as follows:

1. MITSUBISHI shall pay the total sum of three thousand seven hundred fifty dollars (\$3,750.00) as a penalty to the California Air Pollution Control Fund upon execution of this Agreement.

MITSUBISHI shall make the payment by certified check or wire transfer, payable to the **California Air Pollution Control Fund**.

Each check shall be accompanied with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) and sent to:

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

Each wire transfer shall be accompanied with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) and sent to:

State of California Air Resources Board  
c/o Bank of America, Inter Branch to 0148  
Routing No. 0260-0959-3 Account No. 01482-80005  
Notice of Transfer: Asha Sharma Fax: (916) 322-9612  
Reference: CARB Case # C00180

*Wire Transfer Fee: Vendor is responsible for any bank charges incurred for processing wire transfers.*

2. MITSUBISHI shall send the original signed Agreement, copies of payment and the Settlement Agreement Payment Transmittal Form (Attachment A), and any future mailings or documents required per the terms of this Agreement to:

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

3. Facsimile or photocopied signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Agreement.
4. MITSUBISHI shall comply with all requirements of the Off-Road CI Regulation, California Code of Regulations, title 13, section 2423 *et seq.*
5. 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 CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

6. Now, therefore, in consideration of the payment by MITSUBISHI to the California Air Pollution Control Fund in the amount specified above, CARB hereby releases MITSUBISHI and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and predecessors from all claims identified in paragraphs 1-11 of the recitals.
7. The effective date of this Agreement shall be the date upon which it is fully executed.
8. This Agreement constitutes the entire agreement and understanding between CARB 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 CARB and MITSUBISHI concerning these claims.
9. 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.
10. 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.
11. 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.
12. MITSUBISHI agrees that this penalty imposed on MITSUBISHI by CARB is nondischargeable under 11 U.S.C § 523 (a)(7).
13. 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. 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. 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. 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.
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. Penalty Determination**

Below is the basis for the assessed penalties (Health & Saf. Code § 39619.7.)

**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 Health and Safety Code section 43016, 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 engines that were not properly reported pursuant to California Code of Regulations, title 13, section 2423 *et seq.* and failed to attach a permanent emission control label to engines in violation of California Code of Regulations, title 13, section 2424(c)(3).

**The manner in which the penalty amount was determined, including aggravating and mitigating factors and per unit or per vehicle basis for the penalty.**

The penalties in this matter were determined in consideration of all relevant circumstances, including the eight statutory factors. (Health & Saf. Code § 42403.) The per unit penalty in this case is a maximum of \$37,500 per unit per strict liability violation. The penalty obtained in this case is approximately \$12 per unit for 316 units. This is due to cooperation by MITSUBISHI, the history of compliance with the company, and the speedy efforts taken by the company to correct the issue.

Penalties were determined based on the unique circumstances of this matter, considered together with the need to set penalties at levels sufficient to deter violations, the need to remove any economic benefit from noncompliance, to

obtain swift compliance, and considering past penalties in similar cases, and the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger depending on the unique circumstances of the case.

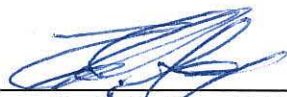
**Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.**

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 incorrect emission control labels. However, since the emission control labels were not legal for use in California, emissions attributable to them are illegal and excess as well. In the interests of settlement and because of the time and expense involved, the parties elected not to do such testing. 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.

19. MITSUBISHI acknowledges that CARB has complied with all provisions of Health and Safety Code section 39619.7, and considered the relevant factors in Health and Safety Code sections 42403 and 43024.
20. The penalty in this case was based in part on confidential business information provided by MITSUBISHI that is not retained by CARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between CARB and MITSUBISHI that CARB does not retain in the ordinary course of business either. The penalty also reflects CARB'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.
21. The undersigned represent that they have full power and authority to enter this Agreement.

ACKNOWLEDGED AND ACCEPTED BY:

**California Air Resources Board**

By:   
Name: Todd P. Sax, D.Env.  
Title: Chief, Enforcement Division  
Date: 5/3/19

**Mitsubishi Turbocharger and Engine America, Inc.**

By:   
Name: Kenichi Iizuka  
Title: Deputy General Manager, Service & Engineering  
Date: 4/9/2019