SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (Agreement) is entered into by and between the STATE OF CALIFORNIA AIR RESOURCES BOARD (ARB) with its principal office at 1001 I Street, fifth floor, Sacramento, California 95814 and MTU America Inc. (MTU), formerly Tognum America Inc. and prior to that known as MTU Detroit Diesel, Inc., 39525 MacKenzie Drive, Novi, MI 48377.

RECITALS

1. California Health and Safety Code section 43103 provides, "(b) The state board shall, consistent with subdivision (a), adopt standards and regulations for light-duty and heavy-duty motor vehicles, medium-duty motor vehicles, as determined and specified by the state board, portable fuel containers and spouts, and off-road or nonvehicle engine categories...."

2. California Health and Safety Code section 43016 provides, "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 ($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. California Health and Safety Code section 43017, provides, "The state board may enjoin any violation of any provision of this part, or of any order, rule, or regulation of the state board, in a civil action brought in the name of the people of the State of California, except that the state board shall not be required to allege facts necessary to show, or tending to show, lack of adequate remedy at law or to show, or tending to show, irreparable damage or loss."

4. California Code of Regulations, Title 13, section 2423 requires that heavy-duty off-road compression ignition engines introduced into commerce in California shall be certified to emission standards adopted by the Air Resources Board.

5. California Code of Regulations, Title 13, section 2423 provides the applicable Exhaust Emission Standards and Test Procedures - Off-Road Compression-Ignition Engines. The following provisions of Part 89, Title 40, Code of Federal Regulations, "as adopted or amended by the U. S. Environmental Protection Agency on the date listed, are adopted and incorporated herein by this

reference for 2000 model year and later off-road compression-ignition engines subject to the requirements of the California Code of Regulations, Title 13, section 2423(b)(1)(A), as the California Emission Standards and Test Procedures for New 2000 and Later Tier 1, Tier 2, and Tier 3 Off-Road Compression-Ignition Engines…".

6. In November 2008, MTU disclosed to EPA and ARB certain irregularities that occurred during durability testing on Series 4000 engines that formed part of the basis for MTU's applications for certificates of conformity (from US EPA) and Executive Orders (from ARB) covering model year 2008 and 2009 engine families that MTU manufactured and sold in California and elsewhere in the United States.

7. In response, EPA voided *ab initio* the certificates of conformity for MTU's model year 2008 and 2009 engine families designated 8MDDL95.4XTR, 8MDDM65.0MTR, 9MDDL95.4XTR, 9MDDN65.0MTR, and 9MDDN86.2MTR. Accordingly, the engines in these engine families are not certified to the applicable emission standards in Code of Federal Regulations, Parts 89 and 94, or California Code of Regulations, Title 13, section 2423. Notwithstanding EPA's voiding *ab initio*, EPA has not determined that Defendant's Model Year 2008 and 2009 engine families 8MDDL95.4XTR, 8MDDM65.0MTR, 9MDDL95.4XTR, 9MDDN65.0MTR, and 9MDDN86.2MTR exceed the emissions limitations in 40 C.F.R. Parts 89 and 94.

8. As a result of the EPA action to void certificates of conformity *ab initio*, MTU engines in the specified engine families that could be regarded as uncertified were sold in California and were offered for sale for an undetermined number of times over an unspecified number of days.

9. MTU stipulates to the facts cited in the forgoing recitals.

10. ARB alleges that if the facts described in Recital paragraphs (1) through (11) were proven, civil penalties could be imposed against MTU.

TERMS AND RELEASE

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

1. MTU shall pay the sum of three hundred thousand dollars ($300,000.00) subject to the following terms: 75 percent of the penalty amount, $225,000.00, shall be paid to the California Air Pollution Control Fund. In addition, 25 percent of the penalty amount, $75,000.000, shall be

concurrently paid to the San Joaquin Valley Air Pollution Control District and "for School Bus Diesel Emission Reduction SEP" shall be annotated in the note or memo line of the check. Full payment is due immediately upon execution of this settlement agreement.

Please submit payment along with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) to:

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

2. MTU will ensure that its engines meet all applicable ARB requirements prior to introducing them into commerce in California.

3. This Agreement shall apply to and be binding upon MTU and its 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.

5. Now, therefore, in consideration of the payment by MTU to the California Air Pollution Control Fund in the amount specified above, ARB hereby releases MTU and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, predecessors, affiliates, customers, end-users, and suppliers from any and all claims that ARB may have based on the facts and allegations described in recital paragraphs 1 through 12 above, including with respect to use of engines in the specified engine families. The undersigned represent that they have the authority to enter this Agreement.

6. This Agreement constitutes the entire agreement and understanding between ARB and MTU concerning the claims and settlement in this Agreement, and this Agreement fully supersedes and replaces any and all prior negotiations and agreements of any kind or nature, whether written or oral, between ARB and MTU concerning these claims.

7. 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.

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. 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.

12. 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.

13. **SB 1402 Statement**

Senate Bill 1402 (Dutton, chapter 413, statutes of 2010) requires ARB to provide information on the basis for the penalties it seeks (see Health and Safety Code section 39619.7). This 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 penalty in this case was imposed based on an undetermined number of violations extending over an unspecified number of days.

The provisions of law the penalty is being assessed under and why that provision is most appropriate for that violation.

The penalty provisions being applied is this case are referenced in the Recitals above because MTU introduced into commerce uncertified compression-ignition engines into California, in violation of California Code of Regulations, Title 13, Section 2423.

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 However, since ARB alleges that the subject units were not certified for use in California, the subject units and the emissions attributable to them should not have been released in California. It is not practicable to quantify these emissions because the information necessary to do so is unavailable.

14. MTU 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, 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.

15. 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 cases, and the potential costs and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger on a per unit basis.

16. The penalty was also based on confidential business information provided by MTU that is not retained by ARB in the ordinary course of business. The penalty was also based on confidential settlement communications between ARB and MTU that ARB does not retain in the ordinary course of business either. The penalty is the product of an arms length negotiation between ARB and MTU and reflects ARB's assessment of the relative strength of its case against MTU, the desire to avoid the uncertainty, burden, and expense of litigation, to obtain swift compliance with the law, and to remove any unfair advantage that MTU may have secured from its actions.

17. MTU represents that it understands the legal requirements applicable to introducing non-California certified vehicles into California.

California Air Resources Board

By: _____

Name: Richard Corey
Title: Executive Officer
Date: 2/23/15

MTU America, Inc.

By: _____

Name: Thomas Koenig
Title: President and Chief Financial Officer
Date: 02/10/15

Air Resources Board

Mary D. Nichols, Chairman
1001 I Street • P.O. Box 2815
Sacramento, California 95812 • www.arb.ca.gov

Matthew Rodriquez
Secretary for
Environmental Protection

Edmund G. Brown Jr.
Governor

ATTACHMENT A

Settlement Agreement Payment Transmittal Form
Due Date:

Date: **February 10, 2015**	**ARB Case #: MSES-09-022**
Company: MTU America, Inc.	
Settlement Total Amount: **$ 300,000.00**	**Accounting Return Copy to:** **Erin Blanton, Air Pollution Specialist, Enforcement Division**

Payment of this penalty shall be split between the two entities, as follows:

- **$ 225,000.00** paid to the order of **California Air Pollution Control Fund**
- **$ 75,000.00** paid to the order of **San Joaquin Valley Air Pollution Control District –"For School Bus & Diesel Emission Reduction SEP"**

Attach Check Here

☐ *Or if paying by credit card, please check this box and also complete the attached Credit Card Payment Form (also located at www.arb.ca.gov/enf/edforms/creditcard_english.pdf)*

☐ *Or if paying by wire transfer, please check this box and use the following wire transfer information:*
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: ARB Case #
Wire Transfer Fee: Vendor is responsible for any bank charges incurred for processing wire transfers.

Please submit this form and payments, no later than DATE, to:

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

(For Shipping, i.e. Fedex)
California Air Resources Board
Accounting Office
1001 "I" Street
Floor 20, Room 20-25
Sacramento, California 95814

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website: http://www.arb.ca.gov.