

# **SETTLEMENT AGREEMENT**

AG Number 2017-00112

## **1. INTRODUCTION**

### **1.1 Anthony E. Held, Ph.D., P.E. and LifeTrak Incorporated**

This settlement agreement (Settlement Agreement) is entered into by and between Anthony E. Held, Ph.D., P.E. (Dr. Held), and LifeTrak Incorporated (LifeTrak), a wholly owned subsidiary of Salutron Incorporated (Noticed Recipient), with Dr. Held and LifeTrak, collectively referred to as the “Parties.” LifeTrak, for the purposes of this Settlement Agreement only, is acknowledging receipt of the Notice and is resolving Dr. Held’s allegations as found in the Notice (defined below). However, LifeTrak represents that as a wholly owned subsidiary of Noticed Recipient, it is an entirely separate entity with its own corporate structure and its own brand of products. Furthermore, Noticed Recipient represents it has never conducted business as LifeTrak directly, indirectly or as a “dba.” Dr. Held is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. LifeTrak wishes to address any exposures that may affect consumers of its products that were sold through retailers which are subject to Proposition 65.

### **1.2 General Allegations**

Dr. Held alleges that Noticed Recipient, and LifeTrak, manufacture, import, sell and/or distribute for sale in California, products containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so without providing the health hazard warning that Dr. Held alleges is required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

### **1.3 Product Description**

The products that are covered by this Settlement Agreement are safety vests with vinyl/PVC components containing DEHP including, but not limited to, *LifeTrak Safety Vest*,

*LTKA2008, #082080073, UPC #8 18603 01123 7* that are manufactured, imported, distributed, sold and/or offered for sale by LifeTrak in the State of California, hereinafter the “Products.”

**1.4 Notice of Violation**

On or about January 27, 2017, Dr. Held served Noticed Recipient, and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Noticed Recipient violated Proposition 65 when it allegedly failed to warn its customers and consumers in California that the Products expose users to DEHP. LifeTrak was subsequently provided with the Notice and notified Dr. Held that he had noticed LifeTrak’s parent company, and that LifeTrak endeavors to resolve the allegations that are contained in the Notice. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

**1.5 No Admission**

Both LifeTrak and Noticed Recipient deny the material, factual and legal allegations contained in the Notice and maintain that all products that LifeTrak and Noticed Recipient have sold and distributed in California, including the Products, have been and are in compliance with all laws. Noticed Recipient and LifeTrak deny that they manufacture, import, sell and/or distribute for sale in California products that are not in compliance with the requirements of Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by LifeTrak and/or Noticed Recipient of any fact, finding, issue of law or violation of law, or any type of relationship between LifeTrak and Noticed Recipient; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by LifeTrak and/or Noticed Recipient of any fact, finding, conclusion, issue of law or violation of law. This Section shall not, however, diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement.

## **1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean June 13, 2017.

## **2. INJUNCTIVE RELIEF: REFORMULATION**

### **2.1 Reformulation Standards**

“Reformulated Products” are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

### **2.2 Reformulation Commitment**

LifeTrak asserts that it has ceased all manufacturing, import production, and distribution of the Products in 2016, and has no intent to produce or sell in California any other Products. Retailers that carried the Products have informed LifeTrak that they have sold their inventory and there are no pending orders for future shipments of the Products. Similarly, LifeTrak has represented that it has no intention of producing the Products in the future. However, if LifeTrak elects to resume the manufacture, production, import and/or distribution of the Products following the Effective Date, it shall not manufacture, import, distribute, sell and/or offer the Products for sale in the State of California unless they are Reformulated Products pursuant to Section 2.1 above.

## **3. MONETARY SETTLEMENT TERMS**

### **3.1 Civil Penalty**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the claims referred to in this Settlement Agreement, LifeTrak shall pay \$2,500 in civil penalties in accordance with this Section. The penalty payment will be allocated in accordance with California Health & Safety Code sections 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) by Dr. Held.

Within five (5) calendar days of the Effective Date, LifeTrak shall provide its payment in a check made payable to “Anthony E. Held, Ph.D., P.E., Client Trust Account” in the amount of \$625, and a check made payable to “OEHHA” in the amount of \$1,875, to be delivered to the address provided in Section 3.3, below. Dr. Held’s counsel shall be responsible for remitting LifeTrak’s penalty payment under this Settlement Agreement to OEHHA.

**3.2 Reimbursement of Attorneys’ Fees and Costs**

The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, LifeTrak expressed a desire to resolve Dr. Held’s fees and costs. The Parties then negotiated a resolution of the compensation due to Dr. Held and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5. For all work performed through the mutual execution of this agreement, LifeTrak shall reimburse Dr. Held and his counsel \$16,500. LifeTrak’s payments shall be delivered to the address in Section 3.3, within five (5) calendar days of the Effective Date, in the form of a check payable to “The Chanler Group.” The reimbursement shall cover all fees and costs incurred by Dr. Held investigating, bringing this matter to LifeTrak’s attention and negotiating a settlement of the matter in the public interest.

**3.3 Payment Address**

All payments required by this Settlement Agreement shall be delivered to the following address:

The Chanler Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

#### **4. CLAIMS COVERED AND RELEASED**

##### **4.1 Dr. Held's Release of Proposition 65 Claims**

Dr. Held acting on his own behalf, and *not* on behalf of the public, releases LifeTrak, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom LifeTrak directly or indirectly distribute or sell Products including, but not limited, to downstream distributors, wholesalers, customers, retailers – including Target Stores, franchisees, cooperative members, and licensees (collectively, “Releasees”), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to DEHP in the Products, as set forth in the Notice. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products, as set forth in the Notice. The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to LifeTrak.

##### **4.2 Dr. Held's Individual Releases of Claims**

Dr. Held, in his individual capacity only and *not* in his representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of Dr. Held of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the Products manufactured, imported, distributed, or sold by LifeTrak prior to the Effective Date. The Parties further understand and agree that this Section 4.2 release shall not extend upstream to any entities that manufactured the Products, or any component parts thereof, or any distributors or suppliers who sold the Products, or any component parts thereof to LifeTrak. Nothing in this Section affects Dr. Held's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve LifeTrak's Products.

#### **4.3 LifeTrak's Release of Dr. Held**

LifeTrak, on behalf of themselves, their past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Dr. Held and his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Dr. Held and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

#### **5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

#### **6. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then LifeTrak shall provide written notice to Dr. Held of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve LifeTrak from any obligation to comply with any pertinent state or federal toxics control law.

#### **7. NOTICE**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and: (i) personally delivered; (ii) sent by first-

class (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to one party by the other party at the following addresses:

For LifeTrak:

Mike Tsai, Chief Executive Officer  
LifeTrak Incorporated  
8371 Central Avenue, Unit A  
Newark, CA 94560

With a Copy to:

George Dowell, Esq.  
Dowell LLP  
1153 Lincoln Ave, Suite C  
San Jose, CA 95125

For Dr. Held:

Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

**8. COUNTERPARTS; FACSIMILE AND SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**9. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

Dr. Held agrees to comply with the reporting requirements referenced in Health & Safety Code section 25249.7(f).

**10. MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties.

11. **AUTHORIZATION**

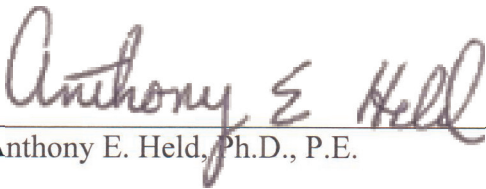
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

**AGREED TO:**

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Date: June 15, 2016

Date: 6/15/17

By:   
Anthony E. Held, Ph.D., P.E.

By:   
Robert B. Gerstenberger  
SVP, Operations & OEM Sales  
LifeTrak Incorporated