

# PROPOSITION 65 SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 The Parties

This Settlement Agreement (“**Agreement**”) is entered into by and between Keep America Safe and Beautiful (“**KASB**”) and The National Telephone Supply Company (“**NTSC**”), with KASB and NTSC each individually referred to as a “**Party**” and, collectively, the “**Parties.**” KASB is a California-based non-profit organization proceeding in the public interest pursuant to California Health & Safety Code § 25249.7(d) to ensure that chemicals known to the State of California to cause cancer, birth defects or other reproductive harm are disclosed in or eliminated from consumer products sold in California. KASB alleges NTSC is a person in the course of doing business for purposes of California Health & Safety Code § 25249.11(b).

### 1.2 Consumer Product Description

KASB alleges NTSC manufactures, imports, sells, and distributes for sale in California tools with vinyl/PVC handles containing di(2ethylhexyl) phthalate (“**DEHP**”) and diisononyl phthalate (“**DINP**”) including, but not limited to, the *Nicopress 1-VC1 Professional Cable Cutter*, SKU # *TOOLNICO-1-VC* without providing the health hazard warnings KASB alleges are required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”), referred to, hereinafter, as the “**Products.**” DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm; DINP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer.

### 1.3 Notice of Violation

On June 23, 2022, KASB served NTSC, Versales, Inc., the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging NTSC violated Proposition 65 by failing to warn its customers and consumers in California that its Products can expose users to DEHP and DINP. To the best of the Parties’

knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

#### **1.4 No Admission**

NTSC denies the factual and legal allegations contained in the Notice and maintains all products it sold or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Agreement shall constitute or be construed as, nor shall compliance with this Agreement constitute or be construed as, an admission by NTSC of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect NTSC's obligations, responsibilities, and duties under this Agreement.

#### **1.5 Effective Date**

For purposes of this Agreement, "**Effective Date**" shall mean December 6, 2023.

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

#### **2.1 Commitment to Reformulate or Warn**

Commencing on the Effective Date and continuing thereafter, all Products NTSC manufactures, imports, sells, ships, or distributes for sale, in or into California, directly or through one or more third party retailers or e-commerce marketplaces, shall either meet the Reformulation Standard for Reformulated Products, as defined by Section 2.2, below, or shall bear an interim clear and reasonable health hazard warning pursuant to the following Sections 2.3 through 2.5.

#### **2.2 Reformulation Standard & Reformulated Products Defined**

For purposes of this Agreement, "**Reformulated Products**" are defined as Products containing di(2-ethylhexyl) phthalate ("DEHP") and/or diisononyl phthalate ("DINP") in maximum concentrations of less than 0.1 percent (1,000 parts per million) in any "accessible component" (i.e., any component that may be touched during a reasonably foreseeable use) when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization. For purposes of compliance with the

Reformulation Standard, testing samples shall be prepared and extracted using Consumer Product Safety Commission (“CPSC”) methodology CPSC-CH-C1001.09.4 and analyzed using U.S. Environmental Protection Agency methodology 8270D, or other methodologies utilized by federal or state government agencies to determine phthalate content in a solid substance. (“Reformulation Standard”).

### 2.3 Clear and Reasonable Warnings

Commencing on or before the Effective Date, and continuing thereafter, for all Products that do not meet the Reformulation Standard, NTSC shall provide interim clear and reasonable health hazard warnings for all Products it imports, distributes, sells, offers or provides for sale, in or into California that do not meet the Reformulation Standard. For purposes of this Agreement, a warning shall be deemed clear and reasonable, if it meets the criteria set forth in California Health & Safety Code § 25249.5 *et seq.* and title 27 California Code of Regulations (“Cal. Code Regs.”) § 25600 *et seq.*, as may be amended from time to time.

Each warning shall be prominently placed with such conspicuousness, as compared with other words, statements, designs, or devices, as to render it likely to be read and understood by an ordinary individual under customary conditions prior to purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion. For purposes of this Agreement, using any of the following warnings shall be deemed clear and reasonable:

#### (a) Warnings:

1. For Products containing DEHP, NTSC shall use the following warning:

**⚠ WARNING:** This product can expose you to chemicals, including di(2-ethylhexyl)phthalate (DEHP), which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

2. For Products containing DINP, NTSC shall use the following warning:

**⚠ WARNING:** This product can expose you to chemicals, including

diisononyl phthalate (DINP), which is known to the State of California to cause cancer. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

3. For Products containing both DEHP and DINP, NTSC shall use the following warning:

**⚠WARNING:** This product can expose you to chemicals, including di(2-ethylhexyl)phthalate (DEHP) and diisononyl phthalate (DINP), which are known to the State of California to cause cancer and birth defects or other reproductive harm.. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

**(b) Foreign Language Requirement.** Where a consumer product sign, label or shelf tag used to provide one of the foregoing warnings includes consumer information, as that term is defined in Title 27 California Code of Regulations § 25600.1(c) (“Consumer Information”), in languages other than English, then Product warning must also be provided in those languages in addition to English.

#### **2.4 On-Product Warnings.**

NTSC shall affix a warning on the Product Label (defined below), its packaging or directly on each Product that is imported, distributed, sold or otherwise provided for sale to consumers in or into California. “Product Label” is defined as a display of written, printed or graphic material printed on or affixed to a Product or its immediate container or wrapper. The entire warning shall appear in at least 6-point type, and in no event shall it be smaller than the largest type size used for other consumer information on the Product.

Warnings provided pursuant to Section 2.3 must print the word “WARNING:” in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word “WARNING:” must be a black exclamation point in a yellow equilateral triangle with a black outline, except, if the sign or label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “WARNING:”. The warning may be contained in the same section of the packaging, labeling, or

instruction booklet that states other safety warnings, if any, concerning the use of the Products and shall be at least the same size as those other safety warnings.

## **2.5 Internet Warnings.**

For all Products that are not Reformulated Products and are imported, distributed, sold or offered for sale after the Effective Date via the internet to customers located in California, or sold in or into California, by NTSC directly or through third-party websites over which NTSC has the ability to control the application of warnings, NTSC shall provide warnings for each Product, both on the Product label, in accordance with Section 2.4, and by prominently displaying the warning to customers prior to purchase or during the checkout process, such that the consumer does not have to seek out the information being provided. The warning or a clearly marked hyperlink to the warning, using the word “WARNING” and given in conjunction with the sale of Products via the internet, shall appear on: (a) the same web page on which the Product is displayed; (b) the same web page as the order form for the Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The warning shall appear in any of the above instances adjacent to or immediately following the display, description or price of the Product for which it is given in the same type size or larger than other consumer information provided for the Product. For third-party websites, as a condition of sale, NTSC shall notify the sellers the Products must be accompanied by a warning, prior to and as a condition of sale, in or into California, and shall supply the warning requirements, as detailed above.

## **2.6 Compliance with Regulations**

The warning requirements set forth herein are recognized by the Parties as not being the exclusive manner of providing a warning for the Products. If the Office of Environmental Health Hazard Assessment regulations require or permit specific safe harbor warning text and/or methods of transmission different than those set forth herein Section 2, then NTSC shall be entitled to use, at its discretion, such other specific safe harbor warning text and/or methods of transmission without being deemed in breach of this Settlement Agreement. If regulations,



legislation, or judicial rulings are enacted or issued, providing that a Proposition 65 warning for the Product is no longer required, a lack of warning will not thereafter be a breach of this Agreement. The Parties agree that, if and where appropriate, NTSC may follow the procedure for warnings set forth in Title 27, California Code of Regulations, § 25600.2 or a similar procedure to provide warnings for the Products consistent with this Agreement.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty**

Pursuant to Health and Safety Code § 25249.7(b), NTSC agrees to pay a civil penalty of \$1,500 within ten (10) business days of the Effective Date. NTSC's civil penalty payment will be allocated according to Health and Safety Code §§ 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent (25%) retained by KASB. NTSC shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount of \$1,125; and (b) "Seven Hills LLP in trust for "Keep America Safe and Beautiful" in the amount of \$375. KASB's counsel shall deliver to OEHHA and KASB their respective portions of the penalty payments.

#### **3.2 Reimbursement of Attorneys' Fees and Costs**

KASB and its counsel offered to resolve the allegations in the Notices without reaching terms on the amount of reimbursement of attorneys' fees and costs. Shortly after the Parties finalized the other material settlement terms, they negotiated and reached an accord on the amount of reimbursement to be paid to KASB's counsel, under general contract principles and the private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution and reporting of this Agreement to the Office of the California Attorney General. Within ten (10) days of the Effective Date, NTSC agrees to issue a check in the amount of \$19,375 payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to NTSC's attention, negotiating a settlement

in the public interest, and reporting its terms to Office of the California Attorney General pursuant to Section 9.

### **3.3 Payments**

All payments payable and due under this Agreement shall be delivered to KASB's counsel at following address:

Seven Hills LLP  
Attn: Kimberly Gates Johnson  
4 Embarcadero Center, Suite 1400  
San Francisco, CA 94111

KASB shall provide to NTSC Federal Form W9s for all payees named herein at the time this Settlement Agreement is fully-executed by all Parties. In return, NTSC shall promptly provide tracking information for payments remitted to counsel for KASB.

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

### **4.1 KASB's Release of NTSC**

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and NTSC, of any violation of Proposition 65 that was or could have been asserted by KASB on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, against NTSC, its directors, officers, employees, agents, successors, assignees, attorneys, and each entity to whom NTSC directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, including, without limitation, Versales, Inc., franchisees, cooperative members, and licensees (collectively, "**Releasees**"), based on their failure to warn, arising under Proposition 65, about alleged exposures to DEHP and DINP contained in Products manufactured, distributed, sold and/or offered for sale by NTSC in California before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, KASB as an individual and *not* on behalf of the public, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of KASB's rights to

institute or participate in, directly or indirectly, any form of legal action and releases all claims that KASB may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to DEHP and DINP in Products manufactured, distributed, sold and/or offered for sale by NTSC, before the Effective Date (collectively, "**Claims**"), against NTSC and Releasees.

The Parties further understand and agree this Section 4.1 release shall not extend upstream to any entities who manufactured the Products or any component parts thereof, or to any distributors or suppliers who sold the Products or any component parts thereof to NTSC, nor shall this Section 4.1 release extend downstream to any third-party entities not providing a warning, pursuant to Section 2. Nothing in this Section affects KASB's right to commence or prosecute an action under Proposition 65 against a Releasee not involving NTSC's Products.

#### **4.2 NTSC's Release of KASB**

NTSC, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against KASB and its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by KASB and its 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 Agreement, any provision of this Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

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

The terms of this Agreement shall be governed by the laws of the State of California and apply within California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then NTSC may provide



KASB with written notice of any asserted change in the law, and shall have no further injunctive obligations pursuant to this Agreement, with respect to, and to the extent that, the Products are so affected. Nothing in this Agreement shall be interpreted to relieve NTSC from its obligation to comply with any pertinent state or federal law or regulation.

**7. NOTICE**

Unless specified herein, all correspondence and notice required by this Agreement shall be in writing and sent by: (i) first-class registered or certified mail, return receipt requested; or (ii) a recognized overnight courier to any Party by the other at the following addresses:

For NTSC:

Frederick Watkins, Executive VP  
The National Telephone Supply Company  
5100 Superior Avenue  
Columbus, OH 44103

For KASB:

Kimberly Gates Johnson, Partner  
Seven Hills LLP  
4 Embarcadero Center, Suite 1400  
San Francisco, CA 94111

With a copy to:

Kendra S. Sherman, Partner  
Squire Patton Boggs (US) LLP  
2000 Huntington Center  
41 South High Street  
Columbus, OH 43215

Any Party may, from time to time, 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 PDF SIGNATURES**

This Agreement may be executed in counterparts and by portable document format (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 REPORTING REQUIREMENTS**

KASB and its counsel agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

**10. ENTIRE AGREEMENT**

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto.

**11. MODIFICATION**

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

**12. AUTHORIZATION**

The undersigned are authorized to execute this Agreement on behalf of their respective Parties and have read, understood, and agreed to all of the terms and conditions of this Agreement.

**AGREED TO:**

Date: 12/12/2023

By: 

My Nguyen, Chief Financial Officer  
Keep America Safe and Beautiful

**AGREED TO:**

Date: 12/08/23

By: 

Frederick Watkins, Executive VP  
The National Telephone Supply Company