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 SIMS GROUP USA CORPORATION (hereinafter "SIMS"), 11320 Dismantle Ct. Rancho Cordova, California 95742.

## I. RECITALS

(1) HSC section 39650-39675 mandates the reduction of the emission of substances that have been determined to be toxic air contaminants (TACs). In 1998, following an exhaustive 10-year scientific assessment process, the ARB identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant. Drayage trucks are controlled under the Drayage Truck Regulation as codified in title 13 CCR, section 2027.

(2) Title 13 CCR, section 2027 (d)(3)(A) requires drayage truck owners meet all applicable emission requirements and deadlines set forth in Phases 1 and 2 detailed in Section 2027 (d).

(3) Title 13 CCR, section 2027 (d)(5)(A)(2) requires drayage truck motor carriers only dispatch drayage trucks that meet emission standards and compliance deadlines set forth in Phases 1 and 2 in Section 2027 (d). Section 2027 (d)(5)(A)(3) requires motor carriers only dispatch drayage trucks that are registered and in good standing with the Drayage Truck Registry (DTR).

(4) The ARB Enforcement Division has documented that SIMS, as a motor carrier, dispatched drayage trucks that are either not compliant with the emissions standards set forth in the Drayage Truck Regulation or not registered with the DTR.

(5) Failure to comply with the requirements of title 13 CCR, section 2027 is a violation of state law resulting in penalties. HSC, section 39674, authorize civil or administrative penalties not to exceed one thousand dollars ($1,000) or ten thousand dollars ($10,000) for each day that the violation occurs.

(6) SIMS neither admits nor denies the specific factual allegations, and does not admit to any liability, as alleged in this Settlement Agreement and Release.

(7) In order to resolve these alleged violations, SIMS has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, the ARB accepts this Agreement in termination and settlement of this matter.

(8) In consideration of the foregoing, and of the promises and facts set forth herein, the parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed violations, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, the ARB and SIMS agree as follows:

## II. TERMS AND RELEASE

In consideration of the ARB not filing a legal action against SIMS for the alleged violations referred to above, and SIMS payment of the penalties set forth in Section 1 below, the ARB and SIMS agree as follows:

(1) Upon execution of this Agreement, the sum of one thousand and eight hundred dollars ($1,800) shall be paid on behalf of SIMS no later than (March 5, 2015), as follows:

- $1,350 to the **Air Pollution Control Fund**
- $ 450 to the **Peralta Colleges Foundation**

**Please send the signed Settlement Agreement and any future mailings or documents required per the terms of this Settlement Agreement to:**

**Mr. Ryman Simangan/Air Pollution Specialist**
**Air Resources Board, Enforcement Division**
**P.O. Box 2815**
**Sacramento, CA 95812**

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

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

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

(3) SIMS shall not violate HSC sections 43701 *et seq.*, 44011.6 *et seq.*, and title 13 CCR, sections 2183, *et seq*, or any other provision of law under the jurisdiction of the ARB.

(4) SIMS shall not violate the Drayage Truck Regulation, as codified in Title 13, CCR, section 2027.

(5) SIMS shall not dispatch drayage trucks that are not compliant with the emission standards set forth in the Drayage Truck Regulation or drayage trucks that are not registered with the DTR. The ARB reserves the right to audit the dispatch records of ABS for compliance with Title 13, CCR, section 2027(d)(5) any time in the future.

(6) SIMS shall complete Low NOx Software Upgrades (reflash) on all applicable heavy-duty diesel engines operating in California and report to the ARB within 45 days of this agreement.

(7) SIMS shall instruct all employees who operate diesel-fueled vehicles to comply with the idling regulations set forth in title 13 CCR section 2485, within 45 days of this Agreement.

(8) SIMS shall not violate the Truck & Bus regulation as codified in title 13 CCR, section 2025 et seq.

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

(10) This Agreement constitutes the entire agreement and understanding between ARB and SIMS concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and SIMS concerning the subject matter hereof.

(11) No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all parties to this Agreement.

(12) 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.

(13) 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.

(14) 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.

(15) Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the 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 HSC sections 42403 and 43024.

Drayage Violations

The per vehicle penalty for the drayage violations involved in this case is a maximum of $1,000 per vehicle per day for strict liability violations or $10,000 per vehicle per day for negligent or intentional violations pursuant to HSC section 39674.

The penalty obtained for the drayage motor carrier violations involved in this case is $1,800 for 18 trucks dispatched not compliant with in-use standards at $100 per dispatch after considering the factors specified in HSC section 43024.

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

Drayage Violations

The penalty provision being applied for the Drayage Truck Regulation (title 13 CCR, section 2027) violations in this case is HSC section 39674 because the Drayage Truck Regulation is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in *H&SC* sections 39650 - 39675 and because ABS, as a drayage motor carrier dispatched drayage trucks that were either not compliant with the emission standards set forth in the Drayage Truck Regulation or not registered with the DTR.

**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 prohibit emissions above a specified level of g/hp-hr. However, since the hours of operation of the non-compliant trucks involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

(16) SIMS acknowledges that ARB has complied with Senate Bill 1402 in prosecuting or settling this case. Specifically, ARB has considered all

relevant facts, including those listed at HSC 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 being assessed under a provision of law that prohibits the emission of pollutants at a specified level.

(17) 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.

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

(19) Now therefore, in consideration of the payment on behalf of SIMS to the Air Pollution Control Fund and the Peralta Colleges Foundation, the ARB hereby releases SIMS and their principals, officers, agents, predecessors and successors from any and all claims the ARB may have or have in the future based on the circumstances described in paragraphs (1) through (8) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

| **California Air Resources Board** | | **Sims Group USA Corporation** | |
|---|---|---|---|
| Signature: | | Signature: | |
| Print Name: | James R. Ryden | Print Name: | L Steven Shinn |
| Title: | Chief, Enforcement Division | Title: | President |
| Date: | 02/25/15 | Date: | 2-17-15 |