

## **SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into by and between the California Air Resources Board ("CARB"), with its principal location at 1001 I Street, Sacramento, California 95814; and Cummins Inc. ("Cummins") with its headquarters at 500 Jackson Street, Columbus, Indiana 47201 (collectively, the "Parties," or individually, a "Party").

### **LEGAL BACKGROUND**

#### **(1) Statutory Background.**

- a. The California Health and Safety Code mandates implementation of emission standards for new motor vehicles and motor vehicle engines to control emissions; allows CARB to certify these vehicles and engines; and prohibits any person from selling, introducing into commerce, importing, delivering, purchasing, renting, leasing, acquiring, or receiving a new motor vehicle or new motor vehicle engine for use, registration, or resale unless it meets applicable emission standards, was properly tested by the manufacturer, has an onboard diagnostic ("OBD") system, and is certified by CARB. This includes attempts or assistance. (Health & Saf. Code §§ 43100, 43101, 43105.5, 43151, 43153, 43211, and 43212).
- b. All new motor vehicle engines must be, in all material respects, substantially the same in construction as the test motor vehicle engine certified by CARB. (Health & Saf. Code § 43106). Manufacturers must also provide certain warranties. (Health & Saf. Code § 43205).
- c. No person may disconnect, modify, or alter any motor vehicle pollution control device required under Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code unless CARB finds by resolution that the alteration or modification does not reduce the effectiveness of the required motor vehicle pollution control device or the alteration or modification results in emission levels that comply with existing state or federal standards for that model-year of the vehicle. (Veh. Code § 27156(b) and (h)).
- d. No person may install, sell, offer for sale, or advertise any device, apparatus, or mechanism intended for use with, or as a part of, a required motor vehicle pollution control device or system that alters or modifies the original design or performance of the motor vehicle pollution control device or system unless CARB finds by resolution that the device, apparatus, or mechanism does not reduce the effectiveness of the required motor vehicle pollution control device or the device, apparatus, or mechanism results in emission levels that comply with existing state or federal standards for that model-year of the vehicle. (Veh. Code § 27156(c) and (h)).

(2) Regulatory Background.

- a. CARB adopted “Motor Vehicle Pollution Control Devices” (Vehicle Standards) (Cal. Code Regs., tit. 13, §§ 1900-2048) to reduce emissions of, inter alia, oxides of nitrogen (NOx) and hydrocarbons (HC) from new and used motor vehicles and motor vehicle engines in California.
- b. Prior to vehicles or engines being sold, introduced into commerce, imported, delivered, purchased, rented, leased, acquired, or received into California, they must be certified based on regulatory defined test procedures and emission test data, and receive an Executive Order (“EO”) from CARB. The vehicles and engines must, inter alia, meet the emission standards (either through a direct emission standard or through a fleet wide phase-in requirement) for each model year (“MY”) certified, must be equipped with a computer-sensed emission-related component to inform the vehicle operator of a malfunction (“OBD system”), and come with an emission control system warranty. Manufacturers seeking certification must also disclose and adequately describe all Auxiliary Emission Control Devices (“AECs”) in their application for certification. In addition, if a manufacturer makes any changes to the engines post certification, it must notify CARB of the running change or field fix and receive approval from CARB. (Cal. Code Regs., tit. 13, §§ 1900-2048).
- c. Light- and Medium-Duty Vehicles and Engines.
  - i. The 2001-2014 certification requirements and test procedures for determining compliance with the emission standards for light- and medium-duty vehicles and engines are set forth in the “California 2001 through 2014 Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2009 through 2016 Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles,” as amended December 6, 2012 (the “2001-2014 Test Procedures”). (Cal Code Regs., tit. 13 § 1961(d)). The 2001-2014 Test Procedures require manufacturers to, among other things, list all AECs, and they incorporate 40 C.F.R. § 86.1842-01, which CARB interprets as requiring manufacturers to notify CARB of any running changes or field fixes.
  - ii. The 2015-2022 certification requirements and test procedures for determining compliance with the emission standards for light- and medium-duty vehicles and engines are set forth in the “California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles,” as amended September 2, 2015 (the “2015 Test Procedures”), which is incorporated into California law by reference. (Cal. Code Regs, tit. 13 §

1961.2(d)).<sup>1</sup> The 2015 Test Procedures require manufacturers to, among other things, list all AECDs and incorporate 40 C.F.R. § 86.1842-01, which CARB interprets as requiring manufacturers to notify CARB of any running changes or field fixes.

- iii. The 2022 and subsequent certification requirements and test procedures for determining compliance with the emission standards for light and medium-duty vehicles and engines are set forth in, inter alia, the "California 2015 through 2025 Model Year Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Year Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," as amended August 25, 2022 (the "2015-2025 Test Procedures"), which is incorporated into California law by reference. (Cal. Code Regs, tit. 13 § 1961.2(d)). The 2015-2025 Test Procedures require manufacturers to, among other things, list all AECDs, and they incorporate 40 C.F.R. § 86.1842-01, which CARB interprets as requiring manufacturers to notify CARB of any running changes or field fixes.

d. Heavy-Duty Engines and Vehicles.

- i. The certification requirements and test procedures for determining compliance with the emission standards for heavy-duty engines and vehicles are set forth in the "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel-Engines and Vehicles," adopted December 12, 2002, as last amended September 9, 2021 ("The Heavy-Duty Test Procedures"), which is incorporated herein by reference. (Cal. Code Regs, tit. 13 §§ 1956.8(b) 1971).
- ii. The Heavy-Duty Test Procedures require manufacturers to, among other things, list all AECDs, and they incorporate 40 C.F.R. § 86.1842-01, which CARB interprets as requiring manufacturers to notify CARB of any running changes or field fixes.

e. Off-Road Diesel Equipment.

- i. The certification requirements and test procedures for determining compliance with the emission standards are set forth in, inter alia, the "California Exhaust Emission Standards and Test Procedures for New 2011 and Later Tier 4 Off-Road Compression-Ignition Engines, Parts I-D, I-E, and I-F," as adopted October 25, 2012 (the "2011 and Later Test Procedures"), which are incorporated into California law by reference. (Cal. Code Regs, tit. 13 § 2421(a)(4)(B)).

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<sup>1</sup> Cal. Code Regs., tit. 13, § 1961.2 was amended effective November 30, 2022.

- ii. The 2011 and Later Test Procedures incorporate 40 C.F.R. § 1039.225, which requires manufacturers to amend their certification applications if any changes occur with respect to any information that is included or should be included in their application. This includes any change to an engine configuration already included in an engine family in a way that may affect emissions or change any of the components described in their application for certification, as well as production and design changes that may affect emissions any time during the engine's lifetime.

(3) Penalty Provisions.

- a. During the relevant times, failure to comply with certification requirements was a violation of state law that could result in a maximum penalty of fifty dollars (\$50.00 USD) up to forty-five thousand five hundred and sixty-three dollars (\$45,563.00 USD)<sup>2</sup> for each strict liability violation of the Vehicle Standards for each vehicle or engine. (Health & Saf. Code, §§ 43016, 43154, 43211, 43212; Cal. Code Regs., tit. 13, § 1900 et seq.).
- b. Violations of Vehicle Code section 27156 may result in penalties not to exceed one thousand five hundred dollars (\$1,500 USD) for each violation. (Health & Saf. Code § 43008.6(b)).

### **CASE BACKGROUND**

(4) Corporate Entity. At all relevant times, Cummins was organized under the laws of the State of Indiana as a corporation and sold engines that were incorporated into vehicles that were sold, introduced into commerce, imported, delivered, purchased, rented, leased, acquired, and/or received into California.

(5) Allegations. CARB alleges the following violations of State law:

- a. Undisclosed AECDs. Cummins' certification applications for the MY2016-2019 Nissan Titan engines failed to disclose at least two software-based AECDs. Some of the AECDs reduced the effectiveness of the emission control systems, and thus the Titan vehicles and/or engines do not match the configurations specified in the certification applications submitted to CARB.

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<sup>2</sup> Assembly Bill (AB) 1685 (Gomez, Stats. 2016, ch. 604) revised Health and Safety Code sections 43016, 43154, 43211, and 43212, establishing changes to maximum per-violation penalties for violations of vehicular air pollution control laws and regulations. Effective January 1, 2017, the maximum penalty was \$37,500, and was adjusted for inflation based on the California Consumer Price Index (CPI). The Department of Industrial Relations publishes the California CPI online at: <https://www.dir.ca.gov/OPRL/CAPriceIndex.htm>.

- b. Emission Standard Exceedances. Cummins sold engines that were incorporated into Nissan Titan vehicles that were introduced into commerce, imported, or delivered into California in violation of the Vehicle Standards because the Nissan Titan vehicles and/or engines failed to comply with the applicable emission standards as listed in the California Executive Orders.
  - c. Undisclosed Running Changes. Certain Cummins certified vehicles and/or engines failed to comply with certification requirements because Cummins implemented running changes without submitting the request to CARB and obtaining CARB approval prior to making the changes.
  - d. Undisclosed Field Fixes. Certain Cummins certified vehicles and/or engines failed to comply with the certification requirements because Cummins implemented field fixes without submitting the request to CARB and obtaining CARB approval prior to making the changes.
- (6) Acknowledgment. Cummins denies the allegations in Paragraph 5 and does not admit liability to CARB arising out of or in connection with these allegations.
- (7) Consideration. In consideration of CARB not filing a legal action against Cummins for the violations alleged in Paragraph 5, and in consideration of the other terms set out below, the Parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed alleged violations, and they voluntarily agree to resolve this matter by means of this Settlement Agreement. To resolve the violations alleged herein, Cummins has taken, or agrees to take, the actions enumerated below within the Terms and Conditions section. Further, CARB accepts this Settlement Agreement in termination and full settlement of this matter.

### **TERMS AND CONDITIONS**

In order to avoid further costs resulting from the pursuit and/or defense of the violations alleged in Paragraph (5), and in consideration of Cummins' agreement to complete all terms and conditions set forth below, CARB and Cummins agree as follows:

- (8) Settlement Amount. Cummins shall pay a civil penalty of thirty-two million three hundred seventy-five thousand and five hundred dollars (\$32,375,500 USD) to CARB. Cummins shall make a payment of 50% within 30 calendar days from the date CARB notifies Cummins of the full execution of the Settlement Agreement consistent with Paragraph 14 (Notices).
- (9) Infrastructure Project. In lieu of up to 50% of the civil penalty, Cummins may implement an infrastructure project in California (the "Infrastructure Project").
- a. Cummins shall provide notice to CARB of its intent to implement the

Infrastructure Project within 90 days of full execution of the Settlement Agreement (the "Project Notice").

- b. Upon approval by CARB (through the Executive Officer or his delegate) of the Project Notice, Cummins shall submit an infrastructure plan to CARB (the "Implementation Plan") for consideration and approval within 90 days of CARB's approval.
- c. If CARB (through the Executive Officer or his delegate) approves the Implementation Plan, the civil penalty identified in Paragraph 8 of this Settlement Agreement will be reduced by the cost of the Infrastructure Project as set out in the Implementation Plan, and any reasonable associated costs incurred in evaluating and developing the Implementation Plan for such infrastructure projects in accordance with this Paragraph not to exceed 1% of the total 50% of the civil penalty.
- d. Cummins shall pay the remaining balance of the civil penalty within 30 days of any of the following:
  - i. Cummins does not provide Project Notice;
  - ii. CARB denies the Project Notice or Implementation Plan; or
  - iii. Cummins provides notice to CARB that all or part of the Implementation Plan CARB approved is not practicable.

(10) Mitigation. Cummins shall pay nine million, eight hundred twelve thousand and seven hundred fifty-four dollars (\$9,812,754 USD) to CARB for the purpose of mitigating total lifetime excess NOx emissions. Cummins shall make all payments within 30 calendar days from the date CARB notifies Cummins of the full execution of the Settlement Agreement consistent with Paragraph 14 (Notices).

(11) Recall. Cummins shall implement a voluntary recall on the Nissan Titans (MY 2016-2019) that addresses the (1) SONOx target table update; (2) alternative table update; and (3) particulate matter sensor update. Cummins shall submit a Voluntary Emissions Recall Plan in accordance with the requirements of Cal. Code Regs., tit. 13, § 2114 (a) by September 30, 2024, and Cummins shall initiate the recall in accordance with the approved Voluntary Emissions Recall Plan by December 31, 2024.

(12) Civil Penalty and Mitigation Payment Method to CARB. Cummins shall pay the civil penalty and mitigation amount by check, credit card, wire transfer, or portal, payable to "the California Air Resources Board," using instructions provided separately by CARB in a Payment Transmittal Form, which shall be provided within 14 days of the Effective Date, as defined in Paragraph 18 of the Settlement Agreement. Cummins is responsible for all payment processing fees. Payments

shall be accompanied by the Payment Transmittal Form to ensure proper application. CARB shall deposit the civil penalty money into the Air Pollution Control Fund for the purpose of enhancing CARB's mobile source emissions control program through additional certification review, in-use evaluation, real-world testing, enforcement actions, and other CARB activities related to the control of air pollution. CARB shall deposit the mitigation money into the Air Pollution Control Fund for the purpose of reducing air pollution in California through CARB mitigation programs. Should payment instructions change, CARB will provide notice to Cummins in accordance with Paragraph 14 (Notices).

- (13) Documents. Cummins shall promptly email or mail a copy of the fully executed Settlement Agreement, with a copy of proof of payment of the civil penalty and mitigation payment and a copy of the Payment Transmittal Form to the address or email in Paragraph 14 (Notices).
- (14) Notices. Unless otherwise specified in this Settlement Agreement, whenever notifications, submissions, or communications are required by this Settlement Agreement, they shall be submitted in writing to the address or email below:

As to CARB:

California Air Resources Board  
Enforcement Division / Settlement Agreements  
Engine and Parts Enforcement Section  
P.O. Box 2815  
Sacramento, California 95812-2815  
CumminsCD@arb.ca.gov

As to the Office of the California Attorney General:

Michael P. Cayaban  
Supervising Deputy Attorney General  
Natural Resources Law Section  
California Department of Justice  
600 West Broadway, Suite 1800  
San Diego, CA 92101  
mike.cayaban@doj.ca.gov

Joshua Caplan  
Deputy Attorney General  
Natural Resources Law Section  
California Department of Justice  
600 West Broadway, Suite 1800  
San Diego, CA 92101  
josh.caplan@doj.ca.gov

As to Cummins by email:  
To be provided by Cummins

As to Cummins by mail:  
Nicole Y. Lamb-Hale  
Vice President, Chief Legal Officer and Corporate  
Secretary  
Jonathan Wood  
Vice President and Chief Technical Officer  
301 E. Market Street  
Indianapolis, IN 46204

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. Notices submitted pursuant to this Paragraph shall be deemed submitted upon emailing or mailing.

- (15) Recovery of Costs. In the event that Cummins fails to timely make civil penalty and mitigation payments pursuant to Paragraphs 8 and 10, respectively, and implement the recall pursuant to Paragraph 11, and CARB is the prevailing party in a civil action to enforce this Settlement Agreement, Cummins shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (16) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the settlement embodied in this Settlement Agreement and supersedes and replaces any and all prior agreements and understandings of any kind, whether written or oral, between the Parties concerning the settlement embodied hereof. This Settlement Agreement consists of 15 pages and 35 paragraphs.
- (17) Binding Effect. This Settlement Agreement binds Cummins, and any principals, officers, receivers, directors, successors and assignees, subsidiary and parent corporations; and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (18) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (19) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Settlement Agreement.
- (20) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be illegal, invalid or



unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.

- (21) Force Majeure. For purposes of this Settlement Agreement, “force majeure” means any event arising from causes beyond the control of Cummins, of any entity controlled by Cummins, or of Cummins’ contractors or the applicable first-tier customer and its dealers, that delays or prevents the performance of any obligation under this Settlement Agreement despite Cummins’ best efforts to fulfill the obligation. Given the need to protect public health and welfare and the environment, the requirement that Cummins exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure - as it is occurring and following the potential force majeure - such that any delay or non-performance is, and any adverse effects of the delay or non-performance are, minimized to the greatest extent possible. “Force majeure” does not include financial inability to perform any obligation under this Settlement Agreement.
- a. If any event occurs for which Cummins will or may assert a claim of force majeure, Cummins shall provide initial notice to California by electronic mail transmitted to the e-mail addresses set forth in Paragraph 14 (Notices). The deadline for the initial notice is seven calendar days after Cummins first knew or should have known that the event would likely delay or prevent performance. Cummins shall be deemed to know of any circumstance of which any applicable first-tier customer or its dealers, or a contractor of, a subcontractor of, or an entity controlled by Cummins knew or should have known.
  - b. If Cummins seeks to assert a claim of force majeure concerning the event, within fourteen days after the initial notice under Paragraph 21(a), Cummins shall submit a further notice to CARB and the Office of the California Attorney General (legal counsel to CARB) by electronic mail transmitted to the e-mail addresses set forth in Paragraph 14 (Notices). That further notice shall include: (i) an explanation and description of the event and its effect on Cummins’ completion of the requirements of the Settlement Agreement; (ii) a description and schedule of all actions taken or to be taken to prevent or minimize the delay and/or other adverse effects of the event; (iii) if applicable, the proposed extension of time for Cummins to complete the requirements of the Settlement Agreement; (iv) Cummins’ rationale for attributing such delay to a force majeure; (v) a statement as to whether, in the opinion of Cummins, such event may cause or contribute to an endangerment to public health or welfare or the environment; and (vi) all available proof supporting the claim that the delay was attributable to a force majeure.
  - c. Failure to submit a timely or complete notice or claim under Paragraph 21 regarding an event precludes Cummins from asserting any claim of force

majeure regarding that event.

- d. If CARB agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Settlement Agreement that is affected by the force majeure event will be extended by CARB for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. CARB will notify Cummins in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.
- e. If CARB does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, CARB will notify Cummins in writing of that decision.
- f. If Cummins elects to invoke the dispute resolution procedures set forth in Paragraph 23 (Dispute Resolution), it shall do so no later than fifteen (15) calendar days after receipt of CARB's notice required by Paragraph 21(e). In any such proceeding, Cummins has the burden of proving that it is entitled to relief under Paragraph 21, that its proposed excuse or extension was or will be warranted under the circumstances, and that it complied with the requirements of Paragraphs 21(a) - 21(b). If Cummins carries this burden, the delay or non-performance at issue shall be deemed not to be a violation by Cummins of the affected obligation of this Settlement Agreement identified to CARB and the court.

(22) Choice of Law. This Settlement 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.

(23) Dispute Resolution. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Paragraph shall be the exclusive mechanism to resolve disputes arising between the Parties under or with respect to this Settlement Agreement. Cummins' failure to seek resolution of a dispute under this Paragraph concerning an issue of which it had notice and an opportunity to dispute under this Paragraph 23 prior to an action by CARB to enforce any obligation of Cummins arising under this Settlement Agreement precludes Cummins from raising any such issue as a defense to any such enforcement action.

a. Types of Dispute Resolution.

- i. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Settlement Agreement shall first be the subject of informal negotiations.

The dispute shall be considered to have arisen when Cummins sends CARB and the Office of the California Attorney General (legal counsel to CARB) a written Notice of Dispute by email in accordance with Paragraph 14 (Notices). Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 45 calendar days from the date Cummins sent its Notice of Dispute, unless that period is modified by a written agreement of the Parties. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by CARB shall be considered binding unless, within 45 calendar days after the conclusion of the informal negotiation period, Cummins invokes formal dispute resolution procedures as set forth below.

- ii. Formal Dispute Resolution. Cummins shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by sending CARB and the Office of the California Attorney General (legal counsel to CARB) a written Statement of Position regarding the matter in dispute by email, in accordance with Paragraph 14 (Notices). The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Cummins' position and any supporting documentation relied upon by Cummins. CARB will send Cummins its Statement of Position by email within 45 calendar days of receipt of Cummins' Statement of Position, in accordance with Paragraph 14 (Notices). CARB's Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by CARB. CARB's Statement of Position is binding on Cummins, unless Cummins files a motion for judicial review of the dispute in accordance with the following Paragraph.
  - iii. Judicial Dispute Resolution. Cummins may seek judicial review of the dispute by filing a complaint with the court and serving it on CARB and the Office of the California Attorney General (legal counsel to CARB). The complaint must be filed within 30 calendar days of receipt of CARB's Statement of Position pursuant to the preceding Paragraph. The complaint may not raise any issue that Cummins did not raise in informal dispute resolution pursuant to Paragraph 23(a)(i) unless the issue was first raised by CARB's Statement of Position. The complaint shall assert Cummins' position on the matter in dispute. CARB shall respond to Cummins' complaint in accordance with California law.
- b. Standard of Review.
- i. Record Review. Except as otherwise provided in the Settlement Agreement, any disputes concerning matters under this Settlement Agreement are accorded record review, which includes the adequacy or appropriateness of

plans or procedures to implement plans, schedules, or any other item that requires approval by CARB under this Settlement Agreement; the adequacy of the performance of work undertaken pursuant to this Settlement Agreement; and/or all other disputes that are accorded review on the administrative record under applicable principles of administrative law.

- ii. Burden of Proof. Cummins shall have the burden of demonstrating, based on the administrative record, that the position of CARB is arbitrary and capricious or otherwise not in accordance with law based on the administrative record.
- iii. Maintenance of Record. CARB will maintain an administrative record of the dispute, which will contain all statements of position, including supporting documentation, submitted pursuant to Paragraph 23. Prior to the filing of any motion, the Parties may submit additional materials to be part of the administrative record pursuant to applicable principles of administrative law.
- iv. Rules of Construction. In any disputes brought under Paragraph 23, it is hereby expressly acknowledged and agreed that this Settlement Agreement was jointly drafted in good faith by CARB and Cummins. Accordingly, the Parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Settlement Agreement.

(24) Non-Discharge. It is further agreed that the penalties described in this Settlement Agreement are non-dischargeable under United States Code, Title 11, Section 523(a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit.

(25) Non-Waiver. The failure to enforce any provision of this Settlement 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 Settlement 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 Settlement Agreement or otherwise provided by law.

(26) Intent to be Bound. The Parties represent that: They have participated fully in the review and drafting of this Settlement Agreement; understand and accept all terms; enter into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Settlement Agreement; have agreed to this Settlement Agreement after independent investigation and agree it was not arrived at through fraud, duress, or

undue influence; and knowingly and voluntarily intend to be legally bound by this Settlement Agreement.

- (27) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (28) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (29) Release. In consideration of full payment of the civil penalty, mitigation, recall, and all other undertakings above, and subject to the reservations in Paragraph 35 below, CARB hereby releases Cummins and its principals, officers, receivers, directors, successors and assignees, subsidiary and parent corporations, from the allegations contained in Paragraph 5 of this Settlement Agreement based on the circumstances described in all paragraphs contained in this Settlement Agreement.
- (30) Authority. The undersigned represent that they have full authority to enter into this Settlement Agreement.

### **PENALTY BASIS**

- (31) Per Unit Penalty. The per unit or per vehicle penalty in this case ranged, during the relevant times, from a maximum of fifty dollars up to forty-five thousand five hundred and sixty-three dollars (\$45,563.00 USD) per action under Health and Safety Code section 43008.6, 43016, 43106, 43211, 43212, and 43154, for violations of the Vehicle Standards (Cal. Code Regs., tit.13, §§ 1900 et seq.). The per unit or per vehicle penalty in this case is a maximum of one thousand five hundred dollars (\$1,500) pursuant to Health and Safety Code section 43008.6 for violation of Vehicle Code section 27156. The penalty of \$32,375,500 is for 120,488 noncompliant engines and vehicle. The per unit penalty in this case ranges from approximately \$220 to \$2,318 per noncompliant unit.
- (32) Emissions. Some of the provisions cited above do prohibit emissions above a specified level. Without information on usage and emission rates, it is not practicable to quantify the excess emissions.
- (33) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors as described in CARB's Enforcement Policy: whether the violator came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; innovative nature and the magnitude of the effort required to comply, and the accuracy,

reproducibility, and repeatability of the available test methods; efforts to attain, or provide for, compliance prior to violation; action taken to mitigate the violation; financial burden to the violator; and voluntary disclosure. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, 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.

- (34) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by Cummins or confidential settlement communications.
- (35) Effect of Settlement/Reservation of Rights. The following shall apply:
- a. This Settlement Agreement resolves the civil claims of CARB for the violations alleged in this Settlement Agreement.
  - b. Notwithstanding any other provision of the Settlement Agreement, CARB reserves all claims, rights, and remedies, whether in law or equity, against Cummins with respect to:
    - i. Noncompliance with or enforcement of any provision of this Settlement Agreement.
    - ii. Facts that were not disclosed by Cummins to CARB.
    - iii. Any imminent and substantial endangerment to the public health, welfare, or the environment in California, whether related to the violations addressed in this Settlement Agreement or otherwise.
    - iv. Any criminal liability.
    - v. Any claim(s) of any officer or agency of California, other than CARB.
  - c. In any subsequent administrative or judicial proceeding initiated by CARB for injunctive relief, civil penalties, or other appropriate relief relating to enforcement of the Settlement Agreement, Cummins shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by CARB in the subsequent proceeding were or should have been brought in the instant case.
  - d. This Settlement Agreement does not limit or affect the rights of Cummins or of CARB against any third parties not covered by this Settlement Agreement, nor does it limit the rights of third parties not covered by this Settlement Agreement against Cummins, except as otherwise provided by law. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Settlement Agreement.

Cummins-CARB Settlement Agreement

- e. This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Cummins is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; Cummins' compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits. CARB does not, by its execution of this Settlement Agreement, warrant or aver in any manner that Cummins' compliance with any aspect of this Settlement Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

ACKNOWLEDGED AND ACCEPTED BY:

**CALIFORNIA AIR RESOURCES BOARD:**

Signature: /S/

Name: Steven S. Cliff, Ph.D.

Title: Executive Officer

Address: 1001 "I" Street, Sacramento CA 95814

Date: March 14, 2024

**CUMMINS INC.**

Signature: /S/

Name: Jonathan Wood

Title: Vice President and Chief Technical Officer

Address: 301 E. Market Street, Indianapolis, IN 46204

Date: March 1, 2024

**CUMMINS INC.**

Signature: /S/

Name: Nicole Y. Lamb-Hale

Title: Vice President, Chief Legal Officer and Corporate Secretary

Cummins-CARB Settlement Agreement

Address: 301 E. Market Street, Indianapolis, IN 46204

Date: March 1, 2024