SETTLEMENT AGREEMENT AND RELEASE

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 KLX Incorporated (hereinafter "KLX "), 6801 Avenue 304, Visalia, California 93291.

I. RECITALS

(1) Health and Safety Code, Section 39650-39675 mandates the reduction of the emissions of substances that have been determined to be toxic air contaminants (TACs). In 1998, following an exhaustive 10-year scientific assessment process, the Air Resources Board identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant. Transport Refrigeration Units (TRUs) are powered by diesel fueled engines that emit toxic particulate matter. TRUs are controlled under section 2477 within chapter 9, division 3, Title 13 of the California Code of Regulations (CCR).

(2) CCR, Title 13, section 2477 (e) (1) (E) (1) states "On or before January 31, 2009 (extended to July 31, 2009), owner/operators of all California based TRUs and TRU gen sets subject to this regulation (TRU ATCM) shall apply for an ARB identification number for all California-based TRUs or TRU gen sets operated by the operator..."

(3) CCR, Title 13, section 2477 (e) (1) (A) requires TRU owner/operators comply with the in-use emission category performance standards on or before the in-use compliance dates set forth in section 2477 (e) (1) (B).

(4) The ARB has documented violations of the in-use performance standard.

(5) Health and Safety Code, Sections 39674 (a) and (b) authorize civil penalties for the violation of the programs for the regulation of toxic air contaminants not to exceed one thousand dollars ($1,000.00) or not to exceed ten thousand dollars ($10,000.00) respectively, for each day in which the violation occurs.

(6) California Health and Safety Code (*H&SC*) Section 44011.6 established the Heavy Duty Vehicle Inspection Program (HDVIP). It authorizes ARB to inspect on-road heavy-duty vehicles for excessive smoke emissions and engine tampering and to issue citations, accordingly. The program also requires the vehicle owner to repair its engines that exceed the prescribed ARB smoke opacity standards, perform a post-repair opacity test, and submit proof of repairs and any assessed penalties under the regulations of the Heavy-Duty Smoke Inspection Program, Chapter 3.5, Sections 2180-2188, Title 13, California Code of Regulations (CCR).

(7) *H&SC* Section 43701 provides that ARB shall adopt regulations that require owners or operators of heavy-duty diesel motor vehicles to perform regular inspections of their vehicles for excess smoke emissions.

(8) Title 13, CCR sections 2190 et seq. were adopted under the authority of *H&SC* section 43701 and, with limited exceptions which are not applicable here, apply to all heavy-duty diesel powered vehicles with gross vehicle weight ratings greater than 6,000 pounds which operate on the streets or highways within the State of California.

(9) Title 13, CCR sections 2190 et seq. authorize the Periodic Smoke Inspection Program (PSIP) which requires the owners and operators of California based vehicle fleets of two or more heavy duty diesel motor vehicles with gross vehicle weight ratings greater than 6,000 pounds which operate on the streets or highways within the State of California to conduct annual smoke opacity inspections of their vehicles that are four years older than the model year of the vehicle's engine.

(10) Title 13, CCR section 2192(a) requires inter alia that the owner of the vehicle "[t]est the vehicle for excessive smoke emissions periodically according to the inspection intervals specified in section 2193(a), (b), and (c)", "[m]easure the smoke emissions for each test...", "[r]ecord the smoke test opacity levels and other required test information as specified in section 2194..." and "[k]eep the records specified in section 2194 for two years after the date of inspection."

(11) *H&SC* Section 43016 states, "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 of not to exceed five hundred dollars ($500.00) per vehicle."

(12) The ARB considers testing, measuring, recording, and recordkeeping to be critical components in reducing excessive smoke emissions from these heavy-duty vehicles.

(13) ARB contends KLX failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy duty diesel vehicles for 2008 in violation of Title 13, CCR Sections 2190 et seq.

(14) Health and Safety Code, Section 39650-39675 mandates the reduction of the emissions of substances that have been determined to be toxic air contaminants (TACs). In 1998, following an exhaustive 10-year scientific assessment process, the Air Resources Board identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant. In-use On-road diesel vehicles are powered by diesel fuel engines that emit toxic particulate matter. On-road vehicles are controlled under section 2025 within Title 13 of the California Code of Regulations (CCR).

(15) Title 13, CCR, section 2025 (e) (1) (B) states "Starting January 1, 2012, for all vehicles with GVWR greater than 26,000 lbs, excluding school buses, fleets must meet the requirements of section 2025 (g) or fleets that report may instead comply with the phase-in option of section 2025 (i)".

(16) KLX chose the phase-in option provided in Title 13, CCR Section 2025 (i).

(17) Title 13, CCR, section 2025 (i) (1) the phase-in option, requires that owners of diesel vehicles with a GVWR greater than 26,000 lbs must meet the PM BACT requirements by phasing in 30 percent of their fleet by January 1, 2012.

(18) The ARB has documented that KLX failed to meet the 30 percent PM BACT fleet phase-in option by January 1, 2012.

(19) ARB contends that if the facts described in recital paragraphs (1) – (18) were proven civil penalties could be imposed against KLX, as provided in H&SC sections 39674 and 43016.

(20) KLX is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with ARB. ARB accepts this Agreement in termination of this matter. Accordingly, the parties agree to resolve this matter completely by means of this Agreement, without the need for formal litigation, and therefore agree as follows:

II. TERMS & RELEASE

In consideration of the ARB not filing a legal action against KLX, for the violations referred to above, the ARB and KLX agree as follows:

(1) Upon execution of this Agreement, a civil penalty of twenty three thousand, two hundred and fifty dollars ($23,250.00) shall be paid on behalf of KLX as follows:

- $17,437.50 to the **California Air Pollution Control Fund**
- $5,812.50 to the **Peralta Community College District**

ARB to receive by:

05/30/2012	First Payment
09/28/2012	Second Payment
01/31/2013	Third Payment
05/30/2013	Fourth Payment

- First payment is due on May 29, 2012, and shall be made in form of check payable to the **Peralta Community College District** in the amount of $5,812.50.
- Second payment is due on September 28, 2012, and shall be made in form of check payable to the **California Air Pollution Control Fund** in the amount of $5,812.50.
- Third payment is due on January 31, 2013, and shall be made in the form of a check payable to the **California Air Pollution Control Fund** in the amount of $5,812.50.
- Fourth payment is due on May 30, 2013, and shall be made in the form of a check payable to the **California Air Pollution Control Fund** in the amount of $5,812.50.
- Checks with the signed settlement agreement shall be sent to:

Mr. Aldo Chaney, Air Pollution Specialist
Air Resources Board, Enforcement Division
9480 Telstar Ave., Suite 4
El Monte, CA 91731

(2) Effect of Untimely Payment or Performance. If any payment is more than 15 days late, the entire remaining balance becomes immediately due and payable. In addition, if the Attorney General files a civil action to enforce this settlement agreement, KLX shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

(3) It is agreed that if KLX, including its subsidiary or parent company, at any time becomes insolvent, or makes an assignment for the benefit of creditors or similar action adversely involving KLX, its subsidiary, or parent company, or a proceeding or petition under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt, or receivership law or statute is filed by or against KLX, its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of KLX, its subsidiary, or parent company's properties, or if any deposit account or other property of KLX, its subsidiary, or parent company be attempted to be obtained or held by writ of execution, garnishment, attachment, condemnation, levy, forfeiture or other legal process, or KLX, its subsidiary, or parent company takes any action to authorize any of the foregoing, the entire remaining balance becomes immediately due and payable without notice or demand.

(4) It is further agreed that the penalties described in Terms and Release paragraph 1 are punitive in nature, rather than compensatory. Furthermore, the penalty is intended to deter and punish KLX for violations of state environmental statutes, and these penalties are payable to and for the benefit of ARB, a governmental unit. Therefore, it is agreed that these penalties imposed on KLX by ARB arising from the facts described in recital paragraphs 1 – 18 are non-dischargeable under 11 U.S.C § 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 benefit of governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.

(5) KLX shall comply with one or both of the following options to attend the California Council on Diesel Education and Technology (CCDET I) class, (SAE J1667 Snap Acceleration Smoke Test Procedure for Heavy-Duty Diesel Powered Vehicles) as described on the ARB webpage at http://www.arb.ca.gov/enf/hdvip/ccdet/ccdet.htm. This class is conducted by various California Community Colleges and instructs attendees on compliance with the PSIP, ECL and the HDVIP.

(a) KLX shall have the fleet maintenance manager (or equivalent) and all staff performing opacity tests for compliance with PSIP and the HDVIP attend the CCDET I class. Proof of CCDET I completion shall be provided to ARB within one year of the date of this Agreement and be maintained in each applicable employee's file for the term of his or her employment.

(b) If KLX uses a contractor to perform the annual smoke opacity testing required under the PSIP, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET I course, KLX shall obtain proof that the contractor's staff conducting the smoke opacity tests completed the CCDET course within the past four years. This proof of CCDET completion shall be provided to ARB with PSIP records as required by this Agreement and be maintained with the annual PSIP records.

(6) KLX shall comply with one or both of the following options to attend the CCDET II class (Diesel Exhaust After Treatment and Maintenance), described on the ARB's webpage http://www.arb.ca.gov/enf/hdvip/ccdet/ccdet.htm. This class is conducted by various California Community Colleges and instructs attendees on California's emission regulations and the proper care and maintenance of exhaust after treatment systems (EATS).

(a) KLX shall have the fleet maintenance manager (or equivalent) and all staff responsible for maintenance of EATS attend the CCDET II class. Proof of CCDET II completion shall be provided to ARB within one year of the date of this Agreement and also be maintained in each applicable employee's file for the term of his or her employment.

(b) In case KLX uses a contractor for the maintenance of EATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course; KLX shall obtain proof that the contractor's staff maintaining the EATS device(s) completed the CCDET II course within the last four years. This proof of the CCDET II completion shall be provided by KLX to the ARB within one year of the date of this settlement and be maintained with the EATS installation and maintenance records.

(7) KLX shall provide copies of all PSIP compliance records for the 2012, and 2013 to ARB by January 31 of the following year. Copies shall be addressed to the attention of Mr. Aldo Chaney, Air Pollution Specialist, ARB Enforcement Division, 9480 Telstar Avenue, Suite 4, El Monte, CA 91731. The ARB reserves the right to visit any KLX fleet location at any time to conduct compliance audits for the HDVIP and PSIP, or any other applicable ARB program.

(8) KLX shall complete Low NOx Software Upgrades (reflash) on all applicable heavy duty diesel engines operating in California and report back to the ARB, within 45 days of this Agreement.

(9) Each 1974 or newer diesel powered heavy-duty commercial vehicle in the KLX fleet shall comply with the emission control label (ECL) requirements set forth in the CCR, Title 13, Section 2183 (c).

(10) KLX shall instruct all employees who operate diesel fueled commercial vehicles to comply with the idling regulations set forth in CCR, Title 13, Section 2485, within 45 days of the execution of this agreement.

(11) KLX shall comply with the TRU in-use performance standards set forth in Title 13, CCR, Section 2477 (e) (1) (A). Within 30 days of the execution of this Agreement, KLX shall submit the proof of compliance with the TRU ATCM to Mr. Aldo Chaney, Air Pollution Specialist, ARB Enforcement Division, 9480 Telstar Avenue, Suite 4, El Monte, CA 91731.

(12) KLX shall not violate the TRU ATCM, as codified in CCR, Title 13, Section 2477.

(13) KLX shall not violate Health and Safety Code Sections 43701 et seq. and 44011.6 et seq., Title 13, CCR, Sections 2180 et seq., 2190 et seq., and 2485 et seq.

(14) KLX shall comply with the Truck and Bus Regulation as codified in CCR, Title 13, Section 2025.

(15) This Agreement shall apply to and be binding upon KLX, 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.

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

(17) 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.

(18) 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.

(19) 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.

(20) 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.

(21) **SB 1402 Statement**

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 Health and Safety Code section 42403 and 43024.

TRU Violations

The per unit penalty for the TRU violations involved in this case is a maximum of $1,000 per unit per day for strict liability violations or $10,000 per unit per day for negligent or intentional violations pursuant to H&SC section 39674. The penalty obtained for the TRU violations involved in this case is $16,500.00 or $500.00 each for 33 non-compliant units. After considering all factors specified in 43024, the penalty reflects that fact these were unintentional first time violations, financial hardship applied and that KLX cooperated with the investigation.

PSIP Violations

The per vehicle penalty for the PSIP violations involved in this case is a maximum of $500 per vehicle per violation per year. The penalty obtained for the PSIP violations involved in this case is $250.00 per violation for 1 PSIP violations for a penalty of $250.00 after considering all factors specified in 43024. The penalty reflects that fact these were unintentional first time violations, financial hardship applied and that KLX cooperated with the investigation.

Truck & Bus Violations

The per unit penalty for the Truck & Bus violations involved in this case is a maximum of $1,000 per unit per day for strict liability violations or $10,000 per unit per day for negligent or intentional violations pursuant to H&SC section 39674. The penalty obtained for the Truck & Bus violations involved in this case is $6,500.00 or $500.00 each for 13 non-compliant vehicles. After considering all factors specified in 43024, the penalty reflects that fact these were unintentional first time violations, financial hardship applied and that KLX cooperated with the investigation.

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

TRU Violations

The penalty provision being applied for the TRU ATCM (Title 13, CCR, section 2477) violations in this case is H&SC section 39674 because the TRU ATCM is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in H&SC section 39002, et seq., 39650-39675 and because KLX failed to bring TRUs in its fleet into compliance by the deadlines set forth in the TRU ATCM.

PSIP Violations

The penalty provision being applied to the PSIP violations is H&SC section 43016 because KLX failed to test, measure, record and maintain records of smoke emissions from its fleet of heavy duty diesel vehicles for year 2008 in violation of the PSIP regulation in Title 13, CCR sections 2190 et seq. for 1 violation. Since the PSIP regulation was adopted pursuant to authority granted in Part 5 of Division 26 of the H&SC and since there is no specific penalty or fine provided for PSIP violations in Part 5, H&SC section 43016 is applicable penalty provision.

Truck & Bus Violations

The penalty provision being applied for the Truck & Bus regulation (Title 13, CCR, section 2025) violations in this case is H &SC section 39674 because the Truck & Bus regulation is a Toxic Air Contaminant Control Measure adopted pursuant to authority contained in H&SC section 39002, et seq., 39650-39675 and because KLX failed to bring their diesel fleet into compliance by the deadlines set forth in Title 13, CCR, section 2025 (i) (1).

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.

TRU Violations
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 TRUs involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

PSIP Violations

The provisions cited above do prohibit emissions above a specified opacity level. However, since the hours of operation of the non-compliant truck involved and its individual emission rate are not known, it is not practicable to quantify the excess emissions.

Truck & Bus Violations

The provisions cited above do prohibit emissions above a specified of g/hp-hr. However, since the hours of operation of the non-compliant trucks involved and its individual emission rate are not known, it is not practicable to quantify the excess emissions.

(22) KLX acknowledges that ARB has complied with SB 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 (including a per unit or per vehicle penalty, if appropriate), 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. However, since the hours of operation of the non-compliant TRUs and truck involved and their individual emission rates are not known, it is not practicable for ARB to quantify the excess emissions.

(23) 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 negotiation, and the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a number of days considered together with the complete circumstances of this case.

The penalty was discounted in this matter based on the fact that this was a first time violation and the violator made unusually diligent efforts to comply and to cooperate with the investigation. Penalties in future cases might be smaller or larger on a per unit basis.

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

(25) Now therefore, in consideration of the payment by KLX, in the amount of twenty three thousand, two hundred and fifty dollars ($23,250.00), ARB hereby releases KLX and its principals, officers, agents, predecessors and successors from any and all claims that ARB may have based on the facts and allegations described in recital paragraphs (1) – (18) above. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

By: Ellen M. Peter

Name: Ellen M. Peter
Title: Chief Counsel
Date: 5/30/2012

KLX, Incorporated

By: R. Greenberg

Name: RON GREENBERG
Title: PRESIDENT.
Date: MAY 23, 2012.