SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into between the State of California Air Resources Board ("ARB"), with its principal office at 1001 "I" Street, Sacramento, California, and Premier Performance LLC ("Premier Performance") with its principal place of business at 278 East Dividend Drive, Rexburg, Idaho. As used in this Agreement, the term "the Parties" refers to ARB and Premier Performance.

RECITALS

1. California Vehicle Code section 27156(c) provides that "No person shall install, sell, offer for sale, or advertise any device intended for use with, or as a part of, any required motor vehicle pollution control device or system which alters or modifies the original design or performance of any such motor vehicle pollution control device or system."

2. California Vehicle Code section 27156(h) provides that the prohibitions in section 27156(c) do not apply to a device found by resolution of ARB (1) not to reduce the effectiveness of any required motor vehicle pollution control device or (2) to result in emissions from the modified or altered motor vehicle that are at levels that comply with applicable state or federal standards. Devices or systems described in section 27156 that have not been approved by ARB are referred to below as "non-CARB exempted aftermarket parts".

3. California Code of Regulations, title 13, section 2222(e) states, "The executive officer may exempt add-on and modified parts based on an evaluation conducted in accordance with the "Procedures for Exemption of Add-on and Modified Parts," adopted by the state board on November 4, 1977, as amended June 1, 1990.

4. California Code of Regulations, title 13, section 2222(a) prohibits advertisement in California of any non-ARB certified exempted aftermarket part, which alters or modifies the original design or performance of any required motor vehicle pollution control device or system unless each advertisement contains a required legally adequate disclaimer. California Code of Regulations, title 13, section 2472 prohibits, among other things, selling, offering for sale or advertising in California of any non-ARB certified exempted aftermarket part, which alters or modifies the original design or performance of any required motor vehicle pollution control device or system.

5. California Code of Regulations, title 13, section 2225(a) provides, in pertinent part, that the Executive Officer may seek fines for violations of Vehicle Code Section 27156.

6. California Health and Safety Code 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) per vehicle, portable fuel container, spout, engine, or other

unit subject to regulation under this part." California Health and Safety Code section 43008.6 provides that "The state board may collect a civil penalty not to exceed one thousand five hundred dollars ($1,500) for each violation of Section 27156 of the Vehicle Code."

7. The ARB alleges that between October 31, 2009 and October 31, 2012, Premier Performance sold, offered for sale, and/or advertised aftermarket parts into California (the "Subject Aftermarket Parts").

8. The ARB alleges that the Subject Aftermarket Parts altered or modified the original design or performance of required motor vehicle pollution control devices or systems and were not exempted by ARB, pursuant to California Vehicle Code section 27156(h) and California Code of Regulations, title 13, CCR section 2472(c).

9. ARB alleges that, if the allegations contained in recital paragraphs 1 through 8 were proved, civil penalties could be imposed as provided in California Health and Safety Code sections 43016 and 43008.6.

10. Premier Performance fully cooperated with ARB in its investigation, and immediately implemented business practices to stop shipment of non-ARB exempted aftermarket parts.

11. Premier Performance has no history of prior violations with ARB.

12. Premier Performance admits the facts in recital paragraphs 1 through 11 above, but denies any liability arising thereunder and makes no admission of liability whatsoever with respect to the allegations described in the above-numbered paragraphs.

13. Premier Performance 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.

TERMS, CONDITIONS, AND RELEASE

In settlement of any and all claims that ARB might have against Premier Performance for the violations alleged above, ARB and Premier Performance agree as follows:

14. Premier Performance shall pay the total sum of five hundred fourteen thousand eight hundred ninety five dollars ($514,895.00) subject to the following terms: Seventy five percent of the penalty amount ($386,171.25) shall be paid by certified check to the "**California Air Pollution Control Fund**" within five (5) days of notice to Premier Performance this Agreement has been executed by the ARB. In addition, twenty five percent of the penalty amount ($128,723.75) shall be concurrently paid by certified

check to the "**San Joaquin Valley Air Pollution Control District**" and "For School Bus and Diesel Emission Reduction SEP" shall be annotated in the Note or Memo line of the check. All payments shall be mailed to the following address along with the attached Settlement Agreement Payment Transmittal Form:

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

OR

California Air Resources Board
Accounting Office
1001 "I" Street
Floor 20, Room 20-25
Sacramento, California 95814

15. It is agreed that the penalty imposed on Premier Performance by ARB arising from the facts described in recital paragraphs 1–11 is nondischargeable under 11 United States Code section 523(a)(7).

16. Premier Performance shall not install, sell, offer for sale, or advertise any device in California intended for use with, or as a part of, any required motor vehicle pollution control device or system which alters or modifies the original design or performance of any such motor vehicle pollution control device or system unless it has first received an exemption from ARB.

17. This Agreement shall apply to and be binding upon Premier Performance 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.

18. Now therefore, in consideration of the payment by Premier Performance in the amounts listed above, ARB hereby releases Premier Performance and its principals, officers, agents, subsidiaries, predecessors, and successors from any and all claims ARB may have based on the alleged violations described in recital paragraphs 1 through 11, including claims under California Vehicle Code section 27156, California Code of Regulations, title 13, sections 2222 et seq., and 2472 et seq. for the subject aftermarket parts.

19. The undersigned represent that they have the authority to enter this Agreement.

20. This Agreement constitutes the entire agreement and understanding between ARB and Premier Performance concerning the claims and settlement in this Agreement,

and this Agreement fully supersedes and replaces any and all prior negotiations and agreement of any kind or nature, whether written or oral, between ARB and Premier Performance concerning these claims.

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

22. 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.

23. This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either party on the grounds that said party drafted it.

24. Each Party to this Agreement has reviewed the Agreement independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this Agreement, and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this Agreement.

25. 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 to the extent necessary to fulfill the Agreement's purpose and the intent of the parties.

26. The failure of any Party to enforce any provision of this 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 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 Agreement or otherwise provided by law.

SB 1402 Statement

27. Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010), Health and Safety Code section 39619.7 (a)) requires the ARB to provide information on the basis for the penalties imposed. This required information, which is provided throughout this settlement agreement, is summarized here. The ARB states as follows:

28. **"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 factors specified in Health and Safety Code section 43024.

The penalty in this case is a maximum of $2,000 per violation of the laws and regulations listed herein (HSC sections 43008.6 and 43016). The penalty obtained in this case is $265.00 per unit for the sale of 1,943 non-ARB certified aftermarket parts in California. This reflects the fact that Premier Performance is a wholesale distributor, this was an unintentional, first first-time violation, and Premier Performance's diligent efforts to comply and cooperate with the ARB's investigation.

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

The penalty provisions applied in this case are Health and Safety Code sections 43008.6 and 43016 because Premier Performance sold, offered for sale, and/or advertised aftermarket parts in California that were not exempted by ARB.

30. **"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 not prohibit emissions above a specified level. It is not practicable to quantify these emissions, because the information necessary to do so, such as emission rates and time of use, is not available. There are no testing results available that would indicate how much emissions may have increased as a result of the use of the Subject Aftermarket Parts. However, since the aftermarket parts involved in this case are illegal for use or sale in California, all of the emissions attributable to them are excess and illegal.

31. Premier Performance acknowledges that ARB has complied with SB 1402 in prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at California Health and Safety Code 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 not being assessed under a provision of law that prohibits the emission of pollutants at a specified level.

32. Penalties were determined based on the unique circumstances of this matter, the need to remove any economic benefit from noncompliance, the goal of deterring future violations, obtaining swift compliance, past penalties in similar cases, and the potential costs and risk associated with litigation. The penalty reflects alleged violations extending over a certain period of time, considered together with the complete circumstances of this case. Penalties in future cases might be different.

33. The penalty in this case was based in part on confidential business information provided by Premier Performance 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 Premier Performance that ARB does not retain in the ordinary course of business. The penalty reflects ARB's assessment of the relative strength of its case against Premier Performance, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Premier Performance may have secured from its actions.

California Air Resources Board

By: _____

Richard W. Corey, Executive Officer

Date: 12/18/2014

Premier Performance LLC

By: _____

Rus Michaelson, Chief Executive Officer

Date: 12/12/14