# SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into between the State of California Air Resources Board (ARB), principally located at 1001 I Street, Sacramento, California 95814, and Yang Ming Marine Transport Corp. (ISM), principally located at 8F, No.150, Sin 1st Road, Sinyi District, Keelung 20145, Taiwan (R.O.C)

## RECITALS

(1) Health and Safety Code (H&SC) sections 39650-39675 mandate the reduction of the emission of substances that have been determined to be toxic air contaminants (TAC). In 1998, following an exhaustive 10-year scientific assessment process, ARB identified particulate matter from diesel-powered engines as a TAC.

(2) California Code of Regulations (CCR), title 13, section 2299.2 (13 CCR § 2299.2) and CCR, title 17, section 93118.2 (17 CCR § 93118.2) provides that the regulation applies to any person who owns, operates, charters, rents, or leases any ocean-going vessel (OGV) that operates in Regulated California Waters (RCW).

(3) 13 CCR § 2299.2 (e) (1) and 17 CCR § 93118.2 (e) (1) set forth the regulation's operational requirements for fuel sulfur content limits for auxiliary diesel engines, main engines, and auxiliary boilers.

(4) 13 CCR § 2299.2 (e) (2) and 17 CCR § 93118.2 (e) (2) set forth the regulation's recordkeeping, reporting, and monitoring requirements.

(5) 13 CCR § 2299.2 (f) and 17 CCR § 93118.2 (f) set forth that any failure to meet the regulation's requirements, "including but not limited to the applicable fuel sulfur content limits; recordkeeping requirements; and Noncompliance Fee provision shall constitute a single, separate violation of this section for each hour that a person operates an OGV in RCW until such provision, criteria or requirement has been met."

(6) Failure to properly complete the operational requirements of the regulation is a violation of State Law resulting in penalties. H&SC sections 39674, 39675, 42400 et seq., 42402 et seq., and 42410, authorize civil or administrative penalties not to exceed $1,000.00 or $10,000.00 for each day that the violation occurs.

(7) ARB, with the cooperation of ISM, has documented that ISM failed to properly complete the operational requirements of the regulation on voyages into California; that the *YM Essence* operated within RCW in violation of this regulation one time on July 25, 2016.

(8) ISM admits the facts in Recitals 1 through 7 solely for purposes of this Agreement and any future enforcement action(s) by ARB against ISM. All admissions by ISM in this Agreement shall only be valid for use by ARB in enforcing this Agreement and in any future ARB enforcement action(s) against ISM.

(9) In order to resolve these violations ISM has taken, or agrees to take, the actions enumerated below within the Terms and Release. ARB accepts this Agreement in termination and settlement of this matter.

(10) 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 alleged violation and voluntarily agree to resolve this matter by means of this Agreement. Specifically, ARB and ISM agree as follows:

**TERMS AND RELEASE**

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

(1) Upon execution of this Agreement, the sum of ten thousand dollars ($10,000.00 USD) shall be paid on behalf of ISM to the California Air Pollution Control Fund.

ISM shall submit the payment along with the enclosed Settlement Agreement Payment Transmittal Form by September 16, 2016, to:

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

ISM shall mail the executed Agreement in an envelope marked confidential by September 16, 2016, to:

Mr. Alex Barber
Air Pollution Specialist
California Air Resources Board
9480 Telstar Avenue, Suite 4
El Monte, California 91731

(2) ISM shall not violate 13 CCR § 2299.2 or 17 CCR § 93118.2, Air Toxic Control Measure (ATCM).

(3) ISM shall accurately comply with fuel switchover and keep accurate records.

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

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

(6) No agreement to modify, amend, extend, enlarge, 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.

(7) Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be illegal, invalid, or unenforceable in any jurisdiction, the remainder of this Agreement shall remain in full force and effect.

(8) 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.

(9) 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.

(10) **Senate Bill 1402 (SB 1402) Statement**

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires ARB to provide information on the basis for the penalties it seeks (see H&SC § 39619.7). This information, which is provided throughout this 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 H&SC section 43024 (H&SC § 43024).

The per unit penalty in this case is a maximum of $10,000.00 per day for strict liability violation pursuant to H&SC section 39674. The vessel *YM Essence* operated on fuel that did not meet the 0.1 percent sulfur standard within RCW for one day in violation of the regulation. The penalty obtained in this case is a total of $10,000.00 USD after considering all factors specified in H&SC § 43024. In particular, the penalty reflects penalties obtained in other OGV violation cases.

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

The penalty provision being applied in this case is H&SC § 39674 because ISM failed to comply with ATCM adopted under H&SC section 39600 et seq.

**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.**

Since ARB has alleged that the fuel used did not meet regulatory requirements, all of the emissions from it were excess and illegal. Without information on engine usage and emission rates, however, quantifying these excess emissions is not practicable.

(11) ISM acknowledges that ARB has complied with SB 1402 in settling this case. Specifically, ARB has considered all relevant facts, including those listed at H&SC §§ 42403 and 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 operation of any main or auxiliary diesel engine or auxiliary boiler within the RCW with distillate fuel above 0.1 percent sulfur content.

(12) 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 case negotiations, and the potential cost and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger on a per unit basis.

(13) The penalty reflects ARB's assessment of the relative strength of its case against ISM, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law, and remove any unfair advantage that ISM may have secured from its actions.

(14) Now therefore, in consideration of the payment on behalf of ISM to the California Air Pollution Control Fund, ARB hereby releases ISM and its principals, officers, agents, affiliates, parent companies, subsidiaries, predecessors, and successors from any and all claims for past violations of 13 CCR § 2299.2 and 17 CCR § 93118.2, ARB may have based on the circumstances described in paragraph (7) of the Recitals.

(15) Each of the undersigned represents and warrants that he or she has full power and authority to enter into this Agreement.

Acknowledged And Accepted By:

**California Air Resources Board**

By: _____

Name: Dr. Todd P. Sax
Title: Chief
Date: 9/21/16

**Yang Ming Marine Transport Corp.**

By: C. Chen

Name: CHARLES CHEN
Title: Executive Vice President.
Date: 29th Aug. 2016