## SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into by and between the California Air Resources Board (ARB), with its principal office at 1001 I Street, Sacramento, California, and Envion, LLC (Envion) located at 14724 Ventura Blvd., Suite 200, Sherman Oaks, CA.

## RECITALS

1. ARB alleges that in 2012, Envion sold, supplied, or offered for sale in California, the Ionic Pro Turbo (TA500) and Ionic Pro Car Ionizer (CAC1) air cleaner models that are subject to the Regulation for Limiting Ozone Emissions from Indoor Air Cleaning Devices, title, 17, California Code of Regulations (CCR), section 94800, et seq.

2. ARB alleges that air cleaner model TA500 was not certified for sale in California prior to September 18, 2012, and air cleaner model CAC1 was not certified for sale in California prior to November 28, 2012.

3. ARB further alleges that Envion did not display in a prominent place on the primary web pages the following language, "does not meet California requirements; cannot be sold in California" as required in Sections 94804 and 94805.

4. ARB alleges that if the allegations described in recital paragraphs 1, 2 and 3, were proven; civil penalties could be imposed against Envion as provided in Health and Safety Code sections 42402 et seq., for each and every unit involved in the violation.

5. Envion admits the allegations described in recital paragraphs 1, 2, and 3, but denies any liabilities from said allegations.

6. The parties agree to resolve this matter completely by means of this Agreement, without the need for formal litigation.

Therefore, the parties agree as follows:

## TERMS AND CONDITIONS

1. Envion shall not sell, supply, offer for sale or manufacture for sale in California indoor air cleaning devices in violation of ARB Regulation for Limiting Ozone Emissions from Indoor Air Cleaning Devices, title, 17, California Code of Regulations (CCR), section 94800, et seq. However, the terms and conditions set forth in this agreement will remain valid and enforceable notwithstanding any future violations that may occur.

2. Envion, in settlement of the above-described violations of title17, CCR, section sections 94804 and 94805 agrees to pay a penalty to the ARB in the amount of

$120,000 paid in twenty four payments to the California Air Pollution Control Fund. The first payment of five thousand dollars ($5,000.00) shall be due on the first of the month following the complete execution of this agreement. The remaining twenty three payments in the amount of five thousand dollars ($5,000.00) each shall be due by the first of each month thereafter. If any payment is more than 15 days late and Envion fails to make such payment within three (3) business days following receipt of written notice from the ARB, the entire remaining balance shall become immediately due and payable. The statute of limitations for the above-described violations shall be tolled until Envion has made all payments required by this paragraph.

3. This settlement shall apply to and be enforceable by and binding upon Envion and its officers, directors, receivers, trustees, employees, representatives, successors, assigns, owners, affiliates, subsidiaries and parent companies and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this settlement.

4. The parties stipulate that this Agreement shall be the final resolution of ARB claims regarding the above-described violations and shall have the same res judicata effect as a judgment in terms of acting as bar to any civil action by the ARB against Envion, its affiliates, and its wholesale and retail distributors, and each of their respective past, present and future officers, directors, receivers, trustees, employees, representatives, successors, assigns, owners, affiliates, subsidiaries and parent companies. This Agreement shall be deemed the recovery of civil penalties for purposes of precluding subsequent criminal action as provided in Health and Safety Code section 42400.7(a).

5. 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.

6. This Agreement constitutes the entire agreement and understanding between the ARB and Envion 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 the ARB and Envion, concerning these claims.

7. 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.

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

9. **SB 1402 Statement**. California Health and Safety Code (HSC) section 39619.7 (Senate Bill 1402 - Dutton, Chapter 413, statutes of 2010) requires ARB to provide information on the basis for the penalties it seeks. This Settlement Agreement includes this information, which is also summarized here.

**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 HSC section 42402, et seq. because Envion sold, supplied, offered for sale, or manufactured for sale indoor air cleaning devices for commerce in California prior to obtaining certification for sale in California, in violation of the Indoor Air Cleaning Regulation (Title 17 California Code of Regulations (CCR) section 98400, et seq.). The penalty provisions of HSC section 42402, et seq. apply to violations of the Indoor Air Cleaning Regulation because the regulations were adopted under authority of HSC section 41712 which is in Part 4 of Division 26 of the Health and Safety Code. The penalty provisions of HSC section 42402, et seq. apply to requirements adopted pursuant to Part 4.

**The manner in which the penalty amount was determined, including aggravating and mitigating factors and per unit or per vehicle basis for the penalty.**

Penalties must be set at levels sufficient to discourage violations. ARB considered all relevant circumstances in determining penalties, including the eight factors specified in HSC section 42403.

Under HSC section 42402, et seq. the penalties for strict liability violations of the Indoor Air Cleaning Regulation are a maximum of $1,000 per day of violation, with each day being a separate violation. In cases like this involving unintentional first time violations that resulted in unquantifiable excess emissions of ozone, the ARB sets penalties that approximate one-third of the retail value of the non-compliant units sold. In addition, the ARB has sought additional penalties for the procedural violation for the failure to display the required consumer notification language for uncertified air cleaners advertised via the company's website and investigative costs. The $120,000 in penalties obtained in this case was reduced because Envion cooperated fully with the investigation, posted the required language on its website, recalled product from its retailer distributors, completed the certification process, and reworked and relabeled the products to comply with the regulations, and financial considerations. Penalties in future cases might be smaller or larger.

**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 the excess emissions, if it is practicable to do so.**

The Indoor Air Cleaning Regulation prohibits emission of pollution above a specified level. However, it is not practicable to quantify the amount of excess emissions because the number of hours that the uncertified units involved were in use is unknown. However, since the air cleaners were not certified for sale in California, ARB asserts that all emissions from them are excess and illegal.

10. Envion acknowledges that ARB has complied with SB1402 in investigating and settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC section 42403, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty amount is being assessed.

11. Final 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 negotiated cases, 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 listed above. Penalties in future cases might be smaller or larger on a per ton basis.

12. The final penalty in this case was based in part on confidential business information provided by Envion 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 Envion 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 Envion, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Envion may have secured from its actions.

**CALIFORNIA AIR RESOURCES BOARD**

Dated: 4/15/14

By: _____
Richard W. Corey
Executive Officer

**ENVION, LLC**

Dated: 4/9/14

By: _____
Michael Schumaker
Manager