

**RELEASE AGREEMENT**

This is a release agreement ("Agreement") between the State Energy Resources Conservation and Development Commission ("Energy Commission" or "Commission"), and **[INSERT NAME OF CONSUMER]** (referred to in this Agreement as "the Consumer"). The Energy Commission and the Consumer may be referred to in this Agreement as "Party" or collectively as "Parties."

**1. Release of Claims**

As of the date that this Agreement between the Energy Commission and the Consumer is executed, the Consumer fully releases and discharges the Energy Commission (including without limitation its Commissioners, executive director, managers, employees, and agents), the State of California, and KEMA, Inc. ("KEMA") (including without limitation its affiliates, subsidiaries, shareholders, officers, directors, employees, agents, successors and assigns), from any and all claims, obligations, losses, causes of action, allegations, damages, demands and liabilities, whether in law or equity, whether sounding in tort, contract or otherwise (collectively referred to as "Claims") based on, arising out of, or related to the Consumer's participation in the Commission's Emerging Renewables Program ("ERP"), including without limitation any and all requests by the Consumer for rebates under the ERP, the Energy Commission's suspension of the ERP, and Commission staff's administrative complaint filed against DyoCore, Inc. ("DyoCore") on July 26, 2011 regarding the manufacturer's SolAir wind turbine ("DyoCore turbine") ("DyoCore Complaint Proceeding, Energy Commission Docket No. 11-CAI-03").

**2. Unknown Claims**

The Consumer acknowledges and agrees this release is a requirement for all applicants seeking payment under the Commission Adoption Order dated November 2, 2011 in Energy Commission Complaint Proceeding No. 11-CAI-03, and that the release described in Section 1 of the Agreement applies to all Claims of every kind whatsoever, known and unknown, anticipated and unanticipated, asserted and unasserted, it may have against the Energy Commission (including without limitation its Commissioners, executive director, managers, employees, and agents), the State of California, and KEMA (including without limitation its affiliates, subsidiaries, shareholders, officers, directors, employees, agents, successors and assigns), based on, arising out of, or related to the subject matter referred to in Section 1.

Further, as to the specific Claims released in Section 1, the Consumer waives the application and benefit of California Civil Code Section 1542, as well as any state or federal statute, or common law principle of similar effect. The Consumer certifies that it has read the following provision of Civil Code Section 1542:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The Consumer understands and acknowledges that in consequence of this waiver of Civil Code Section 1542, even if it should eventually suffer additional damages based on, arising out of, or related to the subject matter referred to in Section 1, it will not be able to make any claim for those damages. Moreover, the Consumer acknowledges that it consciously intends these consequences even as to claims for damages that may exist as of the date of this release but that it does not know exist, and that, if known, would materially affect its decision to execute this release, regardless of whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

### **3. Payment to the Consumer**

In consideration for entering into this Agreement, and in order to provide payments or reimbursements for certain actual and provable costs incurred as of October 11, 2011 in connection with any and all Payment Claim Forms, or R2 Forms, that were issued to the Consumer by the Energy Commission under the ERP for small wind systems that use the DyoCore turbine, the Consumer will be paid pursuant to the terms and conditions of the Commission's Adoption Order dated November 2, 2011 in the DyoCore Complaint Proceeding, Energy Commission Docket No. 11-CAI-03, a total of \$ [REDACTED] ("Payment"). The Payment will be made by the State Controller's Office. The Commission will submit a request for Payment to the State Controller's Office ("SCO") within two (2) business days of the execution date of this Agreement. Additionally, the Commission will pay an additional \$10 charge to have the SCO expedite Payment.

### **4. No Double Recovery**

The Consumer will not receive additional payments from other sources that would result in double recovery (e.g., an insurance claim that would pay for what the Energy Commission has paid for through this Agreement). This requirement does not preclude the Consumer from seeking recovery from DyoCore for amounts not yet covered by the Payment under this Agreement. The Consumer acknowledges that a breach of this condition is a breach of this Agreement.

### **5. No Confidentiality**

The Energy Commission and the Consumer shall not be precluded from disclosing publicly this Agreement as well as the documentation submitted by the Consumer to the Energy Commission to document costs incurred in accordance with

the Energy Commission's Adoption Order in the DyoCore Complaint Proceeding, Energy Commission Docket No. 11-CAI-03, to be reimbursed under the ERP by the Payment.

**6. No Admission of Liability**

This Agreement does not and shall not constitute an admission of liability by either of the Parties and shall not be used by any Party or any other person or entity in any judicial or administrative proceeding for that purpose.

If this Agreement does not become effective or is cancelled or terminated for any reason, it shall be deemed negotiation for settlement purposes only and will not be admissible in evidence or usable for any purpose whatsoever in any judicial or administrative proceedings arising from the subject matter referred to in Section 1 and the underlying facts hereto.

**7. Entire Agreement**

This Agreement constitutes the entire agreement of the Energy Commission and the Consumer concerning the subject matter referred to in Section 1 and supersedes any and all prior negotiations, correspondence, undertakings, and agreements between the Energy Commission and the Consumer. In agreeing to the terms of this Agreement, the Energy Commission and the Consumer warrant that they have not relied in any way upon any representation or statement of the other party regarding the subject matter referred to in Section 1 or the basis or effect of this Agreement other than those representations or statements contained herein.

**8. Further Agreements**

This Agreement shall not be amended, changed, modified, abrogated or superseded by a subsequent agreement unless such subsequent agreement is in the form of a written instrument signed by the Energy Commission and the Consumer.

**9. Advice of Counsel**

The Energy Commission and the Consumer have read the Agreement and have had the opportunity to obtain the advice and assistance of legal counsel in entering into it.

**10. Attorneys' Fees and Costs**

Parties agree to bear their own attorneys' fees and expenses, if any, regarding the specific Claims released in Section 1 and this Agreement.

**11. Governing Law**

The Agreement is entered into, and shall be construed and interpreted, in accordance with the laws of the State of California.

**12. Successors and Assigns**

This Agreement shall be binding upon and inure to the benefit of the Energy Commission and the Consumer and their respective successors and assigns.

**13. Headings**

The headings and captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision thereof.

**14. Severability Clause**

If any provision of this Agreement is held unenforceable, then such provision will be modified to reflect the parties' intention if possible. All remaining provisions of this Agreement shall remain in full force and effect.

**15. Execution**

The Energy Commission and the Consumer each warrant that the person who signs below on behalf of the party has authority to execute this Agreement on behalf of such party and to bind such party to this Agreement.

**[INSERT NAME OF CONSUMER]**

Name (Printed):

Signature: \_\_\_\_\_

Title (if consumer is business entity):

Date:

**California Energy Commission**

Name (Printed): \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_