

March 26, 2009

California Energy Commission  
Re: Docket No. 02-REN-1038  
and Docket No. 03-RPS-1078  
Docket Unit, MS-4  
1516 Ninth Street  
Sacramento, CA 95814-5504

02-REN-1038

**DOCKET**

**03-RPS-1078**

DATE MAR 26 2009

RECD. APR 03 2009

RE: **Staff Workshop on 2006 RPS Procurement Verification Data Review  
3Degrees Public Comments Regarding Renewables Portfolio Standard Procurement from  
“Unbundled” Energy Contracts – Mountain View I and II Facilities**

Dear Commissioner Julia Levin and Chairman Karen Douglas:

3Degrees Group, Inc. (“3Degrees”) is pleased to provide comments addressing the questions posed in Attachment B of the Notice of Staff Workshop on 2006 RPS Procurement Verification Data Review. 3Degrees’ comments pertain specifically to policy issues regarding procurement from “unbundled” energy contracts, as defined in Attachment A of the CEC’s Notice of Staff Workshop on 2006 RPS Procurement Verification Data Review.

3Degrees is the premier renewable energy and carbon offset provider for the U.S. market. The award-winning firm offers retail and wholesale marketing of Renewable Energy Certificates (RECs) and Verified Emission Reductions (VERs, also known as carbon offsets), marketing and communications services, greenhouse gas management and inventory services, utility green power program partnership services, renewable energy and carbon consulting, and regulatory expertise.

Serving 30 Fortune 500 companies and hundreds of businesses and investor-owned and municipal utilities, 3Degrees is the leading renewable energy and carbon mitigation marketer in the United States. Specifically, 3Degrees has received the following recognitions:

- Renewable Energy Marketer of the Year—Large Commercial Segment (UNITED STATES DEPARTMENT OF ENERGY – 2005, 2007, 2008)
- #1 U.S. Renewable Energy Credit Dealer (ENERGY RISK - 2008)
- #1 REC Trading Company - North American Markets (ENVIRONMENTAL FINANCE - 2008)
- #1 Trading Company – GHG Voluntary Markets (ENVIRONMENTAL FINANCE - 2008)
- Green Power Beacon Award for Origination of Business Demand for Renewable Energy (U.S. DEPARTMENT OF ENERGY AND CENTER FOR RESOURCE SOLUTIONS – 2005)
- Business Environmental Network Environmental Entrepreneurship Award (ACTERRA – 2005)

In addition, 3Degrees has played a market leading role in the evolution of these markets for years, as:

- President and Co-founder, Renewable Energy Marketers Association
- Among 1st to structure 10-year REC & VER off-take agreements in U.S. (2007)
- First to offer international VERs under Green-e® Climate offset certification (2008)

No comment.

**Question 2: Please inform staff if you have any corrections or additions to the data in Tables 1-3.**

No comment.

**Question 3: Please inform staff if you have any corrections or additions to the data in Table 4.**

No comment.

**Question 4: For parties selling RECs in the voluntary market or who are otherwise not required to use the RPS interim tracking system or WREGIS, please describe what processes, mechanisms, or safeguards are in place to protect you and the REC buyer and to ensure that RECs are not double counted and that only one REC is created for each MWh of renewable energy generated.**

3Degrees is a marketer of Green-e® Energy Certified renewable energy and has been a marketer of Green-e® Certified Renewable Energy Certificates operating in California since 2002. 3Degrees utilizes industry best practices, including:

- A. making explicit in the language of REC contracts that all of the renewable energy attributes and reporting rights associated with the contract are explicitly transferred with the contract;
- B. requiring third-party verification of the claims underlying the RECs; and
- C. making explicit that contracts for “null power,”<sup>1</sup> do not include the RECs associated with that electricity.

**A. Explicit REC Contract Language Requiring that all of the renewable energy attributes and reporting rights are transferred with the contract.**

3Degrees’ Model Renewable Energy Certificate Purchase and Sale Agreement (“3Degrees Model REC Agreement”) incorporates industry best practices, and is modeled upon the American Bar Association/Environmental Markets Association/American Council on Renewable Energy Master Renewable Energy Certificate Purchase and Sale Agreement (“ABA agreement”).<sup>2</sup> See Exhibit A.

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<sup>1</sup> Null power is defined as “renewable energy that has been stripped or unbundled from its renewable attributes.” See California Energy Commission, Emerging Renewable Program Final Guidebook, 9<sup>th</sup> Edition, Page 22, Footnote 14. The null power and RECs can then be sold in separate transactions with separate parties.

<sup>2</sup> Available at [http://www.renewableenergymarketing.net/Presentations/ABA-EMA-ACORE%20National%20REC%20Agreement\\_Jeremy%20Weinstein.pdf](http://www.renewableenergymarketing.net/Presentations/ABA-EMA-ACORE%20National%20REC%20Agreement_Jeremy%20Weinstein.pdf).

- Executed 1st transfer on The Gold Standard's VER registry (2008)
- VER purchaser from first California Climate Action Registry registered project (2007)
- Founding Member, California Climate Action Registry
- Member, Chicago Climate Exchange
- Member, U.S. EPA Climate Leaders

3Degrees (including its predecessors) have operated in the State of California since 2002, doing business with California utility counterparties including Pacific Gas & Electric, Sacramento Municipal Utility District, City of Palo Alto Utilities, Silicon Valley Power, Roseville Electric, Burbank Water & Power, City of San Francisco, City of San Jose, County of Riverside, Alameda County Waste Management Authority, Port of Oakland, and the Turlock Irrigation District.

It is 3Degrees view that the California Energy Commission ("CEC") should not allow Southern California Edison ("SCE") to claim procurement from the Mountain View I and II wind facilities towards its RPS targets for the years 2003 through 2007 because:

- 1) SCE never acquired valid title to the RECs under either their contract with the Department of Water Resources, or the California Public Utilities Code Section 399.16(a)(5);
- 2) other parties, which have relied on CEC and CPUC precedent and took ownership of the RECs from the Mountain View I and II facilities, would be deprived of the benefit of their bargain if SCE were allowed to procure these RECs for RPS compliance;
- 3) allowing SCE to procure these RECs would pull innocent Mountain View I and II REC counterparties into litigation which would have the effect of harming those parties, decreasing consumer confidence in REC markets, destabilizing the REC markets;
- 4) allowing SCE to procure these RECs would require the State of California to pay just compensation to parties which were divested of their REC rights pursuant to a regulatory taking under the Fifth Amendment to the United States Constitution;
- 5) SCE would be granted an un-bargained for benefit; and
- 6) allowing SCE to procure these RECs would establish a dangerous precedent for voluntary market participants.

3Degrees specifically responds to the questions posed in Attachment B below. Should the CEC have any questions regarding the responses below, or any additional questions of 3Degrees, please feel free to contact us at any time.

**Question 1: Please inform staff if you have any corrections or additions to the data in Tables 1-3.**

3Degrees Model REC Agreement defines Environmental Attributes as “those aspects, claims, characteristics and benefits associated with the generation of electricity by the Facility, other than the Energy produced...”<sup>3</sup>

3Degrees Model REC agreement defines Renewable Energy Certificates as the “Environmental Attributes and Reporting Rights associated with the generation of (1) MWh of Energy from one or more Facilities.”<sup>4</sup>

In 3Degrees Model REC Agreement the Seller warrants that:

- 1) Each REC represents the Environmental Attributes and Reporting Rights associated with the generation of one (1) MWh of Energy from one or more Facilities. Seller has the contractual rights to sell all right, title, and interest in the RECs agreed to be Delivered hereunder.
- 2) Seller has not sold the RECs to any other person or entity, and that at the time of Delivery all rights, title and interest in the RECs are free and clear of all liens, taxes, claims, security interests, or other encumbrances of any kind whatsoever.
- 3) The energy generated with the RECs was not and will not be separately sold, marketed, reported, or otherwise represented as renewable energy, renewable electricity, clean energy, zero-emission energy, or in any similar manner.
- 4) The RECs delivered hereunder, and the “associated Environmental Attributes and Reporting rights will vest in Buyer, and Buyer will (i) have the exclusive rights to make all claims as to the Environmental Attributes associated with energy associated with such RECs generated by the Facility, or other applicable Facility, and (ii) have the right to report and register, as applicable, the exclusive ownership of the Environmental Attributes with any registry, system, agency, authority, or other party, either voluntarily or in compliance with any present or future domestic, international, or foreign law, regulation, registry or program.”<sup>5</sup>

The Default section places the seller in default if it is not able to deliver RECs which comply with the warranties above.<sup>6</sup>

These sections taken together require that if the seller is unable to procure RECs which have all of the environmental attributes and reporting rights associated with them, then the seller is in default under the contract, and the buyer is entitled to damages.<sup>7</sup> The Centennial Power-3Degrees REC contract contained similar warranties.

## **B. Third-Party Verification of the claims underlying a REC**

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<sup>3</sup> See 3Degrees Exhibit A, 3Degrees Model REC Agreement, Article 1, Page 2.

<sup>4</sup> See 3Degrees Exhibit A, 3Degrees Model REC Agreement, Article 1, Page 3.

<sup>5</sup> See 3Degrees Exhibit A, 3Degrees Model REC Agreement Article 3.3(a-d).

<sup>6</sup> See 3Degrees Exhibit A, 3Degrees Model REC Agreement, Article 8(b).

<sup>7</sup> See 3Degrees Exhibit A, 3Degrees Model REC Agreement, Article 9.2.

All of the RECs sold by 3Degrees are certified by Green-e Energy,<sup>8</sup> the nation's leading independent consumer protection program for the sale of renewable energy in the retail market.<sup>9</sup> Green-e Energy's annual Verification Process Audit uses company contracts, invoices, and billing statements to verify the following (partial list follows):

- that the provider purchased enough renewable electricity or RECs in quantity and type to meet its customer demand for each product;
- that the electricity or RECs were purchased from eligible renewable generators, as defined in the Green-e Energy National Standard;
- that the information provided to customers on the product's annual Product Content Label is accurate;
- that the renewable electricity or RECs purchased and sold by the provider were not sold to more than one customer; and
- that the provider has purchased no electricity or RECs from fuel sources for which negative marketing claims were made.

### **C. Making explicit that “null power” contracts do not include RECs.**

"Null power" is defined as "renewable energy that has been stripped or unbundled from its renewable attributes. These renewable attributes may be disposed of separately."<sup>10</sup> It is an industry best practice for generators of renewable power that are selling their null power and Renewable Energy Certificates in separate transactions, to separate parties, to explicitly declare in their electricity sales contracts that the Renewable Energy Certificates are not included with the sale of the electricity. This was clearly and specifically done in the contracts between the Mountain View I and II facilities and their electricity purchasers at the time.

The RECs that 3Degrees procured from Centennial Power, Inc. ("Centennial Power"), the owner of the Mountain View I and II facilities during the time those facilities sold the unbundled energy to SCE, were explicitly contracted for, and were Green-e certified.<sup>11</sup>

The RECs 3Degrees procured from the Mountain View I and II facilities were explicitly contracted for and were Green-e certified in order to protect Centennial Power, 3Degrees, and 3Degrees subsequent counterparties. If the CEC were to allow SCE to procure the Mountain View I and II RECs for their RPS procurement needs, the CEC would be frustrating the well-settled and bargained-for expectations of Centennial Power, 3Degrees, and all of the counterparties who subsequently purchased RECs originating at the Mountain View I and II facilities.

The electricity sold by the Mountain View I and II facilities to SCE during this time specifically excluded the associated Renewable Energy Certificates.<sup>12</sup>

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<sup>8</sup> For more information on Green-e Energy certification, please visit [www.green-e.org](http://www.green-e.org)

<sup>9</sup> Green-e certified 69% of the overall retail renewable energy sales in the voluntary market in 2007. See 2007 Green-e Verification Report, available at [http://www.green-e.org/docs/energy/07Green-e\\_Verification\\_Report.pdf](http://www.green-e.org/docs/energy/07Green-e_Verification_Report.pdf).

<sup>10</sup> See CEC, Emerging Renewable Program Final Guidebook, 9<sup>th</sup> Edition, Page 22, Footnote 14,

<sup>11</sup> See 3Degrees Exhibit B, Redacted versions of 3Degrees-Centennial Power Wind Renewable Energy Certificates Purchase Agreements.

**Question 5: Should SCE’s procurement of energy from the Mountain View I and II facilities in 2004-2006 be counted as RPS-eligible procurement, even though the DWR contract under which the energy was procured provides that all rights and interest in the associated RECs remain with the owner of the facilities? Please explain why or why not.**

SCE should not be permitted to count the energy procured from the Mountain View I and II facilities towards RPS-eligible procurement for the years 2004-2007 because:

- A. SCE never acquired valid title to the RECs under either their contract with the Department of Water Resources, or the California Public Utilities Code Section 399.16(a)(5);
- B. other parties, which have relied on CEC and CPUC precedent and took ownership of the RECs from the Mountain View I and II facilities, would be deprived of the benefit of their bargain if SCE were allowed to procure these RECs for RPS compliance;
- C. allowing SCE to procure these RECs would pull innocent Mountain View I and II REC counterparties into litigation which would have the effect of harming those parties, decreasing consumer confidence in REC markets, destabilizing the REC markets;
- D. allowing SCE to procure these RECs would require the State of California to pay just compensation to parties which were divested of their REC rights pursuant to a regulatory taking under the Fifth Amendment to the United States Constitution;
- E. SCE would be granted an un-bargained for benefit; and
- F. allowing SCE to procure these RECs would establish a dangerous precedent for voluntary market participants.

**A. SCE never acquired valid title to the RECs under either their contract with the Department of Water Resources, or California Public Utilities Code Section 399.16(a)(5).**

California Public Utilities Code Section 399.16(a)(5) states: “No renewable energy credits shall be created for electricity generated pursuant to any electricity purchase contract with a retail seller or a local publicly owned electric utility executed before January 1, 2005, unless the contract contains explicit terms and conditions specifying the ownership or disposition of those credits.”

In this case, the California Department of Water Resources (“DWR”)-SCE energy contract explicitly stated that the RECs generated from the generation of renewable energy at Mountain View I and II

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<sup>12</sup> See CEC Background Information Regarding Outstanding Renewables Portfolio Standard Procurement Claims, Attachment B.

remained with the facilities' owner (Centennial Power). SCE's contract makes clear that they never acquired title to the RECs.<sup>13</sup>

**B. Other parties which have contracted for Mountain View I and II RECs would be deprived of the benefit of their bargain if SCE were allowed to procure the RECs**

In reliance upon Section 399.16(a)(5) Centennial Power sold their RECs to parties other than SCE, and those RECs have been resold many times in the market. Title to a REC may only lawfully rest with one party. If the CEC were to subsequently allow SCE to count the Mountain View I and II RECs toward their RPS procurement, the CEC would be creating a double counting claim.

Double counting of RECs is prohibited by the CEC under California Senate Bill 107 ("SB 107"). SB 107 states: "A renewable energy credit shall be counted only once for compliance with the renewables portfolio standard of this state or any other state, or for verifying retail product claims in this state or any other State".<sup>14</sup>

**C. Allowing SCE to procure the Mountain View I and II RECs would pull innocent counterparties into harmful and costly litigation**

Many of the parties which have purchased RECs originating from the Mountain View I and II facilities have already made public claims to these RECs which cannot be extinguished. For example Safeway, Sustainable Websites, Facebook's Green Energy Application: Green my Vino, and other have been and are making claims to the RECs from the Mountain View I and II facilities.<sup>15</sup> 3Degrees has made public claims to Mountain View I and II RECs in filings they have made with the CEC.<sup>16</sup>

There were many counterparties which have transacted for the Mountain View I and II RECs. Other than SCE, the counterparties transacted in reliance upon their understanding that the energy and the RECs from Mountain View I and II were unbundled.

When 3Degrees purchased RECs from Centennial Power, 3Degrees took explicit care to ensure that the parties protected themselves, and their subsequent counterparties from double counting claims. In reliance upon Section 399.16(a)(5) 3Degrees protected themselves by 1) contracting for the environmental attributes and all reporting rights associated with the RECs, and 2) including Green-e certification as an obligation of Centennial Power under the contract.

In 3Degrees contract with Centennial Power, the parties define REC to represent "all environmental attributes related to one MWh of renewable wind energy generation..."<sup>17</sup>

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<sup>13</sup> See CEC Questions Regarding Outstanding Renewables Portfolio Standard Procurement Claims, Attachment B, Page 5.

<sup>14</sup> Senate Bill 107 may be found at:

[http://www.energy.ca.gov/portfolio/documents/sb\\_107\\_bill\\_20060926\\_chaptered.pdf](http://www.energy.ca.gov/portfolio/documents/sb_107_bill_20060926_chaptered.pdf)

<sup>15</sup> See CEC Background Information Regarding Outstanding Renewables Portfolio Standard Procurement Claims Attachment A, Page 2.

<sup>16</sup> See 3Degrees Exhibit C. 3Degrees Truncated Green Certification Attestation Materials.

<sup>17</sup> 3Degrees Exhibit B, 3Degrees-Centennial Power Contracts, Definitions.

In Section 2, Centennial Power warrants to 3Degrees that “Seller will convey good title to the RECs to Buyer free and clear of any liens or other encumbrances or title defects.”<sup>18</sup>

Under Section 8(b) Centennial Power “attests that any emission reduction or emission allowances allocated to the Seller for the generation output that supports the RECs have been transferred to the Buyer and not sold separately.”<sup>19</sup>

In Section 4(a)(2-3) the parties contract that Events of Default shall include if: “any representation or warranty made by the Affected Party in this Agreement shall prove to have been false or misleading in any material respect when made; or the failure by the Affected Party to perform any covenant or agreement set forth in this Agreement...”<sup>20</sup>

Under the Centennial Power-3Degrees agreement, if the CEC allows SCE to use the Mountain View I and II RECs towards RPS procurement, Centennial Power’s warranty to provide 3Degrees sole and good title to those same RECs will be breached, and Centennial Power would be in default under the contract.

After contracting for Centennial Power’s RECs, 3Degrees subsequently resold those RECs into the marketplace. In each of those subsequent contracts 3 Degrees made warranties similar to the ones which Centennial Power made to 3Degrees. If the CEC were to allow SCE to use the Mountain View I and II RECs towards state RPS compliance, 3Degrees and their counterparties may also be in breach under those contracts.

The logical end result of the CEC allowing SCE to use the Mountain View I and II RECs towards state RPS compliance would be a torrent of litigation which would ensnare dozens of parties. Those counterparties would then face legal costs, the inefficient allocation of their resources toward defending and/or prosecuting legal actions, and uncertainty as to their position in the market.

Other market participants would then have good cause to question the validity of their rights under the RECs they have contracted for presently, and for those RECs for which they are considering buying or selling in the future.

#### **D. Regulatory Taking Under the Fifth Amendment to the United States Constitution**

If the Mountain View I and II RECs were to be granted to SCE, the parties which lawfully contracted for those RECs would be deprived of the benefit of those RECs. The RECs these parties had contracted for would become completely worthless. This would be a complete regulatory taking under Supreme Court precedent.<sup>21</sup> The taking of property from one private party, and giving it to another would require the

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<sup>18</sup> 3Degrees Exhibit B, 3Degrees-Centennial Power Contracts, Section 2.

<sup>19</sup> 3Degrees Exhibit B, 3Degrees-Centennial Power Contracts, Section 8(b).

<sup>20</sup> 3Degrees Exhibit B, 3Degrees-Centennial Power Contracts Section 4(a)(2-3).

<sup>21</sup> See *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, (1992). Lucas holds that a state regulation which deprives a property owner of all economically beneficial use of that property can constitute a taking.



State of California to offer just compensation to the deprived party under the 5<sup>th</sup> Amendment to the United States Constitution.<sup>22</sup>

**E. SCE would be granted an unbargained for gain.**

SCE did not bargain for the RECs associated with the unbundled power they purchased from MWR. Because RECs can only lawfully rest with one party, if the CEC were to subsequently grant SCE title to the RECs from Mountain View I and II, they would be granting them property which they did not bargain for, and they would be denying that same property right to another party which did bargain for those RECs.

**F. The CEC's granting of Mountain View I and II RECs for RPS procurement would establish a dangerous precedent**

If the CEC were to grant Mountain View I and II REC procurement to CSE, the precedent would be established that RECs may be double-counted in situations where a party has successfully appropriated RECs which it never held title to. This precedent would have dangerous implications in all states with Renewable Portfolio Standards across the United States, because it would potentially discredit the claims of voluntary market participants. The same would be true under a federal renewable portfolio standard

**Question 6: Under what conditions, if any, could SCE be allowed to claim that its unbundled procurement from the Mountain View I and II facilities is RPS-eligible?**

There is only one condition that would allow an unbundled procurement to qualify as RPS-eligible, and that is the instance in which the unbundled contract was accompanied by a contract for the RECs underlying that electricity. Since this is not the case for SCE, 3Degrees does not see any legitimate policy or legal justification for allowing SCE to claim that its unbundled procurement from Mountain View is RPS-eligible.

Allowing SCE to procure existing RECs from Mountain View is not an equitable outcome. There have already been public claims made on these RECs. Public claims on a REC formally and permanently retires the RECs under Green-e standards and SB 107.

**Question 6(a): Please inform staff if you have any corrections or additions to the claim that the RECs accounted for through the Green-e Energy program from the Mountain View I and II facilities have been sold into the voluntary market.**

3Degrees concurs that all of the RECs from the Mountain View I and II facilities have been sold and are no longer available for SCE to claim as for their RPS procurement.

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<sup>22</sup> See United States Constitution Fifth Amendment. "No person shall be...deprive of life, liberty or property without due process of law, nor shall private property be taken for public use, without just compensation."

**Question 6(b): Should SCE be allowed to retroactively procure RECs from the other RPS-certified facilities to match or “rebundle” them with the energy SCE procured through the Mountain View Contract? Please explain why or why not.**

The state of California has done an excellent job in writing RPS-eligibility rules that are clear on the issues addressed in this workshop. 3Degrees is opposed to any CEC remedy which would allow SCE to procure Mountain View I and II RECs for compliance with state RPS standards. Please see 3Degrees response to Question 5 for a thorough analysis of the harm and chaos this remedy would cause.

**Question 7: Please describe how the conditions or actions you proposed in response to the above questions may affect you or other interested parties. What remedies, if any, should the CEC and /or CPUC consider to address these issues?**

3Degrees takes no issue with SCE specifically; however in this instance 3Degrees asserts that SCE alone should be required to take whatever actions or bear whatever costs are necessary to comply with state regulations. Those RECs produced by the Mountain View I and II facilities were explicitly contracted for by 3Degrees and Centennial Power. 3Degrees and Centennial Power relied upon CEC and CPUC precedent, the language in their REC contracts, third party verification, and common and contract law, so they could legally claim all of the benefits associated therewith.

Conclusion

The California Energy Commission's mission states that its highest responsibility is to the people of California. 3Degrees finds it in keeping with this mission that the CEC should not allow SCE to claim that its unbundled procurement from Mountain View qualify as RPS eligible. If the CEC allows SCE to claim RPS-eligibility, then the CEC is sanctioning double-counting and taking what was rightfully purchased by Mountain View I and II REC counterparties. The purchasers of the RECs made legitimate and public claims to the renewable attributes – and these claims cannot be undone. The CEC should uphold its policies and the law.

I appreciate your consideration of these comments.

Sincerely,



Steven J. Mickelsen  
Counsel  
3Degrees Group, Inc.

# **EXHIBIT A**

**DRAFT FOR DISCUSSION PURPOSES ONLY.** This document does not constitute an offer and is not a legally binding agreement.

## **RENEWABLE ENERGY CERTIFICATE PURCHASE AND SALE AGREEMENT**

**THIS RENEWABLE ENERGY CERTIFICATE PURCHASE AND SALE AGREEMENT** (“**Agreement**”) is made as of April 3, 2009 (the “**Effective Date**”) between 3Degrees Group Inc., a California Corporation (“**3Degrees**”) with its principal place of business at 6 Funston Ave, Suite A, San Francisco, CA 94129 and [Counterparty] (“**Counterparty**”) with its principal place of business at [Address], [City], [State] [Zip] (each a “**Party**” and collectively, the “**Parties**”).

WHEREAS, the Parties wish to buy and sell RECs (as hereinafter defined) on the terms set forth herein;

NOW THEREFORE, in consideration of their mutual covenants herein, the Parties agree as follows:

### **ARTICLE 1 DEFINITIONS**

“**Applicable Standard**” means the state or federal RPS or other mandatory or voluntary standard or set of rules specified in the Confirmation Letter.

“**Applicable Tracking System**” means the generation information system, generation attribute tracking system or other system specified in the Confirmation Letter that records generation from the Eligible Renewable Resources in a particular geographic region.

“**Attestation Form**” means the Green-e Energy Attestation Form Generator Participating in a Tracking System specified in Exhibit B or such other form required under the Applicable Standard.

“**Business Day**” means a day on which Federal Reserve member banks are open for business, beginning at 8:00 a.m. and end at 5:00 p.m. Eastern Prevailing Time.

“**Buyer**” is the Party buying RECs.

“**Confirmation Letter**” or “**Confirm**” means a Confirmation Letter included as Exhibit A, which constitutes part of and is subject to the terms and provisions of this Agreement.

“**Contract Price**” means the amount payable by Buyer to Seller for the RECs as agreed upon in the Confirmation Letter.

“**Costs**” means the present value of brokerage fees, commissions, attorneys’ fees, and other similar third party transactions costs and expenses reasonably incurred by the Non-Defaulting Party either in terminating or replacing any arrangement pursuant to which it has hedged its obligations relating to a Terminated Transaction; and any charges, penalties, fines or fees imposed or assessed against the Non-Defaulting Party, or the entity to which the Non-Defaulting Party had resold the RECs, under the Applicable Standard on account of Delivery not occurring on the Delivery Deadline, as determined by the Non-Defaulting Party in a commercially reasonable manner.

“**Default**” and “**Defaulting Party**” are defined in Article 9.

“**Delivery**” or “**Deliver**” means delivery of the RECs by Seller to Buyer in accordance with the Applicable Standard by: (i) Seller’s electronic transfer of RECs to the Buyer’s account via and in accordance with the rules of the Applicable Tracking System, (ii) Seller’s provision to Buyer of an Attestation, or (iii) as otherwise specified in the Confirmation Letter or by the Applicable Standard.

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“**Delivery Deadline**” means the date specified in the Confirmation Letter.

“**Early Termination Date**” is defined in Article 10.2.

“**Eligible Renewable Resources**” mean sources of renewable energy that meet all requirements of the Applicable Standard.

“**Energy**” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

“**Environmental Attributes**” means those aspects, claims, characteristics and benefits associated with the generation of a quantity of electricity by the Facility, other than the Energy produced, embodied in the REC pursuant to the Applicable Standard, and, in the absence of any withholding of any part thereof by Seller, all of them, and includes all the environmental, power source, and emission characteristics, credits, allowances, reductions, offsets, and benefits associated with the generation of electricity from the Facility and its displacement of generation from non-renewable energy resources, and any avoided emissions of carbon dioxide, methane, and any other greenhouse gases, but do not include (i) any avoided emissions of nitrogen oxides (NOx) during enforcement seasons for states participating in the Environmental Protection Agency’s NOx Budget Trading Program, (ii) production tax credits and investment tax credits associated with the Facility, (iii) any liabilities, including adverse wildlife or environmental impacts or (iv), unless the Parties have expressly agreed otherwise, tradable emission allowances or other entitlements to produce emissions issued by a governmental authority and allocated to the Facility on a basis other than actual generation of avoided emissions associated with the generation of electricity by the Facility.

“**Facility**” means, if specified, the resource designated in a Confirmation Letter, which the Seller represents is an Eligible Renewable Resource(s).

“**Firm**” is defined in Article 2.5.1.

“**Force Majeure**” means an event or circumstance which materially adversely affects the ability of a Party (“Claiming Party”) to perform its obligations under this Agreement, which event or circumstance was not reasonably anticipated as of the Trade Date and which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which the Claiming Party is unable to overcome or avoid or cause to be avoided by the exercise of reasonable care such as acts of God; fire; flood; earthquake; war; riots; terrorism; strikes, walkouts and other labor disputes that affect one or both Parties. Force Majeure may not be based on (i) the loss or failure of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the RECs; (iii) Seller’s ability to sell the RECs to another at a price greater than the Contract Price; (iv) Buyer’s ability to produce RECs; or (v) Buyer’s ability to purchase product similar to the RECs at a price less than the Contract Price. With respect to a Party’s obligation to make payments hereunder, Force Majeure will be only an event or act of a governmental authority that on any day disables the banking system through which a Party makes such payments.

“**Gains**” mean the present value of the economic benefit to a Party, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

“**Interest Rate**” is equal to Prime lending rate published under the heading “Money Rates” in the Wall Street Journal.

“**Losses**” means the present value of the economic loss to a Party, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.

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“**MWh**” means megawatt-hour.

“**Non-Defaulting Party**” is defined in Article 9.2.

“**Payment Date**” is defined in Article 5.1.

“**Project Contingent**” is defined in Article 2.5.3.

“**Renewable Energy Certificate**” or “**RECs**” means the Environmental Attributes and Reporting Rights associated with the generation of one (1) MWh of Energy from one or more Facilities.

“**Renewable Portfolio Standard**” or “**RPS**” means a state or federal law, rule or regulation that requires a stated amount or minimum proportion or quantity of Energy that is sold or used by specified persons to be generated from Eligible Renewable Resources.

“**Reporting Rights**” means the right to report and register the exclusive ownership of the Environmental Attributes in compliance with federal, state, or local law, if applicable, and to a federal or state agency or any other party at the Buyer’s discretion, and include without limitation those Reporting Rights accruing under Section 1605(b) of the Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program.

“**Seller**” is the Party selling RECs.

“**Settlement Amount**” means the Losses or Gains, and Costs, which the Non-Defaulting Party incurs as a result of the liquidation of a Terminated Transaction pursuant to Article 9.2.

“**Term**” means the duration of this Agreement, as set forth in Article 2.1.

“**Termination Payment**” is defined in Article 10.3

“**Terminated Transaction**” is defined in Article 10.2.

“**Trade Date**” means the date of the Confirmation Letter.

“**Unit Contingent**” is defined in Article 2.5.2.

“**Vintage**” means the calendar year, quarter, or other specified period of time in which the Energy associated with the RECs was generated.

**Rules of Construction.** “Or” is not necessarily exclusive. “Hereof,” “herein,” “hereunder,” and similar words refer to this Agreement in its entirety. “Articles” and “Exhibits” refer to Articles and Exhibits hereof unless otherwise stated or indicated. “Including” is not limiting and means “including without limitation”. All accounting terms and computations are construed in accordance with generally accepted accounting principles consistently applied. All references to a particular entity or market price index include a reference to such entity’s or index’s successors and (if applicable) permitted assigns.

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## **ARTICLE 2 TRANSACTION**

### **2.1. Term.**

The term (“**Term**”) of this Agreement commences on the Effective Date and continues until terminated by either Party upon thirty (30) days’ written notice, except that any such termination is not effective until all payments, Deliveries and other obligations of the Parties under this Agreement have been completed.

### **2.2. Sale and Purchase Obligation.**

Seller agrees to provide and Buyer agrees to purchase RECs according to the terms of this Agreement and any Confirmation Letters now or hereafter entered into between the Parties.

### **2.3. Quantity and Price.**

Seller shall sell and Buyer shall purchase RECs in the quantities and at the Contract Prices specified in Confirmation Letters now or hereafter entered into between the Parties.

### **2.4. Disclosure.**

In order to promote the sale of RECs to its customers or potential customers, Buyer is expressly authorized to disclose to third parties Seller’s name, REC details as provided in Attestation Form, and the Attestation Form. Any disclosure will exclude such confidential details as price and payment term. Confirmation Letters under this Agreement may optionally provide that they are subject to Exhibit D, the 3Degrees Media Rights Annex by stating they confer media rights. Buyer is further authorized to, at Buyer's own expense and with Seller’s reasonable cooperation, monitor, measure, verify, calculate, disclose and claim for the benefit of Buyer any matter respecting the RECs or any aspects thereof pursuant to any present or future protocol, standard, or guidance.

### **2.5. Delivery.**

Seller shall Deliver to Buyer, and Buyer shall receive, the RECs by the Delivery Deadline via the Applicable Tracking System (or other mechanism provided for in the Confirmation Letter) such that all rights, title to and interest in the RECs shall transfer from Seller to Buyer upon such delivery and in accordance with the rules of the Applicable Tracking System, and Buyer will then have the exclusive right to use the RECs under the Applicable Standard or under any other program for which there exists a market registry or reporting for the RECs.

#### **2.5.1 Firm Delivery Obligation**

If the Confirmation Letter provides that the RECs Delivery obligation is a “**Firm**” obligation, the Seller shall Deliver the RECs by the Delivery Deadline, without excuse other than Force Majeure. Unless otherwise specified in a Confirmation Letter, the default Delivery obligation thereunder shall be deemed Firm.

#### **2.5.2 Unit Contingent Delivery Obligation.**

If the Confirmation Letter provides that the RECs Delivery obligation is “**Unit Contingent**”, then Seller’s obligation to Deliver the RECs is excused to the extent that the Facility is not able to

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generate Environmental Attributes in the Vintage or other agreed time period as specified in the Confirmation Letter, due to the performance of the Facility.

### **2.5.3 Project Contingent Delivery Obligation.**

If the Confirmation Letter provides that the RECs Delivery obligation is “**Project Contingent**”, then Seller’s obligation to Deliver the RECs is excused to the extent that the Facility is not able to generate the Environmental Attributes in the Vintage or other agreed time period as specified in the Confirmation Letter, due to a delay or failure in constructing or obtaining necessary approvals to construct or modify and operate the new or modified Facility, or due to other reason(s) as specified in the Confirmation Letter.

## **2.6 Confirmation**

Unless otherwise agreed in writing, Seller will send Buyer a Confirmation Letter, which may be in substantially the form attached hereto as Exhibit A, as modified to support the specific RECs. Upon receipt of such Confirmation Letter, the other Party shall promptly return a written acceptance thereof, which may be signed copy of the Confirmation Letter.

## **ARTICLE 3 REPRESENTATIONS**

### **3.1. Authority.**

Each Party represents and warrants to the other Party that (i) it is a legal entity, duly formed and validly existing and in good standing under the laws of the state of its formation, (ii) it has the full power and authority to execute, deliver, and perform this Agreement and to carry out the transactions contemplated hereby; (iii) its execution and delivery hereof and performance of the transactions contemplated hereunder have been duly authorized by all requisite entity action, and this Agreement has been duly executed and delivered by it and constitutes its legal, valid, and binding obligation, enforceable against it in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws generally affecting creditors’ rights and by equitable principles; (iv) no authorization, consent, notice to or registration or filing with any governmental authority is required for the execution, delivery and performance by it hereof; (v) none of the execution, delivery and performance by it hereof conflicts with or will result in a breach or violation of any law, contract or instrument to which it is bound; (vi) there are no proceedings by or before any governmental authority, now pending or (to the knowledge of such Party) threatened, that if adversely determined could have a material adverse effect on such Party’s ability to perform the Party’s obligations under this Agreement; (vii) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement; and (viii) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement.

### **3.2. Forward Contract Merchant.**

Each Party represents that it is a “forward contract merchant” within the meaning of Section 101(26) of the Bankruptcy Code, and this Agreement and all transactions hereunder constitute “forward contracts” within the meaning of Section 101(25) of the Bankruptcy Code.



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**3.3. Seller Representations and Warranties.**

Seller agrees, represents, and warrants to Buyer that:

- a) Each REC represents the Environmental Attributes and Reporting Rights associated with the generation of one (1) MWh of Energy from one or more Facilities. Seller has the contractual rights to sell all right, title, and interest in the RECs agreed to be Delivered hereunder.
- b) Seller has not sold the RECs to any other person or entity, and that at the time of Delivery all rights, title, and interest in the RECs are free and clear of all liens, taxes, claims, security interests, or other encumbrances of any kind whatsoever.
- c) The Energy generated with the RECs was not and will not be separately sold, marketed, reported, or otherwise represented as renewable energy, renewable electricity, clean energy, zero-emission energy, or in any similar manner.
- d) The RECs Delivered hereunder, and the associated Environmental Attributes and Reporting Rights will vest in Buyer, and Buyer will (i) have the exclusive rights to make all claims as to the Environmental Attributes associated with energy associated with such RECs generated by the Facility, or other applicable Facility, and (ii) have the right to report and register, as applicable, the exclusive ownership of the Environmental Attributes with any registry, system, agency, authority, or other party, either voluntarily or in compliance with any present or future domestic, international, or foreign law, regulation, registry or program.

**ARTICLE 4  
CREDIT AND COLLATERAL REQUIREMENTS**

**4.1. Credit Assurances.**

The Confirmation Letters under this Agreement so specifying (but only those Confirmation Letters so specifying) are the subject of Exhibit C, the 3Degrees Short-Form Collateral Annex entered into by and between the Parties on proximate date herewith.

**ARTICLE 5  
BILLING AND PAYMENT**

**5.1. Billing and Payment Terms.**

Buyer shall pay the Contract Price as applicable within five (5) Business Days of the later of (i) the date Buyer receives written, facsimile or electronic notice from Seller to Buyer that RECs have been Delivered, and (ii) the date Buyer receives an invoice from Seller reflecting the total amount due to Seller for the Delivered RECs ("**Payment Date**"). Buyer is not obligated to pay for any RECs that have not been Delivered.

**5.2. Weekends and Holidays.**

If Payment Date falls on a Saturday or bank holiday in New York, New York other than a Monday then the value of the previous New York banking day shall apply. If Payment Date falls on a Sunday or

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Monday banking holiday in New York, New York the value for the following New York, New York banking day shall apply.

**5.3. Late Payments.**

Without limiting any other rights provided for herein, all overdue payments shall bear interest from the Payment Date to the date of actual payment at a rate equal to the lesser of (i) two percent over the Interest Rate and (ii) the maximum rate permitted by applicable law.

**5.4. Disputes.**

To the extent a Party, in good faith, disputes any part of an invoice, such party shall pay the undisputed amount invoiced by the Payment Date. If any amount withheld under dispute is finally determined to have been due, such withheld amount shall be forwarded to the party to whom such amount is owed within five (5) Business Days of such determination, along with interest at the Interest Rate for overdue payments from, and including, the Payment Date, but excluding the date paid.

**5.5. Taxes.**

Seller shall pay or cause to be paid all sales and other taxes imposed by any government authority on or with respect to the RECs Delivered prior and up to Delivery. Buyer shall pay or cause to be paid any of the same arising thereafter.

**5.6. Invoice and Payment Instructions.**

Payment shall be made by electronic funds transfer, or by other mutually agreed upon method, in immediately available funds, to the bank account name and account number as specified below, or as otherwise notified in writing to the party making payment by the party to whom payment is to be made.

Invoices to 3Degrees will be sent to:

3Degrees Group Inc.  
6 Funston Ave, Suite A  
San Francisco, CA 94129  
Attn: Accounts Payable  
Phone: (415) 730-5715  
Fax: (415) 680-1561  
Email: accounting@3degreesinc.com

Payments to 3Degrees will be sent to:

3Degrees Group Inc.  
6 Funston Ave.  
San Francisco, CA 94129  
Attn: Accounts Receivable  
Phone: (415) 561-6852  
Fax: (415) 680-1561

Wiring instructions:

Beneficiary Bank Name:

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New Resource Bank  
405 Howard Street, Suite 110  
San Francisco, CA 94105

Routing/ABA Number:

Beneficiary:  
3Degrees Group Inc.  
Account #

Invoices to [Counterparty] will be sent to:

[Counterparty]  
[Address]  
[City], [State] [Zip]  
Attn:  
Phone:  
Fax:  
Email:

Payments to [Counterparty] will be sent to:

[Counterparty]  
[Address]  
[City], [State] [Zip]  
Attn:  
Phone:  
Fax:

Wiring instructions:

[Bank Name]  
[ABA: XXXX]  
[Account: XXXX]

## **ARTICLE 6 NOTICES**

All notices, requests, demands, offers, and other communications required or permitted to be made under this Agreement will be in writing and will be effective only if delivered: (a) in person, (b) by a nationally recognized delivery service, (c) by United States Mail, or (d) by electronic mail where mutually agreed. Notices are effective when received, except that notice by email is effective on confirmation of receipt only. Either Party may change its address or contact person(s) for notices by giving notice of such change consistent with this Article.

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If to Counterparty:

[Counterparty]  
[Address]  
[City], [State] [Zip]  
Attn: Contracts Manager  
Phone:  
Fax:

If to 3Degrees:

3Degrees Group Inc.  
6 Funston Ave, Suite A  
San Francisco, CA 94129  
Attn: Contracts Manager  
Phone: (415) 674-4436  
Fax: (415) 680-1561

## **ARTICLE 7 GOVERNING LAW AND DISPUTE RESOLUTION**

This Agreement is governed by and construed in accordance with the laws of the State of New York without regard to its conflict of laws principles. EACH PARTY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT OR CONFIRMATION LETTER EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, AS WELL AS ANY RIGHT TO CONSOLIDATE ANY ACTION IN CONNECTION WITH ANY MATTER ARISING HEREUNDER WITH ANY OTHER MATTER IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

## **ARTICLE 8 ATTORNEY'S FEES**

In the event of any suit or other proceeding between any of the Parties hereto with respect to any of the transactions contemplated hereby or subject matter hereof, the prevailing Party shall be entitled to recover reasonable attorneys' fees, costs (including at the trial and appellate levels) and expenses of investigation.

## **ARTICLE 9 DEFAULTS**

A Party is in default ("**Default**") hereunder if that Party (the "**Defaulting Party**") does any of the following (each an "**Event of Default**"):

(a) breach any of its material obligations herein and not cure within five (5) Business Days of written notice of such breach;

(b) if any representation or warranty made by it herein proves to have been misleading or false in any material respect when made and such Party does not cure the underlying facts so as to make such representation and warranty correct and not misleading within five (5) Business Days of written notice; or

(c) if a Party:

(i) makes an assignment or any general arrangement for the benefit of its creditors,

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(ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it, or

(iii) otherwise becomes bankrupt or insolvent (however evidenced).

## **ARTICLE 10 REMEDIES UPON DEFAULT**

### **10.1. Liquidated Damages.**

Buyer and Seller agree the amounts that are determined to be due from one Party to the other pursuant to this Article in its entirety represents the liquidated damages of each, and no part hereof represents a penalty.

### **10.2. Remedies.**

Upon an Event of Default, the other Party (the “**Non-Defaulting Party**”) may do any or all of the following: (i) designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date (“**Early Termination Date**”) to accelerate all amounts owing between the Parties and to liquidate and terminate all or less than all transactions (each referred to as a “Terminated Transaction”) between the Parties, (ii) withhold any payments due in respect of this Agreement and any other agreements between the Parties to the extent of its damages pursuant to this Article 10, (iii) suspend performance, and (iv) exercise such remedies as provided herein, including an action for damages (except as limited by Article 10.5). The Non-Defaulting Party will calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transactions as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable). Without being required to do any of the foregoing or set a Termination Payment for all transactions and Confirmation Letters, if either Party does not Deliver any RECs by the Delivery Deadline as set forth on a Confirmation Letter, the Buyer may treat that Confirmation Letter as being in Default and a Terminated Transaction, without terminating or cancelling any other Confirmation Letters hereunder, and calculate, as a Non-Defaulting party, the amount due from the Seller for such Terminated Transaction, and in such case Seller shall pay such amount within two days of notice from the Non-Defaulting Party.

### **10.3. Net Out of Settlement Amounts.**

The Non-Defaulting Party will aggregate all Settlement Amounts into a single amount by netting out (a) all amounts that are due to the Defaulting Party for RECs that has been Delivered and not yet paid for, plus, at the option of the Non-Defaulting Party, any or all other amounts due to the Non-Defaulting Party under this Agreement against (b) all Settlement Amount that are due to the Non-Defaulting Party under this Agreement, so that all such amounts will be netted out to a single liquidated amount (the “**Termination Payment**”) payable by the Defaulting Party. The Termination Payment, if any, is due from the Defaulting Party to the Non-Defaulting Party within two (2) business days following notice.

### **10.4. Calculation Disputes.**

If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Settlement Amount or Termination Payment, in whole or in part, the Defaulting Party will, within two (2) Business Days of

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receipt of the Non-Defaulting Party's calculation, provide the Non-Defaulting Party a detailed written explanation of the basis for such dispute.

**10.5. Limitation on Damages.**

The Defaulting Party's liability will be limited to direct, actual damages only, and such direct, actual damages will be the sole and exclusive remedy hereunder. Except with respect to payment of Costs, in no event will either Party be liable to the other under this Agreement for any consequential, incidental, punitive, exemplary, or indirect damages in tort, contract, or otherwise.

**10.6. Exclusive Remedy.**

THE REMEDIES SET FORTH IN THIS ARTICLE 10 ARE THE SOLE AND EXCLUSIVE REMEDIES IN THE EVENT OF A DEFAULT OF A PARTY'S OBLIGATIONS TO SELL OR PURCHASE RECS, AND A PARTY'S LIABILITY SHALL BE LIMITED AS SET FORTH IN THIS ARTICLE. ALL OTHER REMEDIES OR DAMAGES FOR FAILURE TO SELL OR PURCHASE RECS AT LAW ARE HEREBY WAIVED.

**10.7. Force Majeure.**

If either Party is rendered unable, wholly or in part, by Force Majeure to carry out its obligations with respect to this Agreement, then upon such Party's giving notice and full particulars of such Force Majeure as soon as reasonably possible after the occurrence of the cause relied upon, such notice to be confirmed in writing to the other Party, the obligations of the Claiming Party will, to the extent they are affected by such Force Majeure, be suspended during the continuance of said inability, but for no longer period, and the Claiming Party will not be liable to the other Party for, or on account of, any loss, damage, injury or expense resulting from, or arising out of such event of Force Majeure. The Party receiving such notice of Force Majeure will have until the end of the Business Day following such receipt to notify the Claiming Party that it objects to or disputes the existence of an event of Force Majeure.

**ARTICLE 11  
STANDARD PROVISIONS**

**11.1. Additional Documents.**

Each Party, upon the reasonable request of the other Party, will perform any further acts and execute and deliver such documents that may be necessary to carry out the intent and purpose hereof.

**11.2. Assignment.**

Neither Party shall transfer or assign this Agreement, in whole or in part, without the other's written consent, which will not be unreasonably withheld, conditioned or delayed; except that a Party may, without consent (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; (ii) transfer or assign this Agreement to an affiliate if the affiliate's creditworthiness is equal to or higher than that of the assigning Party; or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of the assigning Party whose creditworthiness is equal to or higher than that of the assigning Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions of this Agreement. Any transfer or assignment without the requisite prior consent is void ab initio. All of the rights, benefits, duties, liabilities, and obligations of the Parties shall inure to the benefit of and be binding upon their respective successors and permitted assigns.

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By consenting to one assignment a Party will not be deemed to have consented to a subsequent assignment.

**11.3. Audit and Inspection.**

Buyer has the right during normal working hours, to examine the records of the Seller, including records related to the Facility, if applicable, to the extent reasonably and commercially necessary to confirm Seller's right, title, and interest in the RECs Delivered hereunder and that such RECs continue to meet the Applicable Standards, and to verify the accuracy of any statement, charge, data, or computations made pursuant hereto. Seller shall maintain adequate records to assist Buyer in meeting any reporting or registration requirements associated with the RECs. Seller shall provide such records upon reasonable notice from Buyer. If any such examination reveals any inaccuracy in any statement, the Parties shall make the necessary adjustments promptly, and amounts discovered to be so due shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid.

**11.4. Confidentiality.**

The Parties are expressly authorized to disclose the existence of this Agreement, including the quantity and term of the sale of RECs and Seller's name, REC details as provided in the Attestation Form, and the Attestation Form. Unless otherwise provided, all other terms of this Agreement, including price and payment terms, are confidential and neither Party may disclose such confidential information to anyone, other than (i) as may be agreed to in writing by the Parties; (ii) to any of such Parties' directors, officers and employees and directors, officers and employees of affiliated companies and representatives thereof or their advisors who need to know such information and agree to treat such information confidentially; (iii) to the extent required to be disclosed by applicable law or legal process; or (iv) to any actual or potential lender or lenders providing financing to a Party or any of its affiliates, to any actual or potential investor in a Party or any of its affiliates or to any other potential acquirer of any direct or indirect ownership interest in Party or any of its affiliates or to any advisor providing professional advice to Party or any of its affiliates or to any such actual or potential lender, investor or acquirer who needs to know such information and agree to treat such information confidentially. The Parties are entitled to all remedies available at law or in equity, including specific performance, to enforce this provision; however, neither Party will be liable for any damage suffered as a result of the use or disclosure of confidential information made in accordance with the express terms and conditions of this Agreement. This provision will survive for a period of ten (10) years following the expiration of this Agreement.

**11.5. Counterparts.**

This Agreement may be executed by telefacsimile and in one or more counterparts, all of which taken together will constitute one and the same original instrument.

**11.6. Entire Agreement.**

This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof, and supersedes all previous communications, representations, or contracts, either written or oral, that purport to describe or embody the subject matter hereof. There are no oral understandings, terms, or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.

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**11.7. Exhibits.**

The exhibits attached hereto are incorporated into this Agreement by reference. The exhibits may only be revised upon mutual agreement between the Parties unless otherwise specified in the exhibits. In the event of a conflict between this Agreement and the Confirmation Letter, the terms of the Confirmation Letter shall prevail.

**11.8. No Third-Party Beneficiaries.**

There are no intended third-party beneficiaries hereof, and this Agreement should not be construed to create or confer any right or interest in or to, or to grant any remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation, or undertaking established herein.

**11.9. Severability.**

Any part hereof that is or becomes invalid, illegal, or unenforceable may be severed from the remainder hereof, and to the extent possible, the Parties will use reasonable efforts to replace any such part with provisions that preserve their original intent.

**11.10. Survival Rights.**

This Agreement will continue in effect after termination to the extent necessary to allow or require either Party to fulfill rights or obligations that arose under the Agreement.

**11.11. Waiver, Amendment.**

None of the terms or conditions of this Agreement may be amended or waived except in a writing signed by the Parties. The Parties agree that no waiver, amendment, or modification of this Agreement will be established by conduct, custom, or course of dealing. The failure of a Party to require performance of any provision of this Agreement will not limit such Party's right to seek such performance at a later time. Similarly, a Party's waiver of its rights with respect to any Default or any other matter arising in connection with this Agreement will not be considered a waiver with respect to any subsequent Default or matter.

**11.12. Indemnification.**

Each Party agrees to protect, defend, indemnify, and hold the other Party, its officers, employees and agents, harmless from all losses, costs, damages, injuries, penalties, claims, or liabilities of any nature, including bodily injury or death to any individual or physical damage to or loss of tangible property caused by or arising out of the work performed or to be performed under this Agreement to the extent that such injury or damage is caused by the negligence or willful misconduct of the indemnifying Party, its officers, employees and agents.

**10.15 Change in Law.**

If any statutes, rules, regulations, permits or authorizations are enacted, amended, granted or revoked which have the effect of changing the transfer and sale procedure set forth in this Agreement so that the implementation of this Agreement becomes impossible or impracticable, or otherwise revokes or eliminates the Applicable Standard, the Parties hereto agree to negotiate in good faith to amend this Agreement to conform with such new statutes, regulations, or rules in order to maintain the original intent of the Parties under this Agreement.



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**10.16 Recording**

Each Party consents to the recording of its trading, marketing and scheduling representatives' telephone conversations without any further notice. Any tape recordings may be submitted in evidence to any court or in any legal proceeding for the purpose of establishing any matter relating to the transaction. In addition, the Parties agree not to contest the authority of either Party's employees to enter into this Agreement or the Confirmation Letters generated pursuant to this Agreement. Notwithstanding the foregoing, any agreement with respect to the transaction shall be in a writing signed by both Parties.

**ARTICLE 12  
SIGNATURES**

Each Party represents that the person signing this Agreement on its behalf is authorized to enter into this Agreement on behalf of the Party for whom they sign.

**IN WITNESS WHEREOF**, the Parties understand and agree to the terms and conditions contained herein and agree to be bound thereby.

<b>3Degrees Group Inc.</b>	<b>[Counterparty]</b>
Signature	Signature
Name	Name
Title	Title
Date	Date

## EXHIBIT A

### Confirmation Letter # (If completed separate from a master purchase agreement)

The following describes a transaction between Buyer and Seller for the sale, purchase and Delivery of Renewable Energy Certificates (“**RECs**”) pursuant to the terms of the Renewable Energy Certificate Purchase and Sale Agreement between the Parties dated April 3, 2009 (the “**Agreement**”). Provided, that, to the extent there is a conflict between a provision of the Agreement and this Confirmation Letter, the terms of this Confirmation Letter shall control for the purposes of this transaction.

Initially capitalized terms used and not otherwise defined herein are defined in the Agreement.

#### **Basic Commercial Terms:**

Trade Date:	
Transaction Reference:	
Seller:	
Buyer:	
Facility:	
Eligible Renewable Resource Type:	
Geography:	
Vintage(s):	
Product Quantity (MWh):	
Contract Price (\$/MWh):	
Total Contract Price (\$):	
Delivery Deadline:	
Subject to Collateral Annex [yes, no]	

#### **Product Specific Terms:**

Applicable Standard:	
Environmental Attributes retained by Seller, if any:	
Applicable Tracking System:	
Attestation Form [yes, no]	
Delivery Obligation [Firm, Unit Contingent, Project Contingent]:	
Media Rights Conferred [yes, no]	

This Confirmation Letter is being provided pursuant to and in accordance with the Agreement, and constitutes part of and is subject to the terms and provisions of the Agreement.

The Parties agree to the transaction set forth herein.

<b>3Degrees Group Inc.</b>	<b>[Counterparty]</b>
Signature	Signature
Name	Name
Title	Title
Date	Date

EXHIBIT B



## Green-e Energy Attestation from Generator Participating in a Tracking System

### **I. Facility information**

Name of Generation Facility ("Facility"):

Renewable Resource Type (e.g. Wind, Solar, Geothermal):

Company or Person that Owns Facility ("Seller"):

Address of Facility:

North American Electricity Reliability Corporation (NERC) region in which Facility is located<sup>1</sup>:

Tracking System in which Facility is Registered ("Tracking System"):

Facility Registration or ID Number within Tracking System:

Facility ID Number<sup>2</sup>: \_\_\_\_\_  EIA or  QF? (check one) Nameplate Capacity (MW):

Date Facility was First Operational: \_\_\_/\_\_\_/\_\_\_ Date of Capacity Upgrade or  
Repowering: \_\_\_/\_\_\_/\_\_\_

Contact Person: \_\_\_\_\_ Title:

Telephone: \_\_\_\_\_ Email Address: \_\_\_\_\_

### **II. Declaration**

I, (print name and title) \_\_\_\_\_, declare the following regarding Facility's participation in Tracking System and regarding Renewable Attributes (also called "Certificates", "Renewable Energy Certificates" or "RECs") generated by Facility and tracked in Tracking System:

<sup>1</sup> If you are unsure of which region Facility is in, see <http://www.nerc.com/regional/>

<sup>2</sup> Enter Energy Information Administration (EIA) identification number for the generating facility; if no EIA number, enter the utility-assigned Qualifying Facility (QF) identification number

## EXHIBIT B

- 1) all Renewable Attributes associated with electricity production by Facility are fully aggregated and include all environmental benefits of electricity generation by Facility, including all CO<sub>2</sub> benefits, emissions offsets, reductions and claims;
- 2) for transactions made within Tracking System, Seller transacts only fully aggregated Renewable Attributes;
- 3) Seller sells, retires or reserves the Renewable Attributes only once;
- 4) the Renewable Attributes or the electricity that is generated with the Renewable Attributes are not used to meet any federal, state or local renewable energy requirement, renewable energy procurement, renewable portfolio standard, or other renewable energy mandate by Seller, nor to the best of my knowledge, by any other entity other than the party on whose behalf the Renewable Attributes are retired;
- 5) the electricity co-produced with the Renewable Attributes is not used on-site for powering electric generation equipment (parasitic load);
- 6) if Seller is providing electricity bundled with renewable attributes the renewable electricity was delivered into the NERC region in which Facility is located; and
- 7) the electricity that was generated with the attributes is not separately sold, separately marketed or otherwise separately represented as renewable energy attributable to Facility by Seller, or, to the best of my knowledge, any other entity other than the party on whose behalf the Renewable Attributes are retired.

Please indicate the following:

Is Facility owner reporting its direct greenhouse gas emissions in a legally binding cap and trade program?

- Yes; list the cap and trade program: \_\_\_\_\_
- No

If Seller is transacting only Renewable Attributes within Tracking System and selling the associated electricity to a utility or load-serving entity, please write the name of the utility or load-serving entity here:

- \_\_\_\_\_
- Check box if sale is part of a Qualifying Facility (QF) contract

### **III. Additional statement required for and applicable to biomass facilities only**

1. I attest that no more than five percent (5%) fossil fuels and other fuels that are not Green-e eligible, measured on a BTU basis, were or will be used, including as a start-up, pilot or supplemental fuel, to produce the electricity and/or RECs in the above Green-e eligible biomass generation plant or biomass boiler;
2. I attest that Facility was and will remain in substantial compliance with its operating permit regarding emissions during the period in which renewable energy/RECs were generated;

**EXHIBIT B**

- 3. I attest that if this facility is subject to New Source Review (NSR), it was and will be compliant with all standards pertaining to NSR while selling renewable electricity/Renewable Attributes into Tracking System; and
- 4. I attest that Seller owns the renewable and environmental attributes of biomass fuels at the time of the fuel's use for electricity generation. I have listed below all fuels commonly used at Facility and that I anticipate using at Facility; if I use fuels other than those listed below, I will notify the transferee of my Renewable Attributes within 30 days of the fuel change and submit an updated copy of this attestation to Green-e Energy.

Biomass Fuel Types Used by Facility	Name of Fuel Producer, or Origin/Source of Fuel

**IV. Signature**

As an authorized agent of Seller, I attest that the above statements are true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Place of Execution

This form is used by the Center for Resource Solutions to verify the accuracy of claims made by retail marketers of renewable energy. Proprietary information on this form is held strictly confidential and will not be shared with any other party except in aggregate form; however, basic information identifying Facility may be made public, as noted on the cover page of this document.

## EXHIBIT C

### 3DEGREES SHORT-FORM COLLATERAL ANNEX

This 3DEGREES SHORT-FORM COLLATERAL ANNEX is entered into by and between 3Degrees Group, Inc. (“**3Degrees**”) and \_\_\_\_\_ (“**Counterparty**” each a “**Party**” and together the “**Parties**”). In consideration of the continued agreement of the parties to purchase and sell Product and otherwise transact pursuant to the Margined Agreements, as those terms are defined below, the Parties agree as follows:

#### 1. Definitions.

“**Buyer**” is the Party buying RECs in a certain Margined Agreement.

“**Collateral Thresholds**” mean, with respect to 3Degrees, \$\_\_\_\_\_; and with respect to Counterparty, \$\_\_\_\_\_; provided, however, in the event that a Party experiences a material deterioration in its financial condition (as reasonably determined by the other Party), or is in Default under a Margined Agreement, the Collateral Threshold for that Party shall equal \$0.

“**Forward Market Price**” means the forward market price as of the date of the date of determination for the Product to be determined based upon the average of forward curve prices quoted by three independent, reputable brokers for the Product reasonably selected by mutual agreement of the Parties. If the Parties cannot agree upon selection of the brokers, each Party will select a broker and the two brokers will select a third broker.

“**Margined Agreements**” means those certain [list agreements to be margined] between the Parties.

“**Mark-to-Market Value**” means the net present value, discounted to present value at the prime rate of interest, of: (1) the Contract Price for the Product remaining to be sold thereunder minus the Forward Market Price, multiplied by (2) the quantity of Product to be sold but not yet delivered.

“**Posting Party**” means one of the following:

- 1) Buyer if, at anytime during the Term of the transactions under the Margined Agreement that are marked therein as subject to this Collateral Annex, the net Mark-to-Market Value of all such transactions is positive and is greater than or equal to the Collateral Threshold for Buyer; or
- 2) Seller if, at anytime during the Term of the transactions under the Margined Agreement that are marked therein as subject to this Collateral Annex, the net Mark-to-Market Value of all such transactions is negative and in absolute value is greater than or equal to the Collateral Threshold for Counterparty; or
- 3) Neither Party if neither (1) nor (2) above defines the Posting Party.

“**Product**” means the renewable energy certificates, verified emission reductions, or other commodity or product to be sold in a transaction between the Parties under the Margined Agreements.

“**Seller**” is the Party selling RECs in a certain Margined Agreement.

#### 2. Calculation of Mark-To-Market Value.

## EXHIBIT C

Mark-to-Market Value shall be calculated by 3Degrees and confirmed by Counterparty. The Mark-to-Market Value associated with any transaction shall be assumed to be the same as the price set forth therein until, and first calculated, one hundred eighty (180) days after the execution of the such transaction, and recalculated every one hundred eighty (180) days thereafter; provided, however, that Mark-to-Market Value for all transactions for Product between the Parties shall be calculated no more frequently than once a month, absence an external market event that meaningfully impacts the price of Product.

### **3. Margining.**

The Posting Party shall provide credit assurance in an amount equal to the difference between the Mark-to-Market Value and the Collateral Threshold [up to a maximum of \$\_\_\_\_\_]. Such credit assurance may be in the form of cash or in the form of one of the following:

(a) an irrevocable, non-transferable, standby letter of credit, issued or confirmed by a major U.S. commercial bank or by a U.S. Branch of a foreign bank possessing a credit rating of at least "A-" by S&P or "A3" by Moody's, in a form reasonably acceptable to the accepting Party, to provide that in the event that the letter of credit may be drawn upon in full if it is not renewed within 20 days prior to the date of expiration of the letter of credit.

(b) a guarantee in a form reasonably acceptable to the Seller and Lender by an entity rated at least A- from S&P or A3 from Moody's.

Such credit assurance will be provided within three Business Days of the date of request. On any Business Day, but no more frequently than weekly with respect to letters of credit and daily with respect to cash, if there has been a reduction in the amount of such excess, the posting Party may request that such credit Assurance be reduced correspondingly by the amount of such excess, if any. Failure to provide such credit assurance to the requesting Party within three Business Days of request is an Event of Default under the Margined Agreements. A Party holding credit assurance in the form of cash posted by the other Party will pay the posting Party interest on such cash, monthly, at the Federal Funds rate of interest.

### **3. No Amendment.**

Nothing herein waives or amends any terms of any Margined Agreement or any transaction thereunder.

IN WITNESS WHEREOF, the Parties have executed this 3Degrees Short Form Collateral Annex as of the date first above written.

<b>3Degrees Group Inc.</b>	<b>[Counterparty]</b>
Signature	Signature
Name	Name
Title	Title
Date	Date

**EXHIBIT D**

**3DEGREES MEDIA RIGHTS ANNEX**

This 3DEGREES MEDIA RIGHTS ANNEX is entered into by and between 3Degrees Group, Inc. (“**3Degrees**”) and \_\_\_\_\_ (“**Counterparty**” each a “**Party**” and together the “**Parties**”). In consideration of the continued agreement of the parties to purchase and sell Renewable Energy Certificates and otherwise transact pursuant to the terms of the Renewable Energy Certificate Purchase and Sale Agreement between the Parties dated April 3, 2009 (the “**Agreement**”), the Parties agree as follows:

In the course of business, organizations who purchase renewable energy certificates from 3Degrees utilize photographs of the associated renewable energy facilities for print, web, and other materials. In communicating their renewable energy purchase to their constituents, these organizations help increase the appeal of purchasing renewable energy while building the image and desirability of renewable power in general and Counterparty’s facility of in particular.

To this end, when a Confirmation Letter provides that it confers media rights or is subject to this Annex D, Counterparty will provide 3Degrees with a portfolio of photographs and allow 3Degrees the necessary access to produce additional media. All such media may be used by 3Degrees and shared with 3Degrees’ customers or potential customers who are purchasing or considering purchasing Renewable Energy Certificates from Counterparty’s facility. Counterparty will provide written verification that all 3Degrees customers may use these photographs for as long as they purchase Renewable Energy Certificates.

Therefore, Counterparty grants 3Degrees and its customers and partners in renewable energy marketing and communications the right to utilize and reproduce photographs and any other video and audio provided, with respect to Confirmations so providing.

<b>3Degrees Group Inc.</b>	<b>[Counterparty]</b>
Signature	Signature
Name	Name
Title	Title
Date	Date



# **EXHIBIT B**

**WIND RENEWABLE ENERGY CERTIFICATES  
PURCHASE AGREEMENT**

This purchase agreement for wind renewable energy certificates (this "Agreement") is entered into and effective as of ~~May~~<sup>MAY</sup> 11, 2006, (the "Effective Date") by and between Centennial Power, Inc. ("Seller") and 3 Phases Energy Services, LLC ("Buyer"), which are sometimes referred to herein individually as a "Party" or collectively as the "Parties".

*WFO*

**Recitals**

WHEREAS, Seller is interested in selling wind renewable energy certificates (hereafter referred to as "REC" or "RECs");

WHEREAS, Buyer is interested in purchasing RECs;

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter set forth, the Parties, intending to be legally bound, agree as follows:

**Definitions**

"R E C" means any wind renewable energy credit, credit certificate or similar items that represent all environmental attributes related to one megawatt hour ("MWh") of renewable wind energy generation, but specifically excluding any and all state and federal production tax credits, investment tax credits, and any other tax credits which are or will be generated by the facility. All RECs will be from the Mountain View Power Project owned by Mountain View Power Partners LLC (the "Generation Facility") located in San Geronio Pass, Northwest of Palm Springs, California.

"Business Day" means a day on which banks are open for general commercial business in Bismarck, North Dakota, and a Business Day begins at 8:00 a.m. and closes at 5:00 p.m., central local time.

"Confidential Information" means all oral and written information exchanged between the Parties with respect to the purchase price, payments to be made and RECs to be exchanged under this Agreement. The following exceptions, however, do not constitute Confidential Information for purposes of this Agreement: (i) information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Agreement; (ii) information that was already known by either Party on a non-confidential basis prior to the execution of this Agreement; (iii) information that becomes available to either Party on a non-confidential basis from a source other than the other Party where such source is not known by the receiving Party to be subject to a confidentiality obligation with respect to such information; (iv) information a Party is required to disclose in connection with any administrative or regulatory approval or filing process in connection with the conduct of business.

"Force Majeure" means strikes, catastrophic accidents, acts of God, severe weather, unfavorable wind conditions for unusual and protracted periods, acts or omissions to act by any federal, state, or local government or agency thereof, acts of terrorism, catastrophic mechanical failure of the Generation Facility, or any other cause or causes not reasonably within the control of the parties.

"Unit Contingent" means that Seller's obligation to sell such RECs to Buyer is contingent upon those RECs actually being generated by the Generation Facility.

### 1. Purchase and Sale of RECs.

#### a. Amount and Purchase Price:

Seller agrees to sell and Buyer agrees to purchase RECs as follows:

- Up to 25,000 Unit Contingent RECs from the first half of the vintage year 2007, at a unit price of [REDACTED] per REC on or before July 31, 2007.
- Up to 50,000 Unit Contingent RECs from the second half of the vintage year 2007, at a unit price of [REDACTED] per REC on or before January 31, 2008.
- Assuming maximum REC production, the total purchase price will be [REDACTED] ("Purchase Price").

#### b. Payment Terms and Fund Transfer:

Seller shall present an invoice and attestation to Buyer for purchases made by Buyer. [REDACTED]

#### c. Taxes:

Each Party shall pay any taxes or other fees that are associated with its respective purchase or sale of the RECs as described herein.

### 2. Warranties.

Seller hereby warrants to Buyer that, at the same time of the delivery of the RECs to Buyer purchased and sold by this Agreement, Seller will convey good title to the RECs to Buyer free and clear of any liens or other encumbrances or title defects.

Each Party hereby warrants that the person signing this Agreement on behalf of such Party is legally authorized to obligate the Party. Each Party further represents and warrants that it has and will maintain all legal and regulatory authorizations necessary to perform its obligations under this Agreement.

### 3. Limitations of Liability.

#### a. No Indirect Damages:

FOR BREACH OF ANY PROVISION OF THIS AGREEMENT, EACH PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES, IF ANY, ONLY AS DETERMINED IN ACCORDANCE WITH SECTION 4, AND SUCH DIRECT, ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY HEREUNDER, AND ALL OTHER REMEDIES OR DAMAGES ARE WAIVED. IN

NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, IN TORT, CONTRACT OR OTHERWISE.

**b. Survival:**

This Section 3 shall survive the expiration or termination of this Agreement.

**4. Events of Default; Remedies; Buyer's Liability; Seller's Liability; Force Majeure; No Penalty.**

**a. Events of Default:**

The term "Event of Default" shall mean, with respect to a breaching Party (the "Affected Party"):

1. the failure by the Affected Party to make, when due, any payment required under this Agreement if such failure is not remedied within thirty (30) Business Days after written notice of such failure is given to the Affected Party; or
2. any representation or warranty made by the Affected Party in this Agreement shall prove to have been false or misleading in any material respect when made; or
3. the failure by the Affected Party to perform any covenant or agreement set forth in this Agreement (other than its obligations to make any payment or obligations which are otherwise specifically covered as a separate Event of Default), and such failure is not cured within thirty (30) Business Days after written notice thereof to the Affected Party; or
4. the Affected Party shall:
  - (i) make an assignment or any general arrangement for the benefit of creditors,
  - (ii) file a petition or otherwise commence, authorize or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or have such petition filed against it and such proceeding remains undismissed for thirty (30) days,
  - (iii) otherwise become bankrupt or insolvent (however evidenced), or
  - (iv) be unable to pay its debts as they fall due.

**b. Remedies.** If an Event of Default occurs with respect to either Party at any time during the term of this Agreement, the other Party (the "Notifying Party") may (a) upon fifteen (15) Business Days' written notice to the Affected Party terminate this Agreement, (b) withhold any payments due in respect of this Agreement to the extent of its damages pursuant to the "Limitation of Liability" section, and (c) exercise such other

remedies as may be available at law or in equity or as otherwise provided in this Agreement; provided, upon the occurrence of any Event of Default listed in clause (3) of the definition of "Event of Default" above as it may apply to any Party, this Agreement shall automatically terminate, without notice, immediately prior to such event.

c. **Buyer's Liability.** If Buyer causes an Event of Default and Seller elects to terminate this Agreement, then at Seller's sole discretion Buyer shall be obligated to either: 1) return the RECs to Seller, or 2) pay Seller termination damages equal to the Purchase Price as listed in section 1(a).

d. **Seller's Liability.** If Seller causes an Event of Default and Buyer elects to terminate this Agreement, Seller shall pay Buyer an amount equal to the cost to Buyer of purchasing and additionally the difference between Purchase Price and the market price at which the Buyer could purchase RECs of the same vintage, type, and within the same state. The market price shall be determined based upon the average of prices quoted by three independent third party brokerage services selected by Buyer and reasonably acceptable to Seller.

e. **Force Majeure.** If Seller is unable to deliver the RECs as set forth in this Agreement due to any cause of Force Majeure, then this Agreement shall be void without penalty to either Party for any such portion not delivered.

f. **No Penalty.** Both Parties hereby stipulate that the payment obligations set forth above are reasonable in light of the anticipated harm and the difficulty of estimation or calculation of actual damages, and each Party hereby waives the right to contest such payments as an unreasonable penalty.

## 5. **Assignment.**

This Agreement is not assignable by either Party, except as provided herein, without the prior written approval of the non-assigning Party, which shall not be unreasonably withheld or delayed. Subject to the terms of this Section, any assignment without the written approval of the non-assigning Party, except as provided herein, is voidable by the non-assigning Party. Notwithstanding the foregoing, either Party may assign this Agreement, without the consent of the other Party, (i) to an entity succeeding to all or substantially all of the business or assets of the assigning Party, or (ii) to an affiliate of the assigning Party so long as, in the case of clause (ii), (A) the creditworthiness of such affiliate is not materially weaker than that of the assigning Party immediately prior to the assignment or (B) the assigning Party provides a written guaranty of such affiliate's obligations hereunder, in form and substance reasonably satisfactory to the nonassigning Party, from the assigning Party's ultimate parent entity or another affiliate of assigning Party acceptable to the non-assigning Party in its sole discretion.

## 6. **Non-Disclosure of Confidential Information.**

Except as provided in this Section, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person, at any time during or after the term of this Agreement, without the other Party's prior express written consent. Each Party shall

permit knowledge of and access to the Confidential Information only to those of its corporate affiliates, attorneys, accountants, representatives, principals, agents, brokers, and employees who have a need to know related to this Agreement.

If required by any law, statute, ordinance, decision, order, or regulation passed, adopted, issued or promulgated by a court, any governmental agency or authority having jurisdiction over a Party, such Party may release the Confidential Information, or a portion thereof, to such court, governmental agency or authority, as required by law, statute, ordinance, decision, order, regulation or action and a Party may disclose Confidential Information to accountants in connection with audits, provided that such Party has used its reasonable efforts to cause that court, governmental agency or authority or accountants to treat such information in a confidential manner and to prevent such information from being disclosed or otherwise becoming part of the public domain.

In performing their obligations under this Agreement, the Parties shall employ procedures established to prevent unauthorized disclosure or use of the Confidential Information. Such procedures shall be no less restrictive than the procedures used by each Party to protect its own confidential data.

**7. Termination.**

Except as otherwise set forth herein, the obligations under this Agreement shall expire three (3) years from the date hereof.

**8. Green-e and Wind Energy Credits™ Standards Compliance.**

- a. Seller attests that the electricity associated with the RECs was delivered into the electricity power system or consumed at the site of generation by an end-user of electricity and was not marketed or otherwise represented as renewable energy.
- b. Seller attests that any emission reduction or emission allowances allocated to the Seller for the generation output that supports the RECs have been transferred to the Buyer and not sold separately.
- c. To the best of the Seller's knowledge the generation output that supports the RECs has not been used for compliance with any procurement, renewable portfolio standard or other renewable energy requirement of local, state and federal government.
- d. Seller will notify the Public Utility Commission or other appropriate energy regulatory body in the state where the electricity associated with the REC was sold that all of the environmental attributes of the electricity were sold separately as a REC.
- e. Seller will notify the appropriate environmental regulatory body in the state where the electricity associated with the REC was sold that all of the environmental attributes of the electricity were sold separately as a REC.

- f. To the best of the Seller's knowledge the RECs will not be double counted, double sold or double claimed.
- g. Seller attests that the generation facility that produced the RECs was placed in service in September and October 2001.

**9. Miscellaneous.**

- a. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both of the Parties to this Agreement or their successors in interest.
- b. This Agreement inures to the benefit of, and is binding upon, the Parties and their respective successors and permitted assignees.
- c. If any article, phrase, provision or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such article, phrase, provision, or portion so adjudged will be deemed separate, distinct and independent and the remainder of this Agreement will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purposes of this Agreement and the benefits to the Parties are not substantially impaired.
- d. This Agreement may be executed in several counterparts, including facsimile, each of which is an original and all of which constitute one and the same instrument.
- e. All notices, certificates, or other communications hereunder shall be in writing. All written notices are deemed sufficiently given when mailed by United States certified mail, return receipt requested or by recognized overnight courier service, postage prepaid, or hand-delivered, or sent by facsimile transmission, if the original communication is delivered by recognized overnight courier service, addressed as follows, and shall be effective when received:

To: **Centennial Power, Inc.**  
1150 West Century Avenue  
Bismarck, ND 58503  
Attn: Contract Administrator

To: 3 Phases Energy Services, LLC  
Presidio of San Francisco  
6 Funston Avenue, Suite A  
San Francisco, CA 94129  
Attn: Dan Kalafatas, Director

Payments to Seller shall be by check to the address above or wire transfer and delivered pursuant to Seller's instructions.

f. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all other prior understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof.

g. No delay or omission by a Party in the exercise of any right under this Agreement shall be taken, construed, or considered as a waiver or relinquishment thereof, and any such right may be exercised from time to time and as often as may be deemed expedient. If any of the terms and conditions herein are breached and thereafter waived by a Party, such waiver is limited to the particular breach so waived and is not deemed to waive any other breach hereunder.

h. This Agreement was negotiated and prepared by both Parties with advice of counsel to the extent deemed necessary by each Party.

i. The section and paragraph titles in this Agreement are only for purposes of convenience and do not form a part of this Agreement and will not be taken to qualify, explain, or affect any provision thereof.

j. This Agreement shall be governed by, construed under, and enforced in accordance with the laws of the State of North Dakota, excluding any conflict of law rules that would refer to the laws of another jurisdiction. Forum and venue shall be in the State of North Dakota.


k. The Recitals stated herein are hereby fully incorporated into this Agreement.

IN WITNESS THEREOF, the Parties hereto have made and executed this Agreement, signed by their duly authorized offices or individuals, as of the Effective Date.

3 PHASES ENERGY SERVICES, LLC


CENTENNIAL POWER, INC.

By:

  
Dan Kalafatas  
Director

*June 16, 2006*

By:

  
William R. Connors  
Vice President - Origination, Contracts,  
and Regulatory



## WIND RENEWABLE ENERGY CERTIFICATES PURCHASE AGREEMENT

This purchase agreement for wind renewable energy certificates (this "Agreement") is entered into and effective as of July 31, 2005, (the "Effective Date") by and between Centennial Power, Inc. ("Seller") and 3 Phases Energy Services, LLC ("Buyer"), which are sometimes referred to herein individually as a "Party" or collectively as the "Parties".

### Recitals

WHEREAS, Seller is interested in selling wind renewable energy certificates (hereafter referred to as "REC" or "RECs");

WHEREAS, Buyer is interested in purchasing RECs;

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter set forth, the Parties, intending to be legally bound, agree as follows:

### Definitions

"REC" means any wind renewable energy credit, credit certificate or similar items that represent all environmental attributes related to one megawatt hour ("MWh") of renewable wind energy generation, but specifically excluding any and all state and federal production tax credits, investment tax credits, and any other tax credits which are or will be generated by the facility. All RECs will be from the Mountain View Power Project owned by Mountain View Power Partners LLC (the "Generation Facility") located in San Geronimo Pass, Northwest of Palm Springs, California.

"Business Day" means a day on which banks are open for general commercial business in Bismarck, North Dakota, and a Business Day begins at 8:00 a.m. and closes at 5:00 p.m., central local time.

"Confidential Information" means all oral and written information exchanged between the Parties with respect to the purchase price, payments to be made and RECs to be exchanged under this Agreement. The following exceptions, however, do not constitute Confidential Information for purposes of this Agreement: (i) information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Agreement; (ii) information that was already known by either Party on a non-confidential basis prior to the execution of this Agreement; (iii) information that becomes available to either Party on a non-confidential basis from a source other than the other Party where such source is not known by the receiving Party to be subject to a confidentiality obligation with respect to such information; (iv) information a Party is required to disclose in connection with any administrative or regulatory approval or filing process in connection with the conduct of business.

"Force Majeure" means strikes, catastrophic accidents, acts of God, severe weather, unfavorable wind conditions for unusual and protracted periods, acts or omissions to act by any federal, state, or local government or agency thereof, acts of terrorism, catastrophic mechanical failure of the Generation Facility, or any other cause or causes not reasonably within the control of the parties.

"Unit Contingent" means that Seller's obligation to sell such RECs to Buyer is contingent upon those RECs actually being generated by the Generation Facility.

## 1. Purchase and Sale of RECs.

### a. Amount and Purchase Price:

Seller agrees to sell and Buyer agrees to purchase RECs as follows:

- 100,000 RECs from the first half of the vintage year 2005, at a unit price of [REDACTED] per REC on or before July 31, 2005.
- 100,000 Unit Contingent RECs from the first half of the vintage year 2006, at a unit price of [REDACTED] per REC on or before July 31, 2006.
- 50,000 Unit Contingent RECs from the second half of the vintage year 2006, at a unit price of [REDACTED] per REC on or before January 31, 2007.
- 20,000 Unit Contingent RECs from the vintage year 2007, at a unit price of [REDACTED] per REC on or before July 31, 2008.
- Assuming maximum REC production, the total purchase price will be [REDACTED] ("Purchase Price").

### b. Payment Terms and Fund Transfer:

Seller shall present an invoice and attestation to Buyer for purchases made by Buyer. [REDACTED]

[REDACTED]

### c. Taxes:

Each Party shall pay any taxes or other fees that are associated with its respective purchase or sale of the RECs as described herein.

## 2. Warranties.

Seller hereby warrants to Buyer that, at the same time of the delivery of the RECs to Buyer purchased and sold by this Agreement, Seller will convey good title to the RECs to Buyer free and clear of any liens or other encumbrances or title defects.

Each Party hereby warrants that the person signing this Agreement on behalf of such Party is legally authorized to obligate the Party. Each Party further represents and warrants that it has and will maintain all legal and regulatory authorizations necessary to perform its obligations under this Agreement.

## 3. Limitations of Liability.

### a. No Indirect Damages:

FOR BREACH OF ANY PROVISION OF THIS AGREEMENT, EACH PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES, IF ANY, ONLY AS

DETERMINED IN ACCORDANCE WITH SECTION 4, AND SUCH DIRECT, ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY HEREUNDER, AND ALL OTHER REMEDIES OR DAMAGES ARE WAIVED. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, IN TORT, CONTRACT OR OTHERWISE.

**b. Survival:**

This Section 3 shall survive the expiration or termination of this Agreement.

**4. Events of Default; Remedies; Buyer's Liability; Seller's Liability; Force Majeure; No Penalty.**

**a. Events of Default:**

The term "Event of Default" shall mean, with respect to a breaching Party (the "Affected Party"):

1. the failure by the Affected Party to make, when due, any payment required under this Agreement if such failure is not remedied within thirty (30) Business Days after written notice of such failure is given to the Affected Party; or
2. any representation or warranty made by the Affected Party in this Agreement shall prove to have been false or misleading in any material respect when made; or
3. the failure by the Affected Party to perform any covenant or agreement set forth in this Agreement (other than its obligations to make any payment or obligations which are otherwise specifically covered as a separate Event of Default), and such failure is not cured within thirty (30) Business Days after written notice thereof to the Affected Party, or
4. the Affected Party shall:
  - (i) make an assignment or any general arrangement for the benefit of creditors,
  - (ii) file a petition or otherwise commence, authorize or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or have such petition filed against it and such proceeding remains undismissed for thirty (30) days,
  - (iii) otherwise become bankrupt or insolvent (however evidenced), or
  - (iv) be unable to pay its debts as they fall due.

**b. Remedies.** If an Event of Default occurs with respect to either Party at any time during the term of this Agreement, the other Party (the "Notifying Party") may (a) upon fifteen (15) Business Days' written notice to the Affected Party terminate this Agreement, (b) withhold any payments due in respect of this Agreement to the extent of its damages pursuant to the "Limitation of Liability" section, and (c) exercise such other remedies as may be available at

law or in equity or as otherwise provided in this Agreement; provided, upon the occurrence of any Event of Default listed in clause (3) of the definition of "Event of Default" above as it may apply to any Party, this Agreement shall automatically terminate, without notice, immediately prior to such event.

c. **Buyer's Liability.** If Buyer causes an Event of Default and Seller elects to terminate this Agreement, then at Seller's sole discretion Buyer shall be obligated to either: 1) return the REC's to Seller, or 2) pay Seller termination damages equal to the Purchase Price as listed in section 1(a).

d. **Seller's Liability.** If Seller causes an Event of Default and Buyer elects to terminate this Agreement, Seller shall pay Buyer an amount equal to the cost to Buyer of purchasing and additionally the difference between Purchase Price and the market price at which the Buyer could purchase REC's of the same vintage, type, and within the same state. The market price shall be determined based upon the average of prices quoted by three independent third party brokerage services selected by Buyer and reasonably acceptable to Seller.

e. **Force Majeure.** If Seller is unable to deliver the REC's as set forth in this Agreement due to any cause of Force Majeure, then this Agreement shall be void without penalty to either Party for any such portion not delivered.

f. **No Penalty.** Both Parties hereby stipulate that the payment obligations set forth above are reasonable in light of the anticipated harm and the difficulty of estimation or calculation of actual damages, and each Party hereby waives the right to contest such payments as an unreasonable penalty.

## 5. **Assignment.**

This Agreement is not assignable by either Party, except as provided herein, without the prior written approval of the non-assigning Party, which shall not be unreasonably withheld or delayed. Subject to the terms of this Section, any assignment without the written approval of the non-assigning Party, except as provided herein, is voidable by the non-assigning Party. Notwithstanding the foregoing, either Party may assign this Agreement, without the consent of the other Party, (i) to an entity succeeding to all or substantially all of the business or assets of the assigning Party, or (ii) to an affiliate of the assigning Party so long as, in the case of clause (ii), (A) the creditworthiness of such affiliate is not materially weaker than that of the assigning Party immediately prior to the assignment or (B) the assigning Party provides a written guaranty of such affiliate's obligations hereunder, in form and substance reasonably satisfactory to the nonassigning Party, from the assigning Party's ultimate parent entity or another affiliate of assigning Party acceptable to the non-assigning Party in its sole discretion.

## 6. **Non-Disclosure of Confidential Information.**

Except as provided in this Section, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person, at any time during or after the term of this Agreement, without the other Party's prior express written consent. Each Party shall permit knowledge of and access to the Confidential Information only to those of its corporate affiliates, attorneys,

accountants, representatives, principals, agents, brokers, and employees who have a need to know related to this Agreement.

If required by any law, statute, ordinance, decision, order, or regulation passed, adopted, issued or promulgated by a court, any governmental agency or authority having jurisdiction over a Party, such Party may release the Confidential Information, or a portion thereof, to such court, governmental agency or authority, as required by law, statute, ordinance, decision, order, regulation or action and a Party may disclose Confidential Information to accountants in connection with audits, provided that such Party has used its reasonable efforts to cause that court, governmental agency or authority or accountants to treat such information in a confidential manner and to prevent such information from being disclosed or otherwise becoming part of the public domain.

In performing their obligations under this Agreement, the Parties shall employ procedures established to prevent unauthorized disclosure or use of the Confidential Information. Such procedures shall be no less restrictive than the procedures used by each Party to protect its own confidential data.

**7. Termination.**

Except as otherwise set forth herein, the obligations under this Agreement shall expire three (3) years from the date hereof.

**8. Green-e and Wind Energy Credits<sup>TM</sup> Standards Compliance.**

- a. Seller attests that the electricity associated with the REC's was delivered into the electricity power system or consumed at the site of generation by an end-user of electricity and was not marketed or otherwise represented as renewable energy.
- b. Seller attests that any emission reduction or emission allowances allocated to the Seller for the generation output that supports the REC's have been transferred to the Buyer and not sold separately.
- c. To the best of the Seller's knowledge the generation output that supports the REC's has not been used for compliance with any procurement, renewable portfolio standard or other renewable energy requirement of local, state and federal government.
- d. Seller will notify the Public Utility Commission or other appropriate energy regulatory body in the state where the electricity associated with the REC was sold that all of the environmental attributes of the electricity were sold separately as a REC.
- e. Seller will notify the appropriate environmental regulatory body in the state where the electricity associated with the REC was sold that all of the environmental attributes of the electricity were sold separately as a REC.
- f. To the best of the Seller's knowledge the REC's will not be double counted, double sold or double claimed.

- g. Seller attests that the generation facility that produced the RECs was placed in service in September and October 2001.

**9. Miscellaneous.**

a. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both of the Parties to this Agreement or their successors in interest.

b. This Agreement inures to the benefit of, and is binding upon, the Parties and their respective successors and permitted assignees.

c. If any article, phrase, provision or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such article, phrase, provision, or portion so adjudged will be deemed separate, distinct and independent and the remainder of this Agreement will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purposes of this Agreement and the benefits to the Parties are not substantially impaired.

d. This Agreement may be executed in several counterparts, including facsimile, each of which is an original and all of which constitute one and the same instrument.

e. All notices, certificates, or other communications hereunder shall be in writing. All written notices are deemed sufficiently given when mailed by United States certified mail, return receipt requested or by recognized overnight courier service, postage prepaid, or hand-delivered, or sent by facsimile transmission, if the original communication is delivered by recognized overnight courier service, addressed as follows, and shall be effective when received:

To: Centennial Power, Inc.  
400 North 4<sup>th</sup> Street  
Bismarck, ND 58501  
Attn: Contract Administrator

To: 3 Phases Energy Services, LLC  
Presidio of San Francisco  
6 Funston Avenue, Suite A  
San Francisco, CA 94129  
Attn: Dan Kalafatas, Director

Payments to Seller shall be by check to the address above or wire transfer and delivered pursuant to Seller's instructions.

f. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all other prior understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof.

g. No delay or omission by a Party in the exercise of any right under this Agreement shall be taken, construed, or considered as a waiver or relinquishment thereof, and any such right may be exercised from time to time and as often as may be deemed expedient. If any of the terms and conditions herein are breached and thereafter waived by a Party, such waiver is limited to the particular breach so waived and is not deemed to waive any other breach hereunder.

h. This Agreement was negotiated and prepared by both Parties with advice of counsel to the extent deemed necessary by each Party.

i. The section and paragraph titles in this Agreement are only for purposes of convenience and do not form a part of this Agreement and will not be taken to qualify, explain, or affect any provision thereof.

j. This Agreement shall be governed by, construed under, and enforced in accordance with the laws of the State of North Dakota, excluding any conflict of law rules that would refer to the laws of another jurisdiction. Forum and venue shall be in the State of North Dakota.

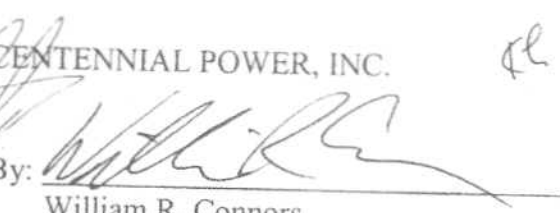
k. The Recitals stated herein are hereby fully incorporated into this Agreement.

IN WITNESS THEREOF, the Parties hereto have made and executed this Agreement, signed by their duly authorized offices or individuals, as of the Effective Date.

3 PHASES ENERGY SERVICES, LLC

CENTENNIAL POWER, INC. *cl*

By:   
Dan Kalafatas  
Director

By:   
William R. Connors  
Vice President, Contracts  
and Regulatory

**WIND RENEWABLE ENERGY CERTIFICATES  
PURCHASE AGREEMENT**

This purchase agreement for wind renewable energy certificates (this "Agreement") is entered into and effective as of April ~~29~~, 2005, (the "Effective Date") by and between Centennial Power, Inc. ("Seller") and 3 Phases Energy Services, LLC ("Buyer"), which are sometimes referred to herein individually as a "Party" or collectively as the "Parties".

**Recitals**

WHEREAS, Seller is interested in selling wind renewable energy certificates (hereafter referred to as "REC" or "RECs");

WHEREAS, Buyer is interested in purchasing RECs;

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter set forth, the Parties, intending to be legally bound, agree as follows:

**Definitions**

"REC" means any wind renewable energy credit, credit certificate or similar items that represent all environmental attributes related to one megawatt hour ("MWh") of renewable wind energy generation, but specifically excluding any and all state and federal production tax credits, investment tax credits, and any other tax credits which are or will be generated by the facility. All RECs will be from the Mountain View Power Project owned by Mountain View Power Partners LLC (the "Generation Facility") located in San Geronio Pass, Northwest of Palm Springs, California.

"Business Day" means a day on which banks are open for general commercial business in Bismarck, North Dakota, and a Business Day begins at 8:00 a.m. and closes at 5:00 p.m., central local time.

"Confidential Information" means all oral and written information exchanged between the Parties with respect to the purchase price, payments to be made and RECs to be exchanged under this Agreement. The following exceptions, however, do not constitute Confidential Information for purposes of this Agreement: (i) information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Agreement; (ii) information that was already known by either Party on a non-confidential basis prior to the execution of this Agreement; (iii) information that becomes available to either Party on a non-confidential basis from a source other than the other Party where such source is not known by the receiving Party to be subject to a confidentiality obligation with respect to such information; (iv) information a Party is required to disclose in connection with any administrative or regulatory approval or filing process in connection with the conduct of business.

"Force Majeure" means strikes, catastrophic accidents, acts of God, severe weather, unfavorable wind conditions for unusual and protracted periods, acts or omissions to act by any federal, state,



or local government or agency thereof, acts of terrorism, catastrophic mechanical failure of the Generation Facility, or any other cause or causes not reasonably within the control of the parties. "Unit Contingent" means that Seller's obligation to sell such RECs to Buyer is contingent upon those RECs actually being generated by the Generation Facility.

## 1. Purchase and Sale of RECs.

### a. Amount and Purchase Price:

Seller agrees to sell and Buyer agrees to purchase RECs as follows:

- 36,377 RECs from the second half of the vintage year 2004, at a unit price of [REDACTED] per REC on or before June 1, 2005.
- Up to 100,000 Unit Contingent RECs from the second half of the vintage year 2005, at a unit price of [REDACTED] per REC on or before January 31, 2006. Such 100,000 Unit Contingent RECs shall not include the 5,000 RECs previously contracted for between the Parties on March 7, 2005.
- Up to 50,000 Unit Contingent RECs from the second half of the vintage year 2006, at a unit price of [REDACTED] per REC on or before January 31, 2007.
- Assuming maximum REC production, the total purchase price will be [REDACTED] ("Purchase Price").

### b. Payment Terms and Fund Transfer:

Seller shall present an invoice and attestation to Buyer for purchases made by Buyer. [REDACTED]

[REDACTED]

### c. Taxes:

Each Party shall pay any taxes or other fees that are associated with its respective purchase or sale of the RECs as described herein.

## 2. Warranties.

Seller hereby warrants to Buyer that, at the same time of the delivery of the RECs to Buyer purchased and sold by this Agreement, Seller will convey good title to the RECs to Buyer free and clear of any liens or other encumbrances or title defects.

Each Party hereby warrants that the person signing this Agreement on behalf of such Party is legally authorized to obligate the Party. Each Party further represents and warrants that it has and will maintain all legal and regulatory authorizations necessary to perform its obligations under this Agreement.

3. **Limitations of Liability.**

a. **No Indirect Damages:**

FOR BREACH OF ANY PROVISION OF THIS AGREEMENT, EACH PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES, IF ANY, ONLY AS DETERMINED IN ACCORDANCE WITH SECTION 4, AND SUCH DIRECT, ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY HEREUNDER, AND ALL OTHER REMEDIES OR DAMAGES ARE WAIVED. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, IN TORT, CONTRACT OR OTHERWISE.

b. **Survival:**

This Section 3 shall survive the expiration or termination of this Agreement.

4. **Events of Default; Remedies; Buyer's Liability; Seller's Liability; Force Majeure; No Penalty.**

a. **Events of Default:**

The term "Event of Default" shall mean, with respect to a breaching Party (the "Affected Party"):

1. the failure by the Affected Party to make, when due, any payment required under this Agreement if such failure is not remedied within thirty (30) Business Days after written notice of such failure is given to the Affected Party; or
2. any representation or warranty made by the Affected Party in this Agreement shall prove to have been false or misleading in any material respect when made; or
3. the failure by the Affected Party to perform any covenant or agreement set forth in this Agreement (other than its obligations to make any payment or obligations which are otherwise specifically covered as a separate Event of Default), and such failure is not cured within thirty (30) Business Days after written notice thereof to the Affected Party; or
4. the Affected Party shall:
  - (i) make an assignment or any general arrangement for the benefit of creditors,
  - (ii) file a petition or otherwise commence, authorize or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or have such petition filed against it and such proceeding remains undismissed for thirty (30) days,

- (iii) otherwise become bankrupt or insolvent (however evidenced), or
- (iv) be unable to pay its debts as they fall due.

**b. Remedies.** If an Event of Default occurs with respect to either Party at any time during the term of this Agreement, the other Party (the "Notifying Party") may (a) upon fifteen (15) Business Days' written notice to the Affected Party terminate this Agreement, (b) withhold any payments due in respect of this Agreement to the extent of its damages pursuant to the "Limitation of Liability" section, and (c) exercise such other remedies as may be available at law or in equity or as otherwise provided in this Agreement; provided, upon the occurrence of any Event of Default listed in clause (3) of the definition of "Event of Default" above as it may apply to any Party, this Agreement shall automatically terminate, without notice, immediately prior to such event.

**c. Buyer's Liability.** If Buyer causes an Event of Default and Seller elects to terminate this Agreement, then at Seller's sole discretion Buyer shall be obligated to either: 1) return the RECs to Seller, or 2) pay Seller termination damages equal to the Purchase Price as listed in section 1(a).

**d. Seller's Liability.** If Seller causes an Event of Default and Buyer elects to terminate this Agreement, Seller shall pay Buyer an amount equal to the cost to Buyer of purchasing and additionally the difference between Purchase Price and the market price at which the Buyer could purchase RECs of the same vintage, type, and within the same state. The market price shall be determined based upon the average of prices quoted by three independent third party brokerage services selected by Buyer and reasonably acceptable to Seller.

**e. Force Majeure.** If Seller is unable to deliver the RECs as set forth in this Agreement due to any cause of Force Majeure, then this Agreement shall be void without penalty to either Party for any such portion not delivered.

**f. No Penalty.** Both Parties hereby stipulate that the payment obligations set forth above are reasonable in light of the anticipated harm and the difficulty of estimation or calculation of actual damages, and each Party hereby waives the right to contest such payments as an unreasonable penalty.

## 5. Assignment.

This Agreement is not assignable by either Party, except as provided herein, without the prior written approval of the non-assigning Party, which shall not be unreasonably withheld or delayed. Subject to the terms of this Section, any assignment without the written approval of the non-assigning Party, except as provided herein, is voidable by the non-assigning Party. Notwithstanding the foregoing, either Party may assign this Agreement, without the consent of the other Party, (i) to an entity succeeding to all or substantially all of the business or assets of the assigning Party, or (ii) to an affiliate of the assigning Party so long as, in the case of clause (ii), (A) the creditworthiness of such affiliate is not materially weaker than that of the assigning Party immediately prior to the

assignment or (B) the assigning Party provides a written guaranty of such affiliate's obligations hereunder, in form and substance reasonably satisfactory to the nonassigning Party, from the assigning Party's ultimate parent entity or another affiliate of assigning Party acceptable to the non-assigning Party in its sole discretion.

**6. Non-Disclosure of Confidential Information.**

Except as provided in this Section, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person, at any time during or after the term of this Agreement, without the other Party's prior express written consent. Each Party shall permit knowledge of and access to the Confidential Information only to those of its corporate affiliates, attorneys, accountants, representatives, principals, agents, brokers, and employees who have a need to know related to this Agreement.

If required by any law, statute, ordinance, decision, order, or regulation passed, adopted, issued or promulgated by a court, any governmental agency or authority having jurisdiction over a Party, such Party may release the Confidential Information, or a portion thereof, to such court, governmental agency or authority, as required by law, statute, ordinance, decision, order, regulation or action and a Party may disclose Confidential Information to accountants in connection with audits, provided that such Party has used its reasonable efforts to cause that court, governmental agency or authority or accountants to treat such information in a confidential manner and to prevent such information from being disclosed or otherwise becoming part of the public domain.

In performing their obligations under this Agreement, the Parties shall employ procedures established to prevent unauthorized disclosure or use of the Confidential Information. Such procedures shall be no less restrictive than the procedures used by each Party to protect its own confidential data.

**7. Termination.**

Except as otherwise set forth herein, the obligations under this Agreement shall expire three (3) years from the date hereof.

**8. Green-e and Wind Energy Credits™ Standards Compliance.**

- a. Seller attests that the electricity associated with the RECs was delivered into the electricity power system or consumed at the site of generation by an end-user of electricity and was not marketed or otherwise represented as renewable energy.
- b. Seller attests that any emission reduction or emission allowances allocated to the Seller for the generation output that supports the RECs have been transferred to the Buyer and not sold separately.
- c. To the best of the Seller's knowledge the generation output that supports the RECs has not been used for compliance with any procurement, renewable

portfolio standard or other renewable energy requirement of local, state and federal government.

- d. Seller will notify the Public Utility Commission or other appropriate energy regulatory body in the state where the electricity associated with the REC was sold that all of the environmental attributes of the electricity were sold separately as a REC.
- e. Seller will notify the appropriate environmental regulatory body in the state where the electricity associated with the REC was sold that all of the environmental attributes of the electricity were sold separately as a REC.
- f. To the best of the Seller's knowledge the RECs will not be double counted, double sold or double claimed.
- g. Seller attests that the generation facility that produced the RECs was placed in service in September and October 2001.

**9. Miscellaneous.**

- a. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both of the Parties to this Agreement or their successors in interest.
- b. This Agreement inures to the benefit of, and is binding upon, the Parties and their respective successors and permitted assignees.
- c. If any article, phrase, provision or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such article, phrase, provision, or portion so adjudged will be deemed separate, distinct and independent and the remainder of this Agreement will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purposes of this Agreement and the benefits to the Parties are not substantially impaired.
- d. This Agreement may be executed in several counterparts, including facsimile, each of which is an original and all of which constitute one and the same instrument.
- e. All notices, certificates, or other communications hereunder shall be in writing. All written notices are deemed sufficiently given when mailed by United States certified mail, return receipt requested or by recognized overnight courier service, postage prepaid, or hand-delivered, or sent by facsimile transmission, if the original communication is delivered by recognized overnight courier service, addressed as follows, and shall be effective when received:

To: Centennial Power, Inc.  
400 North 4<sup>th</sup> Street  
Bismarck, ND 58501  
Attn: Contract Administrator

To: 3 Phases Energy Services, LLC  
Presidio of San Francisco  
6 Funston Avenue, Suite A  
San Francisco, CA 94129  
Attn: Dan Kalafatas, Director

Payments to Seller shall be by check to the address above or wire transfer and delivered pursuant to Seller's instructions.

f. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all other prior understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof.

g. No delay or omission by a Party in the exercise of any right under this Agreement shall be taken, construed, or considered as a waiver or relinquishment thereof, and any such right may be exercised from time to time and as often as may be deemed expedient. If any of the terms and conditions herein are breached and thereafter waived by a Party, such waiver is limited to the particular breach so waived and is not deemed to waive any other breach hereunder.

h. This Agreement was negotiated and prepared by both Parties with advice of counsel to the extent deemed necessary by each Party.

i. The section and paragraph titles in this Agreement are only for purposes of convenience and do not form a part of this Agreement and will not be taken to qualify, explain, or affect any provision thereof.

j. This Agreement shall be governed by, construed under, and enforced in accordance with the laws of the State of North Dakota, excluding any conflict of law rules that would refer to the laws of another jurisdiction. Forum and venue shall be in the State of North Dakota.

k. The Recitals stated herein are hereby fully incorporated into this Agreement.

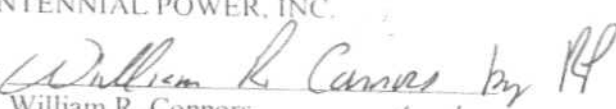
IN WITNESS THEREOF, the Parties hereto have made and executed this Agreement, signed by their duly authorized offices or individuals, as of the Effective Date.

3 PHASES ENERGY SERVICES, LLC

By:   
Dan Kalafatas  
Director

6/21/05

CENTENNIAL POWER, INC.

By:   
William R. Connors  
Vice President, Contracts  
and Regulatory

4/29/05

## **WIND RENEWABLE ENERGY CERTIFICATES PURCHASE AGREEMENT**

This Purchase Agreement for Wind Renewable Energy Certificates (this "Agreement") is entered into and effective on March 7 2005, (the "Effective Date") by and between Centennial Power, Inc. ("Seller") and 3 Phases Energy Services, LLC ("Buyer"), which are sometimes herein individually referred to as a "Party" or collectively as the "Parties".

### **Recitals**

WHEREAS, Seller is interested in selling Wind Renewable Energy Certificates (hereafter referred to as "REC" or "RECs");

WHEREAS, Buyer is interested in purchasing those same RECs;

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter set forth, the Parties, intending to be legally bound, agree as follows:

### **Definitions**

"Renewable Energy Certificate" means any renewable wind energy credit, credit certificate or similar items that represent all environmental attributes related to one MWh of renewable wind energy generation, but specifically excluding any and all state and federal production tax credits, investment tax credits, and any other tax credits which are or will be generated by the facility. All RECs will be from the Mountain View Power Project owned by Mountain View Power Partners LLC (the "Generation Facility") located in San Geronio Pass, Northwest of Palm Springs, California.

"Business Day" means a day on which banks are open for general commercial business in Bismarck, North Dakota, and a Business Day begins at 8:00 a.m. and closes at 5:00 p.m., central local time.

"Confidential Information" means all oral and written information exchanged between the Parties with respect to the purchase price, payments to be made and RECs to be exchanged under this Agreement. The following exceptions, however, do not constitute Confidential Information for purposes of this Agreement: (i) information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Agreement; (ii) information that was already known by either Party on a non-confidential basis prior to the execution of this Agreement; (iii) information that becomes available to either Party on a non-confidential basis from a source other than the other Party where such source is not known by the receiving Party to be subject to a confidentiality obligation with respect to such information; (iv) information a Party is required to disclose in connection with any administrative or regulatory approval or filing process in connection with the conduct of business.

"Force Majeure" means strikes, catastrophic accidents, acts of God, severe weather, unfavorable wind conditions for unusual and protracted periods, acts or omissions to act by any federal, state, or local government or agency thereof, acts of terrorism, catastrophic mechanical failure of the Generation Facility, or any other cause or causes not reasonably within the control of the parties.

**1. Purchase and Sale of RECs.**

**a. Amount and Purchase Price:**

Seller agrees to sell and Buyer agrees to purchase a total of 5,000 RECs generated between July 1, 2005 and December 31, 2005. The unit price of the RECs shall be [REDACTED] per REC for a total purchase price of [REDACTED] ("Purchase Price").

**b. Payment Terms and Fund Transfer:**

Seller shall present an invoice and attestation to Buyer for purchases made by Buyer. [REDACTED]

**c. Taxes:**

Each Party shall pay any taxes or other fees that are associated with its respective purchase or sale of the RECs as described herein.

**2. Warranties.**

Seller hereby warrants to Buyer that, at the same time of the delivery of the RECs to Buyer purchased and sold by this Agreement, Seller will convey good title to the RECs to Buyer free and clear of any liens or other encumbrances or title defects.

Each Party hereby warrants that the person signing this Agreement on behalf of such Party is legally authorized to obligate the Party. Each Party further represents and warrants that it has and will maintain all legal and regulatory authorizations necessary to perform its obligations under this Agreement.

**3. Limitations of Liability.**

**a. No Indirect Damages:**

FOR BREACH OF ANY PROVISION OF THIS AGREEMENT, EACH PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES, IF ANY, ONLY AS DETERMINED IN ACCORDANCE WITH SECTION 4, AND SUCH DIRECT, ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY HEREUNDER, AND ALL OTHER REMEDIES OR DAMAGES ARE WAIVED. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, IN TORT, CONTRACT OR OTHERWISE.

**b. Survival:**

This Section 3 shall survive the expiration or termination of this Agreement.

**4. Events of Default; Remedies; Buyer's Liability; Seller's Liability; Force Majeure; No Penalty.**



**a. Events of Default:**

The term "Event of Default" shall mean, with respect to a Party (the "Affected Party"):

1. the failure by the Affected Party to make, when due, any payment required under this Agreement if such failure is not remedied within thirty (30) Business Days after written notice of such failure is given to the Affected Party; or
2. any representation or warranty made by the Affected Party in this Agreement shall prove to have been false or misleading in any material respect when made; or
3. the failure by the Affected Party to perform any covenant or agreement set forth in this Agreement (other than its obligations to make any payment or obligations which are otherwise specifically covered as a separate Event of Default), and such failure is not cured within thirty (30) Business Days after written notice thereof to the Affected Party; or
4. the Affected Party shall:
  - (i) make an assignment or any general arrangement for the benefit of creditors,
  - (ii) file a petition or otherwise commence, authorize or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or have such petition filed against it and such proceeding remains undismissed for thirty (30) days,
  - (iii) otherwise become bankrupt or insolvent (however evidenced), or
  - (iv) be unable to pay its debts as they fall due.

**b. Remedies.** If an Event of Default occurs with respect to either Party at any time during the term of this Agreement, the other Party (the "Notifying Party") may (a) upon fifteen (15) Business Days' written notice to the Affected Party terminate this Agreement, (b) withhold any payments due in respect of this Agreement to the extent of its damages pursuant to the "Limitation of Liability" section, and (c) exercise such other remedies as may be available at law or in equity or as otherwise provided in this Agreement; provided, upon the occurrence of any Event of Default listed in clause (3) of the definition of "Event of Default" above as it may apply to any Party, this Agreement shall automatically terminate, without notice, immediately prior to such event.

**c. Buyer's Liability.** If Buyer causes an Event of Default and Seller elects to terminate this Agreement, then at Seller's sole discretion Buyer shall be obligated to either: 1) return the RECs to Seller, or 2) pay Seller termination damages equal to the Purchase Price as listed in section 1(a).

**d. Seller's Liability.** If Seller causes an Event of Default and Buyer elects to terminate this Agreement, Seller shall pay Buyer an amount equal to the cost to Buyer of purchasing and additionally the difference between Purchase Price and the market price at which the Buyer could purchase RECs of the same vintage, type, and within the same state. The market price shall be determined based upon the average of prices quoted by three independent third party brokerage services selected by Buyer and reasonably acceptable to Seller.

**e. Force Majeure.** If Seller is unable to deliver the RECs as set forth in this Agreement due to any cause of Force Majeure, then this Agreement shall be void without penalty to either party for any such portion not delivered.

**f. No Penalty.** Both Parties hereby stipulate that the payment obligations set forth above are reasonable in light of the anticipated harm and the difficulty of estimation or calculation of actual damages, and each Party hereby waives the right to contest such payments as an unreasonable penalty.

## **5. Assignment.**

This Agreement is not assignable by either Party, except as provided herein, without the prior written approval of the non-assigning Party, which shall not be unreasonably withheld or delayed. Subject to the terms of this Section, any assignment without the written approval of the non-assigning Party, except as provided herein, is voidable by the non-assigning Party. Notwithstanding the foregoing, either Party may assign this Agreement, without the consent of the other Party, (i) to an entity succeeding to all or substantially all of the business or assets of the assigning Party, or (ii) to an affiliate of the assigning Party so long as, in the case of clause (ii), (A) the creditworthiness of such affiliate is not materially weaker than that of the assigning Party immediately prior to the assignment or (B) the assigning Party provides a written guaranty of such affiliate's obligations hereunder, in form and substance reasonably satisfactory to the nonassigning Party, from the assigning Party's ultimate parent entity or another affiliate of assigning Party acceptable to the non-assigning Party in its sole discretion.

## **6. Non-Disclosure of Confidential Information.**

Except as provided in this Section, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person, at any time during or after the term of this Agreement, without the other Party's prior express written consent. Each Party shall permit knowledge of and access to the Confidential Information only to those of its corporate affiliates, attorneys, accountants, representatives, principals, agents, and employees who have a need to know related to this Agreement.

If required by any law, statute, ordinance, decision, order, or regulation passed, adopted, issued or promulgated by a court, any governmental agency or authority having jurisdiction over a Party, such Party may release the Confidential Information, or a portion thereof, to such court, governmental agency or authority, as required by law, statute, ordinance, decision, order, regulation or action and a Party may disclose

Confidential Information to accountants in connection with audits, provided that such Party has used its reasonable efforts to cause that court, governmental agency or authority or accountants to treat such information in a confidential manner and to prevent such information from being disclosed or otherwise becoming part of the public domain.

In performing their obligations under this Agreement, the Parties shall employ procedures established to prevent unauthorized disclosure or use of the Confidential Information. Such procedures shall be no less restrictive than the procedures used by each Party to protect its own confidential data.

**7. Termination.**

Except as otherwise set forth herein, the obligations under this Agreement shall expire three (3) years from the date hereof.

**8. Green-e and Wind Energy Credits™ Standards Compliance.**

- a. Seller attests that the electricity associated with the RECs was delivered into the electricity power system or consumed at the site of generation by an end-user of electricity and was not marketed or otherwise represented as renewable energy.
- b. Seller attests that any emission reduction or emission allowances allocated to the Seller for the generation output that supports the RECs have been transferred to the Buyer and not sold separately.
- c. To the best of the Seller's knowledge the generation output that supports the RECs has not been used for compliance with any procurement, renewable portfolio standard or other renewable energy requirement of local, state and federal government.
- d. Seller will notify the Public Utility Commission or other appropriate energy regulatory body in the state where the electricity associated with the REC was sold that all of the environmental attributes of the electricity were sold separately as a REC.
- e. Seller will notify the appropriate environmental regulatory body in the state where the electricity associated with the REC was sold that all of the environmental attributes of the electricity were sold separately as a REC.
- f. To the best of the Seller's knowledge the RECs will not be double counted, double sold or double claimed.
- g. Seller attests that the generation facility that produced the RECs was placed in service in September and October 2001.

**9. Miscellaneous.**

such waiver is limited to the particular breach so waived and is not deemed to waive any other breach hereunder.

h. This Agreement was negotiated and prepared by both Parties with advice of counsel to the extent deemed necessary by each Party.

i. The section and paragraph titles in this Agreement are only for purposes of convenience and do not form a part of this Agreement and will not be taken to qualify, explain, or affect any provision thereof.

j. This Agreement shall be governed by, construed under, and enforced in accordance with the laws of the State of North Dakota, excluding any conflict of law rules that would refer to the laws of another jurisdiction. Forum and venue shall be in the State of North Dakota.

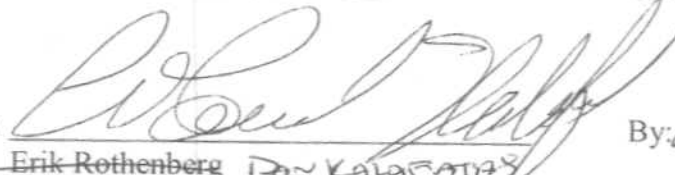
k. The Recitals stated herein are hereby fully incorporated into this Agreement.

IN WITNESS THEREOF, the Parties hereto have made and executed this Agreement, signed by their duly authorized offices or individuals, as of the Effective Date.

3 PHASES ENERGY SERVICES


CENTENNIAL POWER, INC.

By:



~~Erik Rothenberg~~ Dan Kalafatis  
~~Managing Director/Chief Green Officer~~

By:



William R. Connors  
Vice President, Contracts  
and Regulatory



## **WIND RENEWABLE ENERGY CERTIFICATES PURCHASE AGREEMENT**

This Purchase Agreement for Wind Renewable Energy Certificates (this "Agreement") is entered into and effective on October 15, 2004 (the "Effective Date") by and between Centennial Power, Inc. ("Seller") and 3 Phases Energy Services, LLC ("Buyer"), which are sometimes herein individually referred to as a "Party" or collectively as the "Parties".

### **Recitals**

WHEREAS, Seller is interested in selling Wind Renewable Energy Certificates (hereafter referred to as "REC" or "RECs");

WHEREAS, Buyer is interested in purchasing those same RECs;

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter set forth, the Parties, intending to be legally bound, agree as follows:

### **Definitions**

"Renewable Energy Certificate" means any renewable energy credit, credit certificate or similar items that represent all environmental attributes related to one MWh of renewable energy generation but specifically excluding any and all state and federal production tax credits, investment tax credits and any other tax credits which are or will be generated by the facility. All RECs will be from the Mountain View Power Project (the "Generation Facility") located in San Geronio Pass, Northwest of Palm Springs, California.

"Business Day" means a day on which banks are open for general commercial business in Bismarck, North Dakota, and a Business Day begins at 8:00 a.m. and closes at 5:00 p.m., central local time.

"Confidential Information" means all oral and written information exchanged between the Parties with respect to the purchase price, payments to be made and RECs to be exchanged under this Agreement. The following exceptions, however, do not constitute Confidential Information for purposes of this Agreement: (i) information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Agreement; (ii) information that was already known by either Party on a non-confidential basis prior to the execution of this Agreement; (iii) information that becomes available to either Party on a non-confidential basis from a source other than the other Party where such source is not known by the receiving Party to be subject to a confidentiality obligation with respect to such information; (iv) information a Party is required to disclose in connection with any administrative or regulatory approval or filing process in connection with the conduct of business.

"Force Majeure" means strikes, accidents, acts of God, weather conditions, unfavorable wind conditions, acts or omissions to act by any federal, state, or local government or agency thereof, acts of terrorism, breakage, mechanical failure, routine maintenance or repair of the Generation Facility, or any other cause or causes not reasonably within the control of the parties.

## 1. Purchase and Sale of RECs.

### a. Amount and Purchase Price:

Seller agrees to sell and Buyer agrees to purchase a total of 32,500 RECs generated between July 1, 2004 and December 31, 2004. The unit price of the RECs shall be [REDACTED] per REC and purchased as follows:

- Buyer agrees to purchase 32,500 RECs from Seller on or before December 31, 2004.
- Seller agrees to sell 32,500 RECs to Buyer on or before December 31, 2004.
- The total purchase price will be [REDACTED] (the "Purchase Price").

Seller may go to market or some other source to meet the obligations set forth herein if mutually agreed upon by Buyer and Seller, but under no circumstances shall Seller be obligated to do so.

### b. Payment Terms and Fund Transfer:

Seller shall present an invoice and attestation to Buyer for purchases made by Buyer. [REDACTED]

### c. Taxes:

Each Party shall pay any taxes or other fees that are associated with its respective purchase or sale of the RECs as described herein.

## 2. Limitations of Liability.

### a. No Indirect Damages:

FOR BREACH OF ANY PROVISION OF THIS AGREEMENT, EACH PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES, IF ANY, ONLY AS DETERMINED IN ACCORDANCE WITH SECTION 4, AND SUCH DIRECT, ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY HEREUNDER, AND ALL OTHER REMEDIES OR DAMAGES ARE WAIVED. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, IN TORT, CONTRACT OR OTHERWISE.

### b. Survival:

This Section 2 shall survive the expiration or termination of this Agreement.

**3. Events of Default; Remedies; Buyer's Liability; Seller's Liability; Force Majeure; No Penalty.**

**a. Events of Default:**

The term "Event of Default" shall mean, with respect to a Party (the "Affected Party"):

1. the failure by the Affected Party to make, when due, any payment required under this Agreement if such failure is not remedied within thirty (30) Business Days after written notice of such failure is given to the Affected Party; or
2. any representation or warranty made by the Affected Party in this Agreement shall prove to have been false or misleading in any material respect when made; or
3. the failure by the Affected Party to perform any covenant or agreement set forth in this Agreement (other than its obligations to make any payment or obligations which are otherwise specifically covered as a separate Event of Default), and such failure is not cured within thirty (30) Business Days after written notice thereof to the Affected Party; or
4. the Affected Party shall:
  - (i) make an assignment or any general arrangement for the benefit of creditors,
  - (ii) file a petition or otherwise commence, authorize or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or have such petition filed against it and such proceeding remains undismissed for thirty (30) days,
  - (iii) otherwise become bankrupt or insolvent (however evidenced), or
  - (iv) be unable to pay its debts as they fall due.

**b. Remedies.** If an Event of Default occurs with respect to either Party at any time during the term of this Agreement, the other Party (the "Notifying Party") may (a) upon fifteen (15) Business Days' written notice to the Affected Party terminate this Agreement, (b) withhold any payments due in respect of this Agreement to the extent of its damages pursuant to the "Limitation of Liability" Section, and (c) exercise such other remedies as may be available at law or in equity or as otherwise provided in this Agreement; provided, upon the occurrence of any Event of Default listed in clause (3) of the definition of "Event of Default" above as it may apply to any Party, this Agreement shall automatically terminate, without notice, immediately prior to such event.

c. **Buyer's Liability.** In the event Buyer causes an Event of Default and Seller elects to terminate this Agreement, then Buyer shall be obligated to either: 1) return the RECs to Seller, or 2) pay Seller termination damages equal to the Purchase Price as listed in section 1(a).

d. **Seller's Liability.** In the event Seller causes an Event of Default and Buyer elects to terminate this Agreement, Seller shall pay Buyer an amount equal to the cost to Buyer of purchasing and additionally the difference between Purchase Price and the market price at which the Buyer could purchase RECs of the same vintage, type, and within the same state. The market price shall be determined based upon the average of prices quoted by three independent third party brokerage services selected by Buyer and reasonably acceptable to Seller.

e. **Force Majeure.** If Seller is unable to deliver the RECs as set forth in this Agreement due to any cause of Force Majeure, then this Agreement shall be void without penalty to either party for any such portion not delivered.

f. **No Penalty.** Both Parties hereby stipulate that the payment obligations set forth above are reasonable in light of the anticipated harm and the difficulty of estimation or calculation of actual damages, and each Party hereby waives the right to contest such payments as an unreasonable penalty.

#### **4. Assignment**

This Agreement is not assignable by either Party, except as provided herein, without the prior written approval of the non-assigning Party, which shall not be unreasonably withheld or delayed. Subject to the terms of this Section, any assignment without the written approval of the non-assigning Party, except as provided herein, is voidable by the non-assigning Party. Notwithstanding the foregoing, either Party may assign this Agreement, without the consent of the other Party, (i) to an entity succeeding to all or substantially all of the business or assets of the assigning Party, or (ii) to an affiliate of the assigning Party so long as, in the case of clause (ii), (A) the creditworthiness of such affiliate is not materially weaker than that of the assigning Party immediately prior to the assignment or (B) the assigning Party provides a written guaranty of such affiliate's obligations hereunder, in form and substance reasonably satisfactory to the nonassigning Party, from the assigning Party's ultimate parent entity or another affiliate of assigning Party acceptable to the non-assigning Party in its sole discretion.

#### **5. Non-Disclosure of Confidential Information**

Except as provided in this Section, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person, at any time during or after the term of this Agreement, without the other Party's prior express written consent. Each Party shall permit knowledge of and access to the Confidential Information only to those of its corporate affiliates, attorneys, accountants, representatives, principals, agents, and employees who have a need to know related to this Agreement.



If required by any law, statute, ordinance, decision, order, or regulation passed, adopted, issued or promulgated by a court, any governmental agency or authority having jurisdiction over a Party, such Party may release the Confidential Information, or a portion thereof, to such court, governmental agency or authority, as required by law, statute, ordinance, decision, order, regulation or action and a Party may disclose Confidential Information to accountants in connection with audits, provided that such Party has used its reasonable efforts to cause that court, governmental agency or authority or accountants to treat such information in a confidential manner and to prevent such information from being disclosed or otherwise becoming part of the public domain.

In performing their obligations under this Agreement, the Parties shall employ procedures established to prevent unauthorized disclosure or use of the Confidential Information. Such procedures shall be no less restrictive than the procedures used by each Party to protect its own confidential data.

This Section survives for a period of three (3) years following the expiration or termination of this Agreement.

#### **6. Termination**

The term of this Agreement shall begin on the Effective Date set forth above and expires at midnight on January 1, 2005.

#### **7. Green-e and Wind Energy Credits™ Standards Compliance**

- a. Seller attests that the electricity associated with the RECs was delivered into the electricity power system or consumed at the site of generation by an end-user of electricity and was not marketed or otherwise represented as renewable energy.
- b. Seller attests that any emission reduction or emission allowances allocated to the Seller for the generation output that supports the RECs have been transferred to the Buyer and not sold separately.
- c. To the best of the Seller's knowledge the generation output that supports the RECs has not been used for compliance with any procurement, renewable portfolio standard or other renewable energy requirement of local, state and federal government.
- d. Seller will notify in writing the PUC or other appropriate energy regulatory body in the state where the electricity associated with the REC was sold that all of the environmental attributes of the electricity were sold separately as a REC.
- e. Seller will notify in writing the appropriate environmental regulatory body in the state where the electricity associated with the REC was sold that all of the environmental attributes of the electricity were sold separately as a REC.
- f. To the best of the Seller's knowledge the REC will not be double counted, double sold or double claimed.

- g. Seller attests that the generation facility that produced the RECs was placed in service after January 1, 1999.

#### 8. Miscellaneous

- a. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both of the Parties to this Agreement or their successors in interest.
- b. This Agreement inures to the benefit of, and is binding upon, the Parties and their respective successors and permitted assignees.
- c. If any article, phrase, provision or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such article, phrase, provision, or portion so adjudged will be deemed separate, distinct and independent and the remainder of this Agreement will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purposes of this Agreement and the benefits to the Parties are not substantially impaired.
- d. This Agreement may be executed in several counterparts, including facsimile, each of which is an original and all of which constitute one and the same instrument.
- e. All notices, certificates, or other communications hereunder shall be in writing. All written notices are deemed sufficiently given when mailed by United States certified mail, return receipt requested or by recognized overnight courier service, postage prepaid, or hand-delivered, or sent by facsimile transmission, if the original communication is delivered by recognized overnight courier service, addressed as follows, and shall be effective when received:

To: Centennial Energy Resources LLC  
400 North Fourth Street  
Bismarck, ND 58501

Payments to Centennial Energy Resources LLC (Seller) shall be by wire transfer to Seller to the following account:



or to such other and different accounts as may be designated in writing by the Parties and delivered pursuant to this Paragraph.

To: 3 Phases Energy Services, LLC  
2100 Sepulveda Boulevard, Suite 15  
Manhattan Beach, CA 90266  
Attn: Erik Rothenberg, Managing Director and Chief Green Officer

f. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all other prior understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof.

g. No delay or omission by a Party in the exercise of any right under this Agreement shall be taken, construed, or considered as a waiver or relinquishment thereof, and any such right may be exercised from time to time and as often as may be deemed expedient. If any of the terms and conditions herein are breached and thereafter waived by a Party, such waiver is limited to the particular breach so waived and is not deemed to waive any other breach hereunder.

h. This Agreement was negotiated and prepared by both Parties with advice of counsel to the extent deemed necessary by each Party.

i. The section and paragraph titles in this Agreement are only for purposes of convenience and do not form a part of this Agreement and will not be taken to qualify, explain, or affect any provision thereof.

j. This Agreement shall be governed by, construed under, and enforced in accordance with the laws of the State of North Dakota, excluding any conflict of law rules that would refer to the laws of another jurisdiction. Forum and venue shall be in the State of North Dakota.

k. The Recitals stated herein are hereby fully incorporated into this Agreement.

IN WITNESS THEREOF, the Parties hereto have made and executed this Agreement, signed by their duly authorized offices or individuals, as of the Effective Date.

3 Phases Energy Services

Centennial Power, Inc.

Name: Erik Rothenberg

Name: William R. Connors

Title: Managing Director / Chief  
Green Officer

Title: Vice President, Contracts and Regulatory

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

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

## WIND RENEWABLE ENERGY CERTIFICATES PURCHASE AGREEMENT

This Purchase Agreement for Wind Renewable Energy Certificates (this "Agreement") is entered into and effective on August 31, 2004 (the "Effective Date") by and between Centennial Energy Resources LLC ("Seller") and 3 Phases Energy Services LLC ("Buyer"), which are sometimes herein individually referred to as a "Party" or collectively as the "Parties".

### Recitals

WHEREAS, Seller is interested in selling Wind Renewable Energy Certificates (hereafter referred to as "REC" or "RECs");

WHEREAS, Buyer is interested in purchasing those same RECs;

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter set forth, the Parties, intending to be legally bound, agree as follows:

### Definitions

"Renewable Energy Certificate" means any renewable energy credit, credit certificate or similar items that represent all environmental attributes related to one MWh of renewable energy generation but specifically excluding any and all state and federal production tax credits, investment tax credits and any other tax credits which are or will be generated by the plant. All RECs will be from the Mountain View Power Project (the "Generation Facility") located in San Geronio Pass, Northwest of Palm Springs, California.

"Business Day" means a day on which banks are open for general commercial business in Bismarck, North Dakota, and a Business Day begins at 8:00 a.m. and closes at 5:00 p.m., central local time.

"Confidential Information" means all oral and written information exchanged between the Parties with respect to the purchase price, payments to be made and RECs to be exchanged under this Agreement. The following exceptions, however, do not constitute Confidential Information for purposes of this Agreement: (i) information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Agreement; (ii) information that was already known by either Party on a non-confidential basis prior to the execution of this Agreement; (iii) information that becomes available to either Party on a non-confidential basis from a source other than the other Party where such source is not known by the receiving Party to be subject to a confidentiality obligation with respect to such information; (iv) information a Party is required to disclose in connection with any administrative or regulatory approval or filing process in connection with the conduct of business.

## 1. Purchase and Sale of RECs.

### a. Amount and Purchase Price:

Seller agrees to conditionally sell and Buyer agrees to purchase a total of 7,500 RECs generated between July 1<sup>st</sup> and December 31<sup>st</sup> of the vintage year 2004. The unit price of the RECs shall be [REDACTED] per REC and purchased as follows:

- Buyer agrees to purchase 7,500 RECs from Seller on the Effective Date of this Agreement.

The total purchase price will be [REDACTED] (the "Purchase Price").

Seller may go to market or some other source to meet the obligations set forth herein if mutually agreed upon by Buyer and Seller, but under no circumstances shall Seller be obligated to do so.

### b. Payment Terms and Fund Transfer:

Seller shall present an invoice and Attestation to Buyer for purchases made by Buyer. [REDACTED]

### c. Taxes:

Each Party shall pay any taxes or other fees that are associated with its respective purchase or sale of the RECs as described herein.

## 2. Limitations of Liability.

### a. No Indirect Damages:

FOR BREACH OF ANY PROVISION OF THIS AGREEMENT, EACH PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES, IF ANY, ONLY AS DETERMINED IN ACCORDANCE WITH SECTION 4, AND SUCH DIRECT, ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY HEREUNDER, AND ALL OTHER REMEDIES OR DAMAGES ARE WAIVED. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, IN TORT, CONTRACT OR OTHERWISE.

### b. Survival:

This Section 2 shall survive the expiration or termination of this Agreement.

## 3. Events of Default; Remedies; Buyer's Liability; Seller's Liability; No Penalty.

### a. Events of Default:

The term "Event of Default" shall mean, with respect to a Party (the "Affected Party"):

1. the failure by the Affected Party to make, when due, any payment required under this Agreement if such failure is not remedied within thirty (30) Business Days after written notice of such failure is given to the Affected Party; or
2. any representation or warranty made by the Affected Party in this Agreement shall prove to have been false or misleading in any material respect when made; or
3. the failure by the Affected Party to perform any covenant or agreement set forth in this Agreement (other than its obligations to make any payment or obligations which are otherwise specifically covered as a separate Event of Default), and such failure is not cured within thirty (30) Business Days after written notice thereof to the Affected Party; or
4. the Affected Party shall:
  - (i) make an assignment or any general arrangement for the benefit of creditors,
  - (ii) file a petition or otherwise commence, authorize or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or have such petition filed against it and such proceeding remains undismissed for thirty (30) days,
  - (iii) otherwise become bankrupt or insolvent (however evidenced), or
  - (iv) be unable to pay its debts as they fall due.

**b. Remedies.** If an Event of Default occurs with respect to either Party at any time during the term of this Agreement, the other Party (the "Notifying Party") may (a) upon fifteen (15) Business Days' written notice to the Affected Party terminate this Agreement, (b) withhold any payments due in respect of this Agreement to the extent of its damages pursuant to the "Limitation of Liability" Section, and (c) exercise such other remedies as may be available at law or in equity or as otherwise provided in this Agreement; provided, upon the occurrence of any Event of Default listed in clause (3) of the definition of "Event of Default" above as it may apply to any Party, this Agreement shall automatically terminate, without notice, immediately prior to such event.

c. **Buyer's Liability.** In the event Buyer causes an Event of Default and Seller elects to terminate this Agreement, then Buyer shall be obligated to either: 1) return the RECs unsold by the Buyer to a third party or 2) pay Seller termination damages equal to the Purchase Price as listed in section 1(a).

d. **Seller's Liability.** In the event Seller causes an Event of Default and Buyer elects to terminate this Agreement, Seller shall pay Buyer an amount equal to the cost to Buyer of purchasing and additionally the difference between Purchase Price and the market price at which the Buyer could purchase RECs of the same vintage, type, and within the same state. The market price shall be determined based upon the average of prices quoted by three independent third party brokerage services selected by Buyer and reasonably acceptable to Seller.

e. **No Penalty.** Both Parties hereby stipulate that the payment obligations set forth above are reasonable in light of the anticipated harm and the difficulty of estimation or calculation of actual damages, and each Party hereby waives the right to contest such payments as an unreasonable penalty.

#### 4. Assignment

This Agreement is not assignable by either Party, except as provided herein, without the prior written approval of the non-assigning Party, which shall not be unreasonably withheld or delayed. Subject to the terms of this Section, any assignment without the written approval of the non-assigning Party, except as provided herein, is voidable by the non-assigning Party. Notwithstanding the foregoing, either Party may assign this Agreement, without the consent of the other Party, (i) to an entity succeeding to all or substantially all of the business or assets of the assigning Party, or (ii) to an affiliate of the assigning Party so long as, in the case of clause (ii), (A) the creditworthiness of such affiliate is not materially weaker than that of the assigning Party immediately prior to the assignment or (B) the assigning Party provides a written guaranty of such affiliate's obligations hereunder, in form and substance reasonably satisfactory to the nonassigning Party, from the assigning Party's ultimate parent entity or another affiliate of assigning Party acceptable to the non-assigning Party in its sole discretion.

#### 5. Non-Disclosure of Confidential Information

Except as provided in this Section, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person, at any time during or after the term of this Agreement, without the other Party's prior express written consent. Each Party shall permit knowledge of and access to the Confidential Information only to those of its corporate affiliates, attorneys, accountants, representatives, principals, agents, and employees who have a need to know related to this Agreement.

If required by any law, statute, ordinance, decision, order, or regulation passed, adopted, issued or promulgated by a court, any governmental agency or authority having jurisdiction over a Party, such Party may release the Confidential Information, or a portion thereof, to such court, governmental agency or authority, as required by law, statute, ordinance, decision, order, regulation or action and a Party may disclose

Confidential Information to accountants in connection with audits, provided that such Party has used its reasonable efforts to cause that court, governmental agency or authority or accountants to treat such information in a confidential manner and to prevent such information from being disclosed or otherwise becoming part of the public domain.

In performing their obligations under this Agreement, the Parties shall employ procedures established to prevent unauthorized disclosure or use of the Confidential Information. Such procedures shall be no less restrictive than the procedures used by each Party to protect its own confidential data.

This Section survives for a period of three (3) years following the expiration or termination of this Agreement.

#### **6. Termination**

The term of this Agreement shall begin on the Effective Date set forth above and expires at midnight on January 1, 2005.

#### **7. Green-e and Wind Energy Credits™ Standards Compliance**

- a. Seller attests that the electricity associated with the RECs was delivered into the electricity power system or consumed at the site of generation by an end-user of electricity and was not marketed or otherwise represented as renewable energy.
- b. Seller attests that any emission reduction or emission allowances allocated to the Seller for the generation output that supports the RECs have been transferred to the Buyer and not sold separately.
- c. To the best of the Seller's knowledge the generation output that supports the RECs has not been used for compliance with any procurement, renewable portfolio standard or other renewable energy requirement of local, state and federal government.
- d. Seller will notify in writing the PUC or other appropriate energy regulatory body in the state where the electricity associated with the REC was sold that all of the environmental attributes of the electricity were sold separately as a REC.
- e. Seller will notify in writing the appropriate environmental regulatory body in the state where the electricity associated with the REC was sold that all of the environmental attributes of the electricity were sold separately as a REC.
- f. To the best of the Seller's knowledge the REC will not be double counted, double sold or double claimed.
- g. Seller attests that the generation facility that produced the RECs was placed in service after January 1, 1999.



## 8. Miscellaneous

- a. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both of the Parties to this Agreement or their successors in interest.
- b. This Agreement inures to the benefit of, and is binding upon, the Parties and their respective successors and permitted assignees.
- c. If any article, phrase, provision or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such article, phrase, provision, or portion so adjudged will be deemed separate, distinct and independent and the remainder of this Agreement will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purposes of this Agreement and the benefits to the Parties are not substantially impaired.
- d. This Agreement may be executed in several counterparts, including facsimile, each of which is an original and all of which constitute one and the same instrument.
- e. All notices, certificates, or other communications hereunder shall be in writing. All written notices are deemed sufficiently given when mailed by United States certified mail, return receipt requested or by recognized overnight courier service, postage prepaid, or hand-delivered, or sent by facsimile transmission, if the original communication is delivered by recognized overnight courier service, addressed as follows, and shall be effective when received:

To: Centennial Energy Resources LLC  
400 North Fourth Street  
Bismarck, ND 58501

Payments to Centennial Energy Resources LLC (Seller) shall be by wire transfer to Seller to the following account:



or to such other and different accounts as may be designated in writing by the Parties and delivered pursuant to this Paragraph.

To: 3 Phases Energy Services LLC  
2100 Sepulveda Boulevard, Suite 15  
Manhattan Beach, CA 90266  
Attn: Erik Rothenberg, Managing Director/Chief Green Officer

f. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all other prior understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof.

g. No delay or omission by a Party in the exercise of any right under this Agreement shall be taken, construed, or considered as a waiver or relinquishment thereof, and any such right may be exercised from time to time and as often as may be deemed expedient. If any of the terms and conditions herein are breached and thereafter waived by a Party, such waiver is limited to the particular breach so waived and is not deemed to waive any other breach hereunder.

h. This Agreement was negotiated and prepared by both Parties with advice of counsel to the extent deemed necessary by each Party.

i. The section and paragraph titles in this Agreement are only for purposes of convenience and do not form a part of this Agreement and will not be taken to qualify, explain, or affect any provision thereof.

j. This Agreement shall be governed by, construed under, and enforced in accordance with the laws of the State of North Dakota, excluding any conflict of law rules that would refer to the laws of another jurisdiction. Forum and venue shall be in the State of North Dakota.

k. The Recitals stated herein are hereby fully incorporated into this Agreement.

IN WITNESS THEREOF, the Parties hereto have made and executed this Agreement, signed by their duly authorized offices or individuals, as of the Effective Date.

3 Phases Energy Services LLC

Centennial Energy Resources LLC

Name: Erik Rothenberg

Name: \_\_\_\_\_

Title: Managing Director/Chief Green Officer

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

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

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

## WIND RENEWABLE ENERGY CERTIFICATES PURCHASE AGREEMENT

This purchase agreement for wind renewable energy certificates (this "Agreement") is entered into and effective as of August 16, 2006, (the "Effective Date") by and between Centennial Power, Inc. ("Seller") and 3 Phases Energy Services, LLC ("Buyer"), which are sometimes referred to herein individually as a "Party" or collectively as the "Parties".

### Recitals

WHEREAS, Seller is interested in selling wind renewable energy certificates (hereafter referred to as "REC" or "RECs");

WHEREAS, Buyer is interested in purchasing RECs;

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter set forth, the Parties, intending to be legally bound, agree as follows:

### Definitions

"R E C" means any wind renewable energy credit, credit certificate or similar items that represent all environmental attributes related to one megawatt hour ("MWh") of renewable wind energy generation, but specifically excluding any and all state and federal production tax credits, investment tax credits, and any other tax credits which are or will be generated by the facility. All RECs will be from the Mountain View Power Project owned by Mountain View Power Partners LLC (the "Generation Facility") located in San Geronio Pass, Northwest of Palm Springs, California.

"Business Day" means a day on which banks are open for general commercial business in Bismarck, North Dakota, and a Business Day begins at 8:00 a.m. and closes at 5:00 p.m., central local time.

"Confidential Information" means all oral and written information exchanged between the Parties with respect to the purchase price, payments to be made and RECs to be exchanged under this Agreement. The following exceptions, however, do not constitute Confidential Information for purposes of this Agreement: (i) information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Agreement; (ii) information that was already known by either Party on a non-confidential basis prior to the execution of this Agreement; (iii) information that becomes available to either Party on a non-confidential basis from a source other than the other Party where such source is not known by the receiving Party to be subject to a confidentiality obligation with respect to such information; (iv) information a Party is required to disclose in connection with any administrative or regulatory approval or filing process in connection with the conduct of business.

"Force Majeure" means strikes, catastrophic accidents, acts of God, severe weather, unfavorable wind conditions for unusual and protracted periods, acts or omissions to act by any federal, state, or local government or agency thereof, acts of terrorism, catastrophic mechanical failure of the Generation Facility, or any other cause or causes not reasonably within the control of the parties.

“Unit Contingent” means that Seller’s obligation to sell such RECs to Buyer is contingent upon those RECs actually being generated by the Generation Facility.

**1. Purchase and Sale of RECs.**

**a. Amount and Purchase Price:**

Seller agrees to sell and Buyer agrees to purchase RECs as follows:

- 23,000 RECs from the first half of the vintage year 2006, at a unit price of [REDACTED].
- Assuming maximum REC production, the total purchase price will be [REDACTED] (“Purchase Price”).

**b. Payment Terms and Fund Transfer:**

Seller shall present an invoice and attestation to Buyer for purchases made by Buyer. [REDACTED]

**c. Taxes:**

Each Party shall pay any taxes or other fees that are associated with its respective purchase or sale of the RECs as described herein.

**2. Warranties.**

Seller hereby warrants to Buyer that, at the same time of the delivery of the RECs to Buyer purchased and sold by this Agreement, Seller will convey good title to the RECs to Buyer free and clear of any liens or other encumbrances or title defects.

Each Party hereby warrants that the person signing this Agreement on behalf of such Party is legally authorized to obligate the Party. Each Party further represents and warrants that it has and will maintain all legal and regulatory authorizations necessary to perform its obligations under this Agreement.

**3. Limitations of Liability.**

**a. No Indirect Damages:**

FOR BREACH OF ANY PROVISION OF THIS AGREEMENT, EACH PARTY’S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES, IF ANY, ONLY AS DETERMINED IN ACCORDANCE WITH SECTION 4, AND SUCH DIRECT, ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY HEREUNDER, AND ALL OTHER REMEDIES OR DAMAGES ARE WAIVED. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, IN TORT, CONTRACT OR OTHERWISE.

**b. Survival:**

This Section 3 shall survive the expiration or termination of this Agreement.

**4. Events of Default; Remedies; Buyer's Liability; Seller's Liability; Force Majeure; No Penalty.**

**a. Events of Default:**

The term "Event of Default" shall mean, with respect to a breaching Party (the "Affected Party"):

1. the failure by the Affected Party to make, when due, any payment required under this Agreement if such failure is not remedied within thirty (30) Business Days after written notice of such failure is given to the Affected Party; or
2. any representation or warranty made by the Affected Party in this Agreement shall prove to have been false or misleading in any material respect when made; or
3. the failure by the Affected Party to perform any covenant or agreement set forth in this Agreement (other than its obligations to make any payment or obligations which are otherwise specifically covered as a separate Event of Default), and such failure is not cured within thirty (30) Business Days after written notice thereof to the Affected Party; or
4. the Affected Party shall:
  - (i) make an assignment or any general arrangement for the benefit of creditors,
  - (ii) file a petition or otherwise commence, authorize or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or have such petition filed against it and such proceeding remains undismissed for thirty (30) days,
  - (iii) otherwise become bankrupt or insolvent (however evidenced), or
  - (iv) be unable to pay its debts as they fall due.

**b. Remedies.** If an Event of Default occurs with respect to either Party at any time during the term of this Agreement, the other Party (the "Notifying Party") may (a) upon fifteen (15) Business Days' written notice to the Affected Party terminate this Agreement, (b) withhold any payments due in respect of this Agreement to the extent of its damages pursuant to the "Limitation of Liability" section, and (c) exercise such other remedies as may be available at law or in equity or as otherwise provided in this Agreement; provided, upon the occurrence of any Event of Default listed in clause (3) of the definition of "Event of Default" above as it may apply to any Party, this Agreement shall automatically terminate, without notice, immediately prior to such event.

c. **Buyer's Liability.** If Buyer causes an Event of Default and Seller elects to terminate this Agreement, then at Seller's sole discretion Buyer shall be obligated to either: 1) return the RECs to Seller, or 2) pay Seller termination damages equal to the Purchase Price as listed in section 1(a).

d. **Seller's Liability.** If Seller causes an Event of Default and Buyer elects to terminate this Agreement, Seller shall pay Buyer an amount equal to the cost to Buyer of purchasing and additionally the difference between Purchase Price and the market price at which the Buyer could purchase RECs of the same vintage, type, and within the same state. The market price shall be determined based upon the average of prices quoted by three independent third party brokerage services selected by Buyer and reasonably acceptable to Seller.

e. **Force Majeure.** If Seller is unable to deliver the RECs as set forth in this Agreement due to any cause of Force Majeure, then this Agreement shall be void without penalty to either Party for any such portion not delivered.

f. **No Penalty.** Both Parties hereby stipulate that the payment obligations set forth above are reasonable in light of the anticipated harm and the difficulty of estimation or calculation of actual damages, and each Party hereby waives the right to contest such payments as an unreasonable penalty.

## 5. **Assignment.**

This Agreement is not assignable by either Party, except as provided herein, without the prior written approval of the non-assigning Party, which shall not be unreasonably withheld or delayed. Subject to the terms of this Section, any assignment without the written approval of the non-assigning Party, except as provided herein, is voidable by the non-assigning Party. Notwithstanding the foregoing, either Party may assign this Agreement, without the consent of the other Party, (i) to an entity succeeding to all or substantially all of the business or assets of the assigning Party, or (ii) to an affiliate of the assigning Party so long as, in the case of clause (ii), (A) the creditworthiness of such affiliate is not materially weaker than that of the assigning Party immediately prior to the assignment or (B) the assigning Party provides a written guaranty of such affiliate's obligations hereunder, in form and substance reasonably satisfactory to the nonassigning Party, from the assigning Party's ultimate parent entity or another affiliate of assigning Party acceptable to the non-assigning Party in its sole discretion.

## 6. **Non-Disclosure of Confidential Information.**

Except as provided in this Section, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person, at any time during or after the term of this Agreement, without the other Party's prior express written consent. Each Party shall permit knowledge of and access to the Confidential Information only to those of its corporate affiliates, attorneys, accountants, representatives, principals, agents, brokers, and employees who have a need to know related to this Agreement.

If required by any law, statute, ordinance, decision, order, or regulation passed, adopted, issued or promulgated by a court, any governmental agency or authority having jurisdiction over a Party, such Party may release the Confidential Information, or a portion thereof, to such court, governmental agency or authority, as required by law, statute, ordinance, decision, order, regulation or action and a Party may disclose Confidential Information to accountants in connection with audits, provided that such Party has used its reasonable efforts to cause that court, governmental agency or authority or accountants to treat such information in a confidential manner and to prevent such information from being disclosed or otherwise becoming part of the public domain.

In performing their obligations under this Agreement, the Parties shall employ procedures established to prevent unauthorized disclosure or use of the Confidential Information. Such procedures shall be no less restrictive than the procedures used by each Party to protect its own confidential data.

**7. Termination.**

Except as otherwise set forth herein, the obligations under this Agreement shall expire three (3) years from the date hereof.

**8. Green-e and Wind Energy Credits™ Standards Compliance.**

- a. Seller attests that the electricity associated with the RECs was delivered into the electricity power system or consumed at the site of generation by an end-user of electricity and was not marketed or otherwise represented as renewable energy.
- b. Seller attests that any emission reduction or emission allowances allocated to the Seller for the generation output that supports the RECs have been transferred to the Buyer and not sold separately.
- c. To the best of the Seller's knowledge the generation output that supports the RECs has not been used for compliance with any procurement, renewable portfolio standard or other renewable energy requirement of local, state and federal government.
- d. Seller will notify the Public Utility Commission or other appropriate energy regulatory body in the state where the electricity associated with the REC was sold that all of the environmental attributes of the electricity were sold separately as a REC.
- e. Seller will notify the appropriate environmental regulatory body in the state where the electricity associated with the REC was sold that all of the environmental attributes of the electricity were sold separately as a REC.
- f. To the best of the Seller's knowledge the RECs will not be double counted, double sold or double claimed.

- g. Seller attests that the generation facility that produced the RECs was placed in service in September and October 2001.

**9. Miscellaneous.**

a. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both of the Parties to this Agreement or their successors in interest.

b. This Agreement inures to the benefit of, and is binding upon, the Parties and their respective successors and permitted assignees.

c. If any article, phrase, provision or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such article, phrase, provision, or portion so adjudged will be deemed separate, distinct and independent and the remainder of this Agreement will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purposes of this Agreement and the benefits to the Parties are not substantially impaired.

d. This Agreement may be executed in several counterparts, including facsimile, each of which is an original and all of which constitute one and the same instrument.

e. All notices, certificates, or other communications hereunder shall be in writing. All written notices are deemed sufficiently given when mailed by United States certified mail, return receipt requested or by recognized overnight courier service, postage prepaid, or hand-delivered, or sent by facsimile transmission, if the original communication is delivered by recognized overnight courier service, addressed as follows, and shall be effective when received:

To: Centennial Power, Inc.  
400 North 4<sup>th</sup> Street  
Bismarck, ND 58501  
Attn: Contract Administrator

To: 3 Phases Energy Services, LLC  
Presidio of San Francisco  
6 Funston Avenue, Suite A  
San Francisco, CA 94129  
Attn: Dan Kalafatas, Vice President

Payments to Seller shall be by check to the address above or wire transfer and delivered pursuant to Seller's instructions.

f. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all other prior understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof.



g. No delay or omission by a Party in the exercise of any right under this Agreement shall be taken, construed, or considered as a waiver or relinquishment thereof, and any such right may be exercised from time to time and as often as may be deemed expedient. If any of the terms and conditions herein are breached and thereafter waived by a Party, such waiver is limited to the particular breach so waived and is not deemed to waive any other breach hereunder.

h. This Agreement was negotiated and prepared by both Parties with advice of counsel to the extent deemed necessary by each Party.

i. The section and paragraph titles in this Agreement are only for purposes of convenience and do not form a part of this Agreement and will not be taken to qualify, explain, or affect any provision thereof.

j. This Agreement shall be governed by, construed under, and enforced in accordance with the laws of the State of North Dakota, excluding any conflict of law rules that would refer to the laws of another jurisdiction. Forum and venue shall be in the State of North Dakota.


k. The Recitals stated herein are hereby fully incorporated into this Agreement.

IN WITNESS THEREOF, the Parties hereto have made and executed this Agreement, signed by their duly authorized offices or individuals, as of the Effective Date.

3 PHASES ENERGY SERVICES, LLC


CENTENNIAL POWER, INC.

By:

  
Dan Kalafatas  
Vice President

9/6/06

By:

  
William R. Connors  
Vice President - Origination,  
Contracts, and Regulatory

ew

# **EXHIBIT C**

VIA UNITED STATES MAIL

5/13/2008

California Energy Commission  
Ms. Jackalyne Pfannenstiel  
Chair  
1516 Ninth Street, MS-29  
Sacramento, CA 95814-5512

Dear Ms. Jackalyne Pfannenstiel:

**Re: 3Degrees Group, Inc. Green Certificate Attestation Materials**

As a Green-e certified marketer of Tradable Renewable Certificates (“TRCs”), 3Degrees is required under the protocols of Green-e certification to submit a letter to the oversight entity of each of the suppliers from which it has purchased TRCs for Green-e Reporting Year 2007.

The Green-e program requires 3Degrees to notify the appropriate entity in instances when: 1) utilities sell TRCs outside of their service territory; 2) an independent power producer has sold TRCs separate from the underlying electricity commodity; or 3) a distributed generator has sold its TRCs. The purpose of this notification is to ensure that a utility selling TRCs outside of its service territory does not double count these renewable energy sales by also including them in *its* resource label and to inform the entity of jurisdiction about TRC transactions in its State that meet the above criteria. Please make any and all necessary effort to ensure TRCs are not double counted.

The purchases that 3Degrees made are summarized below:

Project Name	Utility	Location	TRCs (MWh)	Generation Period
[Truncated Due to Size]				
Mountain View I / II	California Department of Water and Power	San Gorgonio Pass, CA	14933	1/1/2007 to 6/30/2007
Mountain View I / II	California Department of Water and Power	San Gorgonio Pass, CA	25000	1/1/2007 to 6/30/2007
Mountain View I / II	California Department of Water and Power	San Gorgonio Pass, CA	20000	4/1/2007 to 6/30/2007
Mountain View I / II	California Department of Water and Power	San Gorgonio Pass, CA	2567	7/1/2006 to 12/31/2006
Mountain View Power Partners	California Department of Water and Power	Palm Springs, CA	30082	7/1/2006 to 9/30/2006
Mountain View Power Partners	California Department of Water and Power	Palm Springs, CA	15383	10/1/2006 to 12/31/2006

<b>Mountain View Power Partners</b>	<b>California Department of Water and Power</b>	<b>Palm Springs, CA</b>	<b>12418</b>	<b>10/1/2006 to 12/31/2006</b>
<b>Mountain View Power Partners II</b>	<b>California Department of Water and Power</b>	<b>Palm Springs, CA</b>	<b>19739</b>	<b>7/1/2006 to 9/30/2006</b>
<b>Mountain View Power Partners II</b>	<b>California Department of Water and Power</b>	<b>Palm Springs, CA</b>	<b>12214</b>	<b>10/1/2006 to 12/31/2006</b>
<b>[Truncated Due to Size]</b>				

Thank you for your commitment to renewable energy.

Sincerely,



Christopher Gaudet  
Trading Manager, 3Degrees Group, Inc.

VIA UNITED STATES MAIL

8/10/2007

California Public Utility Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

Dear California Public Utility Commission:

**Re: 3Degrees Group, Inc. Green Certificate Attestation Materials**

As a Green-e certified marketer of Tradable Renewable Certificates (“TRCs”), 3Degrees, formerly the Green Certificates & Utility Partnerships division of **3 Phases Energy Services**, is required under the protocols of Green-e certification to submit a letter to the oversight entity of each of the suppliers from which it has purchased TRCs for Green-e Reporting Year 2006.

The Green-e program requires 3Degrees to notify the appropriate entity in instances when: 1) utilities sell TRCs outside of their service territory; 2) an independent power producer has sold TRCs separate from the underlying electricity commodity; or 3) a distributed generator has sold its TRCs. The purpose of this notification is to ensure that a utility selling TRCs outside of its service territory does not double count these renewable energy sales by also including them in *its* resource label and to inform the entity of jurisdiction about TRC transactions in its State that meet the above criteria. Please make any and all necessary effort to ensure TRCs are not double counted.

The purchases that 3Degrees made are summarized below:

Project Name	Utility	Location	TRCs (MWh)	Generation Period
Mountain View Power Partners	California Department of Water and Power	Palm Springs, CA	7500	7/1/2006 to 9/30/2006
Mountain View I II	California Department of Water and Power	Gorgonio Pass, CA	23000	1/1/2006 to 6/30/2006
Mountain View Power Partners	California Department of Water and Power	Palm Springs, CA	83060.17	1/1/2006 to 6/30/2006
Mountain View Power Partners II	California Department of Water and Power	Palm Springs, CA	16684	1/1/2006 to 6/30/2006
Mountain View I II	California Department of Water and Power	Gorgonio Pass, CA	5000	7/1/2005 to 12/31/2005
Mountain View Power Partners	California Department of Water and Power	Palm Springs, CA	59686	7/1/2005 to 12/31/2005
Mountain View Power Partners II	California Department of Water and Power	Palm Springs, CA	31242	7/1/2005 to 12/31/2005
[Truncated Due to Size]				

Thank you for your commitment to renewable energy.

Sincerely,



Jay McCall  
Senior Manager Supply and Operation, 3Degrees Group, Inc.



**3 PHASES**  
**ENERGY SERVICES**

PRESIDIO OF SAN FRANCISCO  
6 FUNSTON AVE.  
SAN FRANCISCO CA 94129  
WWW.3PHASES.COM

May 29, 2006

VIA US POSTAL SERVICE

California Public Utility Commission  
Energy Division  
505 Van Ness Avenue  
San Francisco, CA 94102

To Whom It May Concern:

As a Green-e certified purchaser of Tradable Renewable Certificates (“TRCs”), 3 Phases Energy is required under the protocols of Green-e certification to submit a letter to the Public Utility/Service Commissions of each of the investor-owned utilities from which it has purchased TRCs for Green-e Reporting Year 2005.

The Green-e program requires 3 Phases Energy to notify the appropriate Commission in instances when: 1) utilities sell TRCs outside of their service territory; 2) an independent power producer has sold TRCs separate from the underlying electricity commodity; or 3) a distributed generator has sold its TRCs. The purpose of this notification is to ensure that a utility selling TRCs outside of its service territory does not double count these renewable energy sales by also including them in *its* resource label and to inform the commission of jurisdiction about TRC transactions in its State that meet the above criteria. Please make any and all necessary effort to ensure TRCs are not double counted.

The purchases that 3 Phases Energy made are summarized below:

Project Name	Utility	Location	TRCs (MWh)	Generation Period
Mountain View Wind Facility	California Department of Water and Power	San Geronio Pass, CA	100,000	1/1/2005 - 6/30/2005
Mountain View Wind Facility	California Department of Water and Power	San Geronio Pass, CA	95,928	7/1/2005 - 12/31/2005
Mountain View Wind Facility	California Department of Water and Power	San Geronio Pass, CA	73,387	7/1/2004 - 12/31/2004
<b>[Truncated Due to Size]</b>				

3 Phases Energy did not purchase electricity associated with the TRCs, but rather only the TRCs as an independent commodity. 3 Phases Energy has similarly notified the additional utility commissions with jurisdiction over Pacific Power and Utah Power, and a copy of this letter has been sent to PacifiCorp.

Should have any further questions, please feel free to call me.

Sincerely,



Dan Kalafatas  
Vice President