

EXHIBIT 2
License Agreement
Between
The Research Foundation of State University of New York
And
Licensed Grower

THIS AGREEMENT is made as of _____, 20____, by and between _____ (hereinafter referred to as "**Licensed Grower**"), a corporation duly organized under the laws of the State of _____, and having its principal place of business at _____, and The Research **Foundation** of State University of New York (herein referred to as "**Foundation**"), having its principal place of business at 35 State Street, Albany, New York 12207 U.S.A. (mailing address: P.O. Box 9, Albany, New York 12201-0009).

1.0 Introduction

- 1.1** The Willow Crop Development Center at the State University of New York College of Environmental Science and Forestry (**SUNY ESF**) has produced Willow varieties for commercial use. All Willow varieties are the property of **Foundation**.
- 1.2 Foundation** is a separate corporation with an exclusive contract to manage, market, protect, and commercialize intellectual property including the Willow varieties researched and developed at **SUNY ESF**.
- 1.3** Prior to commercial use, the Willow varieties are tested under test or research agreements, which grant limited rights of possession for test or research purposes only; no right to commercial use is given or implied by such test or research agreements; and
- 1.4 Foundation** has a program for granting non-exclusive commercial-use rights to select Willow varieties researched and developed at **SUNY ESF**; and
- 1.5** When, at the sole discretion of **Foundation**, a Willow variety researched and developed at **SUNY ESF** is deployed for commercial use, all such use falls under the terms and conditions of an agreement separate from the test or research agreements, such as those defined herein; and
- 1.6** Licensed Grower desires to obtain commercial-use rights to the Willow varieties defined herein and agrees to the terms and conditions defined herein; and
- 1.7** Licensed Grower acknowledges the importance of supporting the Willow development program at **SUNY ESF** and will implement and abide by the Grower's License in that spirit.

2.0 Definitions

- 2.1 Licensed Willow Varieties** mean the varieties designated as Willow varieties researched and developed at **SUNY ESF**.
- 2.2 Plants** means whole plants, cuttings or whips, whether planted or not.

- 2.3 Plant Parts** mean all parts of **Plants** which can be propagated vegetatively asexually, or non-sexually, to produce additional plants.
- 2.4** Licensed Grower is a commercial entity that will obtain willow cuttings only from a Licensed Nursery or from Foundation to plant, grow, and harvest, and deliver the harvested willow biomass to a biomass conversion facility for commercial purposes. Licensed Grower recognizes **Foundation** as sole owner of Willow varieties subject to this Grower's License.

3.0 Ownership of Plants

- 3.1** All Plants and Plant Parts of Licensed Willow varieties, whether planted or not, are the property of **Foundation** and possession by Licensed Grower is governed by the terms of this Grower's License.

4.0 Acquisition and Restricted Distribution of Plants and Plant Parts

- 4.1** Licensed Grower may only acquire or possess Plants or Plant Parts through physical transfer from the following:
- 4.1.1 Foundation**
 - 4.1.2** Nurseries expressly licensed by **Foundation** (Foundation Licensed Nursery)
 - 4.1.3** Through Licensed Grower's own propagation from Plants and/or Plant Parts obtained through 4.1.1 and 4.1.2.
- 4.2** Plants or Plant Parts of Licensed Willow varieties may not be distributed to any third party without prior written approval of **Foundation**.

5.0 Management of Plants and Plant Parts

- 5.1** Except for the non-distribution provision of clause 4.2, Licensed Grower shall have, at its sole discretion, the right to make any and all decisions concerning the management of Plant and Plant Parts of Licensed Willow varieties in its possession. The rights of **Foundation** in such Plants and/or Plant Parts shall be limited to said aforementioned non-distribution clauses and the royalty obligations defined below in Section 6.0.

6.0 Royalty

- 6.1** A portion of royalty payments supports the continued research and development of Willow varieties.
- 6.2** Licensed Grower shall ensure that Licensed Nursery, from which the Licensed Willow varieties were purchased, is paid a royalty according to one of the following schedules:
- 6.2.1 In New York State:**
 - 6.2.1.1** 2.0% (two percent) of the gross receipts (sales) of harvested Licensed Willow varieties delivered to a facility that burns, gasifies, pulps, ferments or otherwise converts the harvested Willow varieties for commercial gain.
 - 6.2.2 Outside New York State:**
 - 6.2.2.1** 4.0% (four percent) of the gross receipts (sales) of harvested Licensed Willow varieties delivered to a facility that burns,

gasifies, pulps, ferments or otherwise converts the harvested Willow varieties for commercial gain.

- 6.3** Foundation Licensed Nursery shall then remit said royalty payment to Foundation.
- 6.4** The royalty specified in 6.2 shall not be owed on any Plant planted by Licensed Grower prior to January 1, 2004. However, Licensed Grower is encouraged to make such payment voluntarily as per clause 1.7.
- 6.5** If Licensed Grower propagates Willow varieties without directly licensing from Licensed Nursery, Licensed Grower is responsible for paying a royalty for every plant of Willow varieties and said payment shall be made directly to **Foundation**.
- 6.5.1** For each year in which Licensed Grower has planted Plants of Licensed Willow varieties, Licensed Grower will deliver to **Foundation** by 30 August of that year a report in writing setting forth the number of Licensed Willow varieties planted for the previous year ending 30 June and will accompany such report with an appropriate payment of royalty due for such period.
- 6.5.2** Licensed Grower will keep complete and accurate records showing the information by which Licensed Grower arrived at a royalty determination and will permit a person designated by **Foundation** to inspect said records and the planted Plants, at reasonable times, as may be necessary to verify royalty reports made by Licensed Grower.
- 6.5.3** Such inspection described in Section 6.4.2 shall be made at **Foundation's** expense. However, if the results of the audit reveal additional royalties owed to **Foundation** that differ by more the five percent (5%) from those royalties already paid, Licensed Grower shall also reimburse **Foundation** for the costs of the inspection. **Foundation** agrees to hold such records confidential, except as may be necessary to maintain an action against Licensed Grower for breach of this Grower's License, and/or in conjunction with applicable laws and regulations. The records required by this paragraph shall be maintained and available for inspection for a period of five (5) years following the calendar quarter to which they pertain. This paragraph shall survive termination of this Grower's License.
- 6.6** In the event Plants that have been planted and for which a full royalty has been paid die or are discovered to be not-true-to-type, Licensed Grower may replace such Plants and no further royalty shall be owed on these replacement Plants, except where additional royalty is owed under the deferred payment schedule defined in Sections 6.2.1.1 or 6.2.2.1. Licensed Grower shall report all such replacements and indicate that the royalty has been paid.
- 6.7** At any time, upon six (6) months written notice, **Foundation** may unilaterally change the royalty provisions described in Section 6.0 et seq., and such royalty provisions will apply to all subsequent plantings of Sub-Licensed Willow varieties.

7.0 Planted Plant Possession and Land Transfers

- 7.1** If the Licensed Grower transfers title to land on which Plants of Licensed Willow varieties are planted, the new holder of title to such land shall retain the non-distribution obligations described in Sections 4.0 and 6.0.
- 7.2** The right to possess Plants and/or Plant Parts shall be transferable with transfer of title to land on which such Plants and/or Plant Parts are planted. Should Transferee take possession of same, Transferee shall execute a new Grower's License with Foundation upon said transfer.
- 7.3**
- 7.4** Licensed Grower shall notify **Foundation** of transfers of land title in which the right of possession of planted Plants and/or Plant Parts is transferred as described in Section 7.1. Such notification shall precede transfer of land title by 60 days.
- 7.5** The production, harvest, and sale of biomass from Willow varieties for commercial purposes shall be subject to the terms of Section 6.0 Royalty

8.0 Term, Termination and Disposition of Plants

- 8.1** This License shall last as long as Licensed Grower possesses Plants and/or Plant Parts of Licensed Willow varieties.
- 8.2** Licensed Grower may terminate this License at any time by written notification to **Foundation**. However, upon such termination, Licensed Grower shall destroy or return to **Foundation** all Licensed Willow varieties and Plant Parts in their possession. Licensed Grower will confirm destruction in writing to **Foundation**.
- 8.3** In the event Licensed Grower transfers title to land on which Licensed Willow varieties are planted, this License shall immediately terminate and Licensed Grower shall notify **Foundation** of such land transfer including the name of the transferee of such land title. Should Transferee take possession of land and Planted Willow varieties, Transferee shall execute a new Grower's License with Foundation upon said transfer.
- 8.4** Such notification shall precede transfer of land title by 60 days.
- 8.5** **Foundation** may terminate this License if there is a material breach of any of the terms and conditions contained herein and upon such termination, Licensed Grower shall destroy or return to **Foundation** all Plants of Licensed Willow varieties. Licensed Grower will confirm such destruction in writing to **Foundation**. However, **Foundation** may, at its own discretion, provide a reasonable period within which Licensed Grower may cure such breach.

9.0 Indemnification, Warranties and Limitations

- 9.1** Licensed Grower agrees to indemnify **Foundation, SUNY, SUNY ESF** and New York State and hold them harmless against all liabilities, demands, damages, expenses, or losses arising: (i) from the possession, planting, propagation, harvesting, maintenance, conversion, sale and production of

Licensed Willow varieties by Licensed Grower, and (ii) from a third party's use of Plants and/or Plant Parts of Licensed Willow varieties.

9.2 Foundation does not make any representations, extend any warranties of any kind, express or implied, or assume any responsibility whatever concerning the possession, propagation, planting, harvesting, maintenance, sale or production or other disposition by Licensed Grower of Licensed Willow varieties.

10.0 Miscellaneous

10.1 This License shall be governed by the Laws of the State of New York.

10.2 This License shall be binding upon and be to the benefit of the parties hereto and their heirs, successors and assigns. However, neither party shall assign this License, in whole or in part, without the written consent of the other which consent shall not be unreasonably withheld.

10.3 For purposes of mailings of notices, payments, or other communications, the addresses of the parties are given below. A party may change its address by giving written notice to the other party.

In the case of **Foundation**:

M. Güven Yalcintas, Ph.D.
Director and Vice-President
The Research Foundation of State University of New York
35 State Street
Albany, NY 12207-2826

In the case of Licensed Grower:

Notices shall be deemed given as of the date of mailing by certified mail, postage prepaid, to the above addresses (or such addresses as may be specified in writing by a Party).

10.4 No term or provision of this License shall be waived and no breach excused unless such waiver or consent shall be in writing and signed by the party

claimed to have waived or consented. No waiver of a breach shall be deemed to be a waiver of a different or subsequent breach.

- 10.5 This License may not be modified, changed or terminated orally. No change, modification, addition or amendment shall be valid unless in writing and signed by authorized representatives of the Parties hereto.
- 10.6 In the event any provision of this License is determined to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.
- 10.7 This License constitutes and contains the entire agreement of the parties respecting its subject matter and supersedes any and all prior negotiations, correspondence, understandings and agreements, whether written or oral, between the parties respecting its subject matter.
- 10.8 Licensed Grower agrees not to use the name of The Research Foundation of State University of New York or the State University of New York (SUNY) or the State of New York or the name of any member of the respective institution in sales, promotion, or advertising or in any other form of publicity without the express written permission of the respective organization and, if appropriate, the individual whose name is to be used.

IN WITNESS of this Agreement, **Foundation** and Licensed Grower have caused this License to be executed by their duly authorized officers on the dates indicated below:

Foundation

Licensed Grower

By: _____
M. Güven Yalcintas

By: _____

Print Name: _____

Title: Vice President of Technology Transfer

Title: _____

Date: _____

Date: _____

