

## WILLOW SUPPLY AGREEMENT

This WILLOW SUPPLY AGREEMENT (“Agreement”) dated this \_\_\_\_ day of \_\_\_\_ 2011, by and between ReEnergy \_\_\_\_\_ (“ReEnergy”) a New York limited liability company, with offices at \_\_\_\_\_, and \_\_\_\_\_ (the “Supplier”), a \_\_\_\_\_ with an address at \_\_\_\_\_.

### RECITALS

WHEREAS, Supplier owns, leases or otherwise controls the land described in Exhibit A attached hereto and made a part hereof (the “Property”);

WHEREAS, the Property is able to satisfactorily grow certain Shrub Willow Biomass Crops (as defined herein); and

WHEREAS, ReEnergy has received approval for a project area in Central and Northern New York State under the Biomass Crop Assistance Program (BCAP), making producers of Shrub Willow Biomass Crops eligible for certain government financial assistance, providing that they have purchase agreements with ReEnergy, which is prepared to use that material for energy production at its biomass-to-energy facility located at \_\_\_\_\_, New York (the “Facility”); and

WHEREAS, Supplier desires to plant, produce and deliver its harvested Shrub Willow Biomass Crops to the Facility and ReEnergy desires to accept and combust Shrub Willow Biomass Crops from Supplier at the Facility;

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

1. Definitions. The following words and phrases shall have the following meanings when used in this Agreement:

“Commencement Date” means the date on which this Agreement is executed and delivered by all parties.

“Shrub Willow Biomass Crops” means willow plantings that have been harvested and processed in accordance with the specifications described in Exhibit B hereto.

“Unacceptable Material” means any material which (a) by reason of its composition, characteristics, or quantity may cause potential injury to the Facility or its personnel, may present a danger to public health, safety or welfare or may cause the Facility to be in violation of any permit, license or approval or any federal, state or local law, regulation or mandate; or (b) contains non-willow products or any other materials as set forth in Exhibit C hereto, including but not limited to, any stones, excessive dirt or leaves, or non-wood materials.

2. Supplier Delivery Obligation. From and after the Commencement Date and until this Agreement is terminated or expires, the Supplier shall deliver to the Facility all of Supplier’s

Shrub Willow Biomass Crops in accordance with the schedule and parameters set forth in Exhibit D attached hereto.

3. ReEnergy Acceptance Obligation. From and after the Commencement Date and until this Agreement is terminated or expires, ReEnergy shall accept all Shrub Willow Biomass Crops harvested, processed and delivered by the Supplier to the Facility. Until notice is given otherwise, the delivery hours for the Facility will be 6:00 a.m. to 6:00 p.m. on Mondays through Fridays and 6:00 a.m. to 12:00 noon on Saturdays.

4. Pricing.

4.1 Purchase Price for Shrub Willow Biomass Crops. ReEnergy agrees to pay \$27.50 per green ton for Shrub Willow Biomass Crops harvested by the Supplier on the Property and delivered to the Facility (the "Purchase Price"). The Purchase Price assumes the moisture content of the Shrub Willow Biomass Crops will on average be 50%, and the moisture content of any single load will not exceed 55% (tested as described in Exhibit B). If the moisture level of any load of Shrub Willow Biomass Crops exceeds 55%, ReEnergy will have the right to either (i) reject the entire load of Shrub Willow Biomass Crops, or (ii) accept the load of Shrub Willow Biomass Crops, in which case the Purchase Price to be paid for said load of Shrub Willow Biomass Crops will be reduced to \$23.00 per green ton. Supplier acknowledges that ReEnergy intends to reject any load that has a moisture content greater than 57%. The Purchase Price shall also be subject to adjustment if Supplier fails to meet the minimum harvesting requirements as described in Exhibit D attached hereto.

4.2 Diesel Cost Sharing. ReEnergy agrees to assume 60% share of incremental diesel costs in excess of \$4.35 per gallon. This fuel surcharge will be based on the pricing published on the EIA website for Diesel On-highway – All Types, New England (PADD 1A). All diesel cost share calculations will use the first published rate for the month the delivery takes place. The increased harvesting and transportation costs will be calculated as follows:

- i) For harvest costs, the calculation will assume 10 gallons per acre and 20 green tons of Shrub Willow Biomass Crops harvested per acre.
- ii) For transportation costs, the calculation will assume 5 miles per gallon based on the round trip distance between the Property and the Facility.

The following is an example (for illustration only) of the cost sharing for the increase in harvest costs:

Assuming a 100 acre site with diesel cost at \$4.55/gallon; incremental diesel costs will be \$0.20/gallon, times 100 acres times 10 gallons/acre divided by 2,000 tons = \$0.10 per ton. Therefore, ReEnergy 60% share would be \$0.06 per ton.

4.3 Purchase Price Adjustments. After the second harvest of Shrub Willow Biomass Crops on the Property, ReEnergy and Supplier will act in good faith and participate in discussions regarding escalation of harvest costs other than those for fuel discussed in Section 4.2. Such discussions will be based on records of actual and unavoidable costs and expenditures incurred by the Supplier incident to the harvesting operation, not increases in the

cost of land, general inflation rates, or other extraneous factors. If efforts by SUNY ESF and/or ReEnergy result in additional funding or equipment that reduce the Suppliers cost associated with a harvest, then those savings will be considered in any further discussions, and if significant, may be reflected in a reduction in Purchase Price.

5. Payments. Payments will be made on a weekly basis for Shrub Willow Biomass delivered during the previous week. All payments will be directed to Supplier unless otherwise agreed upon by the parties. ReEnergy shall provide a report with each payment describing on a per day and per vehicle basis the quantity of Shrub Willow Biomass Crops credited to the account of the Supplier during the prior week.

6. Term. The term of this Agreement shall be the period commencing on the Commencement Date, and ending after delivery of the third complete harvest of Shrub Willow Biomass Crops on the Property in accordance with the parameters set forth in Exhibit D attached hereto.

7. Rejection of Materials. ReEnergy shall have the right to reject any portion of the materials delivered by the Supplier that ReEnergy determines in its reasonable judgment constitutes Unacceptable Material, either before the material has been staged and loaded or after said material has been emptied from the delivery vehicle. Ownership of Shrub Willow Biomass Crops shall not pass to ReEnergy unless and until such Shrub Willow Biomass Crops are accepted by ReEnergy. ReEnergy may remove from the Facility and dispose of in whatever manner is appropriate given the nature of the waste (a) any Unacceptable Material rejected by ReEnergy and not removed from the Facility by the delivery vehicle; and (b) any Unacceptable Material discovered by ReEnergy after the departure of the delivery vehicle which ReEnergy can establish was produced by the Supplier. The costs of disposal of any such Unacceptable Material will be charged to the Supplier.

8. Compliance with BCAP Program. ReEnergy and the Supplier acknowledge that the planting, harvesting, processing of Shrub Willow Biomass Crops, as well as the use thereof by ReEnergy for energy production, is being performed hereunder pursuant to the USDA BCAP program that is administered by the USDA Farm Service Agency. ReEnergy and the Supplier agree to comply with all applicable statutes, rules, and regulations applicable to them in connection with this Agreement and the transactions contemplated hereby, including those relating to the BCAP program.

9. Indemnity. Supplier shall indemnify and hold harmless ReEnergy and its directors, officers, employees, agents, consultants and other representatives (collectively, the "Indemnified Parties"), from and against any claims, demands, actions, causes of action, judgments, damages, losses (which shall include any diminution in value), liabilities, costs or expenses (including, without limitation, interest, penalties and reasonable attorneys' and experts' fees and disbursements) which may be made against any of the Indemnified Parties or which any of them may suffer or incur as a result of, arising out of or relating to: (i) any violation, contravention or breach of any covenant, agreement or obligation of Supplier under or pursuant to this Agreement; or (ii) any action, suit, trial, arbitration or other proceeding by a party containing allegations which, if proven true, would constitute an event described above.

10. Force Majeure. Except with respect to the performance of any obligations hereunder to make payments, a delay or failure of performance hereunder by either party shall not constitute a default under this Agreement if such delay or failure of performance is caused by an act of God or other events of force majeure. If the Facility is inoperable for an extended period of time that interrupts the ability of Supplier to harvest and deliver Shrub Willow Biomass Crops, ReEnergy will work in good faith with Supplier to explore all reasonable options to allow Supplier to harvest the Shrub Willow Biomass Crop in a manner that will still allow ReEnergy to use the Shrub Willow Biomass Crop for fuel, including delivery to a consolidation yard for storage or to another facility owned by an affiliate of ReEnergy, and if the parties cannot reach agreement on any such option ReEnergy will allow a one-year delay in Supplier's harvesting of Shrub Willow Biomass Crops on the Property.

11. Modifications. This Agreement may not be modified or amended except in writing signed by or on behalf of both parties by their duly authorized officers.

12. Assignments. The Supplier may not assign or subcontract its rights under this Agreement without the prior written consent of ReEnergy. ReEnergy may assign all of its rights and obligations under this Agreement. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and permitted assigns.

13. Entire Agreement. This Agreement, and any Exhibits attached hereto, constitute the entire agreement and understanding between the parties with respect to the subject matter hereof and supersede all prior negotiations, agreements and understandings between the parties.

14. Severability. In the event that any of the provisions, portions, or applications of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, ReEnergy and the Supplier shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions, portions, or applications thereof shall not be affected thereby.

15. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

16. Notices. Any notice or other communication required to be given under this Agreement shall be made in writing and shall be validly given, if personally delivered to its addressee, or sent by registered or certified mail, or sent by reputable overnight carrier that provides evidence of delivery, to the following addresses:

To ReEnergy:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To the Supplier:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

17. Control of Land by Supplier. If the Supplier does not own all of the Property described in Exhibit A, but through an agreement with the land owner has control and rights to occupy the Property, the Supplier agrees to pass through a rental payment of at least \$30 per acre from any annual BCAP rental payments received from USDA to the owner of the Property. The Supplier further agrees to make the same annual rental payment to the owner of the Property during harvest years, when BCAP program payments to the Supplier may be reduced to offset income from the sale of Shrub Willow Biomass Crops. To the extent that this agreement covers rented land, ReEnergy requires proof of payment, via a signed letter from the landowner acknowledging receipt of the BCAP annual payment or its equivalent in harvest years within one month of the anniversary date of the BCAP contract for the Property. Supplier can also elect to have the USDA issue rental payments directly to the landowner, in which case the Supplier will only need to supply proof of an equivalent rental payment during harvest years.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

\_\_\_\_\_  
[SUPPLIER]

REENERGY \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

Exhibit A

DESCRIPTION OF THE PROPERTY

Owner: \_\_\_\_\_

County: \_\_\_\_\_

Township: \_\_\_\_\_

Tax Map No: \_\_\_\_\_

Number of Acres: \_\_\_\_\_

Farm Number: \_\_\_\_\_

Tract Field: \_\_\_\_\_

## Exhibit B

### PRODUCT SPECIFICATIONS

Supplier will adhere to the following product specifications for all Shrub Willow Biomass Crops:

1. The moisture content is expected to be less than 50%, but at no time will it exceed 55%. Moisture content will be calculated as follows: Plant personnel will bag a sample of each load received. Sample will be split and one part will be weighed in an empty numbered sample pan. Personnel will record the weight with the pan number and supplier name. The weighed sample is then placed in drying oven at 201°F. The dried sample will be re-weighed and the moisture content is calculated based on the difference in weight. ReEnergy will provide Supplier with a copy of the test results for any load that exceeds 55%.
2. The diameter of the harvested willow shrubs must be 1 inch or greater. The maximum particle size of the harvested willow product accepted at the Facility shall be between 3 and 4 inches, with minimal long sticks. Less than one inch material is anticipated, but should not be in excess of 15 percent in any one load.
3. Supplier will plant only the eligible Shrub Willow Biomass Crops, as outlined in the USDA LTP4, on the Property during the term of this Agreement.
4. Supplier will maintain the Shrub Willow Biomass Crops for the entire Agreement term.
5. Supplier will make best efforts to participate in any BCAP related project area trainings and communications.
6. Supplier will provide information concerning crop management (dates of field operations, results of soil tests, herbicide and fertilizer applications) as requested, and permit unscheduled visits of technicians authorized by SUNY/ESF and/or ReEnergy to monitor crop development, survey for pests, and assist with harvest scheduling.
7. The standard for Shrub Willow Biomass Crops shall be product harvested in accordance with existing best management practices as set forth in the conservation plan issued by NRCS (Natural Resource Conservation Services) issued to the Supplier.

Failure to adhere to these criteria will allow ReEnergy to either: (i) reject loads of non-complying products; or (ii) adjust the Purchase Price at its own discretion.

## Exhibit C

### UNACCEPTABLE MATERIAL

- Asphalt, Brick or Concrete
- Stone or Rock
- Excess quantity of leaves
- Excessive amounts of dirt
- Paper
- Plastic
- Metal
- Other Non-Wood materials

## Exhibit D

### PRODUCTION COMMITMENT AND SCHEDULE

Supplier will adhere to the following production commitment and schedule:

1. The supplier will deliver all the Shrub Willow Biomass Crop produced in three complete harvest cycles. Each harvest must take place between Oct 15th and March 31<sup>st</sup>.
2. The first harvest must take place within five (5) years of planting. Subsequent harvests will take place not sooner than three (3) growing seasons or later than four (4) years after a previous harvest within the contract term, unless ReEnergy shortens or lengthens these harvest intervals, at its sole discretion.
3. The Supplier's minimum delivery commitment for each individual harvest shall be 20 green tons per planted acre. Failure to meet the minimum delivery commitment will entitle ReEnergy to damages equal to \$3.00 per green ton, multiplied by a value equal to the minimum delivery commitment less the amount of tonnage delivered. Notwithstanding the foregoing, if Supplier has followed best management practices but fails to achieve a yield of 20 green tons per acre due to circumstances beyond Supplier's reasonable control, Supplier shall not be liable to ReEnergy for said damages so long as Supplier has delivered to ReEnergy 100% of the Shrub Willow Biomass Crop that was harvested by Supplier.

Additional Acceptance/Delivery Requirements:

- a. ReEnergy will accept delivery only between Oct. 15th and April 30<sup>th</sup> of a calendar year.
  - b. Supplier is required to inform ReEnergy of Supplier's plans to harvest Shrub Willow Biomass Crops at least four months in advance of a harvest.
  - c. ReEnergy will then provide Supplier with an additional delivery schedule including one or more windows of three weeks during which Supplier's material will be delivered; with a maximum delivery quantity set for each window to assure orderly receipt of material at the Facility while also allowing some flexibility for the Supplier's harvesting operations.
4. Storage of Shrub Willow Biomass Crops will use best management practices to protect material from contamination. If harvested Shrub Willow Biomass Crops are stored on the ground, then sufficient Shrub Willow Biomass Crops will be left on the ground to provide a buffer from contamination.
  5. ReEnergy has the right to inspect the deliveries and reject any loads for failure to meet the specifications set forth in this Agreement.