

# Bidding Terms Agreement

THIS AGREEMENT dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, is between EnergyNet Services, LLC, 7201 W. Interstate 40, Ste 319, Amarillo, TX 79106, hereinafter designated as "EnergyNet" and \_\_\_\_\_, hereinafter designated as "PURCHASER", \_\_\_\_\_ (address).

IN CONSIDERATION of EnergyNet permitting PURCHASER to submit bids for the purchase of properties being offered for sale or lease on EnergyNet and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, PURCHASER agrees to be bound by and comply with the terms of this Agreement and acknowledges that all representations, agreements, warranties and assurances provided by PURCHASER in this Agreement will be truthful and accurate each time PURCHASER bids on property being offered on EnergyNet.

PURCHASER UNDERSTANDS AND AGREES THAT ENERGYNET CANNOT GUARANTEE THE COMPLETENESS, TIMELINESS, OR ACCURACY OF THE INFORMATION CONTAINED ON THE WEBSITE AND THAT NOTHING ON THE WEBSITE CONSTITUTES INVESTMENT ADVICE. DECISIONS TO BID SHOULD BE BASED UPON PURCHASER'S DUE DILIGENCE. ANY DECISIONS BASED UPON THE INFORMATION CONTAINED ON THE WEBSITE ARE THE SOLE RISK AND RESPONSIBILITY OF THE PURCHASER.

## Acquisition of Property in Online Auction

On the EnergyNet platform, any natural persons, corporate entities (whether for-profit or nonprofit), governmental bodies, and any other recognized legal entities, hereinafter designated as "SELLER", may offer Property(ies) for purchase or lease ("Property") pursuant to an agreement provided by SELLER that shall be available for review on the EnergyNet platform Property Information Page (hereinafter "Acquisition Agreement") with or without a minimum bonus bid. The Acquisition Agreement will describe whether the offered property rights constitute a leasehold or fee interest. EnergyNet shall designate a beginning and ending date during which potential purchasers may bid on Property. If PURCHASER is the highest bidder at the ending time and date, and the bid meets the minimum bonus, if any, or if PURCHASER'S bid is accepted by SELLER, PURCHASER will be obligated to acquire the PROPERTY, execute the Acquisition Agreement, pay the bid amount, pay the buyer's premium, and comply with the terms of the Acquisition Agreement.

## Agreement to Acquire Property

PURCHASER hereby agrees to participate as a bidder in the Online Auction for Property on the Website. EnergyNet agrees to allow PURCHASER to participate in the Online Auction based on the terms and conditions in this Agreement, the Acquisition Agreement and any additional terms as posted on the Sale Group or Property Narrative or Property Information Page or Additional Information on the Website. EnergyNet reserves the right to terminate PURCHASER'S ability to bid at any time in EnergyNet's sole discretion.

## Purchaser's Representations, Agreements, Warranties and Assurances

PURCHASER holds EnergyNet and SELLER harmless for any and all violations of Federal or State Securities Laws perpetrated by the PURCHASER. PURCHASER shall indemnify EnergyNet for all costs including reasonable attorneys' fees incurred by EnergyNet due to any violation or alleged violation of Federal or State Securities Laws.

### 1. Due Diligence and Independent Evaluation

- A. PURCHASER hereby acknowledges and agrees that it has the sole responsibility to examine all information available to PURCHASER, whether on the Website or not, concerning the Property being offered. Further, PURCHASER acknowledges and agrees PURCHASER must contact EnergyNet or the SELLER to obtain any additional requested information prior to the beginning date of the Online Auction if PURCHASER needs additional information from EnergyNet or SELLER. By submitting a bid, PURCHASER represents to EnergyNet and SELLER that PURCHASER has obtained all of the information necessary to acquire the Property.
- B. PURCHASER further agrees that it will make an independent evaluation of the Property and acknowledges that SELLER and EnergyNet have made no statements or representations concerning the present or future value of the future income, costs or profits, if any, to be derived from the Property.
- C. PURCHASER further agrees that it is familiar or prior to bidding will become familiar with legal restrictions (including court decisions) relating to the development of properties, like the Property, which may include limitations on the development of minerals. By submitting a bid, PURCHASER understands that legal restrictions including prior or future court decisions could prevent PURCHASER'S development of the Property. PURCHASER further agrees that it is accepting the risk of such legal impediments to development. PURCHASER further agrees the buyer's premium paid by PURCHASER is earned by EnergyNet at the time the PURCHASER becomes obligated to acquire the Property as provided in this Agreement. PURCHASER agrees that the buyer's premium paid by PURCHASER is non-refundable.
- D. PURCHASER further acknowledges that in making its Bid in the Online Auction, it has relied solely upon its independent examination of the premises, public and SELLER records, information which SELLER made available to PURCHASER, and PURCHASER'S bids are based solely on PURCHASER'S independent inspections, estimates, computations, evaluations, reports, studies and knowledge of the Property. Any and all information provided by SELLER or EnergyNet, as well as any other information provided by SELLER or EnergyNet as requested by PURCHASER, are furnished to PURCHASER at PURCHASER'S sole risk. SELLER and EnergyNet do not warrant or represent the accuracy of the data presented to the PURCHASER and PURCHASER agrees to hold harmless EnergyNet and SELLER from any reliance by PURCHASER on data provided by the SELLER and/or EnergyNet. In other words, PURCHASER should use the information on the Website to become generally familiar with the Property to be acquired. The PURCHASER agrees, however, to perform its own due diligence regarding the Property and to base its decisions on its own due diligence.

### 2. Purchaser's Assurance of Capacity

- A. PURCHASER represents and warrants to EnergyNet and SELLER that it is authorized to hold title to the Property, is authorized by all applicable Federal and State laws to be a purchaser or lessee of Property and is in good standing and duly qualified to conduct its business in the jurisdiction where the Property is located.
- B. If PURCHASER is a partnership, corporation or limited liability company, PURCHASER warrants and represents that the consummation of the transactions contemplated by this Agreement will neither violate nor be in conflict with Articles of Incorporation, By-Laws, Partnership Agreements and/or Management Agreements applicable to PURCHASER and that the transactions contemplated by this Agreement have already been duly and validly authorized.

- C. After the conclusion of the acquisition, the SELLER will not be obligated to assist the PURCHASER in any way in the management or operation of the Property, and the PURCHASER will be dependent solely upon its own efforts to realize a profit from or utilize the Property.

### 3. Agreement Terms

PURCHASER acknowledges and agrees that it has reviewed and will comply with all terms, conditions and requirements contained in the Acquisition Agreement by and between SELLER and PURCHASER if PURCHASER is declared to be the successful bidder.

### 4. Title

PURCHASER acknowledges and agrees that it will hold SELLER and EnergyNet harmless as to accuracy of any documents of title to the Property. PURCHASER further acknowledges and agrees that SELLER does not warrant title either express or implied and all title to the Property is on an "AS IS" basis.

### 5. Effective Date and Closing

- A. The date of sale for Property acquired in the Online Auction is when PURCHASER is declared to be the successful bidder on SELLER'S Property as declared by the online auctioneer.
- B. PURCHASER acknowledges and agrees upon notification from EnergyNet of PURCHASER'S successful Bid, PURCHASER is to tender an Executed Acquisition Agreement and the total amount of funds required pursuant to the terms of the Acquisition Agreement within the timeframe indicated by SELLER and EnergyNet. Time is of the essence.

### 6. Acquisition Agreement to Control

As between SELLER and PURCHASER the terms and conditions of the Acquisition Agreement provided by the SELLER and displayed on the Website with each of SELLER'S Properties shall supersede and control over any conflicting terms and conditions in this Agreement. Both PURCHASER and SELLER have a duty to determine any discrepancies between the Acquisition Agreement and what is represented in the Property information provided.

### 7. Indemnifications

- A. PURCHASER understands and agrees that EnergyNet and its officers, directors, shareholders, employees, agents, representatives, contractors, successors and assigns are not liable to the PURCHASER for SELLER'S failure to close the sale or lease transaction, for SELLER'S breach of the Acquisition Agreement, or for any other breach of duty owed to the PURCHASER from the SELLER. PURCHASER'S sole remedy is against the SELLER.
- B. PURCHASER AGREES TO INDEMNIFY AND HOLD HARMLESS ENERGYNET AND ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, SUCCESSORS AND ASSIGNS AS TO ANY AND ALL LIABILITY AND COSTS, LEGAL OR OTHERWISE, RESULTING FROM BREACHES BY PURCHASER OF THIS AGREEMENT OR THE ACQUISITION AGREEMENT, INCLUDING WITHOUT LIMITATION ANY AND ALL CAUSES OF ACTION RELATED TO PURCHASER'S DUTIES UNDER THIS AGREEMENT OR ANY OTHER LOSS OR DAMAGE OCCURRING AS A RESULT OF PURCHASER'S DUTIES OWED TO THE SELLER OUTSIDE OF THIS AGREEMENT.
- C. ALL INDEMNIFICATIONS EXTEND TO THE BENEFIT OF THE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, AND ASSIGNS OF EACH INDEMNIFIED PARTY. ALL INDEMNITIES SURVIVE THE TERM AND TERMINATION OF THIS AGREEMENT.

### 8. Term of Agreement

- A. The term of this Agreement, including any subsequent amendments, is one (1) year from the date PURCHASER executes this Agreement, unless EnergyNet provides written notice of termination to PURCHASER. Notwithstanding this one (1) year term, PURCHASER acknowledges and understands that the terms and provisions of this Agreement may be changed or amended from time to time by EnergyNet, and that PURCHASER'S use of EnergyNet's Website to bid or make offers on Property will be subject to and governed by the terms of the BIDDING TERMS AGREEMENT posted on EnergyNet's Website as of seven days prior to the beginning date of the Online Auction.
- B. PURCHASER UNDERSTANDS THAT IT IS PURCHASER'S RESPONSIBILITY AND DUTY TO READ BIDDING TERMS AGREEMENT SEVEN DAYS PRIOR TO THE BEGINNING DATE OF ANY ONLINE AUCTION IN WHICH PURCHASER WISHES TO PARTICIPATE. BY PARTICIPATING IN SUCH ONLINE AUCTION OR ANY SUBSEQUENT NEGOTIATIONS, PURCHASER AGREES TO BE BOUND BY THE TERMS OF SUCH BIDDING TERMS AGREEMENT.

### 9. Miscellaneous

- A. Governing Law. PURCHASER acknowledges and agrees that this Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas and the exclusive venue for any action by PURCHASER or SELLER arising under this Agreement shall be the Federal District Court for the Northern District of Texas, Amarillo Division or in the District Courts of Potter County, Texas. The Acquisition Agreement, assignments, and matters pertaining to the Acquisition Agreement will be governed by and interpreted in accordance with the laws of the states in which the Property is located.
- B. Attorneys' Fees and Costs. In the event that any party to this Agreement resorts to legal proceedings to enforce this Agreement, the prevailing party in such proceedings shall recover all costs incurred by such party, including reasonable attorney fees.
- C. No Partnerships. This Agreement does not create and shall not be construed to create a partnership, association, joint venture or fiduciary relationship of any kind or character between the PURCHASER and SELLER, or EnergyNet, and shall not be construed to impose any duty, obligation, or liability arising from such a relationship by or with respect to the PURCHASER, SELLER, or EnergyNet.
- D. Severability. PURCHASER acknowledges and agrees that if any term or other provision of this Agreement is invalid, illegal or incapable of being enforced under any applicable rule or law, such provision will be ineffective only to the extent of such invalidity, illegality or unenforceability and all other terms, conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transaction contemplated hereby is not affected in a materially adverse manner with respect to either party.

- E. Waiver. Each party acknowledges and agrees that no waiver by either party of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other portions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.
- F. Captions. PURCHASER acknowledges and agrees that the titles and headings in this Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision of this Agreement.
- G. Notices. PURCHASER acknowledges and agrees that any notice provided or permitted to be given under this Agreement shall be in writing, and may be served by personal delivery including, without limitation by telecopier or facsimile or by depositing same in the United States mail, addressed to the party to be notified, postage prepaid, and registered or certified with a return receipt requested. Notices deposited in the mail in the manner herein above described shall be deemed to have been given and received upon the date of delivery as shown on the return receipt. Notice served in any other manner shall be deemed to have been given and received only if and when actually received by the addressee. For purposes of notice, the addresses of the parties shall be as follows.

If to: PURCHASER:

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If to: EnergyNet

EnergyNet Services, LLC  
7201 W. Interstate 40, Ste 319  
Amarillo, TX 79106

The address of any party for notice purposes may be changed by such party by giving two days written notice of such change to all other parties to the Agreement.

- H. Ambiguity. PURCHASER acknowledges and agrees that if any provision of this Agreement is determined to be ambiguous by any Court, the Court shall not construe the ambiguity against EnergyNet on the basis of primary or sole authorship of the Agreement.
- I. Entirety and Amendments. PURCHASER acknowledges and agrees that this Agreement and the instruments delivered or required to be delivered pursuant to this Agreement supersede all prior negotiations, understandings and agreements between the parties relating to the subject matter hereof and constitute the entire understanding and agreement between the parties. Except for changes as provided by paragraph 8, no alterations, modifications, amendments or changes in the Agreement shall be effective or binding unless in writing and executed by PURCHASER and EnergyNet.

PURCHASER

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

Printed or Typed Name and Title