

# Bidder Agreement

This Agreement (the "Agreement") is made by and between AZ Bidder LLC, an Arizona limited liability company ("AZB"), and \_\_\_\_\_ ("Bidder").

WHEREAS, AZB maintains a website (the "Website") of Arizona real property for sale;

WHEREAS, AZB provides services to parties interested in purchasing Arizona real estate; and

WHEREAS, AZB is a licensed real estate broker in the State of Arizona doing business as eChoice Realty; and

WHEREAS, Bidder desires to use said services and have access to the Website;

NOW, THEREFORE, in consideration of the premises and the agreements herein, the parties agree as follows:

1. BIDDER'S INFORMATION. Bidder agrees to provide accurate, current, and complete information required to register with AZB and at other points as may be required in the course of using the Website and Services of AZB ("Bidder Information"). Bidder further agrees to maintain and update Bidder Information as necessary to keep it accurate, current, and complete. AZB may terminate Bidder's rights to services if any information Bidder provides is false, inaccurate or incomplete. Bidder agrees that AZB may store and use the Bidder Information (including credit card information) for use in maintaining Bidder's Account (as hereinafter defined).

## 2. DEPOSIT AND FEES.

(a) Bidder shall provide a deposit (the "Deposit") of not less than \$10,000 to AZB, as security for bidding activity. Upon bank clearance of the Deposit, Bidder will become entitled to the services from AZB set forth below.

(b) AZB will hold the Deposit on behalf of Bidder, without interest in a FDIC insured Trust Account. Bidder may request the return of the Deposit at any time unless Bidder has committed to purchase real estate.

(c) Bidder will pay AZB a fee in the amount of \$\_\_\_\_\_ upon a successful bid (the "Bidding Fee"), as provided below.

(d) Bidder will pay other fees incurred under this Agreement on a monthly basis with a valid credit card that is (i) issued in the name of Bidder or (ii) authorized to Bidder for use for such purpose.

(e) The fee for a drive-by report (as described below) is \$\_\_\_\_\_.

(f) The fee for a title research checklist (as described below) is \$\_\_\_\_\_.

(g) AZB reserves the right to change its fees and to institute new fees at any time, upon ten (10) days prior notice to Bidder, which may be sent by email or posted on the Website.

## 3. SERVICES AVAILABLE TO BIDDER.

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- (a) Bidder is entitled to access to the content on the Website, in accordance with the Terms and Conditions set forth on the Website. Any violation of the Terms and Conditions by Bidder may result in the termination of Bidder's access to the Website, as provided in the Terms and Conditions.
- (b) If Bidder requests, AZB will provide to Bidder a drive-by report of a specified property (the "Subject Property") listed on the Website within twelve business hours of the receipt of request by Bidder.
- (c) AZB will email a title research checklist on the Subject Property within 12 business hours of the receipt of request by Bidder.
- (d) AZB will bid on Bidder's behalf for the Subject Property at a trustee sale, as described below.
- (e) A "drive-by report" will consist of not less than one digital photo of the Subject Property taken within 24 hours of the trustee auction for the Subject Property and a checklist of the inspector's observations of the Subject Property, in the form of the checklist shown on the Website.
- (f) A "title research checklist" will consist of a checklist of observations relating to publicly available information concerning the title to the Subject Property.

### 4. BIDDING.

- (a) Bidder may connect to the Website area called Bidcast in order to receive real time reports of bids.
- (b) Bidder will indicate its intent to bid on each trustee sale on the Website ("Mark For Bid") at least one hour prior to the scheduled start-time of each trustee sale.
- (c) AZB will submit one or more bids on Bidder's behalf by open-outcry upon receipt by AZB of a bid amount entered by Bidder on the Website (the "Maximum Bid"), provided there is sufficient time for AZB to submit the bid before the sale is determined by the trustee to be closed ("Sale End").
- (d) In the event that Bidder and at one or more other clients of AZB have placed Maximum Bids for identical amounts, AZB will represent and place a Current Bid on behalf of the client who entered the highest Maximum Bid at the earliest date/time as recorded on the Website (the "High Bidder").
- (e) AZB will inform Bidder whether its Maximum Bid is the highest bid then recorded on the Website (the "High Bid").
- (f) Any Maximum Bid submitted by Bidder that is the High Bid is final and cannot be cancelled, retracted or reduced once accepted by AZB.
- (g) The amount of each bid AZB submits to the trustee on Bidder's behalf (the "Current Bid") will be in whole dollar amounts and in increments determined solely by AZB; provided that each Current Bid will be at least \$1.00 (one-dollar) greater than the original opening bid amount established by the trustee and at least \$1.00 (one-dollar) greater than the last known bid placed by another party.
- (h) Once AZB has submitted a Current Bid on Bidder's behalf, the Current Bid may not be canceled, retracted or reduced.
- (i) Bidder may enter additional Maximum Bid amounts on the Website at any time until Sale End.

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(j) In the event that Bidder submits a Maximum Bid that is not the High Bid, Bidder may submit bids directly to trustee or by using another method outside of the Website.

(k) AZB will report the status of bidding at the trustee sale, including the Current Bid and the Maximum Bid to Bidder on the Website.

(l) AZB will use its best efforts to ensure that the Current Bid AZB submits to the trustee does not exceed the Maximum Bid.

(m) Bidder authorizes AZB exceed Bidder's Maximum Bid by any amount up to \_\_\_\_\_ over the Bidder's Maximum Bid in attempt to place a Winning Bid on behalf to the Bidder (the "Flex Bid Amount").

(n) In the event AZB submits a Current Bid to the trustee that exceeds the sum total of the Maximum Bid amount and the Flex Bid Amount, and the trustee designates the Current Bid as the Winning Bid, AZB will reimburse Bidder for the amount that the Current Bid exceeds the Maximum Bid amount less the Flex Bid Amount (the "Over-Bid Amount").

(o) If an Over-Bid Amount occurs, AZB will reimburse Bidder for the Over-Bid Amount by subtracting the Over-Bid Amount from the amount of the Bidding Fee. If the Over-Bid Amount exceeds the Bidding Fee, AZB will reimburse Bidder for an amount equal to the Over-Bid Amount less the Bidding Fee in the form of a cashier's check to be mailed to Bidder within five (5) business-days.

5. SUCCESSFUL BID. If the Bidder has submitted a bid that has been designated by the trustee as the winning bid (the "Winning Bid"),

(a) AZB will provide Bidder's Information to the trustee. AZB will tender to trustee a cashier's check in the amount of \$10,000 as a deposit for the Bidder's payment of the purchase price (the "Trustee Deposit"). Bidder's Deposit will be debited in the amount of the Trustee Deposit.

(b) By the end of the business day following the day of the Winning Bid, Bidder shall remit to AZB the Bidding Fee via a payment method satisfactory to AZB.

(c) Bidder will deliver a cashier's check for the balance of the purchase price of the Subject Property to the trustee by the end of the following business day. AZB shall have no obligation to assist Bidder with this delivery.

(d) If Bidder desires to continue to receive services from AZB, including access to the Website, the Bidder shall restore the Deposit to a minimum of \$10,000.

6. BIDDER ACCOUNT, PRIVACY AND SECURITY.

(a) Account and Password. As a registered user of the Website, Bidder will establish an account (the "Account"). Bidder is solely responsible for maintaining the confidentiality and security of the Account. Bidder should not reveal Account information to anyone else or use anyone else's Account. Bidder is entirely responsible for all activities that occur on or through the Account, and agrees to immediately notify AZB of any unauthorized use of the Account or any other breach of security. AZB shall not be responsible for any losses arising out of the unauthorized use of the Account.

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(b) AZB is committed to Bidder's right to privacy. AZB only collects information that Bidder voluntarily provides. AZB will never rent or sell this private information to anyone. The AZB website may contain links to other websites. If Bidder chooses to visit other websites, AZB is not responsible for the privacy policies or content of those other websites.

(c) AZB collects information about Bidder that Bidder provides and from cookie files and tracking software. AZB uses this information solely for internal analysis or to contact Bidder about offers or promotions that it sponsors. AZB will not knowingly provide any of this information (except in the form of aggregate statistics that do not link Bidder's identity to any specific information and do not identify Bidder as a visitor to the Website) to third parties unless AZB obtains Bidder's permission or is compelled to do so by a lawful court order.

### 7. VIOLATIONS/INDEMNIFICATION

Bidder agrees, at Bidder's own expense, to defend and indemnify and hold harmless AZB against all third party claims, losses, liability, damages, and/or costs, including reasonable attorneys' fees that may be asserted against AZB and all losses incurred, as a result of any violations of this Agreement by Bidder.

### 8. DISCLAIMER OF WARRANTIES

Information provided by AZB is believed to be accurate and reliable, but no warranties are made as to the accuracy or timeliness of Content.

IN ORDER TO PROVIDE BIDDER WITH THIS SERVICE, AZB IS UNABLE TO OFFER ANY WARRANTIES OR MAKE ANY REPRESENTATIONS ABOUT ANY BENEFITS OR OPPORTUNITIES THAT BIDDER MAY OBTAIN AT THIS SITE. AZB HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. THIS WEB SITE IS MADE AVAILABLE TO BIDDER "AS IS," WITHOUT ANY WARRANTIES WHATSOEVER ABOUT THE NATURE, CONTENT OR ACCURACY (EITHER WHEN POSTED OR AS A RESULT OF THE PASSAGE OF TIME) OF ANY MATERIAL AT THE SITE, AND WITHOUT ANY REPRESENTATIONS OR GUARANTEES. IN ADDITION, AZB MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTEES THAT THIS WEBSITE WILL BE SECURE, ACCESSIBLE CONTINUOUSLY AND WITHOUT INTERRUPTION, OR ERROR FREE. TO THE EXTENT THAT BIDDER MIGHT OTHERWISE BELIEVE THAT ANY WARRANTIES, GUARANTEES OR REPRESENTATIONS HAVE BEEN MADE TO BIDDER, BIDDER HEREBY AGREES THAT SUCH STATEMENTS, WHETHER MADE ORALLY OR IN WRITING, ARE TO BE CONSTRUED AS MERELY NONBINDING EXPRESSIONS OF POLICY RATHER THAN AFFIRMATIVE REPRESENTATIONS, OBLIGATIONS, GUARANTEES OR WARRANTIES. IN THE EVENT OF ANY CONFLICT BETWEEN THIS SECTION 8 AND OTHER TERMS OR PROVISIONS OF THIS AGREEMENT, THIS SECTION SHALL BE CONSTRUED TO TAKE PRECEDENCE.

### 9. LIMITATION OF LIABILITY

BIDDER ACKNOWLEDGES THAT THE WEBSITE, BIDDER'S CONNECTION TO THE WEBSITE, OR AZB'S COMMUNICATION WITH ITS AGENTS PLACING BIDS MAY BE UNAVAILABLE FOR EXTENDED PERIODS, DUE TO TECHNOLOGICAL FAILURE OR OTHER REASONS. AZB DOES NOT ACCEPT LIABILITY FOR ANY CONDUCT, ACTS OR OMISSIONS OCCURRING AT THE WEBSITE OR WITH RESPECT TO ANY BID OR FOR ANY LOSSES THAT BIDDER MAY INCUR. IN NO EVENT WILL AZB BE LIABLE TO BIDDER FOR ANY CLAIMS BY ANY THIRD-PARTIES, FOR ANY CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, INCLUDING ANY LOST PROFITS, EVEN IF BIDDER CLAIMS TO HAVE NOTIFIED AZB ABOUT SUCH DAMAGES, AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE. THIS LIMITATION

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SHALL APPLY REGARDLESS OF THE THEORY OF RECOVERY ASSERTED, WHETHER TORT, BREACH OF CONTRACT OR OTHER THEORY.

## 10. COMPLETE AGREEMENT/NO REPRESENTATIONS

This Agreement constitutes the entire agreement between AZB and Bidder relating to access to and use of the Website and supersedes any prior or contemporaneous representations or agreements. AZB reserves any rights not otherwise expressly granted by this Agreement. This Agreement may not be modified, either expressly or by implication, except as set forth below in Section 11.

## 11. MODIFICATIONS/TERMINATION

AZB may, from time to time, without notice, update or revise the Terms and Conditions of the Website. If it updates or revises the Terms and Conditions, AZB will notify Bidder either by email to the most recently-provided email address, or by posting the updated or revised Terms and Conditions on the Website. Bidder's use of the Website following any such update or revision constitutes Bidder's agreement to follow and be bound by the Terms and Conditions as updated or revised. It is Bidder's responsibility to review the Terms and Conditions periodically.

## 12. DISPUTE RESOLUTION/ JURISDICTION

This website is hosted on servers located in Phoenix, Arizona, and is intended to be viewed by residents of the United States. All disputes arising out of or relating to this Agreement or our operation of this site shall be resolved by binding arbitration in the city of Phoenix, pursuant to the rules of the American Arbitration Association. All such disputes shall be governed by and construed in accordance with the laws of the United States and of the State of Arizona governing contracts made and to be performed in that State. However, Bidder agrees that AZB shall be entitled to obtain preliminary injunctive relief to enforce any of the terms of this Agreement against Bidder pending a final determination in arbitration.

## 13. CONSTRUCTION

If any portion of this Agreement is ruled invalid or otherwise unenforceable, it shall be deemed amended in order to achieve as closely as possible the same effect as originally drafted. Any invalid or unenforceable portion should be construed as narrowly as possible in order to give effect to as much of the Agreement as possible.

In Witness Whereof, the parties have caused this Agreement to be duly executed as of \_\_\_\_\_, 20\_\_\_\_.

**AZ Bidder LLC**

**Bidder**

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

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

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

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

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

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