



## Lockbox System Authorized User Agreement

This AGREEMENT is made and entered into by Upstate Alliance of REALTORS® Multiple Listing Service, Inc. (“MLS”); the “Participant” identified on the last page below; and the “Subscriber” identified on the last page below.

1. **PURPOSES.** The parties have entered this Agreement because (a) MLS will provide access to its lockbox system; (b) if Subscriber agrees to the terms in this Agreement; and (c) if Participant makes certain commitments on Subscriber’s behalf.

### DEFINITIONS AND USAGE

2. For purposes of this Agreement, the following terms shall have the meanings set forth below.

**MLS Policies:** MLS’s Rules and Regulations, including the lockbox system rules, as amended from time to time in MLS’s discretion, and any operating policies promulgated by MLS.

**Confidential Information:** Information or material proprietary to a party or designated “confidential” by the party and not generally known to the public that the other parties may obtain knowledge of or access to as a result of this Agreement. Confidential Information includes, but is not limited to, the following types of information (whether in oral, visual, audio, written or other form): (a) all MLS data, except to the extent to which this Agreement and the MLS Policies permit its disclosure; (b) IP addresses, access codes and passwords, and personal identification numbers (PINs); (c) any information that MLS obtains from any third party that MLS treats as proprietary or designates as Confidential Information, whether or not owned or developed by MLS; (d) any information designated as confidential or private by any applicable state, federal, local or other law, regulation or directive; and (e) any claims or evidence presented by any party under arbitration pursuant to paragraph 28. Confidential Information does not include information that is or becomes publicly available by other than unauthorized disclosure by the receiving party; independently developed by the receiving party; received from a third party who has obtained and disclosed it without breaching any confidentiality agreement; or already possessed by the receiving party at the time of its disclosure.

**Smart Card:** A pocket-sized card with embedded integrated circuits designed to authenticate and control access to lockboxes.

**Subscriber:** Party to this Agreement. In the event there is no separate subscriber party to this agreement, “Subscriber” refers to the Participant herein.

3. **Usage.** The following usages apply to any interpretation or construction of this Agreement, unless the context clearly indicates otherwise.

- a. Wherever the term “including” is used, it means “including, but not limited to.”
- b. The singular and plural numbers and masculine, feminine, and neuter genders of words are fully interchangeable.
- c. Wherever the term “law” is used, it means all statutes, regulations, and case law, both state and federal, as they are amended. Without limiting the generality of the foregoing, “law” expressly includes all state and federal fair housing statutes and regulations.

### MLS’S OBLIGATIONS

4. **ACCESS TO SERVICE.** MLS shall provide Participant and Subscriber access to the lockbox service of MLS, subject to the MLS Policies.

5. **NOTICE OF SIGNIFICANT EVENTS.** MLS shall provide commercially reasonable notice to Participant and Subscriber of all significant events relating to the lock box system, including scheduled downtime and changes in the MLS Policies.

6. **PROVISION OF REPLACEMENT SMART CARDS.** MLS shall issue a replacement Smart Card to Subscriber provided Subscriber has (a) complied with this Agreement and the MLS Policies with respect to lockboxes; and (b) paid the fee or deposit established by MLS to replace a Smart Card that is lost, stolen, or damaged.

### ACKNOWLEDGEMENTS / GENERAL PROVISIONS

7. **RECEIPT.** Participant and Subscriber acknowledge that Subscriber has received a SentriLock Smart Card from MLS.

8. **TITLE TO SMART CARD.** Participant and Subscriber acknowledge that the Smart Card is the sole property of SentriLock and Subscriber shall return it as required by SentriLock or MLS.

9. **USE CONSISTENT WITH MLS POLICIES.** Access to and use of MLS’s lockbox system is at all times limited to the purposes and by the restrictions set out in the MLS Policies. Any other use or access is strictly prohibited and is a material breach of this Agreement.

10. **PERIODIC UPDATES REQUIRED.** Participant and Subscriber acknowledge that the Smart Card has an update code interval, determined in MLS’s sole discretion. At the expiration of each update code interval, Subscriber’s Smart Card must receive a new update code, or it will fail to function. Subscriber may obtain update codes from the MLS by placing the Smart Card in a properly configured card reader or by other authorized methods.

11. **EXCHANGE OF SMART CARDS.** MLS may, at its discretion, require Subscriber to return Subscriber’s Smart Card and to use a new Smart Card, compatible with the lockbox system, provided by MLS.

12. **LOCKBOXES NOT A SECURITY SYSTEM.** Participant and Subscriber acknowledge that the Smart Card, lockboxes, and other components of the lockbox system are not a security system; they are a marketing convenience and control system. Participant and Subscriber hold MLS harmless against any claims that the lockbox system failed, for whatever reason, to prevent or grant admission to any property.

### SUBSCRIBER / PARTICIPANT OBLIGATIONS TO MLS

13. **PERIODIC SERVICE FEES.** At the inception of this Agreement, no periodic service fees for the lockbox system are due from Participant or Subscriber. In the event the MLS establishes any periodic service fees, Participant and Subscriber agree to pay them when they come due and according to the payment terms MLS establishes.

14. **MLS POLICIES PREVAIL.** Participant and Subscriber shall comply with the MLS Policies at all times. In the event of any perceived conflict between the MLS Policies and this Agreement, the MLS Policies shall prevail and govern.

15. **RETURN OF SMART CARD.** Participant and Subscriber shall return the Smart Card to MLS within 48 hours after receipt of a request to do so by MLS.

16. **SECURITY MEASURES.** Participant and Subscriber acknowledge the importance of maintaining security of Smart Cards. Consequently, Subscriber shall:

- a. Keep the Smart Card in Subscriber’s possession and in a safe place at all times;

## Lockbox System Authorized User Agreement (continued)

- b. Not allow Subscriber's personal identification number (PIN) to be attached to the Smart Card nor disclosed to anybody;
- c. Not lend the Smart Card to any person for any purpose whatsoever nor permit any other person to use the Smart Card for any purpose;
- d. Not duplicate or attempt to duplicate the Smart Card nor allow anyone else to do so.
- e. Not assign, transfer or pledge Subscriber's rights in the Smart Card.
- f. Notify MLS within three days of the loss or theft of the Smart Card.
- g. Follow any additional security measures set out in the MLS Policies.

**17. PROCEDURE FOR LOST, STOLEN AND DAMAGED CARDS.** In the event Subscriber loses the Smart Card or it is stolen, Participant and Subscriber shall sign and deliver to MLS a statement of the circumstances surrounding the loss or theft. In the event that Subscriber's Smart Card is damaged, Subscriber shall immediately return it to MLS.

**18. SUBMISSION TO DISCIPLINARY REVIEW.** Participant and Subscriber shall submit to a disciplinary tribunal of MLS in the event either is accused of a breach of the MLS Policies relating to the lockbox system. MLS shall conduct all such tribunals in accordance with its bylaws and rules. All such tribunals shall have at their disposal every sanction available to them under the MLS Policies, including forfeiture of Subscriber's Smart Card and withdrawal of Participant's and Subscriber's rights to possess a Smart Card. In cases of significant breaches of MLS Policies, a disciplinary tribunal may revoke all the Smart Cards in Participant's office, not just the one issued under this Agreement.

### PARTICIPANT OBLIGATIONS TO MLS

**19. GUARANTY AND LIABILITY FOR SUBSCRIBER CONDUCT.** Participant is guarantor of Subscriber's performance under this Agreement. Participant is jointly and severally liable to MLS for all damages and costs MLS sustains as a result of Subscriber's use of the Smart Card, up to and including the last date Subscriber has access to the lockbox system by virtue of the Smart Card issued under this agreement, even if Subscriber is no longer affiliated with Participant at the time of the wrongful conduct.

**20. PARTICIPANT WARRANTIES.** Participant warrants that (a) Participant is a license real estate broker and participant in MLS; and (b) Subscriber possesses a real estate license and is associated with Participant as a licensee actively seeking to sell real estate or Subscriber is a certified real estate appraiser affiliated with Participant.

**21. SUBSCRIBER TRANSFERS.** Participant shall notify MLS in writing within 24 hours after Subscriber's transfer of license. If the Subscriber has transferred to a firm which is not participating in the UPSTAR MLS, or if the Subscriber's license is inactivated or sent back to the State, Participant agrees to make its best efforts to obtain the transferred Subscriber's Smart Card. Participant acknowledges that it shall be liable for periodic lockbox service fees, if any, for the disassociated Subscriber until the next billing cycle after the card is returned. If Participant cannot obtain return of the Smart Card, it shall supply MLS with copies of written correspondence attempting to obtain the card's return.

### CONFIDENTIAL INFORMATION

22. The parties shall protect the Confidential Information with the same degree of care they take to protect their own sensitive business information of like kind, but in no event less than reasonable care. A party may disclose Confidential Information if such disclosure is required by law or court order; provided, however, that such party makes commercially reasonable efforts to notify the others in writing in advance of disclosure.

23. Within five days after termination of this Agreement, the receiving party shall return to the disclosing party all Confidential Information of the disclosing party. The receiving party shall also erase or destroy Confidential Information stored on magnetic media or other computer storage, including system backups. Upon the disclosing party's request, an officer of the receiving party shall certify in writing that all materials have been returned or destroyed.

### TERM AND TERMINATION

24. The term of this Agreement begins on the date that MLS signs it. This Agreement shall terminate upon the occurrence of any of the following events: (a) immediately upon termination of Participant's privileges as an MLS participant or termination of Subscriber's privileges as an MLS subscriber; (b) 30 days after any party's notice to the others of its intent to terminate; (c) 10 days after any party's notice to another that the other has breached this Agreement, provided the breach remains uncured; (d) immediately upon notice from an MLS disciplinary body to Participant or Subscriber that Participant or Subscriber has violated the MLS Policies with regard to the lockbox system. In the event Participant's or Subscriber's MLS privileges are terminated while this Agreement is in effect and MLS subsequently reinstates those privileges, this Agreement shall automatically be reinstated if MLS resumes its obligations under paragraphs 4 through 6.

### GENERAL PROVISIONS

**25. Limitation of liability/exclusion of warranties. IN NO EVENT SHALL MLS BE LIABLE TO PARTICIPANT OR SUBSCRIBER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES (EVEN IF MLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), OR LOST PROFITS ARISING FROM THIS AGREEMENT OR ANY BREACH OF IT. IN NO EVENT SHALL MLS BE LIABLE TO PARTICIPANT OR SUBSCRIBER FOR ANY AMOUNT IN EXCESS OF THE FEES PARTICIPANT AND SUBSCRIBER HAVE PAID MLS, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES. PARTICIPANT ACKNOWLEDGES THAT MLS PROVIDES THE LOCKBOX SYSTEM ON AN "AS-IS," "AS-AVAILABLE" BASIS, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTY OF TITLE, NON-INFRINGEMENT, AND ACCURACY.**

**26. APPLICABLE LAW.** This Agreement shall be governed by and interpreted according to the laws of the State of Indiana, without regard to its conflicts and choice of law provisions.

**27. MLS'S REMEDIES.** Because of the critical importance of security in the lockbox system, Participant and Subscriber acknowledge and agree that MLS would suffer irreparable harm in the event that either of them breaches or threatens to breach its obligations under this Agreement, and that monetary damages would be inadequate to compensate MLS for a breach. MLS is therefore entitled, in addition to all other forms of relief, to



## Lockbox System Authorized User Agreement (continued)

injunctive relief to restrain any threatened, continuing or further breach by Participant or Subscriber, without showing or proving any actual damages sustained by MLS, and without posting any bond.

**28. ARBITRATION; ATTORNEY'S FEES.** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, including its Optional Rules for Emergency Measures of Protection (collectively, the "Arbitration Rules"), and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Any arbitration shall be held in Fort Wayne, Indiana, or by telephone where the Arbitration Rules so permit. The parties irrevocably agree, consent, and submit themselves to personal jurisdiction in the courts of the State of Indiana located in the county of Allen or the federal court of the United States situated therein, as applicable, which shall have sole and exclusive jurisdiction over any action under this Agreement not subject to arbitration. If any party prevails in an action or proceeding to enforce or interpret this Agreement or any provision hereof, it shall be entitled to reasonable attorney's fees and costs for the legal action.

**29. INDEMNIFICATION.** Subject to paragraph 25, in the event a party breaches any provision of this Agreement, that party (the Indemnifying Party) shall indemnify the other parties, their subsidiaries and affiliated companies, and all their respective employees, directors, agents, and authorized successors and assigns (the Indemnified Parties), against any and all losses, damages, and costs (including reasonable attorneys' fees) arising from each claim of any third party resulting from the breach. Participant and Subscriber shall further indemnify MLS against claims and damages arising from entry by any person into any premises by use of the lockbox system. The Indemnified Parties shall (a) promptly notify the Indemnifying Party of any claim and give the Indemnifying Party the opportunity to defend or negotiate a settlement of any such claim at the Indemnifying Party's expense, and (b) cooperate fully with the Indemnifying Party, at the Indemnifying Party's expense, in defending or settling any claim.

**30. SURVIVAL OF OBLIGATIONS.** The obligations of Participant set forth in paragraph 19 shall survive the termination or expiration of this Agreement for five years. The "Definitions," "Confidential

Information," and "General" provisions of this Agreement shall survive its termination or expiration in perpetuity.

**31. NOTICE.** All notices from Participant or Subscriber to MLS to be given under this Agreement shall be by personal service or U.S. mail, return receipt requested, and shall be effective the earlier of the date of receipt or three days after mailing. All notices from MLS to Participant and Subscriber shall be by personal service, U.S. mail, facsimile transmission, or electronic mail to the address(es) on for Participant and Subscriber on file with MLS, and shall be effective the earlier of the date of receipt or three days after mailing.

**32. NO WAIVER.** No waiver or modification of this Agreement or any of its terms is valid or enforceable unless reduced to writing and signed by the party who is alleged to have waived its rights or to have agreed to a modification.

**33. NO ASSIGNMENT.** No party may assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of all other parties to this Agreement. Any purported assignment or delegation in contravention of this paragraph is null and void, and shall immediately cause this Agreement to terminate.

**34. ENTIRE AGREEMENT.** Subject to MLS Policies, this Agreement contains the full and complete understanding of the parties regarding the subject matter of this Agreement and supersedes all prior representations and understandings, whether oral or written, relating to the same.

**35. RELATIONSHIP OF THE PARTIES.** The relationship of MLS to the other parties hereunder is that of independent contractors. No party shall be deemed to be the agent, partner, joint venturer, franchisor or franchisee, or employee of MLS or have any authority to make any agreements or representations on the behalf of MLS. Each party shall be solely responsible for the payment of compensation, insurance, and taxes of its own employees.

**36. SEVERABILITY.** Each provision of this Agreement is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in full force and effect. In the event that any provision of this Agreement is held invalid or unenforceable by a court having jurisdiction over the parties, the invalid or unenforceable provision shall be replaced, if possible, with a valid provision which most closely approximates the intent and economic effect of the invalid provision.

The parties, intending to be bound by this Agreement, witness its provisions by signing below.


UPSTATE ALLIANCE OF REALTORS® MULTIPLE LISTING

 \_\_\_\_\_  
*UPSTAR MLS Representative Signature*

\_\_\_\_\_  
*Print name*

\_\_\_\_\_  
*Effective Date*


PARTICIPANT

 \_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Print name*

\_\_\_\_\_  
*Firm Name*

SUBSCRIBER

 \_\_\_\_\_  
*Signature of Subscriber*

\_\_\_\_\_  
*Subscriber Name (Please Print)*