

AFFILIATE LOCKBOX SYSTEM AGREEMENT



UPSTATE ALLIANCE OF REALTORS® MULTIPLE LISTING SERVICE, INC.

3403 E. Dupont Road, Fort Wayne IN 46825 ■ Phone (260) 426-4700 ■ Fax (260) 422-9966

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. RECITALS.

a. UPSTAR MLS has leased for use by its members and authorized Affiliates the Lockbox System and Smart Card manufactured and distributed by SentiLock under an agreement between SentiLock and UPSTAR MLS

b. UPSTAR MLS desires to provide and Affiliate desires to receive a license to use the Smart Card in connection with Affiliate’s normal and customary activities as a property inspector or certified appraiser in accordance with the terms and conditions set forth in this Agreement.

DEFINITIONS AND USAGE

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

Affiliate: An active affiliate member in Upstate Alliance of REALTORS® who holds a valid inspector or appraiser license in good standing in the State of Indiana and who shall receive access to the Lockbox System pursuant to the terms of this Agreement.

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) UPSTAR MLS data, except to the extent to which this Agreement and the MLS Policies permit its disclosure; (b) addresses, access codes and passwords, and personal identification numbers (PINs); (c) information that UPSTAR MLS obtains from any third party that UPSTAR MLS treats as proprietary or designates as Confidential Information, whether or not owned or developed by UPSTAR MLS; (d) information designated as confidential or private by any applicable state, federal, local or other law, regulation or directive; and (e) 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.

Effective Date: The date upon which UPSTAR MLS executes this Agreement and is the date this Agreement commences.

Lockbox System: The collection of devices placed at real property listed for sale in the UPSTAR MLS database that securely stores the key to enter the property. UPSTAR MLS members access the key using their Smart Card.

MLS Policies: The rules and regulations of UPSTAR MLS, including the lockbox system rules, as amended from time to time in UPSTAR MLS’s discretion, and any operating policies promulgated by UPSTAR MLS.

Renewal Date: The date on which this Agreement shall renew, July 1st, pursuant to the terms and conditions contained herein.

Smart Card: A pocket-sized card with embedded integrated circuits designed to authenticate and control access to the Lockbox System.

Upstate Alliance of REALTORS®: The Association of REALTORS® serving the Fort Wayne, Indiana and surrounding area which wholly owns and maintains UPSTAR MLS.

UPSTAR MLS’S OBLIGATIONS

4. **LICENSE.** UPSTAR MLS hereby grants to Affiliate during the term of this Agreement a non-transferable revocable license to use the Smart Card to access the Lockbox System in connection with Affiliate’s ordinary business activities and for no other purpose.

5. **NOTICE OF SIGNIFICANT EVENTS.** UPSTAR MLS shall provide commercially reasonable notice to Affiliate of all significant events relating to the Lockbox System, including scheduled downtime and changes in the UPSTAR MLS Policies.

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

ACKNOWLEDGEMENTS / GENERAL PROVISIONS

7. **RECEIPT.** Affiliate acknowledges that Affiliate has received a Smart Card from UPSTAR MLS.

8. **TITLE TO SMART CARD.** Affiliate acknowledges that the Smart Card is the sole property of SentiLock and has been leased to UPSTAR MLS pursuant to the terms of an agreement between SentiLock and UPSTAR MLS. Affiliate understands and agrees it must return the Smart Card to UPSTAR MLS immediately upon termination of this Agreement.

9. **RESTRICTIONS ON USE.** Access to and use of UPSTAR MLS’s Lockbox System is at all times limited to the purposes and by the restrictions set forth in this Agreement and in the MLS Policies. Any other use or access is strictly prohibited and is a material breach of this Agreement. Affiliate understands it is prohibited from allowing any person, including but not limited to Affiliate’s staff, from using the Smart Card at any time for any purpose. Affiliate shall be held liable for any unauthorized use of the Smart Card.

10. **PERIODIC UPDATES REQUIRED.** Affiliate acknowledges that the Smart Card has an update code interval, determined in UPSTAR MLS’s sole discretion. At the expiration of each update code interval, Affiliate’s Smart Card must receive a new update code, or it will fail to function. Affiliate may obtain update codes from UPSTAR MLS by placing the Smart Card in a properly configured card reader or by other authorized methods. Affiliate is solely responsible for obtaining the update codes for its Smart Card and acknowledges its Smart Card may not work if not properly updated.

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

12. **LOCKBOXES NOT A SECURITY SYSTEM.** Affiliate acknowledges 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. Affiliate shall hold UPSTAR MLS harmless against any claims, demands, losses, damages, liabilities, costs, charges and expenses arising out of the Lockbox System’s failure, for whatever reason, to prevent or grant admission to any property.

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AFFILIATE OBLIGATIONS TO UPSTAR MLS

13. **LOCKBOX SYSTEM ACCESS FEE.** Affiliate agrees to pay a nonrefundable annual fee for access to and use of the Lockbox System and Smart Card of One Hundred Dollars (\$100.00), prorated on a quarterly basis beginning July 1st and due and payable on the Effective Date. Subsequent annual fees shall be due on the Renewal Date of subsequent years.

14. **PROOF OF INSURANCE.** Affiliate must provide UPSTAR MLS with proof of Affiliate's liability insurance with minimum coverage of Two Hundred Fifty Thousand Dollars (\$250,000.00) on the Effective Date, and must continue to provide said proof each Renewal Date.

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

16. **RETURN OF SMART CARD.** Affiliate shall return the Smart Card to UPSTAR MLS within forty-eight (48) hours after receipt of a request to do so by UPSTAR MLS.

17. **SECURITY MEASURES.** Affiliate acknowledges the importance of maintaining the security of its Smart Card. Consequently, Affiliate shall:

- a. Keep the Smart Card in Affiliate's possession and in a safe place at all times;
- b. Not allow Affiliates personal identification number (PIN) to be attached to the Smart Card or disclosed to anyone for any reason;
- c. **Not lend the Smart Card to any person for any purpose whatsoever nor permit any other person to use the Smart Card at any time for any purpose;**
- d. Not duplicate or attempt to duplicate the Smart Card or allow anyone else to do so.
- e. Not assign, transfer or pledge Affiliate's rights in the Smart Card.
- f. Notify UPSTAR MLS within three (3) days of the loss or theft of the Smart Card.
- g. Follow any additional security measures set out in the UPSTAR MLS Policies.

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

19. **SUBMISSION TO DISCIPLINARY REVIEW.** Affiliate shall submit to a disciplinary tribunal of UPSTAR MLS in the event Affiliate is accused of a breach of the MLS Policies relating to the Lockbox System. UPSTAR 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 UPSTAR MLS Policies, including forfeiture of Affiliate's Smart Card and withdrawal of Affiliate's rights to possess a Smart Card.

CONFIDENTIAL INFORMATION

20. 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.

21. Within five (5) 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

22. The initial term of this Agreement begins on the Effective Date and shall continue until the Renewal Date, at which point the term shall automatically renew for one (1) year periods unless either party terminates this Agreement in accordance with this paragraph. This Agreement shall terminate upon the occurrence of any of the following events: (a) upon termination of Affiliate's privileges as an Upstate Alliance of REALTORS® member; (b) thirty (30) days after any party's notice to the other of its intent to terminate; (c) ten (10) days after any party's notice to the other that the other has breached this Agreement, provided the breach remains uncured; (d) immediately upon written notice from an UPSTAR MLS disciplinary body to Affiliate that Affiliate has violated the UPSTAR MLS Policies with regard to the Lockbox System. In the event Affiliate's UPSTAR MLS privileges are terminated while this Agreement is in effect and UPSTAR MLS subsequently reinstates those privileges, this Agreement shall automatically be reinstated if UPSTAR MLS resumes its obligations under this Agreement.

GENERAL PROVISIONS

23. **Limitation of liability/exclusion of warranties.** IN NO EVENT SHALL UPSTAR MLS BE LIABLE TO AFFILIATE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES (EVEN IF UPSTAR MLS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), OR LOST PROFITS ARISING FROM THIS AGREEMENT OR ANY BREACH OF THIS AGREEMENT. IN NO EVENT SHALL UPSTAR MLS BE LIABLE TO AFFILIATE FOR ANY AMOUNT IN EXCESS OF THE FEES AFFILIATE HAS PAID UPSTAR MLS FOR ACCESS TO AND USE OF THE LOCKBOX SYSTEM AND SMART CARD, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES. AFFILIATE ACKNOWLEDGES THAT UPSTAR MLS PROVIDES THE LOCKBOX SYSTEM ON AN "AS-IS," "AS-AVAILABLE" BASIS, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND/OR ACCURACY.

24. **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.

25. **INJUNCTIVE RELIEF.** Because of the critical importance of security in the Lockbox System, Affiliate acknowledges and agrees that UPSTAR MLS would suffer irreparable harm in the event that Affiliate breaches or threatens to breach its obligations under this Agreement, and that monetary damages would be inadequate to compensate UPSTAR MLS for such breach. UPSTAR MLS is therefore entitled, in addition to all

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other forms of relief, to injunctive relief to restrain any threatened, continuing or further breach by Affiliate, without showing or proving any actual damages sustained by UPSTAR MLS, and without posting any bond.

26. 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 either 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.

27. INDEMNIFICATION. Subject to this Agreement, in the event a party breaches any provision of this Agreement, that party (the Indemnifying Party) shall indemnify the other party, 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. Affiliate shall further indemnify UPSTAR MLS against claims and damages arising from entry by any person into any premises by use of the Lockbox System and Smart Card. The Indemnified Party shall (a) notify the Indemnifying Party of any claim in writing 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) fully cooperate with the Indemnifying Party, at the Indemnifying Party’s expense, in defending or settling any claim.

28. NOTICE. All notices from Affiliate to UPSTAR 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 (3) days after mailing. All notices from UPSTAR MLS to Affiliate shall be by personal service, U.S. mail, facsimile transmission, or electronic mail to the address(es) on for Affiliate on file with UPSTAR MLS, and shall be effective the earlier of the date of receipt or three days after mailing.

29. 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.

30. 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.

31. ENTIRE AGREEMENT. Subject to UPSTAR 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.

32. RELATIONSHIP OF THE PARTIES. The relationship between the parties hereunder is that of independent contractors. Neither party shall be deemed to be the agent, partner, joint venturer, franchisor or franchisee, or employee of the other or have any authority to make any agreements or representations on the behalf of the other. Each party shall be solely responsible for the payment of compensation, insurance, and taxes of its own employees.

33. 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.

AFFILIATE

UPSTAR MLS

Signature

Print name

Firm Name

Address

City, State ZIP

Signature

Print name

EFFECTIVE DATE