

## 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.

**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.

- Wherever the term “including” is used, it means “including, but not limited to.”
- The singular and plural numbers and masculine, feminine, and neutral genders of words are fully interchangeable.
- 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.

### ACKNOWLEDGEMENTS / GENERAL PROVISIONS

6. **RECEIPT.** Participant and Subscriber acknowledge that Subscriber will receive a link once membership is complete.

7. **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.

8. **LOCKBOXES NOT A SECURITY SYSTEM.** Participant and Subscriber acknowledge that the Sentikey App, lockboxes, and other components of the lockbox system are not a security sys-

tem; 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

9. **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.

10. **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.

11. **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 access to Sentikey System. In cases of significant breaches of MLS Policies, a disciplinary tribunal may revoke all the Sentikey Access in Participant’s office, not just the one issued under this Agreement.

### PARTICIPANT OBLIGATIONS TO MLS

12. **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 system, up to and including the last date Subscriber has access to the lockbox system issued under this agreement, even if Subscriber is no longer affiliated with Participant at the time of the wrongful conduct.

13. **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.

14. **SUBSCRIBER TRANSFERS.** Participant shall notify MLS in writing within 24 hours after Subscriber’s transfer of license.

### CONFIDENTIAL INFORMATION

15. 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.

### TERM AND TERMINATION

16. 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

17. **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**

