

METROLIST KEYBOX SYSTEM USE AND SUB-LEASE AGREEMENT

This System Use and Sub-Lease Agreement ("Lease") is entered into as of _____, 20____, by and between _____ (print name), California R.E. License # _____, a Participant or Subscriber ("Keyholder") in the multiple listing service ("MLS" of MetroList Services, Inc. ("Organization")), and Organization covering the following equipment:

ActiveKEY (Serial # _____)

Non-MetroList Key (Serial # _____) Keyholder agrees that MetroList may at its sole option elect to program an ActiveKEY or other key device in Keyholder's possession which has been provided to Keyholder by another multiple listing service that has entered into agreements with GE as defined herein below which are similar to the agreement MetroList has entered into with GE (a "Non-MetroList Key.") With the sole exception that Keyholder is using a Non-MetroList Key, all other terms and provisions of this Lease shall apply.

Keyholder and Organization agree as follows:

1. LEASE AGREEMENT

a. Organization leases to Keyholder, and Keyholder leases from Organization, the equipment described above (which may be new or refurbished), which includes the ActiveKEY together with its secret code ("PIN") (collectively, the "Equipment"). Keyholder may lease only one such ActiveKEY. In addition, Organization grants to Keyholder (i) a limited non-exclusive, non-transferable sub-license to use the network, the use of which Organization licenses from GE, a division of GE Security, Inc. ("GE"), which is necessary for the use and operation of the Equipment (the "Network") for the Term (as defined in Section 1(b) below) and (ii) a limited, non-exclusive, nontransferable sub-license to use the software Organization licenses from GE (the "Software") for the Term. The Equipment, Software and Network are collectively referred to herein as the "Service." The Service is more fully described in the User Guide published by GE, which will be provided to Keyholder and is incorporated herein by reference. The User Guide may be amended from time to time by GE. Keyholder will agree to any amended User Guide or may terminate this Agreement pursuant to Section 10 below.

b. This Lease shall commence on the date set forth above and have a term ("Term") until **December 6, 2016**, unless terminated earlier or extended pursuant to the provisions of this Lease.

c. Keyholder agrees to comply with the Rules and Regulations relating to the use of the Service which are set forth in the User Guide as amended from time to time and the Rules of Organization and its MLS. By executing this Lease, Keyholder agrees to maintain the security of the Equipment and the PIN of each piece of Equipment to prevent the use of the Equipment by unauthorized persons. Keyholder further agrees that neither the Service, nor any other GE product used in connection with the Service (including the Equipment), is a security system. The Service is a marketing convenience key-control system, and as such, any loss of Equipment or disclosure of the PIN compromises the integrity of the Service, and Keyholder agrees to use her or his best efforts to ensure the confidentiality and integrity of all components of the Service.

d. Keyholder acknowledges that, in order to make the Service available to Keyholder, Organization and GE entered into a Master Agreement (the "Agreement") that provide the terms under which GE will provide the Service to Organization. **Keyholder understands that, if the Agreement is terminated for any reason during the Term of this Lease, the Service will no longer be available to Keyholder and this Lease will terminate in accordance with Section 10 below. Keyholder agrees that, under the terms of the Agreement, Organization may elect a different Service or choose to upgrade the Service at any time during the Term of this Lease, which may result in an increase of the System Fee (as defined in Section 3(a) below) and/or the termination of this Lease.** Except as the rights and obligations of Keyholder and Organization under this Lease may be affected as described in the two preceding sentences, the rights and obligations between Keyholder and Organization with respect to the Service are governed solely by the terms and conditions of this Lease. Keyholder understands that failure of Organization to perform its obligations under the Agreement may detrimentally affect Keyholder's use of the Service.

e. In the Agreement, GE has reserved the right to discontinue any item of Equipment used in connection with the Service upon the provision of one (1) year prior written notice to Organization. If GE discontinues any item of Equipment, the Equipment leased hereunder shall continue to be completely compatible with and shall function with the Service. If the Equipment leased is lost, destroyed or damaged, Organization may replace that Equipment with refurbished Equipment ("Replacement"), which shall be completely compatible with and shall function with the Service, and shall offer the same level of functionality as the Equipment currently offered.

2. TITLE AND USE The Service, including all its components, and the Equipment, are and shall at all times remain the property of GE. All additions, attachments, replacement parts and repairs to the Equipment, and any Replacements shall become part of the Equipment and shall, without further act, become the property of GE, which are the sole property of Organization. The Software and all applicable rights in patents, copyrights, trade secrets, and trademarks are and shall at all times remain the property of GE.

3. PAYMENTS

a. **DURING THE TERM OF THIS LEASE, KEYHOLDER HEREBY AGREES TO PAY A MONTHLY FEE TO ORGANIZATION, THE AMOUNT OF WHICH WILL BE DETERMINED ON AN ANNUAL BASIS BY ORGANIZATION, AND WHICH SHALL BE INVOICED IN ADVANCE NOT LESS THAN ONCE IN EACH THREE (3) MONTH PERIOD FOR A PERIOD OF THREE (3) MONTH'S FEES NOR MORE THAN ONCE EACH MONTH FOR ONE (1) MONTH'S FEES SHOULD KEYHOLDER ELECT TO USE ORGANIZATION'S AUTOMATIC CREDIT CARD PAYMENT SERVICE FOR MLS FEES AND KEYBOX SYSTEM FEES. THE MONTHLY KEYBOX SYSTEM FEE FOR THE SERVICE, INCLUDING ALL LEASED EQUIPMENT WHETHER PROVIDED BY GE OR ORGANIZATION AND THE ADMINISTRATIVE FEE AS OF DECEMBER 7, 2009 IS \$12.50, PLUS APPLICABLE TAX (THE "SYSTEM FEE.") KEYHOLDER SHALL BE ENTITLED TO TERMINATE THIS LEASE IN ACCORDANCE WITH THE PROVISIONS CONTAINED IN SECTION 10.**

b. Organization has three billing groups. One group is invoiced each month for three (3) months' fees in advance (a "Billing Group"). Payment is due as of the first day of the first month in the Billing Group. Failure to pay fees by the first day of the second month in the Billing Group shall constitute default under this Lease and will result in deactivation of Keyholder's ActiveKEY. Keyholder may re-activate his/her ActiveKEY within the second month of the Billing Group upon payment to Organization of a \$10.00 Re-activation Fee. Such fee shall be in addition to any MLS Reinstatement Fee. Failure to pay fees by the first day of the third month in the Billing Group shall constitute default and will result in termination of this Lease as well as MLS services.

c. If Keyholder begins leasing an ActiveKEY after December 7, 2009, Keyholder shall be required to pay Organization a Key Lease Startup Fee of \$20.00. This provision does not apply to Keyholders who exchange a DisplayKEY for an ActiveKEY between December 7, 2009 and January 8, 2010.

d. EXCEPT AS OTHERWISE PROVIDED HEREIN, KEYHOLDER'S OBLIGATION TO MAKE PAYMENTS TO OR AT THE DIRECTION OF ORGANIZATION SHALL BE ABSOLUTE, UNCONDITIONAL, NONCANCELABLE AND INDEPENDENT AND SHALL NOT BE SUBJECT TO ANY SETOFF, CLAIM OR DEFENSE FOR ANY REASON, INCLUDING ANY CLAIMS KEYHOLDER MAY HAVE RELATING TO PERFORMANCE OR FOR LOSS OR DAMAGE OF OR TO THE SERVICE OR THE EQUIPMENT OR ANY REPLACEMENTS.

4. **RISK OF LOSS; RETURN OF ACTIVEKEY**

a. No loss, damage or destruction to the ActiveKEY shall relieve Keyholder of any obligation under this Lease, except to the extent any such loss, damage or destruction is directly caused by the gross negligence of Organization. The cost for replacing an ActiveKEY that is lost, damaged or destroyed is the Replacement Cost ("REPLACEMENT COST.") Replacements may be refurbished Equipment. REPLACEMENT COST is set forth below.

b. At the expiration of the Term or upon Termination as provided for in Section 10, Keyholder, at Keyholder's expense and risk, shall immediately return or cause the return to Organization, or its designee, to such location as Organization or its designee shall specify, the ActiveKEY with all Software and any components included within the Service that have been leased to Keyholder pursuant to this Lease. The ActiveKEY and components used in connection with the Service shall be returned in good condition, repair and working order, ordinary wear and tear excepted.

c. In the event Keyholder fails to return the ActiveKEY leased to Keyholder at the expiration of the Term or upon Termination as provided for in Section 10, Keyholder agrees to pay Organization, as liquidated damages ("LIQUIDATED DAMAGES") for such failure to return the ActiveKEY the amount set forth below. Keyholder acknowledges that it is extremely impractical and difficult to assess Organization's actual damages in the event the ActiveKEY is not returned, and Keyholder therefore agrees that these LIQUIDATED DAMAGES are a fair and reasonable calculation of Organization's actual damages in the event the leased ActiveKEY is not returned.

REPLACEMENT COST

\$249.00

LIQUIDATED DAMAGES

\$249.00

5. **REPRESENTATIONS AND COVENANTS** Keyholder covenants and agrees:

a. If Keyholder allegedly or otherwise misuses the Service or any component thereof, including without limitation, use of the Service in violation of the User's Guide, and a third party brings an action against Organization and/or GE relating to such misuse, Keyholder agrees to indemnify, defend and hold harmless Organization and/or GE, and their respective directors, officers, agents, representatives, employees, successors and assigns, from and against any and all claims, demands, actions, losses, damages, injuries, obligations, liabilities and costs and expenses of every kind or nature (including reasonable attorneys' fees, whether incurred at the trial or appellate level, in an arbitration proceeding, in bankruptcy, including without limitation, any adversary proceeding, contested matter or motion or otherwise) incurred by Organization and/or GE in such proceeding.

b. **That neither Organization nor GE shall be liable for any compensatory, indirect, incidental, consequential, punitive, reliance or special damages, including, without limitation, damages for lost profits, advantage, savings or revenues of any kind or increased cost of operations, arising out of the use or inability to use the Service for any purpose whatsoever whether or not Keyholder has been advised of the possibility of such damages.**

c. That Keyholder will not (i) use or gain access to the source code for the Software; (ii) alter, reproduce, modify, adapt, translate, reverse engineer, de-compile, disassemble or prepare derivative works based upon the Software; or (iii) provide or otherwise make available the Software or any part or copies thereof to any third party.

d. To provide Organization and GE with written notice of any legal proceeding or arbitration in which Keyholder is named as a defendant and that alleges defects in the Equipment or System within five (5) days after Keyholder receives written notice of such action.

e. That the access number locations may not correspond to local telephone company billing designations and therefore need to be carefully selected. Keyholder agrees that it shall be responsible for checking the access number with its local telephone company to make sure that the actual number selected is a local call for their calling plan.

The obligations set forth in this Section 5 shall survive termination of this Lease.

6. **DEFAULT**

a. Each of the following events shall be an Event of Default by Keyholder under this Lease:

i. Keyholder's failure to pay, for any reason, any amount required under this Lease when due; or

ii. The commencement of either an involuntary or voluntary action under any bankruptcy, insolvency or other similar law of the United States of America or any state thereof or of any other country or jurisdiction with respect to Keyholder; provided, however, that the commencement of any involuntary case or proceeding will not be an Event of Default under this Lease if such case or proceeding is dismissed within sixty (60) days after it was commenced; or

iii. The failure by Keyholder to perform any obligation or act required under this Lease; or

iv. The breach by Keyholder of any provision of this Lease.

b. An Event of Default by Organization under this Lease will occur upon the termination for any reason of the Master Agreement between Organization and GE.

7. **RIGHTS AND REMEDIES**

a. Upon the occurrence of an Event of Default by Keyholder, Organization may, at its sole option and without limitation or election as to other remedies available under this Lease or at law or in equity, exercise one or more of the following remedies:

i. Terminate this Lease and at Organization's option demand the return of any or all Equipment to Organization or its designee;

ii. Terminate one or both of Keyholder's sub-licenses to use the Network and to use the Software;

iii. Direct GE to deactivate Keyholder's access to the Service or any component of the Service;

iv. Bill the Keyholder for any outstanding amounts owed under this Lease, including any applicable LIQUIDATED DAMAGES for the failure to return the ActiveKEY; and/or

v. Take any and all actions necessary to collect all amounts currently due and owing under this Lease, including any and all costs and expenses of every kind or nature (including reasonable attorneys' fees, whether incurred at the trial or appellate level, in an arbitration proceeding, or in

bankruptcy, including any adversary proceeding, contested matter or motion, or otherwise) incurred by Organization in connection with the exercise of its rights and remedies under this Lease.

b. Upon the occurrence of an Event of Default by Organization or termination of this Lease, all of Keyholder's obligations under this Lease shall terminate, except that Keyholder shall be required to return the Equipment to Organization and to pay Organization any outstanding amounts owed under this Lease or separate iBox Lease, including any damages for the failure to return the Equipment.

c. If Organization deactivates the Service because of a default by Keyholder under this Lease, but does not otherwise terminate this Lease, Keyholder will be entitled to seek to have the Service reactivated. In order to so, Keyholder shall be required to cure any and all existing defaults, and to pay any and all outstanding amounts owed under this Lease and the reasonable costs and attorneys' fees incurred by Organization in connection with collecting under this Lease. After confirmation of the curing of such defaults and the receipt of payment of such amounts, Organization shall direct GE to reactivate the Equipment within twenty-four (24) hours.

d. In the event that Organization institutes any action for the collection of amounts due and payable hereunder, Keyholder shall pay, in addition to the amounts due and payable under this Lease, all reasonable costs and attorneys fees incurred by Organization in connection with collecting under this Lease. Keyholder expressly waives all rights to possession or use of the Service or the Equipment or any component thereof after the occurrence of an Event of Default, and waives all claims or losses caused by or related to any repossession or termination of use.

e. Organization's failure or delay in exercising any right or remedy under this Lease shall not operate as a waiver thereof or of any subsequent breach or of such right or remedy. Organization's rights and remedies are cumulative, not exclusive, and no exercise of any remedy shall preclude the exercise of another remedy.

8. ARBITRATION; LITIGATION Any controversy or claim arising out of or relating to this Lease shall be resolved by binding arbitration in accordance with the rules of the California Code of Civil Procedure, Section 1080 et. seq. The arbitration shall be conducted in Sacramento, California. The substantially prevailing party in any arbitration under this Lease shall be entitled to recover from the other as part of the arbitration award reasonable costs and fees including reasonable attorneys' fees. Any arbitration award may be enforced by a court of competent jurisdiction in accordance with applicable law. In the event legal action to enforce the arbitration award is necessary the substantially prevailing party shall be entitled to recover its costs and expenses, including reasonable attorneys' fee in such action and in any appeals therefrom or reviews thereof.

9. NOTICES All notices hereunder shall be sent by (i) hand-delivery, (ii) facsimile, (iii) certified mail, return receipt requested, postage prepaid, or (iv) overnight delivery service, to Keyholder at his/her preferred mailing address as shown in the records of Organization, to Organization at POB 340340, Sacramento, CA, 95834, or to such other address as a party shall specify to the other party in writing. Notices shall be deemed to have been delivered when received, if hand-delivered or sent by facsimile or certified mail, three (3) days after the day deposited in the mail; or one (1) day after the day deposited with an overnight delivery service.

10. TERMINATION

a. Keyholder may terminate this Lease at any time as follows: (i) provide written notice of termination to Organization or its designee, (ii) by returning the Equipment to Organization and paying Organization any amounts owing prior to such termination, including (ia) any applicable damages for the failure to return the Equipment as set forth in Section 4, subsection c, hereof, and (ib) any System Fees owing prior to such termination which remain unpaid. Upon termination, System Fees that would have become owing after the date of termination of this Lease are released and discharged by Organization.

b. Organization may terminate this Lease upon termination of the Agreement for any reason, including without limitation, a default by Organization under the Agreement or an upgrade of the Service by Organization. Upon termination, Keyholder shall be obligated to satisfy the obligations in Section 10(a).

c. In the event of death, Keyholder's heirs or personal representatives shall surrender his/her ActiveKEY to Organization or its designee within thirty (30) days after notice to Organization of the death of Keyholder.

d. In addition, Keyholder shall not be entitled to any refund of any unused portion of the System Fee for use of the Service previously paid.

11. WARRANTY The Equipment is warranted by GE against defects in workmanship and/or materials, to be fit for its intended purpose and to conform in all material respects to its written specifications for the term of the Lease. GE shall, without charge, repair or replace such defective or nonconforming component for the term of the Lease. Keyholder must return any defective system component under warranty to Organization at Keyholder's sole cost and expense and Organization shall provide all repaired or replacement Equipment to Keyholder. This warranty does not extend to any damage caused by accident, abuse, neglect or misuse of system components. Keyholder agrees to cooperate with Organization and GE by performing diagnostic tests provided to Keyholder when Keyholder initially seeks warranty service.

12. GENERAL PROVISIONS

a. This Lease and the other documents referenced herein and/or executed and delivered by the parties in connection with this Lease constitute the entire agreement between Organization and Keyholder relating to the lease of Equipment and use of the Service.

b. Provided that Keyholder has returned to Organization all keys previously leased by Organization to Keyholder, all prior leases between Organization and Keyholder for such keys are terminated effective as of the parties' execution of this Lease.

c. This Lease shall be effective and binding when fully executed by both parties. This Lease may be executed in a number of counterparts, each of which will be deemed an original and when taken together shall constitute one agreement.

d. This Lease shall be amended or modified only by a written agreement signed by the parties.

e. Any waiver or consent by any party to any breach by the other, whether express or implied, shall not constitute a consent to or waiver of any other or subsequent breach.

f. All agreements, representations and warranties contained in this Lease shall survive the expiration or other termination of this Lease.

g. If any provision of this Lease is unenforceable, such unenforceability shall not affect the enforceability of the remaining provisions of this Lease.

h. This Lease shall be governed by the laws of the State of California.

i. Organization may at any time assign or transfer its interest in this Lease, in whole or in part, including, without limitation, Organization's right to administer the Service and to exercise any remedy here under, without notice to Keyholder.

j. This Lease shall be binding upon and inure to the benefit of Organization, and its successors and assigns, and Keyholder.

k. Time is of the essence with respect to all terms of this Lease.

