

**COOPERATING KEY AGREEMENT FOR LICENSED USE OF THE  
METROLIST KEYBOX SYSTEM  
(NON-METROLIST KEY)**

This Cooperating Key Agreement for Licensed Use of the MetroList Keybox System ("Agreement") is entered into as of \_\_\_\_\_, 20\_\_\_\_, by and between MetroList Services, Inc., a California corporation ("Organization"), and \_\_\_\_\_ (print name), California R.E. License # \_\_\_\_\_ ("Keyholder"). Organization's "KeyBox System" allows authorized persons to utilize an electronic system to open control boxes on properties listed with Organization's multiple listing service with an electronic device known as a "Key." Keyholder is a Participant or Subscriber in the \_\_\_\_\_ multiple listing service ("MLS").

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 or issuing authority that has entered into an agreement or agreements with General Electric Company ("GE") or its successor in interest, UTC Fire & Security Americas Corporation, Inc. ("Supra"), which are similar to the agreement MetroList entered into with GE or Supra (a "Non-MetroList Key.") Keyholder warrants and represents to MetroList that Keyholder's Non-MetroList Key was duly issued by \_\_\_\_\_, the Serial Number of such Non-MetroList Key is \_\_\_\_\_, and Keyholder is in lawful possession of such Non-MetroList Key. It shall be Keyholder's sole responsibility to comply with the terms and conditions of any lease or other agreement Keyholder may have with the issuer of the Key, GE and/or Supra, relating to the use of Keyholder's Non-MetroList Key.

Keyholder and Organization agree as follows:

1. **LICENSE AGREEMENT**

a. Organization hereby grants a non-exclusive, non-transferable license ("License") to Keyholder permitting Keyholder to use the Non-MetroList Key described above together with its secret code ("PIN") to access MetroList iBox(es) (collectively, the "Equipment"). 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 Supra, 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, non-transferable sub-license to use the software Organization licenses from Supra (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 online by Supra, which has been or will be provided to Keyholder and is incorporated herein by reference. The User Guide may be amended from time to time by Supra. Keyholder will agree to any amended User Guide or may terminate this Agreement pursuant to Section 10 below.

b. This Agreement shall commence on the date set forth above and have a term from month-to-month ("Term"), unless terminated earlier pursuant to the provisions of this Agreement.

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 Agreement, 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 Supra or other 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 entered into a Master Agreement that provides the terms under which Supra will provide the Service to Organization (the "Master Agreement"). **Keyholder understands that, if the Master Agreement is terminated for any reason during the Term of this Agreement, the Service will no longer be available to Keyholder and this Agreement will terminate in accordance with Section 9 below. Keyholder agrees that, under the terms of the Master Agreement, Organization may elect a different Service or choose to upgrade the Service at any time during the Term, which may result in an increase of the System Fee (as defined in Section 3(a) below) and/or the termination of this Agreement.** Except as the rights and obligations of Keyholder and Organization under this Agreement 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 Agreement. Keyholder understands that failure of Organization to perform its obligations under the Master Agreement may eliminate or detrimentally affect Keyholder's ability to use the Service.

2. **TITLE AND USE** The Service, including all its components, and the Equipment (except for the iBoxes purchased from Organization and any Non-MetroList Key which are the sole property of Keyholder), are and shall at all times remain the property of Supra, as the case may be. 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 Supra (except for the iBoxes purchased from Organization and any eKey device used as a Non-MetroList Key which are the sole property of Keyholder). The Software and all applicable rights in patents, copyrights, trade secrets, and trademarks are and shall at all times remain the property of Supra.

3. **PAYMENTS**

a. **DURING THE TERM OF THIS AGREEMENT, 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 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 FOR CALENDAR YEAR 2014 IS \$12.50 PER MONTH AND \$15.50 PER MONTH EFFECTIVE ON AND AFTER JANUARY 1, 2015, PLUS APPLICABLE TAX (THE "SYSTEM FEE.") KEYHOLDER SHALL BE ENTITLED TO TERMINATE THIS AGREEMENT IN ACCORDANCE WITH THE PROVISIONS CONTAINED IN SECTION 9 BELOW.**

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 Agreement and will result in deactivation of Keyholder's Non-MetroList Key and suspension of access to MetroList's MLS. Keyholder may re-activate his/her Non-MetroList Key within the second month of the Billing Group upon payment to Organization of a \$20.00 Re-activation 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 Agreement and access to the MetroList MLS.

c. As a condition to the effectiveness of this Agreement, Keyholder shall pay Organization's current cooperating Key activation fee applicable to Keyholder upon execution of this Agreement.

d. EXCEPT AS OTHERWISE PROVIDED HEREIN, KEYHOLDER'S OBLIGATION TO MAKE PAYMENTS TO OR AT THE DIRECTION OF ORGANIZATION SHALL BE ABSOLUTE, UNCONDITIONAL 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. **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 or MLS Rules, and a third party brings an action against Organization, GE and/or Supra relating to such misuse, Keyholder agrees to indemnify, defend and hold harmless Organization, GE and/or Supra, and their respective parents, subsidiaries, affiliates, directors, officers, shareholders, 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 Supra in such proceeding.

b. **That neither Organization, GE nor Supra 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 Supra with written notice of any legal proceeding or arbitration in which Keyholder is named as a defendant that alleges defects in or other matter pertaining to 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 Keyholder 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 the pertinent calling plan.

The obligations set forth in this Section 4 shall survive termination of this Agreement.

#### 5. **DEFAULT**

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

- i. Keyholder's failure to pay, for any reason, any amount required under this Agreement 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 Agreement 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 Agreement when due; or
- iv. The breach by Keyholder of any provision of this Agreement, any iBox BT LE® lease agreement, or any other agreement between Organization and Keyholder; or
- v. The failure by Keyholder to abide by the MetroList MLS Rules as determined by Organization in its sole and absolute discretion.

#### 6. **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 Agreement or at law or in equity, exercise one or more of the following remedies:

- i. Terminate this Agreement, and, at Organization's option, demand the return of any or all Equipment to Organization or its designee other than any Equipment owned by Keyholder;
- ii. Terminate the License and/or one or both of Keyholder's sub-licenses to use the Network and to use the Software;
- iii. Direct Supra 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 Agreement; or
- v. Take any and all actions necessary to collect all amounts currently due and owing under this Agreement, 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 Agreement.

b. Upon the termination or expiration of this Agreement, all of Keyholder's rights and obligations under this Agreement shall automatically terminate, except that Keyholder shall be required to return any Equipment not owned by Keyholder to Organization, pay Organization any outstanding amounts owed under this Agreement, and comply with and perform Keyholder's continuing obligations under Section 4 above.

c. If Organization deactivates Keyholder's access to the Service because of a default by Keyholder under this Agreement, but does not otherwise terminate this Agreement, Keyholder will be entitled to seek to have access to 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 Agreement and the reasonable costs and attorneys' fees incurred by Organization in connection with collection and/or enforcement of rights under this Agreement. 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 or as soon thereafter as is practicable.

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 Agreement, all reasonable costs and attorneys' fees incurred by Organization in connection with collecting under this Agreement. Keyholder expressly waives all rights to possession or use of the Service or the Equipment or any component thereof (other than those items owned by Keyholder) 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 Agreement 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.

7. **ARBITRATION; LITIGATION** Any controversy or claim arising out of or relating to this Agreement 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 Agreement 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.

8. **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.

9. **TERMINATION**

a. Keyholder may terminate this Agreement at any time as follows: (i) provide written notice of termination to Organization or its designee, (ii) by returning any Equipment not owned by Keyholder to Organization and paying Organization any amounts owing prior to such termination.

b. Organization may terminate this Agreement upon termination of the Master Agreement for any reason, including without limitation, a default by Organization under the Master Agreement or a change or upgrade of the Service by Organization.

c. If Organization is a party to a Supra Key Reciprocal Agreement providing for reciprocal access to each party's Keybox System by the parties' Participants, Subscribers or other authorized Key users ("Reciprocal Agreement"), Organization may terminate this Agreement upon termination of the Reciprocal Agreement for any reason.

d. Organization may terminate this Agreement for any reason or no reason upon thirty (30) days prior written notice to Keyholder.

e. In the event of death, Keyholder's heirs or personal representatives shall notify Organization of such event within thirty (30) days after such event. This Agreement shall terminate as of the date of death.

f. Upon termination of this Agreement under Section 6 or any of the foregoing provisions, any lease for Equipment to which Keyholder is a party shall be automatically terminated, Keyholder shall return any Equipment not owned by Keyholder to Organization within five (5) business days after the effective date of the termination, and any unpaid System Fees that would have become owing after the date of termination of this Agreement are released and discharged by Organization. Upon termination or expiration of the Term, Keyholder shall pay Organization any amounts owing for a period prior to such termination or expiration, and shall return any Equipment not owned by Keyholder to Organization within five (5) business days after the effective date of termination or expiration.

10. **WARRANTY** No warranty of any kind either express or implied is provided by Organization for any Non-MetroList Key. To the extent that the Master Agreement provides a warranty on iBoxes purchased by Organization from GE and resold or leased by Organization to Keyholder, MetroList shall extend such iBox warranty to Keyholder upon Keyholder producing documentation satisfactory to MetroList that Keyholder purchased the iBox from MetroList.

11. **GENERAL PROVISIONS**

This Agreement and the other documents referenced herein and/or executed and delivered by the parties in connection with this Agreement constitute the entire agreement between Organization and Keyholder relating to the use of a Non-MetroList Key and use of the Service.

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

b. This Agreement shall be amended or modified only by a written agreement signed by the parties.

c. 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.

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

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

f. This Agreement, including its interpretation and enforcement, shall be governed by the laws of the State of California.

g. Organization may at any time assign or transfer its interest in this Agreement, 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.

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

i. Time is of the essence with respect to all terms of this Agreement.

j. Any notice or other communication required or permitted under this Agreement shall be delivered either personally, by registered or certified mail, postage prepaid and return receipt requested, by facsimile with delivery receipt, by email with an electronic read receipt, or by Federal Express or other reputable overnight delivery service, to the address of the parties set forth below. Any notice under this Agreement will be deemed given upon receipt if delivered personally or upon deposit if deposited for delivery by United States Mail or by reputable overnight delivery service. Notices given by electronic mail shall be deemed given upon the date of transmission if the sender has written or printed confirmation of successful transmission not later than 5:00 p.m., local time in Sacramento, California, on a business day. If such written or printed confirmation of successful transmission is for later than 5:00 p.m., local time in Sacramento, California, on a business day or on a weekend or federally-recognized holiday, the notice will be deemed given on the next business day. A party may designate from time to time a different or additional address for noticing purposes under this provision by giving the other party ten (10) days written notice of the same.

*[Signatures appear on the following page]*

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date set forth in the preamble.

**KEYHOLDER:**

By: \_\_\_\_\_  
Keyholder's Signature                      Date

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

Home Street  
Address: \_\_\_\_\_

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

Street: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

e-mail Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**ORGANIZATION:**

By: \_\_\_\_\_  
MetroList Representative                      Date

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

Address: 1164 W. National Drive, Suite 60  
Sacramento, CA 95834  
Attn: Member Services  
Facsimile No: (916) 922-1835  
Email: memberservices@metrolist.net