

METROLIST KEYBOX SYSTEM USE AND SUB-LICENSE AGREEMENT (eKEY)

This Systems Use and Sub-License Agreement ("License") 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").

eKEY Serial Number: _____

Keyholder and Organization agree as follows:

1. LICENSE AGREEMENT

a. **eKEY.** Organization licenses to Keyholder, and Keyholder licenses from Organization, a limited non-exclusive, non-transferable, revocable license for the Term to either the eKEY Professional Software or the eKEY Basic Software which are each used with certain electronic devices including certain cellular telephones and devices ("Device") that are approved by UTC Fire & Security Americas Corporation, Inc., a Delaware corporation, and its successors and assigns and any designees ("Supra"). During the Term, Supra may in its sole discretion add approved Devices. Supra does not provide any warranty of the performance or availability of any Device. Such combination of an approved Device and the eKEY Professional Software or the eKEY Basic Software is referred to collectively as the "eKEY".

i. **eKEY Professional Software:** Enables Keyholder to obtain a current update code for the eKEY; to open and perform other iBox functions with the eKEY; to download, view, sort, and query multiple listing service data and agent roster data with the eKEY; and to upload, download, view, sort, and query property showing data with the eKEY.

ii. **eKEY Basic Software:** Enables Keyholder to obtain a current update code for the eKEY; to open and perform other iBox functions with the eKEY; and to upload property showing data with the eKEY.

b. **Network; KIM Database.** Organization grants to Keyholder a limited non-exclusive, non-transferable, revocable license for the Term to use Supra's computer network accessible to Keyholder through third-party telecommunication and internet services (the "Network"), which is necessary for the use and operation of the eKEY and for access to Supra's Keyholder/Keybox Information Manager database ("KIM Database").

i. **Connection Through eKEY.** Keyholder will connect to the Network and KIM Database through Supra's synchronization software ("eSYNC Software") at no cost to Keyholder using one of the following methods: (i) Wireless Sync or (ii) PC Internet Sync

2. TERM OF SERVICE

a. **Service.** The software incorporated in the eKEY Professional Software, eKEY Basic Software, Network, and eSYNC Software (collectively, "Software"); the equipment incorporated in the iBoxes ("Equipment"); Network; and KIM Database are collectively, "Service." The Service is more fully described in the applicable User Guide, which is available to Keyholder at www.supraekey.com and is incorporated herein by reference.

b. **Term.** This License (including the licenses and leases granted above) shall commence on the date set forth above and terminate on **March 30, 2025** (the "Term"), unless terminated sooner or extended in accordance with the terms of this License. **KEYHOLDER SHALL BE ENTITLED TO TERMINATE THIS LICENSE IN ACCORDANCE WITH SECTION 11. KEYHOLDER SHALL ALSO BE ENTITLED TO CHANGE SERVICES BY TERMINATING THIS LICENSE AND ENTERING INTO A NEW LICENSE IN ACCORDANCE WITH SECTION 5.**

3. PAYMENTS

a. **DURING THE TERM OF THIS LICENSE, 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. KEYHOLDER SHALL BE ENTITLED TO TERMINATE THIS LICENSE IN ACCORDANCE WITH THE PROVISIONS CONTAINED IN SECTION 11.**

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 License and will result in deactivation of Keyholder's eKEY. Keyholder may re-activate his/her eKEY within the second month of the Billing Group upon payment to Organization of a \$20.00 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 License as well as MLS services.

c. **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 OF THE SERVICE OR FOR LOSS OR DAMAGE.**

4. TITLE AND USE OF SERVICE

a. Keyholder acknowledges and agrees that the Service is and shall at all times remain the property of Supra. The Software and any upgrades or revisions thereto, and all applicable rights in patents, copyrights, trade secrets, and trademarks, are and shall at all times remain the property of Supra.

b. Keyholder agrees: (i) to comply with the Service rules and regulations set forth in the Supra User Guide; (ii) that it is necessary to maintain the security of the Key and the personal identification number ("PIN") in order to prevent the use of the Key by unauthorized persons; (iii) not to share the Key; and (iv) that the Service, including any Supra product used in connection with the Service, is not a security system. The Service is a marketing convenience key control system; therefore, any loss of the Key, sharing of the Key, or disclosure of the PIN may compromise the integrity of the Service.

5. CHANGE OF SERVICE

a. Keyholder shall be entitled to change at any time the Service by terminating this License in accordance with Section 11 and entering into a new keyholder License with Organization.

b. Keyholder understands that in order to make the Service available to Keyholder, Organization and Supra have entered into a Master Agreement, which provides the terms under which Supra will provide the Service to Organization and Keyholder. **Keyholder agrees that if the Master Agreement is terminated for any reason during the Term of this License, the Service may no longer be available to Keyholder as determined by Supra, in which case this License shall terminate in accordance with Section 11 below. Keyholder further agrees that if the Master Agreement is amended by Organization and Supra for any reason during the Term of this License, the Service may be modified or upgraded, in which case the terms of this License may be amended (including without limitation, an increase or other change in the System Fee and other fees set forth in Section 3 above) upon written notice to Keyholder by Supra.** Except as the rights and obligations of Keyholder and Supra under this License may be affected as described in the two preceding sentences, the rights and obligations between Keyholder and Supra with respect to the Service are governed solely by the terms and conditions of this License.

c. Supra may discontinue any item of Equipment or Software used in connection with the Service upon the provision of one (1) year prior written notice to Organization. If Supra discontinues any item of Equipment or Software, the any item of Equipment and Software provided to Keyholder hereunder shall continue to be completely compatible with and shall function with the Service.

6. WARRANTY All items of Software manufactured by Supra and used in connection with the Service are warranted against defects in workmanship and/or materials, to be fit for their intended purpose, and to conform in all material respects to their written specifications for the Term of the Agreement. Supra shall, without charge, repair or replace such defective or nonconforming Software for the Term of the Agreement. Keyholder must return at her or his sole cost and expense any defective or nonconforming Software under warranty to Supra or at Supra's request, to Organization. This warranty does not extend to any loss, damage, or destruction caused by accident, abuse, neglect or misuse.

7. RISK OF LOSS; RETURN OF EQUIPMENT AND SOFTWARE

a. No loss, damage or destruction to any Software or to any other item included with the Service which has been provided to Keyholder, shall relieve Keyholder of any obligation under this License.

b. At the expiration of the Term or earlier termination of this License, Keyholder, at Keyholder's expense and risk, shall return all software media provided by Supra, which remains in Keyholder's possession, and shall delete all Software from all of Keyholder's personal computers and Phones.

8. 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 Supra relating to such misuse, Keyholder agrees to indemnify, defend and hold harmless Organization and/or Supra, 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 Supra in such proceeding.

b. **That neither Organization 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 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 shall survive termination of this License.

9. DEFAULT

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

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

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

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

10. 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 License or at law or in equity, exercise one or more of the following remedies:

- i. Deactivate Keyholder's access to the Service or any component of the Service; and/or
- ii. Terminate 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. Require the deletion of all Software from all of Keyholder's personal computers and Phones; and/or
- v. Bill the Keyholder for any outstanding amounts owed under this License; and/or

v. Take any and all actions necessary to collect all amounts currently due and owing under this License, 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 License.

b. Upon the occurrence of an Event of Default by Organization or termination of this License, all of Keyholder's obligations under this License shall terminate, except that Keyholder shall be required to return all software media and/or Equipment provided by Organization which remains in the Keyholder's possession; to delete all Software from all of Keyholder's personal computers and Phones; and to pay Organization any outstanding amounts owed under this License or separate iBox Agreement.

c. If Organization deactivates the Service because of a default by Keyholder under this License, but does not otherwise terminate this License, 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 License and the reasonable costs and attorneys' fees incurred by Organization in connection with collecting under this License. After confirmation of the curing of such defaults and the receipt of payment of such amounts, Organization shall direct Supra 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 License, all reasonable costs and attorneys fees incurred by Organization in connection with collecting under this License. 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 License 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.

11. TERMINATION

a. Keyholder may terminate this License at any time as follows: (i) provide written notice of termination to Organization or its designee, and (ii) by returning all software media provided by Supra which remains in Keyholder's possession; deleting all Software from all of Keyholder's personal computers and Phones; and paying Organization any amounts owing prior to such termination 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 License are released and discharged by Organization.

b. Organization may terminate this License 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 addition, Keyholder shall not be entitled to any refund of any unused portion of the System Fee for use of the Service previously paid.

12. ARBITRATION; LITIGATION Any controversy or claim arising out of or relating to this License 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 License 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.

13. 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.

14. GENERAL PROVISIONS

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

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

c. This License shall be effective and binding when fully executed by both parties. This License 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 License 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 License shall survive the expiration or other termination of this License.
- g. If any provision of this License is unenforceable, such unenforceability shall not affect the enforceability of the remaining provisions of this License.
- h. This License shall be governed by the laws of the State of California.
- i. Organization may at any time assign or transfer its interest in this License, 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 License 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 License.

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

KEYHOLDER:

ORGANIZATION:

By: _____
 Subscriber's Signature Date

By: _____
 (METROLIST REPRESENTATIVE)

Print Name: _____

Home Street
 Address: _____

Company Name: _____

Street: _____

City, State, Zip: _____

e-mail Address: _____

Phone Number: _____