

eKEY Software Sub-Lease/License Agreement

IF YOU NEED A COPY OF THIS LEASE FOR YOUR RECORDS, PLEASE MAKE A COPY.
ALL ATTACHMENTS ARE PART OF THIS LEASE. READ THEM BEFORE SIGNING BELOW.

THIS SUB-LEASE AGREEMENT ("Lease") is entered as of _____, 20____

by and between _____ ("KEYHOLDER"),

and the Delta Association of REALTORS® ("ORGANIZATION") covering the following equipment:

eKEY Serial # _____ e-Key Basic []

Fees and Payment Information

Key Fees are prorated on a monthly basis and may contain one-time fees such as the KEY Application Fee (\$49.00).

The Delta Association Annual Payment for an eKEY:

e-Key Basic Fees: \$240 due in January

The billing from DAR will come via e-mail. No paper billing will occur.

Fees are subject to change at any time without notice.

This Sub-Lease/License Agreement ("Agreement") is entered into as of the date set forth in the signature block below by and between the keyholder referenced in the signature block ("Keyholder"), and Delta Association of REALTORS® ("Organization"). Keyholder and Organization agree as follows:

1. LEASE AND LICENSE

- a. **eKEY Basic Software.** If Keyholder has selected the Basic Software (the "eKEY"), Organization grants to Keyholder, a limited non-exclusive, non-transferable, revocable sub-license for the Term to use such software. In addition, Organization grants to Keyholder a limited non-exclusive, non-transferable, revocable sub-license to use the Network, the use of which Organization licenses from Supra, which is necessary for the use and operation of the eKEY for the Term. The eKEY 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. The eKEY Software is used with certain electronic devices including certain cellular telephones ("Phones") approved by UTCFS. During the Term, UTCFS may in its sole discretion approve additional Phones. UTCFS does not provide any warranty of the performance of such Phones.
- b. **iBoxes BT LE.** If applicable, Organization leases to Keyholder for the Term, and Keyholder agrees to lease, iBoxes.
- c. Network organization grants to Keyholder (i) a limited non-exclusive, non-transferable, revocable sub-license to use the Network (the "Network"), to of which Organization license form UTC Fire & Security Americas Corporation, Inc. ("Supra") Which is necessary for the use and operation of the eKEY (collectively, "Key") for the Term shown on page 4 of this Agreement and (ii) a limited, non-exclusive, nontransferable, revocable sub-license to use the software Organization licenses from UTCFS for the Term.

2. SERVICE

- a. The software incorporated in the eKEY Software, iBoxes (if applicable), Network; the equipment incorporated in the iBoxes (if applicable), (collectively, "Equipment"); Network; and KIM Database are collectively, "Service." The Service is more fully described in the applicable User Guide, which will be provided to Keyholder in conjunction with the Software and is incorporated herein by reference.
- b. Keyholder understands that, in order to make the Service available to Keyholder, Organization and Supra entered into a Master Agreement

that provides the terms under which Supra will provide the Service to Organization. **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 12 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 of this Agreement, which may result in an increase of the System Fee 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 detrimentally affect Keyholder's use of the Service.

- c. In the Master Agreement, Supra has reserved the right to discontinue any item of Equipment used in connection with the Service. If Supra discontinues any item of Equipment, the Equipment leased and licensed 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.
- d. Keyholder agrees to comply with the Rules and Regulations relating to the use of the Service which are set forth in the User Guide and the Rules and Regulations of Organization and/or its MLS system. By executing this Agreement, Keyholder agrees to maintain the security of the personal identification number 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 Supra 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 personal identification numbers 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.

3. **TERM**

This Agreement shall commence on the date set forth in the signature block and have a term ("Term") until the date set forth on page 4, unless terminated earlier or extended pursuant to the provisions of this Agreement.

4. **PAYMENTS**

- a. **DURING THE TERM OF THIS AGREEMENT, KEYHOLDER SHALL PAY TO ORGANIZATION A FEE FOR THE RIGHT TO USE THE SERVICE SUCH SYSTEM FEE SHALL BE DETERMINED BY ORGANIZATION. KEYHOLDER SHALL BE ENTITLED TO TERMINATE THIS AGREEMENT IN ACCORDANCE WITH THE PROVISIONS CONTAINED IN SECTION 12.**
- b. Keyholder shall pay the System Fee determined by the Organization upon entering this Agreement and shall pay the System Fee for all subsequent years as directed by the Organization.
- c. Organization reserves the right to: i) increase the System Fee annually, ii) charge a key activation fee, iii) charge a late fee for any System Fee that is not paid as directed by the Organization, iv) charge a fee for any payment that is returned unpaid or for insufficient funds or credit.
- 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.**

5. **TITLE AND USE**

The Service, including all its components, and the Equipment (except iBoxes), are and shall at all times remain the property of Supra. All additions and upgrades to the Software shall become part of the Software and shall, without further act, become the property of Supra. The Software and all applicable rights in patents, copyrights, trade secrets, and trademarks, are and shall at all times remain the property of Supra.

6. **RISK OF LOSS; RETURN OF EQUIPMENT**

- a. No loss, damage or destruction to the Equipment shall relieve Keyholder of any obligation under this Agreement, except to the extent any such loss, damage or destruction is directly caused by the negligence of Organization.
- b. At the expiration of the Term, Keyholder, at Keyholder's expense and risk, shall immediately return or cause the return to Organization to such location as Organization shall specify all Equipment or components leased and licensed pursuant to this Agreement. All Equipment or components leased and licensed herein shall be returned in good condition, repair and working order, ordinary wear and tear excepted

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

- a. If Keyholder misuses the Service or any component thereof, including without limitation, use of the Service in violation of the User 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 within five (5) days after Keyholder receives written notice of such action.

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

8. **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 within fifteen (15) days after the date that such

- ii. payment is 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.
- b. An Event of Default by Organization under this Agreement will occur upon the termination for any reason of the Master Agreement.

9. 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 demand the return of any Equipment and Software to Organization;
 - 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. Bill the Keyholder for any outstanding amounts owed under this Agreement, including any applicable liquidated damages for the failure to return the Equipment; and/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 occurrence of an Event of Default by Organization or termination of this Agreement, all of Keyholder's obligations under this Agreement shall terminate, except that Keyholder shall be required to return the Equipment and Software to Organization and to pay Organization any outstanding amounts owed under this Agreement, including any damages for the failure to return the Equipment and Software.
- c. If Organization deactivates 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 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 collecting under this Agreement. 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 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 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.

10. 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 American Arbitration Association or such other rules as may be agreed to by the parties. The arbitration shall be conducted in a location mutually agreed to by the parties. If the parties, following good-faith diligent efforts, fail to agree on the location of the arbitration within thirty (30) days after either party requests arbitration, the arbitration shall be conducted in Antioch, California; provided that either party shall be entitled to participate in such arbitration by video conference or teleconference. 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 attorney's fees. Any arbitration award may be enforced by a court of competent jurisdiction in accordance with applicable law. In the event that legal action to enforce the arbitration award is necessary, the substantially prevailing party shall be entitled to recover its reasonable costs and attorney's fees in such action or any appeals.

11. 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 the party being notified at its address set forth in the signature block of this Agreement, or to such other address as a party shall subsequently 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.

12. TERMINATION

- a. Keyholder may terminate this Agreement at any time by returning the Equipment and Software to Organization and paying Organization any amounts owing prior to such termination, including (i) any applicable damages for the failure to return the Equipment and Software as set forth in Section 6(a) hereof, and (ii) 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 Agreement are released and discharged by Organization.
- 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 an upgrade of the Service by Organization. Upon termination, Keyholder shall be obligated to satisfy the obligations in Section 12(a).
- c. In the event that Keyholder fails to return all Equipment leased to Keyholder upon termination of this Agreement or at the expiration of the Term, Keyholder agrees to pay to Organizations, as liquidated damages for such failure to return the Equipment, the amount set forth in Section 6(a).
- 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.

13. WARRANTY The Equipment and Software are warranted by Supra against defects in workmanship and/or materials, to be fit for the intended purpose and to conform in all material respects to its written specifications for the term of the Agreement. Supra shall, without charge, repair or replace such defective or nonconforming component for the term of the Agreement. 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 UTCFS by performing diagnostic tests provided to Keyholder when Keyholder initially seeks warranty service.

14. GENERAL PROVISIONS

- a. This Agreement constitutes the entire agreement between Organization and Keyholder relating to the Agreement 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 Agreement.
 - c. This Agreement may be executed in a number of counterparts, each which will be deemed an original and when taken shall constitute one agreement.
 - d. 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.
 - e. All agreements, representations and warranties contained in this Agreement shall survive the expiration or other termination of this Agreement.
 - f. If any provision of this Agreement is unenforceable, such unenforceability shall not affect the enforceability of the remaining provisions of this Agreement.
 - g. This Agreement shall be governed by the laws of the State of California.
 - h. This Agreement shall be binding upon and inure to the benefit of Organization, and its successors and assigns, and Keyholder and its permitted successors and assigns.

User's Guide and Rules and Regulations

Relating to use of the UTC Fire & Security Americas Corporation, Inc. ("UTCFS") (Supra) System incorporated into and made a part of the eKEY Software Sub-Lease Agreement

1. ELIGIBILITY FOR LEASING KEY EQUIPMENT AND UTILIZATION OF THE SERVICE

- A. BridgeMLS. Participants in good standing are eligible for the service.
- B. BridgeMLS. Subscribers in good standing are eligible for the service with the authorization of the Participant.
- C. BridgeMLS. Subscribers in good standing as a Licensed Secretary/Assistant are eligible for the service with the authorization of the Participant.
- D. Delta Association of REALTORS® ("ORGANIZATION") Affiliate members are eligible for the service if they are a California licensed or certified appraisers .
- E. KEYHOLDER acknowledges that the eKEY are updated wirelessly and updates shall be issued only to KEYHOLDERS in good standing with the BridgeMLS. Multiple Listing Service or, in the case of eligible Affiliates, the Delta Association of REALTORS®, both of whom must be in compliance with the terms of the lease and these rules.

2. STATUS

- A. If KEYHOLDER is a licensed salesperson, KEYHOLDER shall notify the ORGANIZATION in writing within 24 hours following the termination of his or her affiliation with the Broker-Participant. Upon such termination KEYHOLDER may continue using the Service pursuant to this lease, provided the KEYHOLDER becomes affiliated with another Broker-Participant within one (1) business day of such termination and notifies ORGANIZATION in a manner satisfactory to the ORGANIZATION within 24 hours of the change of employment. Such notice must also be executed by KEYHOLDER's new broker.
- B. KEYHOLDER may not sell, transfer, or assign the ActiveKEY to any other individual or entity, including but not limited to, another broker or agent. Nor shall KEYHOLDER loan to another, or borrow from another, individual or entity, including but not limited to, another broker or agent.
- C. Failure to comply with the provisions of this paragraph shall constitute a breach of these Rules and Regulations.

3. SECURITY OF THE eKEY Basic AND IBoxes

- A. KEYHOLDER acknowledges that it is necessary to maintain the security of the Service.
- B. KEYHOLDER acknowledges that it is necessary to maintain the security of the eKEY and its Personal Identification Numbers ("PIN") to prevent its use by unauthorized persons.
- C. KEYHOLDER agrees as follows:
 1. to keep the eKEY in KEYHOLDER's possession or in a safe place at all times.
 2. to not allow a KEYHOLDER's personal identification number (PIN) to be attached to the eKEY in any manner or for any purpose or be disclosed by KEYHOLDER to any third party.
 3. to not lend or otherwise transfer the eKEY to any other person or entity, or permit any other person or entity to use the eKEY for any purpose whatsoever, whether or not such other person or entity is a real estate licensee.
 4. to not duplicate the eKEY or allow any other person to do so.
 5. to not assign, transfer, or pledge the eKEY.
 6. to not destroy, alter, modify, disassemble or tamper with the eKEY or knowingly or unknowingly allow anyone else to do so.
 7. to follow all additional security procedures as specified by the ORGANIZATION, and
 8. KEYHOLDER shall indemnify the ORGANIZATION against, and hold the ORGANIZATION harmless from any and all actions, suits, costs, damages and liabilities, including, without limitation, the delivery, possession, use or loss by anyone other than the ORGANIZATION.

4. AUTHORIZATION

- A. Before the KEYHOLDER installs or uses any Key Box on real property, KEYHOLDER shall obtain written authorization from the property owner to do so, as well as from any tenant(s) in possession of the property, if applicable.
- B. KEYHOLDER agrees to disclose to the property owner and tenant(s) if applicable, that the Key Box is not designed or intended as a security device.
- C. KEYHOLDER shall use extreme care to ensure that all doors to the listed property are locked upon departure, that the key to the property is returned to the Key Box and Key Box is locked.
- D. KEYHOLDER shall not use any key obtained from a Key Box for any purpose other than that for which the box is intended nor shall KEYHOLDER remove and/or retain any key without the express permission of the listing broker.

5. **DEFAULT**

The occurrence of any of the following events shall constitute an Event of Default by KEYHOLDER under these rules:

1. the eKEY is lost or stolen,
2. the KEYHOLDER permits an unauthorized person or entity to possess or use the ActiveKEY,
3. the KEYHOLDER fails to pay, when due, any amount required to be paid by it in connection with the use of the Service,
4. KEYHOLDER breaches or fails to observe, keep, and perform each of these Rules or any obligation or provision of any agreement executed and delivered by KEYHOLDER in connection with the use of the Service, or
5. ORGANIZATION or Supra (UTFCS) in its respective discretion determines that it must declare a default and take appropriate action for security purposes.

6. **TERMINATION**

In the event that KEYHOLDER fails to return all equipment leased to KEYHOLDER upon termination of the Sub-Lease Agreement, KEYHOLDER acknowledges that it is impractical and difficult to assess actual damages to ORGANIZATION, and therefore agrees to pay to ORGANIZATION as liquidated damages for such failure to return the equipment the amount set forth in Section 6 of the Sub-Lease Agreement.

7. **REMEDIES**

Upon the occurrence of an Event of Default by KEYHOLDER under the Lease, Sub-lease, or these Rules ORGANIZATION may:

1. cause the KEYHOLDER's key to be deactivated;
2. take legal action against KEYHOLDER to recover all damages incurred by ORGANIZATION resulting from such default and/or improper use of the eKEY; and
3. pursue any other remedy available at law or in equity.

8. **STATEMENT OF ADMINISTRATION PROCEDURES AND OPERATING STANDARDS**

KEYHOLDER acknowledges that the use of the Service is also subject to the terms and conditions of the Administration Agreement and the Statement of Administration Procedures and operating standards for the Service, and that failure of UTFCS or the ORGANIZATION to perform any of its obligations under the Administration Agreement or the Statement may detrimentally affect KEYHOLDER's use of the Service. KEYHOLDER expressly waives any right to exercise any right or remedy arising under, relating to or by virtue of any default by any person under the Administration Agreement, the Statement and/or any other agreement executed and delivered in connection with the use or leasing of the Service. KEYHOLDER further acknowledges and agrees that UTFCS and/or the ORGANIZATION may exercise any remedies any of them have under the Administration Agreement or the Statement.

9. **SYSTEM FEES**

KEYHOLDER acknowledges that the annual System fees and other fees payable in connection with the use and lease of the system may be adjusted pursuant to the terms and provisions of the Sub-Lease Agreement.

10. **SOFTWARE LICENSE**

No title or ownership of any software or any of its components is transferred to KEYHOLDER, and KEYHOLDER's use of any software in connection with the Service constitutes a revocable license. Title to all applicable rights in patents, copyrights, and trademarks shall remain with UTFCS and KEYHOLDER agrees to take appropriate action to maintain the confidentiality of the software and its components.

11. **ACKNOWLEDGEMENT**

KEYHOLDER acknowledges that neither the Service, the Key Box, the eKEY, nor any other UTFCS product used in connection with the Service is a security system. The Service is a marketing convenience key control system and as such any loss of eKEYS or disclosure of personal identification numbers compromises the integrity of the Service. KEYHOLDER shall use its best efforts to insure the confidentiality of all components of the service.

IN WITNESS WHEREOF, ORGANIZATION and KEYHOLDER have caused this Lease to be duly executed

KEYHOLDER:

Applicant Signature: _____ Date: _____

Print Name: _____

Office Name: _____

Office Address: _____
(Street Address) (City) (State) (Zip)

Your E-mail Address: _____

Your Phone Number: _____

BROKER:

Your Broker's Signature: _____ Date: _____

Your Broker's Name: _____

DAR AFFILIATES ONLY:

Qualifying Member Types:

California Licensed/Certified Appraiser: []

License Number: _____

Office Use Only

[] Broker/Participant

[] Agent/Subscriber