

## eKEY SUB-LICENSE AGREEMENT

THIS SUB-LICENSE AGREEMENT ("License") is entered as of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ ("Keyholder"), and **CHARLOTTESVILLE AREA ASSOCIATION OF REALTORS®** ("Organization") covering the following software ("Software"):

eKEY Professional or Basic Software (Serial # \_\_\_\_\_).

Keyholder, Organization, and Broker agree as follows:

### 1. LICENSE AGREEMENT

a. Organization hereby grants to Keyholder (i) a limited non-exclusive, non-transferable sub-license to use the network (the "Network"), the use of which Organization licenses from GE Security, Inc. ("GE") 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 Network and Software are collectively referred to herein as the "Service." The Service is more fully described in the User's Guide's published by GE, which will be provided to Keyholder and is incorporated herein by reference. The Software, when loaded onto certain personal digital assistants ("PDA") operates as an electronic key ("eKEY") to open certain keyboxes. Keyholder acknowledges receipt of the Equipment and the Software.

b. This License shall commence on the date set forth above and have a term ("Term") until **April 23, 2012**, unless terminated earlier or extended pursuant to the provisions of this License.

c. Keyholder acknowledges and agrees that she or he must comply with the Rules and Regulations relating to the use of the Service which are set forth in the User's Guide and the Rules and Regulations of Organization and/or its MLS system. By executing this License, Keyholder acknowledges that it is necessary to maintain the security of the eKEY and the personal identification number necessary to operate the eKEY to prevent the use of the eKEY by unauthorized persons. Keyholder further acknowledges that neither the Service, nor any other GE product used in connection with the Service (including the Software), is a security system. The Service is a marketing convenience key-control system, and as such, any loss of eKEY 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.

d. If Keyholder is a non-MLS member of Organization, Keyholder covenants and agrees not to use the eKEY to access any property without first obtaining showing instructions from the listing agent of the property. Showing instructions may be obtained via telephone.

e. Keyholder acknowledges that, in order to make the Service available to Keyholder, Organization and GE entered into a Master Agreement that provides, among other things, the terms under which GE will provide the Service to Organization. **Keyholder understands that, if either the Master Agreement is terminated for any reason during the Term of this License, the Service will no longer be available to Keyholder and this License will terminate in accordance with Section 10 below. Keyholder further acknowledges and 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 License, which may result in an increase of the System Fee (as defined in Section 3(a) below) and/or the termination of this License.** Except as the rights and obligations of Keyholder and Organization under this License 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 License. Keyholder acknowledges that failure of Organization to perform its obligations under the Master Agreement and/or the Organization Lease may detrimentally affect Keyholder's use of the Service.

f. In the Master Agreement, GE has reserved the right to discontinue any item of Software used in connection with the Service upon the provision of one (1) year prior written notice to Organization. If GE discontinues any item of Software, the Software licensed hereunder shall continue to be completely compatible with and shall function with the Service.

## 2. TITLE AND USE

Keyholder hereby acknowledges and agrees that the Service, including all its components, and the Software, are and shall at all times remain the property of GE. If Keyholder has purchased an eSYNC Cradle or eSYNC Modem from GE for use with the eKEY, title to such eSYNC Cradle or eSYNC Modem shall be held by Keyholder, but the Software incorporated into the eSYNC Cradle or eSYNC Modem shall at all times remain the property of GE. All additions and upgrades to the Software shall become part of the Software and shall, without further act, become the property of GE. The Software and all applicable rights in patents, copyrights, trade secrets, and trademarks (including those associated with any purchased eSYNC Cradle or eSYNC Modem), are and shall at all times remain the property of GE.

## 3. PAYMENTS

a. **DURING THE TERM OF THIS LICENSE, KEYHOLDER SHALL PAY TO ORGANIZATION A FEE FOR THE LICENSE AND USE OF THE SOFTWARE, PLUS APPLICABLE TAX, (THE "SYSTEM FEE"). THE SYSTEM FEE SHALL BE DETERMINED BY THE ORGANIZATION AND SHALL BE INCLUDED IN THE INFORMATION SERVICES DUES. KEYHOLDER SHALL BE ENTITLED TO TERMINATE THIS LICENSE IN ACCORDANCE WITH THE PROVISIONS CONTAINED IN SECTION 10.**

b. Organization reserves the right to charge an activation fee.

c. The System Fees set forth in Section 3(a) above will increase 2% per year on each **April 24**, which is the anniversary of the start of the Service within Organization's area.

d. Keyholder agrees to pay to Organization a late fee of 10% for any System Fee that is not received by Organization within fifteen (15) days after the date such payment is due. Keyholder also agrees to pay to Organization a fee of \$25 for any Keyholder payment that is returned unpaid or for insufficient funds or credit.

e. 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 SOFTWARE OR ANY REPLACEMENTS.

## 4. RETURN OF SOFTWARE

a. 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 of the Software with any components included within the Service that have been licensed to Keyholder pursuant to this License, not including any eSYNC Cradle or eSYNC Modem purchased by Keyholder.

## 5. 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's Guide, and a third party brings an action against Organization relating to such misuse, Keyholder agrees to indemnify, defend and hold harmless Organization and/or GE, and its 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 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, decompile, 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. That Keyholder will not loan the Software to any person nor shall the Keyholder be in possession of another person's Software.

e. 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 Software within five (5) days after Keyholder receives written notice of such action.

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

## **6. 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 within fifteen (15) days after the date that such 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 License if such case or proceeding is dismissed within sixty (60) days after it was commenced.

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

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

(i) Terminate this License and demand the return of any Software to Organization;

(ii) Terminate one or both of Keyholder's sub-licenses to use the Network and to use the Software, which will make an eSYNC Cradle or eSYNC Modem purchased by Keyholder inoperable;

(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 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 the Software to Organization and to pay Organization any outstanding amounts owed under this License, including any damages for the failure to return the Software.

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 GE to reactivate the Software 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 Software 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. The Keyholder agrees to abide by all rules and regulations established by Organization relating to the use of the Equipment, including but not limited to those set forth in this License, CAAR Policy 10: Lockbox System Policy and the Lockbox Security Requirements documents, and to comply with and abide by the decisions and sanctions of Organization as a result of a Factual Review. In addition to the penalties for violations set forth in CAAR Policy 10: Lockbox System Policy and in addition to any sanctions for violating this License, CAAR Policy 10: Lockbox System Policy and/or Lockbox Security Requirements, or for failing to comply with a decision of the Lockbox Committee, remedies may include the suspension of lockbox privileges, including loss of the Equipment.

f. 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. Keyholder understands that Organization's rights and remedies are cumulative, not exclusive, and no exercise of any remedy shall preclude the exercise of another remedy.

## **8. TERMINATION**

a. Keyholder may terminate this License at any time by returning the Software to Organization and paying Organization any amounts owing prior to such termination, including any System Fees owing prior to such termination which remain unpaid. Upon termination, System Fees which 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 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 set forth above in Section 10(a).

c. Any unused portion of the System Fee for use of the Service previously paid shall be forfeited by Keyholder and Keyholder shall not be entitled to a refund.

## **9. WARRANTY**

The Software 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 License. GE shall, without charge, repair or replace such defective or nonconforming Software for the term of the License. Keyholder must return any defective Software under warranty to Organization at Keyholder's sole cost and expense and Organization shall provide all replacement Software to Keyholder. This warranty does not extend to any damage caused by accident, abuse, neglect or misuse of Software. Keyholder agrees to cooperate with Organization and GE by performing diagnostic tests provided to Keyholder when Keyholder initially seeks warranty service.

## **10. KEY AUDIT**

Organization may from time to time institute a key audit for the purpose of verifying the security of the lockbox key system. Under routine circumstances the Keyholder shall be given at least 14 days notification; however, an emergency audit may be required with less notification given. In the event the Keyholder fails to present his/her Software on or before the specified date of the audit, Organization may impose a fine and/or assessment to the Keyholder or Broker of no more than \$100.00. In the event the Keyholder fails to present his/her Software within 30 days after the specified date of the audit, then, in addition to other remedies available to Organization, Organization may impose a fine and/or assessment to the Keyholder or Broker of no more than an additional \$100.00.

## **11. ELIGIBLE LESSEES; APPRAISAL FIRMS.**

Except as otherwise provided in this paragraph, the Software may only be leased to active members in good standing of Organization. Provided that the Keyholder and the Broker are active members in good standing of a REALTOR Association in the state of Virginia other than Organization, they shall be eligible to lease the Equipment as provided herein upon the payment of an annual subscription fee of \$100.00. Such fee shall not be considered to be a refundable deposit. In the event the Keyholder is a Certified Real Estate Appraiser, who is a member of Organization, the Keyholder shall sign below acknowledging his/her agreement to be bound by the terms of this

License and further acknowledge that apprentice appraisers affiliated with an appraisal firm are not eligible to be a Keyholder.

## **12. RETURN OF SOFTWARE**

The Keyholder agrees to return the Software within 48 hours of receipt of a request to do so by Organization or within 5 BUSINESS DAYS OF THE FOLLOWING EVENTS:

- a. Termination of Keyholder as an active member of Organization or of another REALTOR Association in the state of Virginia.
- b. Termination of Broker as an active member of Organization or of another REALTOR Association in the state of Virginia.
- c. Termination of Keyholder's association with Broker for any reason. In the event of death of Keyholder, Keyholder's heirs or personal representative shall surrender the Equipment to Organization and shall be entitled to refund without interest of any amount of Deposit due Keyholder.

## **13. BROKER'S RESPONSIBILITY**

Broker covenants that Broker is a real estate Broker and an active member of Organization or of another REALTOR Association in the state of Virginia, that the Keyholder, unless a Real Estate Appraiser, is associated with Broker as an active real estate licensee in an active effort in the sale, purchase or lease of real estate through Broker's office, that the Keyholder has a valid real estate license issued by the Commonwealth of Virginia and that Broker will notify Organization should the Keyholder or Broker terminate that relationship with Broker by sending a copy of any letter or transfer form sent to the Virginia Real Estate Board affecting the Keyholder's status with the Broker to the Organization. In the event of termination of the relationship of Keyholder with Broker, Broker shall use best efforts to secure the Software from the Keyholder, if the Keyholder does not return the Software. This License shall not be construed to make the Keyholder an employee of Broker. Broker hereby accepts responsibility for ensuring that the Keyholder abides by this License, the CAAR Lockbox Security Requirements and CAAR Policy #10: Lockbox System Policy.

## **14. GENERAL PROVISIONS**

- a. Provided that Keyholder has returned to Organization all Software previously licensed by Organization to Keyholder, all prior Licenses between Organization and Keyholder for such keys are hereby terminated effective as of the parties' execution of this License.
- b. This License shall be effective and binding upon the parties hereto 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.
- c. This License may be modified or amended by Organization at any time and from time to time.
- 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 License shall survive the expiration or other termination of this License.
- f. If any provision of this License is unenforceable, such unenforceability shall not affect the enforceability of the remaining provisions of this License.
- g. This License shall be governed by the laws of the Commonwealth of Virginia.
- h. This License shall be binding upon and inure to the benefit of Organization, and its successors and assigns, and Keyholder and its permitted successors and assigns.

## **15. CERTIFICATION**

The Keyholder hereby certifies that he or she understands and will abide by the provisions of this License and acknowledges that he or she has received, read, and will abide by this License, CAAR Policy # 10: Lockbox System Policy and the CAAR Lockbox Security Requirements, as those documents are now in effect or may be from time to time amended.

IN WITNESS WHEREOF, Organization, Keyholder, and Broker have caused this License to be duly executed.

**KEYHOLDER:**

**By:** \_\_\_\_\_

**Date:** \_\_\_\_\_

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

**ORGANIZATION:**

**By:** \_\_\_\_\_

**Date:** \_\_\_\_\_

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

**BROKER:**

**By:** \_\_\_\_\_

**Date:** \_\_\_\_\_

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