

Seven MLSs Agree to Cooperate With Lockbox Access

The reciprocal arrangement allows MLS members to receive a cooperative code and electronic key privileges from the participating organizations without having to be a member of the cooperating agency's MLS. Should you receive a cooperative key through the Berkeley Association of REALTORS (B.A.R.), your key will work in the following areas:

- Alameda County
- Contra Costa County
- Merced County*
- Monterey County
- San Benito County
- Santa Clara County
- Santa Cruz County
- San Mateo County
- Stanislaus County*
- San Joaquin County*
- San Francisco County

In order to obtain a Cooperative Key through the B.A.R. please complete the Cooperating Key Agreement and Lease Agreement below and call the B.A.R. Office at 510.848.4288.



Cooperating Key Agreement

Keyholder Information

Agent Name – Print Clearly: _____

DRE License #: _____ Exp. Date: _____

NRDS# _____

Agent Email Address: _____

Agent Mailing Address: _____

City: _____ State: _____ Zip: _____

Agent Phone #: _____ Office Phone #: _____

Office Name: _____

Office Address: _____

Cooperating Details

Co-Op Date: _____ Type of Key - *Circle one*: Display Key ActiveKey eKey

Key Serial #: _____ 4 Digit Pin Code: _____ Primary MLS: _____

Cooperating Keys are billed annually at the rate of \$120.00 Annually / Semi-Annually at \$75.00.

The Co-Op key holder is bound by existing Key Lease Agreement through Primary Board.

My signature below acknowledges I have received a copy of the MLS Rules and Regulations, including Key Rules and agree to abide by such rules. I also agree as a condition to delivery of the key and right to access listings and property through the use of the key, I will comply with all of the MLS Rules and Regulations of any Multiple Listing Service or Association through which a property is listed, and accessed by me or anyone using my key, irrespective as to whether such use is authorized or not. I understand and acknowledge, in addition to any remedy available to an Association or MLS at law or equity, my key access may be terminated without notice or hearing if substantial grounds exist for the Association or MLS in which an issue of compliance arises to determine there has been a breach of this agreement or violation of any provision of the applicable MLS Rules and Regulations.

Keyholder Signature: _____ **Date:** _____

Payment Information *Please mark one of the following.* \$120 annual \$75 semi-annual

Cash: _____ Check#: _____ Credit Card: _____ *visa or mastercard*

Card # _____ exp. date ____ / ____ CID _____

Signature _____

RULES AND REGULATIONS RELATING TO USE OF THE SERVICE

Supra DisplayKEY and eKEY Software Sub-Lease/License Agreement

KEYHOLDER AND ORGANIZATION agree as follows:

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 Bay East Association of REALTORS® (“Organization”). Keyholder and Organization agree as follows:

1. **LEASE AND LICENSE**

- a) **DisplayKEY.** If Keyholder has selected the DisplayKEY and the DisplayKEY Cradle (collectively the “DisplayKEY”), Organization leases to Keyholder, and Keyholder leases from Organization, the DisplayKEY (which may be new or refurbished). In addition, Organization grants to Keyholder (i) a limited non-exclusive, non-transferable, revocable sub-license to use the network, the use of which Organization licenses from GE Security, Inc. (“GE”), which is necessary for the use and operation of the DisplayKEY (the “Network”) for the Term (as defined in Section 3 below) and (ii) a limited, non-exclusive, nontransferable, revocable sub-license to use the software Organization licenses from GE (the "Software") for the Term. The equipment and software incorporated in the DisplayKEY enable the Keyholder to obtain a current update code for the DisplayKEY; to open and perform other iBox functions with the DisplayKEY; and to upload property-showing data with the DisplayKEY.
- b) **iBoxes.** If applicable, Organization leases to Keyholder for the Term, and Keyholder agrees to lease, iBoxes. In addition, Organization grants to Keyholder (i) a limited non-exclusive, non-transferable, revocable sub-license to use the Network, which is necessary for the use and operation of the iBoxes for the Term and (ii) a limited, non-exclusive, nontransferable, revocable sub-license to use the software Organization licenses from GE for the Term. The quantity of iBoxes assigned to Keyholder shall in all cases be determined by the Network.

2. **PAYMENTS**

- a. **DURING THE TERM OF THIS AGREEMENT, KEYHOLDER SHALL PAY TO ORGANIZATION A FEE FOR THE RIGHT TO USE THE SERVICE PLUS APPLICABLE TAX (THE “SYSTEM FEE”). 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. The 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, and (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.**

3. **TITLE AND USE** The Service, including all its components, and the Equipment (except iBoxes), are and 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, are and shall at all times remain the property of GE.

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4. 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 caused by the sole negligence of Organization. The cost for replacing any Equipment that is lost, damaged or destroyed and the damages to be paid by Keyholder for failing to return the Equipment upon termination of this Agreement is set forth below. Replacements may be refurbished Equipment.

DisplayKEY	DisplayKEY Cradle
\$150.00	\$99.00

- 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, the DisplayKEY and all Software and any components included within the Service that have been leased or licensed to Keyholder pursuant to this Agreement. The DisplayKEY and components used in connection with the Service shall be returned in good condition, repair and working order, ordinary wear and tear excepted.
- c. Upon early termination of the Master Agreement by Organization, GE shall collect any iBoxes that remain in Keyholders possession and which have not been returned to Organization. GE shall also take any and all actions necessary to collect any liquidated damages owed by Keyholder, including any and all costs and expenses of every kind or nature incurred by GE in connection with the exercise of its rights and remedies under this Agreement for the failure of Keyholder to return the iBoxes.

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 and/or GE relating to such misuse, Keyholder agrees to indemnify, defend and hold harmless Organization and/or GE, and their respective directors, officers, agents, representatives, employees, successors and assigns, from and against any and all claims, demands, actions, losses, damages, injuries, obligations, liabilities and costs and expenses of every kind or nature (including reasonable attorneys’ fees, whether incurred at the trial or appellate level, in an arbitration proceeding, in bankruptcy, including without limitation, any adversary proceeding, expert witnesses, contested matter or motion or otherwise) incurred by Organization and/or GE in such proceeding.
- b. That neither Organization nor GE shall be liable for any compensatory, indirect, incidental, consequential, punitive, reliance or special damages, including, without limitation, damages for lost profits, advantage, savings or revenues of any kind or increased cost of operations, arising out of the use or inability to use the Service for any purpose whatsoever whether or not Keyholder has been advised of the possibility of such damages.
- c. That Keyholder will not (i) use or gain access to the source code for the Software; (ii) alter, reproduce, modify, adapt, translate, reverse engineer, de-compile, disassemble or prepare derivative works based upon the Software; or (iii) provide or otherwise make available the Software or any part or copies thereof to any third party.
- d. To provide Organization and GE with written notice of any legal proceeding or arbitration in which Keyholder is named as a defendant and that alleges defects in the Equipment 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.

6. 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 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

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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.

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 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 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 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 GE to reactivate the Equipment within twenty-four (24) hours.
- d. In the event that Organization institutes any action for the collection of amounts due and payable hereunder, Keyholder shall pay, in addition to the amounts due and payable under this 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.

- 8. 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 Pleasanton, 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

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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.

9. **NOTICES** All notices hereunder shall be sent by (i) hand-delivery, (ii) facsimile, (iii) certified mail, return receipt requested, postage prepaid, or (iv) overnight delivery service, to 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.

10. **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. GE is an intended third party beneficiary under this Agreement.
- 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 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(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.

11. **WARRANTY** The Equipment and Software are warranted by GE 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. GE shall, without charge, repair or replace such defective or nonconforming component for the term of the Agreement. No such warranty or representation is made by Organization. Keyholder must return any defective system component under warranty to Organization at Keyholder's sole cost and expense and Organization shall provide all repaired or replacement Equipment to Keyholder. This warranty does not extend to any damage caused by accident, abuse, neglect or misuse of system components. Keyholder agrees to cooperate with Organization and GE by performing diagnostic tests provided to Keyholder when Keyholder initially seeks warranty service.

12. **GENERAL PROVISIONS**

- a. This 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 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.
- d. This Agreement shall be amended 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.

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- f. All agreements, representations and warranties contained in this Agreement shall survive the expiration or other termination of this Agreement.
- g. If any provision of this Agreement is unenforceable, such unenforceability shall not affect the enforceability of the remaining provisions of this Agreement.
- h. This Agreement shall be governed by the laws of the State of California.
- i. 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.

IN WITNESS WHEREOF, ORGANIZATION AND KEYHOLDER HAVE CAUSED THIS LEASE TO BE DULY EXECUTED AS OF THE DATE SET FORTH IN THE PREAMBLE TO THIS LEASE.

I certify that the information given in this application is true and correct, and agree to abide by all the rules and conditions set forth.

Keyholder's (Applicant) Signature

Date

Keyholder's Printed Name
