

## DisplayKEY Lease and Software Sublicense Agreement

IF YOU NEED A COPY OF THIS LEASE FOR YOUR RECORDS, PLEASE MAKE A COPY.

**ADDENDUM A IS PART OF THIS SUBLEASE. READ IT BEFORE SIGNING BELOW.**

This DisplayKEY and DisplayKEY Cradle Lease and Software Sublicense Agreement ("Lease") is entered as of \_\_\_\_\_, 2013, by and between \_\_\_\_\_ ("Keyholder"), and Carolina Multiple Listing Services, Inc. ("Organization") covering the following equipment: DisplayKEY and Cradle (Serial # \_\_\_\_\_).

Keyholder and Organization agree as follows:

### 1. **LEASE AGREEMENT**

a. Grant of Lease and Sublicense. Organization leases to Keyholder, and Keyholder leases from Organization, the equipment described above (which may be new or refurbished), which includes the DisplayKEY and the DisplayKEY Cradle (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, a division of GE Security, Inc. ("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, nontransferable sublicense 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's Guide's published by Supra, which will be provided to Keyholder and is incorporated herein by reference.

b. Term. This Lease shall commence on the date set forth above and have a term ("Term") until August 17, 2014, unless terminated earlier or extended pursuant to the provisions of this Lease.

c. Rules and Regulations. Keyholder agrees to 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 any other rules or regulations set forth herein. By executing this Lease, Keyholder agrees to maintain the security of the Equipment and 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 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 its best efforts to ensure the confidentiality and integrity of all components of the Service. Keyholder understands that the Equipment is and shall remain the property of the Organization and as such shall not be made available to anyone other than the undersigned. Keyholder agrees that they will not permit the use of the Equipment by any other person and that they will cooperate fully in any Organization investigation relating to unauthorized use of the Equipment and that any violation to this Agreement is subject to fines and/or penalties as set forth in Addendum A.

d. Service. Keyholder understands that, in order to make the Service available to Keyholder, Organization and Supra entered into a Master Agreement effective as of May 16, 2005 (the "Agreement") that provides the terms under which Supra will provide the Service to Organization. **Keyholder understands that, if the Agreement is terminated for any reason during the Term of this Lease, the Service will no longer be available to Keyholder and this Lease will terminate in accordance with Section 10 below. Keyholder agrees that, under the terms of the Agreement, Organization may elect a different Service or choose to upgrade the Service at any time during the Term of this Lease, which may result in an increase of the System Fee (as defined in Addendum A) and/or the termination of this Lease.** Except as the rights and obligations of Keyholder and Organization under this Lease 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 Lease. Keyholder understands that failure of Organization to perform its obligations under the Agreement may detrimentally affect Keyholder's use of the Service.

e. Discontinuation of Service. In the Agreement, Supra has reserved the right to discontinue any item of Equipment 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, the Equipment leased hereunder shall continue to be completely compatible with and shall function with the Service. If the Equipment leased is lost, destroyed or damaged by the Keyholder, Organization may replace that Equipment with refurbished Equipment ("Replacement") at Keyholder's expense, 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.

2. **TITLE AND USE** The Service, including all its components, except the Equipment, is and shall at all times remain the property of Supra. The Equipment is and shall at all times remain the property of Organization. All additions, attachments, replacement parts and repairs to the Equipment shall become part of the Equipment and shall, without further act, become the property of Organization. The Software and all applicable rights in patents, copyrights, trade secrets, and trademarks are and shall at all times remain the property of Supra. Keyholder agrees to return Equipment to Organization within one (1) week of the Keyholder's suspension or termination from Organization. In the event the Keyholder is no longer licensed with an appropriate regulatory agency in North or South Carolina or causes their license, certification or Registered Trainee status to lapse, expire, become inactive, or has the same suspended or revoked by action of such regulatory agency, or when not licensed or associated with a Member Participant, the Equipment shall be returned to the Organization's office within one (1) week of the effective date of any such action. In the event Keyholder fails to return Equipment within one (1) week, Keyholder will be responsible for the payment of liquidated damages in the amount set forth in Addendum A.

### 3. **PAYMENTS**

a. DURING THE TERM OF THIS LEASE, KEYHOLDER SHALL PAY TO ORGANIZATION AN ANNUAL FEE as outlined in Addendum A of this Lease Agreement, FOR THE LEASE AND USE OF THE EQUIPMENT. Keyholder shall be required to pay when entering into this Lease, the full amount or prorated portion of the annual System Fee; plus the applicable key issuance fees as outlined in Addendum A.

b. Keyholders leasing a DisplayKEY and/or Cradle shall be required to pay Organization applicable key activation fees as outlined in Addendum A

c. Keyholder agrees to pay to Organization a late fee as outlined in Addendum A, for any System Fee that is not received by Organization within thirty (30) days after the date such payment is due. Keyholder also agrees to pay to Organization a fee as outlined in Addendum A, for any Keyholder check that is returned for insufficient funds.

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.

### 4. **RISK OF LOSS: RETURN OF DISPLAYKEY**

a. No loss, damage or destruction to the Equipment shall relieve Keyholder of any obligation under this Lease, except to the extent any such loss, damage or destruction is directly caused by the negligence of Organization or unless Keyholder provides evidence, satisfactory to Organization, that the Equipment was stolen. The cost for replacing any Equipment that is lost, damaged or destroyed except to the extent any such loss, damage, or destruction is not directly caused by the negligence of the Keyholder shall be paid by Keyholder as set forth in Addendum A.

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 of the DisplayKEYs with all Software and any components included within the Service that have been leased to Keyholder pursuant to this Lease. 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.

### 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 its 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 Supra shall not 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 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 Lease.

## **6. DEFAULT**

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

(i) Keyholder's failure to pay, for any reason, any amount required under this Lease within thirty (30) days after the date that such payment is due or if Keyholder fails to observe, keep or perform any other obligation or provision of this Agreement; or

(ii) Failure to maintain the security of the Equipment either by allowing a third party access to the Equipment or by attaching Keyholder's PIN number to Equipment; or

(iii) 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 Lease if such case or proceeding is dismissed within sixty (60) days after it was commenced.

b. An Event of Default by Organization under this Lease will occur upon the termination for any reason of the 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 Lease or at law or in equity, exercise one or more of the following remedies:

(i) Assess Keyholder fines as described in Addendum A. Keyholder understands that access to the use of the Equipment will be unavailable until all fines are paid or Board of Directors of Organization makes a decision to waive fines;

(ii) Terminate this Lease and demand the return of any Equipment to Organization;

(iii) Terminate one or both of Keyholder's sub-licenses to use the Network and to use the Software;

(iv) Direct Supra to deactivate Keyholder's access to the Service or any component of the Service;

(v) Bill the Keyholder for any outstanding amounts owed under this Lease, including any applicable liquidated damages for the failure to return the Equipment; and/or

(vi) Take any and all actions necessary to collect all amounts currently due and owing under this Lease, 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 Lease.

b. Upon the occurrence of an Event of Default by Organization or termination of this Lease, all of Keyholder's obligations under this Lease shall terminate, except that Keyholder shall be required to return the Equipment to Organization and to pay Organization any outstanding amounts owed under this Lease, including any damages for the failure to return the Equipment.

c. If Organization deactivates the Service because of a default by Keyholder under this Lease, but does not otherwise terminate this Lease, Keyholder will be entitled to seek to have the Service reactivated. In order to do so, Keyholder shall be required to cure any and all existing defaults, and to pay any and all outstanding amounts owed under this Lease and the reasonable costs and attorneys' fees incurred by Organization in connection with collecting under this Lease. After confirmation of the curing of such defaults and the receipt of payment of such amounts, Organization shall reactivate the Service as soon as possible.

d. In the event 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 Lease, all reasonable costs and attorneys fees incurred by Organization in connection with collecting under this Lease. 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 Lease shall not operate as a waiver thereof or of any subsequent breach 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. SECURITY OF EQUIPMENT** Keyholder acknowledges that it is necessary to maintain security of the Equipment to prevent its use by unauthorized persons and agrees:

a. to keep the Equipment in the Keyholder's possession or in a safe place at all times;

b. to not loan the Equipment to any person, whether or not a real estate licensee, for any purpose whatsoever, or to permit the Equipment to be used for any purpose by any other person;

c. to not duplicate the Equipment or allow other persons to do so;

d. to not assign, transfer or pledge this Lease or the Equipment;

e. to immediately notify the Organization in writing of the loss or theft of the Equipment and the circumstances surrounding such loss or theft;

f. to follow all additional security procedures or relevant operating procedures as specified from time to time by the Organization; and

g. to not damage or deface the Equipment in any way, including attaching the Keyholder's PIN number to Equipment

**9. ARBITRATION; LITIGATION** Any controversy or claim arising out of or relating to this Lease 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 chosen by Organization. The substantially prevailing party in any arbitration under this Lease 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.

**10. 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 noticed at its address set forth in the signature block of this Lease, 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.

## **11. TERMINATION**

a. Keyholder may terminate this Lease at any time by returning the Equipment to Organization and paying Organization any amounts owing prior to such termination, including (i) any applicable damages for the failure to return the Equipment as set forth in Addendum 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 Lease are released and discharged by Organization.

b. Organization may terminate this Lease upon termination of the Agreement with Supra 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 11(a).

c. This Agreement shall automatically terminate in the event of a default by the Keyholder under the Keyholder's obligations to the Organization or suspension

or termination of the Keyholder from participation in the Organization or of the rights of the Keyholder to use the multiple listing services.

d. In the event that Keyholder fails to return all Equipment leased to Keyholder upon termination of this Lease 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 Addendum A.

e. 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. WARRANTY** The Equipment is warranted by Supra 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 Lease. Supra shall, without charge, repair or replace such defective or nonconforming component for the term of the Lease. 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 by the Keyholder. Keyholder agrees to cooperate with Organization and Supra by performing diagnostic tests provided to Keyholder when Keyholder initially seeks warranty service.

**13. RULES AND REGULATIONS** Those portions of the Organization's or any affiliated entity's By-Laws, Rules and Regulations or other policy and procedure documents that pertain to keys/Equipment, and their use, are incorporated herein by reference, as they now exist and as they may be amended from time to time. The Keyholder covenants and agrees to comply with all provisions contained therein, as well as any and all rules and regulations promulgated by the Organization and contained within the Organization's By-Laws and Rules and Regulations or other policy and procedure documents as they relate to the Service as the same may be amended from time to time. The Keyholder agrees that the violation of this Lease shall constitute a violation of the Organization's regulations.

**14. GENERAL PROVISIONS**

a. This Lease and any sublease for iBoxes (if applicable), constitutes the entire agreement between Organization and Keyholder relating to the lease 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 Lease.

c. This Lease shall be effective and binding when fully executed by both parties. This Lease 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 Lease may be amended by Organization from time to time.

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 Lease shall survive the expiration or other termination of this Lease.

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

h. This Lease shall be governed by the laws of the State of North Carolina.

i. This Lease 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, the parties have caused this to be duly executed as of the date set forth in the preamble.

**KEYHOLDER:**

**ORGANIZATION: Carolina Multiple Listing Services, Inc.**

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

By: Cara Marie Howard

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

Title: Chief Executive Officer

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

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

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

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

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

**Addendum A Attached**

**Addendum A**  
**Fee and Cost Schedule**

**Lease, Subleased and Purchased Product\***

**A. Fees**

1. Keyholders shall pay to Organization Key Issuance Fees for the Display Key and System Services as set forth below: (Annual system fee is prorated on a monthly basis beginning in July.)

**If new product was leased:**

<b>Product</b>	DisplayKEY/Cradle
<b>Lease Price</b>	\$199.00 + tax
<b>Activation Fee</b>	\$50.00
<b>Refundable Deposit</b>	\$25.00
<b>Quarterly System Fee</b>	\$30.00 (\$120.00 Annually)

**If used product was leased:**

<b>Product</b>	Used DisplayKEY/Cradle
<b>Lease Price</b>	\$135.00 + tax
<b>Activation Fee</b>	\$50.00
<b>Refundable Deposit</b>	\$25.00
<b>Quarterly System Fee</b>	\$30.00 (\$120.00 Annually)

**All keys held by Key holders who fail to meet the payment deadline will be inactivated until payment is made.**

**B. Product Replacement Cost**

1. If any Leased, Subleased, or Purchased Product is lost, stolen, or damaged by Keyholder and must be replaced during the Term, Keyholder should be prepared to pay the following replacement fees:

<b>iBox (NEW)</b>	\$92.00 + tax
<b>iBox (USED)</b>	\$60.00 + tax
<b>New DisplayKey w/ Cradle</b>	\$199.00 + tax
<b>New DisplayKey only</b>	\$150.00 + tax
<b>New DisplayKey Cradle only</b>	\$49.00 + tax
<b>Used DisplayKey w/Cradle</b>	135.00 + tax
<b>Used DisplayKey only</b>	100.00 + tax
<b>Used Cradle</b>	35.00 + tax

DisplayKEYs that are stolen may be replaced free of charge if Keyholder can provide Organization with a copy of a Police Report of the incident.

If any previously lost/stolen Product is recovered, Keyholder must return, to Organization, the replacement product they were given. At no time may a Keyholder retain more than one DisplayKEY. Upon return of replacement product, Keyholder may expect to receive a partial refund.

**C. Liquidated Damages**

The damages for Keyholder's failure to return any unit of the Leased, Subleased or Purchased Product within one (1) week of resignation or termination from the Organization, shall be as follows and is based on the initial lease amount paid:

<b>New DisplayKey w/ Cradle</b>	\$199.00 + tax
<b>New DisplayKey only</b>	\$150.00 + tax
<b>New DisplayKey Cradle only</b>	\$49.00 + tax
<b>Used DisplayKey w/Cradle</b>	135.00 + tax
<b>Used DisplayKey only</b>	100.00 + tax
<b>Used DisplayKey Cradle only</b>	35.00 + tax

**D. Keyholder Default**

Keyholders found in violation or default of the Keyholder Lease Agreement and/or Rules and Regulations are subject to the fines as set forth below:

Violation	Penalty/Fine
Attaching PIN to Key	\$500.00
Lending leased DisplayKEY to another individual	\$500.00
Attaching Shackle Code to Lockbox	\$500.00

\*These fees are all encompassing whether referenced in a DisplayKey Keyholder Lease Agreement or an iBox Sublease Agreement or otherwise.

**KEYHOLDER:**

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

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

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

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

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

**ORGANIZATION: Carolina Multiple Listing Services, Inc.**

By: *Gene Marie Howard*

Title: Chief Executive Officer

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

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