

ELECTRONIC KEY and KEYBOX LEASE, LICENSE and USE AGREEMENT

This Electronic Key and Keybox Lease, License and Use Agreement ("Agreement") is made and entered into by and between the **Arlington Board of REALTORS®, Inc.** a Texas corporation ("Association"), and _____ ("Keyholder"). In consideration of the mutual agreements herein contained, the parties agree:

1. Definitions. As used in this Agreement, the following terms and phrases shall have the respective definitions as set forth as follows:

- (a) "Association" or "ARBOR" means the Arlington Board of REALTORS®, Inc., a Texas corporation, its officers, directors, agents and employees.
- (b) "Keybox" means the iBox.
- (c) "Key" means either the ActiveKEY; eKEY Professional Software Service; or eKEY Basic Software Service.
- (d) "MLS" means the Arlington Board of Realtors MLS Service.
- (e) "NTREIS" means North Texas Real Estate Information Systems, Inc., a Texas corporation.
- (f) "Keyholder" means the individual person identified as Keyholder in the first paragraph of this Agreement.

Keyholder represents and warrants that Keyholder is:

Designated REALTOR/Broker, or **a sales associate of Broker/Participant.**

2. Security Considerations. The Association may terminate this Agreement and may refuse to activate or reactivate any Key held by the Keyholder if the Keyholder is convicted of a felony or misdemeanor and if the crime, in the determination of the Association, relates to the real estate business or puts clients, customers, or other real estate professionals at risk.

3. Additional Security Considerations. The Association may suspend the Keyholder's right to use Keys following the Keyholder's arrest and prior to any conviction for any felony or misdemeanor which, in the determination of the Association, relates to the real estate business or which puts clients, customers, or other real estate professionals at risk.

Have you ever been convicted of a felony or misdemeanor?

Yes No

Are there any felony or misdemeanor criminal proceedings pending against you? [You may exclude misdemeanors involving DWI, drug possession, bad checks, and disturbing the peace.]

Yes No

If you responded **YES** to either question, please provide:

- A copy of final convictions, if any;
- A copy of the indictment;
- Information related to any release or discharge of probation;
- An explanation of the circumstances surrounding the conviction or charges;
- Information as to whether the convictions or charges have been disclosed to the Texas Real Estate Commission; and
- Any other relevant information necessary for a review of the conviction or charges.

4. Indemnification. The Association and UTC Fire & Security Americas Corporation, Inc. ("UTCFS") will not be liable for any damage to any person, persons or property occurring as a result of the use or abuse of any Key or Keyboxes. The Keyholder agrees to use all reasonable care and diligence in the use of the Key and Keyboxes and will protect, indemnify, defend and hold harmless the Association and UTCFS and their respective directors, officers, employees, agents and attorneys from any liability, claim, cause of action, suit, arbitration, loss, expense or damage to any person, including attorney fees and costs, arising from the use of the Key, Keyboxes or otherwise related to or concerning this Agreement whether due to the act of the Keyholder, an employee or agent of the Keyholder, or any other person whatsoever, or a loss of any kind or character occasioned by theft or from any cause whatsoever.

5. Reimbursement. Keyholder agrees to reimburse Association for any and all expenses incurred by Association attempting to recover the Key or Keyboxes or otherwise related to or concerning the Agreement from Keyholder or to enforce or interpret any of the provisions of this Agreement. Keyholder agrees to pay all costs and expenses incurred by Association, together with reasonable attorneys fees, with respect to enforcing the terms and provisions of this Agreement. Keyholder agrees to pay all costs and expenses incurred by Association in reestablishing the security of the Key/Keybox system if it is determined that security has been compromised through the negligence or fault of the Keyholder.

6. Authorization. Keyholder will secure written authorization from the owner and/or tenant, if required by the lease contract, in possession of any property listed for sale or lease prior to the installation and use of an electronic Keybox on such property. Extreme care should be taken by Keyholder to ensure that the property is secured and the electronic Keybox is

operated properly.

7. Default. Breach of any of the provisions of this Agreement shall entitle the Association to terminate this Agreement without prejudice to or limitation of any other remedy available to Association at law or in equity.

8. Key Receipt. Keyholder hereby acknowledges receipt of the Key and the personal identification number (PIN) from the Association.

9. System Service Fee. So long as this Agreement remains in effect, Keyholder agrees to pay quarterly, in advance, system service fees as determined from time to time by the Association for the use of the Key and participation by Keyholder in the Key program. The failure of Keyholder to pay the system service fees timely shall constitute a default under this Agreement and entitle Association to terminate this Agreement and all further rights of Keyholder to use the Key or Keyboxes. If Keyholder is a participant or subscriber of the MLS, the system service fee will be included in the Keyholder's quarterly subscriber fees and may or may not be separately assessed.

10. Return of Key and Materials. It is understood and agreed by the Keyholder that the Key and all related equipment covered by this Agreement shall remain the property of the Association. Upon return of the Key and all related equipment and materials in good condition and in working order within 48 hours of receipt by Keyholder of a request to do so by the Association or within 30 days after any of the following events, then the actual amount of the Keyholder's deposit in an amount of not more than \$85.00 will be refunded to the Keyholder ("Refund Amount"):

(a) Termination of either Broker or Keyholder as an active member of the Association in good standing as a REALTOR® or MLS Participant.

(b) Termination of Keyholder's affiliation with Broker for any reason.

If the Keyholder fails to return the Key and all related equipment and materials on or before the applicable deadline specified above then no refund will be paid and Keyholder will be required to pay Replacement Costs of the Key as set forth in Paragraph 15 of this Agreement.

In the event of death of Keyholder, Keyholder's heirs or personal representatives shall surrender the Key to Association within thirty (30) days of a request to do so by Association and shall be entitled to a refund (without interest) of the Refund Amount. Failure to return the Key as provided herein shall entitle the Association to retain the Refund Amount as liquidated damages and Keyholder's estate will be required to pay Replacement Costs of the Key as outlined in Paragraph 15 of this Agreement.

11. Security and Use of Key and Keyboxes. Keyholder agrees:

(a) To keep the Key in Keyholder's possession or in a safe place at all times.

(b) Not to allow Keyholder's PIN to be attached to the Key or carrying case.

(c) Not to loan the Key to any person, for any purpose whatsoever, or to permit the Key to be used for any purpose by any other person; except in the event of electronic failure of an Key belonging to a participant or subscriber affiliated with the Keyholder's broker for a time not to exceed 72 hours.

(d) Not to duplicate the Key or allow any other person to do so.

(e) Not to assign, transfer or pledge the Key.

(f) To notify the Association immediately in writing of the loss or theft of the Key and the circumstances surrounding such loss or theft.

(g) To fully comply with all security procedures and the applicable Rules and Regulations of the Association for use of the Key and Keyboxes as specified from time to time by the Association. Keyholder also agrees to abide by the rules and regulations of the Service as listed in the applicable User Guide.

(h) To safeguard the SHACKLE CODE and CALL BEFORE SHOWING CODE (CBS) of each Keybox from other system users and non-users.

(i) To notify the Association immediately, in writing, of the loss or theft of the Keybox and the circumstances surrounding such loss or theft.

(j) To notify the Association, in writing, if Keyholder sells, trades, or otherwise transfers Keybox to another party. Such notice shall include the name of the transferee and the serial numbers of the Keyboxes transferred.

12. Return of the Keyboxes. Keyholder agrees to return leased Keyboxes within ten (10) days at the time of any of the following events:

(a) Termination of the Broker or Keyholder as an active participant.

(b) Request from ARBOR for Keyholder to return extra Keybox(es) to ARBOR for distribution to other users.

(c) In the event of the death of the Keyholder, Keyholder's heirs or personal representative shall surrender the Keyboxes to ARBOR within thirty (30) days after requested to do so by ARBOR

(d) ARBOR will pay Keyholder the refund amount for each Keybox returned under items A, B or C in accordance with ARBOR's established policy.

NOTE: Failure to return the Keyboxes as provided herein shall result in breach of the Agreement and Keyholder agrees to pay all expenses and costs including reasonable attorney's fees incurred by ARBOR in enforcing this provision. Keyholder may also be subject to suspension of EntryCard/Keybox System Service ("Services"), and to a billing of the replacement cost per Keybox as determined by ARBOR. This replacement cost would be used to provide additional Keyboxes for distribution to other users.

13. Acknowledgment. Each party using a Key or Keyboxes hereby acknowledges that neither the Key nor the Keyboxes, nor any other 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 Key or disclosure of Personal Identification Numbers compromises the integrity of the Service and each party agrees that it will use its best efforts to insure the confidentiality and integrity of all components of the Service.

14. Inspections and Audits. The Association shall have the right to inspect the Key at all reasonable times and places. Keyholder agrees to submit the Key for inspection at the Association's office within 48 hours after receipt of written notice. In addition, Keyholder agrees to submit the Key for inspection on an annual basis for a Key audit, and any other time upon oral request if the Association believes that the integrity or security of the electronic Keybox system is in jeopardy. A failure to comply with the terms of this paragraph shall constitute a breach of this Agreement.

15. Loss, Theft, or Damage of ActiveKEY. In the event the ActiveKEY is damaged as a result of a negligent or willful act of the Keyholder, or as a result of abuse or improper use of such ActiveKEY, or in the event of the breach of any other provision of this Agreement, then in any such event Keyholder may be required to deliver to the Association an amount as outlined below as a condition to the issuance of a replacement ActiveKEY to Keyholder. In the event of loss or theft of the ActiveKEY, the Keyholder shall furnish to the Association a written Statement of Loss or Theft and a Police Report.

Keyholder understands that Replacement Insurance is available to Keyholder to cover the replacement costs if ActiveKEY is lost or stolen. In the event Keyholder fails to purchase Replacement Insurance or in the event the Loss or Theft is not covered by Insurance, or if the ActiveKEY is damaged as described above then Keyholder will be required to pay the following Replacement Costs as liquidated damages below.

Replacement Cost. The replacement cost for any lost, stolen or damaged piece of the Equipment shall be as follows ("Replacement Cost"): **ActiveKEY - \$250.00**

16. Rules and Regulations. Those portions of the NTREIS MLS Rules and Regulations and applicable Rules and Regulations of the Association or other Rules and Regulations pertaining to Keyboxes or Keys and their use are incorporated herein by reference, as they now exist and as they may be amended from time to time. Keyholder agrees to comply with provisions contained therein, as well as any and all reasonable rules and regulations promulgated by NTREIS or the Association.

17. Additional Provisions. To execute promptly, at Association's sole cost and expense, any ancillary documents and take all such further actions as Association may reasonably request.

To provide Association with written notice of any legal proceeding or arbitration in which Keyholder is named as a defendant and which alleges defects in the Equipment used in connection with the Service, within five (5) days after Keyholder becomes aware of such action.

This Agreement shall automatically terminate upon the termination of Association's written Master Agreement with UTCFS related to the Service.

ASSOCIATION MAKES NO AND EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, COVENANTS, OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION, MERCHANTABILITY, QUALITY, SUITABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE KEY(S), KEYBOXES, EQUIPMENT AND/OR THE SERVICE. WITH RESPECT TO ASSOCIATION'S DUTIES TO ASSOCIATION, IT IS EXPRESSLY AGREED THAT THE KEY(S) AND THE SERVICE ARE SUBLEASED TO KEYHOLDER STRICTLY ON AN "AS IS" AND "WITH ALL FAULTS" BASIS.

ASSOCIATION IS NOT LIABLE FOR ANY DAMAGES CAUSED BY ANY FAILURE OF THE EQUIPMENT OR SERVICE TO OPERATE OR THE FAULTY OPERATION OF SAME. ASSOCIATION IS NOT LIABLE FOR ANY DAMAGES OR LOSSES RESULTING FROM THE INSTALLATION, OPERATION, OR USE OF THE KEY(S), KEYBOXES, EQUIPMENT AND/OR SERVICE.

ASSOCIATION MAKES NO REPRESENTATION OR WARRANTY THAT THE KEY(S), KEYBOXES, EQUIPMENT AND/OR SERVICE MADE AVAILABLE UNDER THIS AGREEMENT ARE DELIVERED OR PROVIDED FREE OF THE RIGHTFUL CLAIM OF ANY THIRD PARTY BY WAY OF INFRINGEMENT.

IN NO EVENT WILL ASSOCIATION OR UTCFS BE LIABLE TO KEYHOLDER FOR LOSS OF BUSINESS, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, CONTRACT, OR TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE), ARISING OUT OF THE QUALITY, CONDITION, OR USE OF THE SERVICE OR ANY RIGHT OR PRODUCT SOLD, SUBLICENSSED, SUBLEASED OR ASSIGNED

HEREUNDER OR IN CONNECTION HEREWITH. In no event shall Association be liable to Keyholder for any claim arising out of or relating to the Service or this Agreement in an amount exceeding the amount of the aggregate fees paid by Keyholder to Association hereunder. Any lawsuit by any party arising out of or relating to the Key(s), Keyboxes, Equipment, Service or this Agreement shall be filed within **two (2)** year from the complaining party's first knowledge of the occurrence which gives rise to the cause of such action.

Keyholder shall not sell, assign, transfer, lease, sublease, license, sublicense, encumber or hypothecate this Agreement or any property right, title or interest set forth or described in this Agreement, without the express prior written consent of Association.

This Agreement constitutes the entire agreement between the parties. No agreements, representations, or warranties other than those specifically set forth in this Agreement are binding on any of the parties.

This Agreement has been executed and delivered in the State of Texas and shall be interpreted under and construed in accordance with the law of Texas. It is agreed that Texas law will control the validity of and the obligations created by this Agreement. VENUE FOR ANY ACTION ARISING OUT OF THIS AGREEMENT SHALL LIE EXCLUSIVELY IN TARRANT COUNTY, TEXAS AND **EACH OF KEYHOLDER AND** ASSOCIATION HEREBY WAIVES THE RIGHT TO SUE OR BE SUED ELSEWHERE.

This Agreement and each of its provisions is binding on and inures to the benefit of the respective heirs, assignees, executors, administrators, trustees, and successors of the parties. Nothing in this Section may be construed as a consent by Association to any assignment by Keyholder of any interest in this Agreement.

18. Termination of Prior Lease Agreement. Upon full execution of this Agreement, any prior Lease Agreement for Electronic Key and/or Electronic Keybox Lease Agreement between any of the undersigned parties is automatically superseded and replaced and is further terminated and of no further force and effect.

EXECUTED at Arlington, Texas, this _____ day of _____, 20____.

Print Keyholder's Name

Keyholder's Signature

Print Name of Brokerage Firm

Business Street Address

City,

Texas

Zip

Business Telephone Number

Keyholder's Home Phone Number

Keyholder's Cell Number

Keyholder's Home Address

City,

Texas

Zip

Keyholder's Real Estate License Number

Keyholder's Social Security Number (last 4 only)

By: Arlington Board of REALTORS®

Name\Position