

# GREATER HARTFORD ASSOCIATION OF REALTORS®, Inc.

## DisplayKEY Sub-Lease Agreement

This Sub-Lease Agreement ("Lease") is entered as of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ ("Keyholder"), and Greater Hartford Association of REALTORS®, Inc. ("Organization" or "GHAR") covering the following equipment:

DisplayKEY (Serial # \_\_\_\_\_).

Keyholder and GHAR agree as follows:

### 1. LEASE AGREEMENT

a. GHAR leases to Keyholder, and Keyholder leases from GHAR, the equipment described above (which may be new or refurbished), which includes the DisplayKEY and the DisplayKEY Cradle (collectively the "DisplayKEY") (collectively, the "Equipment.") In addition, GHAR grants to Keyholder (i) a limited non-exclusive, non-transferable sub-license to use the network, the use of which GHAR licenses from GE Security, Inc. ("GE"), 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 sub-license to use the software GHAR licenses from GE (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 GE, which will be provided to Keyholder and is incorporated herein by reference.

b. This Lease shall commence on the date set forth above and have a term ("Term") until September 29, 2014, unless terminated earlier or extended pursuant to the provisions of this Lease.

c. 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 GHAR and/or its MLS system. 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 GE 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.

d. Keyholder understands that, in order to make the Service available to Keyholder, GHAR and GE entered into a Master Agreement that provides the terms under which GE will provide the Service to GHAR. **Keyholder understands that, if the Master 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 13 below. Keyholder agrees that, under the terms of the Master Agreement, GHAR 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 Section 6(a) below) and/or the termination of this Lease.** Except as the rights and obligations of Keyholder and GHAR under this Lease may be affected as described in the two preceding sentences, the rights and obligations between Keyholder and GHAR with respect to the Service are governed solely by the terms and conditions of this Lease. Keyholder understands that failure of GHAR to perform its obligations under the Master Agreement may detrimentally affect Keyholder's use of the Service.

e. In the Master Agreement, GE 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 GHAR. If GE 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, GHAR 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.

2. TITLE AND USE The Service, including all its components, and the Equipment, are and shall at all times remain the property of GE. All additions, attachments, replacement parts and repairs to the Equipment, and any Replacements shall become part of the Equipment 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.

3. TRANSFER. If Keyholder transfers from one Designated REALTOR® (DR) to another DR, Keyholder will be entitled to continue hereunder, provided the new DR executes in writing with five days, a transfer and assumption of

DR's responsibilities on a form provided by GHAR. GHAR may assess a processing fee for such transfers, which must be paid by Keyholder promptly. Failure to return the completed transfer form or pay any applicable transfer fee to GHAR within five days shall constitute default under this Agreement by Keyholder.

4. **STATUS.** If DR fails to maintain DR status in a REALTOR® association or Keyholder fails to maintain affiliation with a DR, the DisplayKEY will be deactivated and Keyholder must immediately return all Equipment in his/her/its possession to GHAR.

5. **SECURITY OF KEY.** Keyholder agrees:

- a. To not attach the secret code number to the DisplayKEY and to maintain the security and confidentiality of such secret code numbers.
- b. To not loan the DisplayKEY to any person, whether or not a Real Estate licensee, for any purpose whatsoever, or to permit the DisplayKEY to be used by any other person, unless permitted under GHAR rules.
- c. To not assign, transfer or pledge this Agreement or the DisplayKEY.
- d. To immediately notify GHAR in writing of the loss, destruction or theft of the DisplayKEY and circumstances surrounding such loss, destruction or theft.
- e. To follow all additional security procedures as specified in writing by GHAR from time to time.

6. **PAYMENTS**

a. **DURING THE TERM OF THIS LEASE, KEYHOLDER SHALL PAY TO GHAR A FEE FOR THE LEASE AND USE OF THE EQUIPMENT, PLUS APPLICABLE TAX, (THE "SYSTEM FEE"). THE SYSTEM FEE SHALL BE DETERMINED BY THE GHAR. KEYHOLDER SHALL BE ENTITLED TO TERMINATE THIS LEASE IN ACCORDANCE WITH THE PROVISIONS CONTAINED IN SECTION 13.**

b. Keyholder shall pay the System Fee determined by the GHAR upon entering this Lease and shall pay the System Fee for all subsequent years as directed by the GHAR.

c. The GHAR reserves the right to: (i) increase the System Fee annually in the sole discretion of the GHAR Board of Directors, (ii) charge a key activation fee, (iii) charge a late fee for any System Fee that is not paid as directed by the GHAR, 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 GHAR 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.

7. **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 GHAR. 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 Lease 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 GHAR to such location as GHAR shall specify, all of the DisplayKEY 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.

c. If the DisplayKEY is ever lost or stolen, Keyholder and DR each have the obligation to notify GHAR immediately of such fact and GHAR shall have the right to immediately deactivate such DisplayKEY and take any other steps it deems necessary to secure the Equipment and the Service. If Keyholder then requires a replacement DisplayKEY, Keyholder shall lease a replacement DisplayKEY exclusively from GHAR at the then current price.

8. **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 GHAR and/or GE relating to such misuse, Keyholder agrees to indemnify, defend and hold harmless GHAR 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, contested matter or motion or otherwise) incurred by GHAR and/or GE in such proceeding.

b. **That neither GHAR 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 GHAR 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.

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

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

iii. Termination of DR's Membership in a REALTOR® Association.

iv. Termination of Keyholder's affiliation with a Designated REALTOR® for any reason, unless a transfer of assumption of Designated REALTOR®'s responsibilities is submitted to GHAR, in accordance with Section 3 of this Agreement.

v. Failure to comply with a Key audit by GHAR.

vi. Failure to comply with any provision of this Agreement, including, without limitation, the rules and policies incorporated herein by reference.

b. An Event of Default by GHAR under this Lease will occur upon the termination for any reason of the Master Agreement.

## **10. RIGHTS AND REMEDIES**

a. Upon the occurrence of an Event of Default by Keyholder, GHAR 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. Terminate this Lease and demand the return of any Equipment to GHAR;

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 Lease, 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 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 GHAR in connection with the exercise of its rights and remedies under this Lease.

b. Upon the occurrence of an Event of Default by GHAR 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 GHAR and to pay GHAR any outstanding amounts owed under this Lease, including any damages for the failure to return the Equipment.

c. If GHAR 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 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 GHAR in connection with collecting under this Lease. After confirmation of the curing of such defaults and the receipt of payment of such amounts, GHAR shall direct GE to reactivate the Equipment within twenty-four (24) hours.

d. In the event that GHAR 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 GHAR 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. GHAR'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 or of such right or remedy. GHAR's rights and remedies are cumulative, not exclusive, and no exercise of any remedy shall preclude the exercise of another remedy.

**11. 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 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 West Hartford, Connecticut; 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 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 attorneys' fees in such action or any appeals therefrom or reviews thereof.

**12. 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.

**13. TERMINATION**

a. Keyholder may terminate this Lease at any time by returning the Equipment to GHAR and paying GHAR any amounts owing prior to such termination, including (i) any applicable damages for the failure to return the Equipment as set forth in Section 4 (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 GHAR.

b. GHAR may terminate this Lease upon termination of the Master Agreement for any reason, including without limitation, a default by GHAR under the Master Agreement or an upgrade of the Service by GHAR. Upon termination, Keyholder shall be obligated to satisfy the obligations in Section 13(a).

c. 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 GHAR, and therefore agrees to pay to GHAR, as liquidated damages for such failure to return the Equipment, the amount set forth in Section 4(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.

**14. WARRANTY** The Equipment 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 Lease. GE 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 GHAR at Keyholder's sole cost and expense and GHAR 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 GHAR and GE by performing diagnostic tests provided to Keyholder when Keyholder initially seeks warranty service.

**15. GENERAL PROVISIONS**

a. This Lease constitutes the entire agreement between GHAR and Keyholder relating to the lease of Equipment and use of the Service.

b. Provided that Keyholder has returned to GHAR all keys previously leased by GHAR to Keyholder, all prior leases between GHAR 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 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.

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 Connecticut.

i. This Lease shall be binding upon and inure to the benefit of GHAR, and its successors and assigns, and Keyholder and its permitted successors and assigns.

16. **AMENDMENT.** GHAR may unilaterally amend this Agreement to the extent any amendments are necessary or appropriate for compliance with the applicable laws

17. **INSPECTION/CARD AUDIT** GHAR shall have the right to inspect the Key issued to KEYHOLDER at all reasonable times and places. Keyholder agrees to submit the Key for inspection at GHAR's headquarters, when given not less than 48 hours written notice, or a verbal request, if it is believed that the integrity and security of the System are in jeopardy.

18. **DESIGNATED REALTOR® RESPONSIBILITY** DR confirms that DR is both a licensed Real Estate broker and a DR Member of a REALTOR® Association. DR also confirms:

- a. Keyholder is in fact affiliated with DR.
- b. Keyholder has a current real estate broker or salesperson license.
- c. In addition to DR's obligations under Section 4 of this Agreement, DR will notify GHAR in writing should Keyholder's affiliation with DR be terminated.
- d. DR shall supervise the duties and responsibilities of Keyholder under this Agreement.

19. **RULES AND REGULATIONS** GHAR's KeyBox Service Rules and other regulations pertaining to Keys, KeyBoxes, and their use, and all rules, regulations and policies of GHAR relating to the operation of this keybox system are incorporated herein by reference, as they now exist and as they may be amended from time to time. DR and Keyholder covenant and agree to comply with the provisions contained therein.

20. **FAILURE TO COMPLY** Failure to comply with the terms of this Agreement may result in disciplinary action by GHAR, a written complaint to the Real Estate Commission, and/or any appropriate law enforcement agencies.

IN WITNESS WHEREOF, GHAR and Keyholder have caused this Lease to be duly executed as of the date set forth in the preamble to this Lease.

Executed at \_\_\_\_\_, Connecticut, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

MEMBER # \_\_\_\_\_ Key No. \_\_\_\_\_ Cradle No. \_\_\_\_\_

\_\_\_\_\_  
Print KEYHOLDER's Name

\_\_\_\_\_  
Print DR's Name

\_\_\_\_\_  
KEYHOLDER's Signature

\_\_\_\_\_  
**DR's Signature (required)**

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Firm Address

\_\_\_\_\_  
KEYHOLDER's Driver's License No. \_\_\_\_\_

\_\_\_\_\_  
KEYHOLDER's Home Phone No. \_\_\_\_\_

\_\_\_\_\_  
KEYHOLDER's Home Address \_\_\_\_\_

\_\_\_\_\_  
Greater Hartford Association of REALTORS®, Inc.

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

Authorized GHAR Representative