



# Area WIRELESS Terms of Service Agreement (the "Agreement")

## Context

- A. Area WIRELESS is available to REALTORS® and unlicensed professionals working at real estate organizations and brokerages and their immediate families.
- B. Area WIRELESS is a single corporate-enterprise account whereby all subscribed users utilize a Shared Unlimited Data Plan which is supplied by Rogers in accordance with the master agreement between ARESC and Rogers. There are differences between mobility corporate-enterprise accounts and consumer accounts in terms of features, roaming, data-usage and charges. Without limitation, with a corporate-enterprise account, the policies are set between ARESC and users, while with a consumer account, the policies are set between the network/provided and users.

## 1. Definitions

1.1 In this Agreement, the following terms have the following meanings:

- A. '**Affiliates**' has the meaning as defined in the *Business Corporations Act* (Alberta).
- B. '**ARESC**' is AREA Real Estate Services Corporation.
- C. '**ARESC Account**' is the corporate account with Rogers through which the Services are provided.
- D. '**ARESC Equipment**' means all material, equipment and software required for User to use the Services and made available to User by ARESC, and any other equipment used by ARESC in the provision of the Services, provided however, it shall not include products purchased by User under this Agreement pursuant to, without limitation, Section 32 (whether on an installment payment plan or otherwise).
- E. '**CRTC**' is the Canadian Radio-television and Telecommunications Commission.
- F. '**Device**' is the tool used to access the Services.
- G. '**Fuel**' is 1399493 Alberta Inc. (operating as Fuel Mobile).
- H. '**Parties**' means ARESC and the User and 'Party' means either one of them.
- I. '**Rogers**' is Rogers Communications Canada Inc.
- J. '**Rogers Wireless Network**' has the meaning given to that term in Section 8.1 herein.
- K. '**Services**' are the mobile voice, data and related services provided for in this Agreement. For certainty, any materials the User accesses through the internet, or downloads, do not form part of the Services.
- L. '**User**' is the counterparty (counter to ARESC) to this Agreement, and being the person or entity that is responsible for the use of the Services.

## 2. Agreement

2.1 This Agreement is between the User and ARESC, a corporation duly incorporated under



the laws of Alberta.

**2.2** This Agreement, including any Schedules, and any ARESC, Fuel or Rogers policy documents referred to in this Agreement, set out the full and complete agreement between ARESC and the User about the subject matter hereof and supersede all prior or contemporaneous agreements or understandings of any kind, whether written or oral. There are no warranties, representations, covenants or agreements between ARESC and the User except as specifically set forth or referred to in this Agreement.

**2.3** Any limitation of liability or indemnification that applies to ARESC in this Agreement also applies to its directors, officers, Affiliates (in the case of ARESC, which includes The Alberta Real Estate Association), contractors, employees and agents.

**2.4** By using the Services, the User accepts and agrees to abide by this Agreement.

### **3. Changes to the Agreement**

**3.1** ARESC may change this Agreement, including but not limited to, the terms and conditions, the Schedule, the Services and ARESC's fees and rates at any time. Notice of these changes will be sent by email to the User 30 days prior to the effective date for the change. If the User does not accept the changes, they may cancel the Services before the effective date. If the User does not cancel the Services, the continued use of the Services is taken as acceptance of the new agreement.

### **4. Services**

**4.1** ARESC, using ARESC's Account, will provide the Services to the User at the rates and with the features based on the enterprise account plan summarized in the chart attached hereto as *Appendix I Chart: YOUR AREA WIRELESS PLAN*, all in accordance with the terms and conditions of this Agreement.

**4.2** As the account holder of the ARESC Account, ARESC reserves the right to make decisions, in its sole discretion and without consultation with User, respecting the ARESC Account that impact the User. If the change increases the User's monthly fee for Services, the User will be given notice 30 days prior to the effective date of the change. The User may then decide whether or not to accept the change as described in Section 3 above.

### **5. Account Registration and Management**

**5.1** Account registration and management of the Services will be handled by Fuel on behalf of ARESC. The User warrants that any information provided to Fuel to register for the Services is true and consents to Fuel managing the Services and the User's account. Further thereto, User acknowledges that User may be asked to accept certain terms and conditions in order to be registered in Fuel's system.

### **6. Activation**

**6.1** The Services start when the User's line is activated by Rogers and a Rogers SIM card is put into the User's Device or, in the case of existing Rogers customers, when the User's line is migrated to the ARESC Account by Rogers.

### **7. SIM Cards**

**7.1** The User may only use a Rogers SIM card in a Rogers approved Device or other



hardware which has been approved by Rogers.

## **8. Rogers Wireless Network**

**8.1** The Services will be provided using the Rogers-owned wireless transmission facilities (the "**Rogers Wireless Network**"). The User acknowledges and agrees that Rogers has the right to, in its discretion and without notice, make changes to any aspect of the Rogers Wireless Network from time to time.

**8.2** The Services will be provided within the geographic area(s) that Rogers provides the Services (the "**Service Area**"), which area may be enlarged or reduced in scope from time to time by Rogers in its sole discretion. A map of the Service Area can be found at <http://www.rogers.com/consumer/wireless/network-coverage>. ARESC does not warrant any information contained in the map, including but not limited to, the quality of the Services or the location of the coverage.

**8.3** The User acknowledges that the Services are subject to transmission limitations caused by atmospheric or topographical conditions or equipment failures beyond the reasonable control of Rogers. The Services may be temporarily refused, interrupted or curtailed due to governmental regulations or orders, system capacity limitations or equipment modifications, upgrades, reallocations, repairs, maintenance and similar activities necessary for the proper operation of the Services.

## **9. Extended Coverage and WI-FI Calling**

**9.1** As part of the Services, the User will have access to extended coverage.

**9.2** Extended coverage is meant to provide additional wireless coverage within Canada, outside of the Rogers Wireless Network without incurring roaming charges. Extended coverage is intended for occasional use. The majority of the User's monthly usage (voice, data and SMS) must occur on the Rogers Wireless Network, otherwise, Rogers may restrict or limit the User's access to extended coverage on an ongoing basis.

**9.3** A User's Device containing a Rogers SIM card will always connect to the Rogers Wireless Network if it's available. Once the User leaves the Rogers Wireless Network and enters an extended coverage area, the User's Device will automatically connect to extended coverage. If the User is on a call when entering an extended coverage area, the call will drop. Once EXT appears on the Device screen, the User can call back to complete the call. A few enhanced features may not be available while in an extended coverage area, including:

- A. Call Display / Name Display
- B. 4-1-1 Directory Assistance Call Completion
- C. Pound numbers (#) and short codes
- D. Some advanced features while using Rogers One Number™
- E. N-1-1 codes
- F. 2-1-1 Community Information
- G. 3-1-1 Non-Emergency Municipal Government
- H. 5-1-1 Weather & Traveler Information
- I. 7-1-1 Access to Message Relay Service (MRS) by the deaf
- J. 8-1-1 Non-urgent Health Tele-triage Services

**9.4** Rogers and its roaming partners may, without notice, change geographical coverage areas.



Neither Rogers nor ARESC is liable to the User for any loss suffered as a result of any disruptions or outages to extended coverage, or as a result of any changes to extended coverage areas.

**9.5** WI-FI calling may be made available to the User. If made available, WI-FI calling enables a User to use a Device to make and receive phone calls, and send and receive messages, over a Wi-Fi network. This means the User would still be able to call and text even in areas where the Rogers Wireless Network coverage is limited, such as office buildings, factories and plants, as long as the device is configured to use a Wi-Fi connection. The User will need to, among other things, enable Wi-Fi calling on their Device. More details about this feature are available at [www.rogers.com/wificalling](http://www.rogers.com/wificalling). It is the User's responsibility to be informed of usage rates that will apply in relation to WI-FI calling. Questions that the User has about WI-FI calling, including any costs related thereto, should be directed to the Area WIRELESS Concierge. **IMPORTANT: WI-FI CALLING HAS DIFFERENCES AND UNIQUE LIMITATIONS OF 9-1-1 EMERGENCY SERVICES. THE USER IS RESPONSIBLE FOR REVIEWING ALL LIMITATIONS ON THEIR DEVICE WHEN YOU ENABLE THE FEATURE PRIOR TO ACTIVATION.**

## **10. Roaming**

**10.1** Coverage is provided outside of Canada by third-party service providers. The User is responsible for monitoring use of their Device while travelling and shall pay any and all charges and fees incurred from these third-party service providers. It is the User's responsibility to be informed of usage rates that will apply if the User is travelling outside of Canada. See *Appendix I Chart: Your Area Wireless Plan* for further details on roaming practices and charges. Any additional questions that the User has about the costs of travelling should be directed to the Area WIRELESS Concierge.

## **11. Third Party Applications**

**11.1** The User is responsible for their purchase, use, maintenance and support of any applications, software, content, data query functions and other services produced, manufactured or performed by third parties for installation on the User's Device and/or for use in connection with any software or Services (collectively, "**Third Party Services**"), whether offered by Rogers or a another third party. Where Third Party Services are offered, directly or indirectly, by Rogers, Rogers may charge fees with respect to such Third Party Services, in which case, User will be responsible therefore. Neither Rogers nor ARESC shall have any responsibility to correct or fix any problems or errors relating to or caused by the installation, configuration, modification or use of any Third Party Services or any components thereof.

**11.2** The installation and/or use of Third Party Services shall be at the sole risk of the User.

## **12. Data Use**

**12.1** The ARESC Account is not pooled and therefore Users will not be charged for Data Use Overages. It is important to note that once a User exceeds their included max speed data in a billing cycle, their data speed will be throttled to speeds of up to 512kb/s for the remaining of the billing cycle. The Rogers Wireless Network access and speed varies by geographic location. The User should be mindful and responsible with data to ensure that they do not exceed their max speed data and therefore have their data speed throttled to speeds of up to 512kb/s.



**12.2** ARESA reserves the right to block, turn off or cancel any of the Services without notice if, in ARESA's sole discretion, ARESA deems that additional costs may be incurred by the ARESA Account because of the User's data use.

### **13. Long Distance Rounding**

**13.1** Local and long-distance airtime charges will be charged in increments of sixty (60) seconds, rounded up to the nearest minute on a per call basis.

### **14. Identifiers**

**14.1** The User acknowledges it has no right, title or interest in or to any network address or identifier (such as telephone number, IP address, host name) ("**Identifier**") assigned to the User by Rogers. Rogers may, on reasonable notice, change the Identifier. Rogers is not obligated to notify any other party of a change to the User's Identifier. The User is entitled to port their number to another wireless service provider upon termination of a line in accordance with the requirements, if any, of the CRTC and by paying any applicable Rogers charges.

### **15. Substitute Services**

**15.1** The User acknowledges that Rogers may migrate a Service to an alternative service or technology as long as the alternative service or technology provides similar functionality as the Service. The definition of "Service" includes the alternative service. Neither Rogers nor ARESA will be responsible if any changes in the Service affects the performance of equipment, hardware or software or causes it to become obsolete or require modification or attention. ARESA shall provide the User with 30 days' notice of any such change.

### **16. Prohibitions and Restrictions**

**16.1** The User must use the Services at all times in compliance with:

- A. all laws;
- B. all ARESA policies, as modified from time to time;
- C. all Rogers policies, including Rogers Acceptable Use Policy, the IP Address Policy, the Privacy Policy, all as modified from time to time. The Rogers policies are available online at [rogers.com/consumer/support-terms](http://rogers.com/consumer/support-terms); and
- D. any applicable software licenses.

**16.2** The User shall not use nor permit usage of any of the Services for any improper use.

**16.3** The User may not resell, remarket, transfer or share any of the Services.

**16.4** The User will not reproduce, change or tamper with or allow anyone else to tamper with a serial number (ESN), mobile identification number (MIN), International Mobile Equipment Identity (IMEI) number, International Mobile Subscriber Identity (IMSI) number and/or the Subscriber Identity Module Number (SIM), as the case may be.

**16.5** In addition to the termination rights set out elsewhere in this Agreement, ARESA may, without any advance notice and/or reasons for taking such action, terminate the Services if the User engages in or ARESA suspects that the User is engaging activities which are contrary to the prohibitions and restrictions set forth in this Section 16. ARESA shall not be obliged to justify the termination, nor shall the User be entitled to any compensation, damages, losses, damage to reputation and/or other sums which arise as a direct and/or indirect result of such termination by



ARESC.

**16.6** ARESC reserves the right to charge the User for any direct or indirect costs incurred by ARESC in connection with the User's breach of any provision of this Agreement, including costs incurred to enforce the User's compliance with it.

## **17. Equipment**

**17.1** ARESC Equipment shall at all times be and remain the exclusive property of ARESC, wherever located, including on the User's premises. Upon termination or expiration of this Agreement or the Services, the User shall return the ARESC Equipment to ARESC at the User's expense. The User shall be responsible for the loss of or damage to the ARESC Equipment except if caused by the negligence or willful misconduct of ARESC. The User shall ensure at all times that the ARESC Equipment is stored in a manner and in an environment that conforms to relevant specifications provided by ARESC.

## **18. Suspension**

**18.1** The User acknowledges that Rogers has the right to suspend all or part of the Services or access to the Services immediately if Rogers reasonably suspects or determines that there is a malfunction, abuse, incorrect configuration or use of the Services, the Third Party Services, equipment owned by Rogers, the Rogers Wireless Network, to maintain or improve service, or if ARESC is in breach of any of their obligations under its master agreement with Rogers in respect of the Services, or for other business reasons. Further thereto, ARESC shall have the right to suspend all or part of the Services or access to the Services immediately if ARESC reasonably suspects or determines that there is a malfunction, abuse, incorrect configuration or use of the Services, the Third Party Services, equipment owned by Rogers, the ARESC Equipment, the Rogers Wireless Network, the Devices, to maintain or improve service, or if the User is in breach of any of their obligations under this Agreement, or for other business reasons.

**18.2** Charges for the Services will continue to be incurred and will be payable by the User during any herein contemplated suspension period.

## **19. Termination**

**19.1** *Termination by ARESC.* In addition to any other termination rights set out in this Agreement, ARESC may terminate this Agreement, without liability:

- A. at any time, if Rogers terminates or ceases to offer the Services to ARESC;
- B. at any time, if ARESC determines, in its sole discretion, that the User has breached or will likely breach any of the terms or conditions of this Agreement; or
- C. on 30 days' notice, for any reason.

Charges for the Services will continue to be incurred by the User up to the termination date. The termination date is the date the User receives notice from ARESC of any one of the events in (A) or (B) above. In the case of (C) above, the termination date is the day following the last day of the subject 30 day notice period. The User will cease receiving the Services on the termination date and all amounts then owing under this Agreement for the billing period up to the termination date will be reflected on the next bill and due and payable upon bill receipt.

**19.2** *Termination by User.* The User may terminate the provision of Services and this Agreement at any time by delivering notice to such effect to ARESC through Fuel. ARESC will



cease providing the Services and consider this Agreement terminated on the day Fuel receives the User's instructions to terminate. If the User has their phone number transferred to another service provider, ARESC will treat that as the User's decision to terminate the Services as of the transfer date. The User agrees to pay to ARESC all outstanding costs, and charges that the User has incurred up to the date ARESC stops providing the Services, immediately on receipt of the corresponding bill.

## **20. Charges and Payments (Billing)**

**20.1** Automatic credit card payments and current municipal (mailing) address are requirements of being on the ARESC Account. The User must at all times have an active credit card and a current mailing address on file with Fuel.

**20.2** A User account which does not have an active credit card or a current mailing address on file at any time may be suspended or cancelled by ARESC, as ARESC determines in its sole discretion.

**20.3** The User will be billed monthly (currently, each billing period is the 4<sup>th</sup> day of the month to 3<sup>rd</sup> day of the following month, but these start and end dates are subject to change). Users will receive an email and/or text message notifying them when a bill has been issued and is available for viewing online (an online account manager is maintained for the User). The credit card on file will be charged when the monthly invoice is received from Rogers and processed by Fuel. The date it is processed by Fuel is the required payment date.

**20.4** If payment of an amount due on the User's account is not received by ARESC by the required payment date, it will be considered an outstanding amount and will be subject to a late payment charge of 2% per month, calculated and compounded monthly on the outstanding amount (26.82% per year) from the required payment date until the date ARESC receives such amount in full. The User agrees that ARESC may charge any unpaid and outstanding amount, including any late payment charges and outstanding balance on a Device (see Section 32), on the User's account to the User's credit card or issue an invoice. Without derogating from or limiting anything else contained in this Agreement, if payment of an amount due on the User's account is not received by ARESC by the required payment date, ARESC may suspend or cancel the User's account. In the event of a suspension of the User's account, charges for the Services will continue to be incurred and will be payable by the User during the suspension period.

**20.5** The User agrees to pay to ARESC all amounts set forth in each invoice issued by Fuel, including but not limited to the charges applicable to the Services attributable to the User's Device, regardless of the User's own role in incurring them. For absolute certainty, ARESC will not credit for charges attributable to a User's Device, even if the User disputes their role in incurring those charges.

**20.6** Acceptance of late or partial payments does not waive ARESC's right to collect the full amount owing.

**20.7** ARESC may bill the User up to one year from the date that charges were incurred.

**20.8** The charges the User may be billed for include, but are not limited to:

- A. the cost of local and long-distance calls, character and data usage charges, and charges for messages and other Services made, sent from or received on the User's Device, including any charges relating to access to the services of other telephone companies or telecommunication carriers;



- B. the monthly and other fees for using the Services;
- C. amounts payable on account of the purchase of a Device (see Section 32);
- D. fees for extended coverage and roaming, as per Sections 9 and 10 herein;
- E. deposit(s), the price of software or other equipment and accessories (if any), shipping and handling and any other fees, charges or costs that arise out of this Agreement;
- F. any charges for excessive data usage;
- G. any fees incurred by ARESC for collection efforts due to non-payment; and
- H. all applicable taxes and similar charges relating to the above listed items.

**20.9** User should contact the Area WIRELESS Concierge regarding any questions about billing and/or charges incurred. Users should not contact Rogers directly to address billing concerns.

**21. No Warranties, Guarantees or Conditions**

**21.1** To the maximum extent permitted by applicable law:

- A. The User acknowledges and agrees that the Services and all Devices are provided “as is” and “as available” and without warranty, guarantee or condition of any kind whatsoever, express, statutory or implied, including, but not limited to, warranties of merchantable quality, fitness for a particular purpose, infringement, or those arising from a course of dealing or usage of trade. Without limiting the generality of the foregoing, ARESC shall not have any liability whatsoever to the User for:
  - I. any interruptions or disruptions of the Services, the internet or the Third Party Services or any other damages suffered by the User which are caused directly or indirectly by any failures of a Device, equipment owned by Rogers, ARESC Equipment, the Services, the Rogers Wireless Network, the internet or the Third Party Services;
  - II. any power failures;
  - III. any acts or omissions of the User or its agents or representatives;
  - IV. any disruption of any part of the equipment used to provide the Services;
  - V. any infringement of intellectual property rights arising from or in connection with the User’s use of a Device, the Services or Third Party Services;
  - VI. any event of force majeure; or
  - VII. any suspension or termination of the Services.
- B. ARESC does not warrant:
  - I. the performance, availability, uninterrupted use of or operation of the internet or the User’s connection to the internet;
  - II. that any data or files sent by or to the User (whether by e-mail or otherwise) will be transmitted, transmitted in uncorrupted form, or transmitted within a reasonable period of time;
  - III. uninterrupted or error-free Services; or
  - IV. the content, availability, accuracy or any other aspect of any information including all data, files and all other information or content in any form, accessible or made available to or by the User through the use of the Services.
- C. ARESC does not give any conditions or make any representations or warranties regarding any third party content, even if accessed by means of a link provided directly



or indirectly by ARESC, Fuel, or otherwise, including without limitation any conditions, representations or warranties regarding the ownership or functionality of such content.

## **22. Exclusions and Limitations of Liability**

**22.1** Notwithstanding any other term or condition contained in this Agreement, the User acknowledges and agrees that ARESC is only able to provide the Services, through Rogers, at the fees agreed upon on the basis that ARESC shall have no liability to the User whatsoever except as expressly stated in this Section 22.

**22.2** To the maximum extent permitted by applicable law, ARESC will not be liable to the User for:

- A. Any indirect, special, consequential, incidental, economic or punitive damages (including but not limited to, loss of profit or revenue; loss, destruction or alteration of data, files or software; economic loss; loss of business opportunities; down time costs; costs of substitute goods or services; lost goodwill; loss from work stoppage; cost of overhead; loss of anticipated benefits under this Agreement; losses resulting from third party's unauthorized access to data; personal injury, death, property damage or any other foreseeable or unforeseeable loss, however caused) directly or indirectly resulting from or related to this Agreement, the Services, Fuel's managed services and applications or otherwise arising from dealings between any one or all of ARESC, Rogers, Fuel and the User, even if ARESC has been negligent, was advised of the possibility of such damages, or such damages were foreseeable.
- B. The denial, restriction, blocking, disruption or inaccessibility of any Services, including without limitation, 911 or special needs services.
- C. Any error, omission or delay in connection with the transfer of telephone numbers to or from another telecommunications service provider or any limitation connected thereto.
- D. Damages arising out of the User's own acts, defaults, neglect or omissions.
- E. Damages arising out of the transmission of material or messages through use of the User's Device which is in any way unlawful.
- F. Any act, omission or negligence of Rogers or Fuel, or any other third party not under the control of ARESC.

**22.3** Notwithstanding any other term or condition contained in this Agreement, the User further agrees that any and all claims against ARESC for damages, regardless of cause of action, whether in contract, tort, product liability, strict liability or otherwise, will in all cases and in any event, be limited to a maximum aggregate amount of FIFTY DOLLARS (\$50.00) in lawful currency of Canada. The User acknowledges and agrees that the disclaimers, limitations and caps on liability contained in this Agreement are reasonable, form the basis of lower fees and charges to the User than would otherwise be possible, are fully known to the User, and are freely accepted and agreed to by the User.

**22.4** *Limits on Rogers Liability for Emergency Services.* The foregoing applies only to the provision of emergency services on a mandatory basis. The User acknowledges and agrees that Rogers will not be liable for:

- A. libel, slander, defamation or the infringement of copyright arising from material or



- messages transmitted over Rogers' network from User's property or premises or recorded by User's equipment or Rogers Equipment;
- B. damages arising out of User's act, default, neglect or omission in the use or operation of equipment provided by Rogers;
  - C. damages arising out of the transmission of material or messages over the Rogers Wireless Network on User's behalf which is in any way unlawful;
  - D. any act, omission or negligence of other companies or telecommunications systems when their facilities are used in establishing connections to or from User's facilities and equipment.

Furthermore, except in cases where negligence on Rogers' part results in physical injury, death or damage to User's property or premises, Rogers' liability for negligence related to the provision of emergency services on a mandatory basis is limited to the greater of \$20 and three times the amount (if any) User would otherwise be entitled to receive as a refund for the provision of defective service based on the terms of ARESC's contract with Rogers for the ARESC Account. However, Rogers' liability is not limited by this Section in cases of deliberate fault, gross negligence or anti-competitive conduct on Rogers' part or in cases of breach of contract where the breach results from Rogers' gross negligence.

### **23. No Other Remedies**

**23.1** The User acknowledges and agrees that the User's only rights and remedies relating to this Agreement are as set out in this Agreement.

### **24. Content**

**24.1** The User acknowledges and agrees that there is some content accessible through the Services that may be offensive to the User, or that may not be in compliance with applicable law. For example, it is possible to obtain access to content that is pornographic, obscene, or otherwise inappropriate or offensive, particularly for children. The User acknowledges that neither ARESC nor Rogers own or have control over the availability, accuracy or any other aspect of third party content in any form accessible or that may be made available to or by the User through the use of the Services and, as such, ARESC assumes no responsibility for the availability, accuracy or any other aspect of the content contained or accessible through the Services. The User agrees that all content accessed using the Services is accessed and used by the User at their own risk and that ARESC will not be liable for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to the User's access to such content.

### **25. Indemnification**

**25.1** The User will fully indemnify, defend and forever hold ARESC harmless from any and all claims, damages, losses or expenses of any kind (including without limitation legal fees and costs on a solicitor and his own client basis) incurred by ARESC in connection with any and all claims, suits, judgments and causes of action of any kind against ARESC by the User or any third party, including but not limited to Rogers and Fuel, for, on account of or arising from or in connection with, as applicable, without limitation:

- A. the acts or omissions or acts or omissions of the User or their agents or representatives, or acts or omissions connected to the User's Device (including without limitation, in



- relation to infringement of patents or other proprietary rights);
- B. libel, slander, defamation or infringement of copyright or other proprietary right with respect to material transmitted by the User or through use of the User's Device;
  - C. injury, death or property damage arising in connection with the acts or omissions of the User or through use of the User's Device; or
  - D. breach by the User of any of the terms or conditions of this Agreement or any other terms and conditions accepted by the User in relation to this Agreement or the Services (e.g. Fuel's terms and conditions contemplated in Section 5.1).

## **26. Security of Information**

**26.1** ARESC does not represent, warrant or covenant that the User's use of the Services will be entirely secure and private. The User acknowledges that it may be possible for third parties to monitor communications while the User uses the Services.

**26.2** The User assumes full responsibility for the establishment of appropriate security measures to control access to its equipment and to the information transmitted by the User. In addition, the User acknowledges and agrees that the User is solely responsible for taking the necessary precautions to protect its networks and systems, and all software, data and files stored on or otherwise forming part of its network and the User's system, against unauthorized access by any third party, and that such responsibility includes, without limitation, protection against unauthorized access through the Services.

**26.3** Neither ARESC nor Rogers will be liable for any and all claims, losses, actions, damages, suits or proceedings whatsoever resulting from, arising out of, or otherwise relating to, the User's failure to take appropriate precautions to protect their networks and systems, and all software, data and files stored on or otherwise forming part of their network and systems, against unauthorized access or any other breach of the User's security or privacy.

**26.4** The User acknowledges that Rogers has no obligation, but has the right at any time and from time to time, to monitor use of the Services (electronically or otherwise) as necessary to satisfy any law, regulation or investigate any information, data, files, pictures or content in any form or use of Services as necessary to operate the Services or to protect the rights or property of itself or others that are directly related to providing any products and Services. Such monitoring shall include but not be limited to bandwidth consumption and how it affects operation and efficiency of the network and the Services.

## **27. Personal Information and Privacy**

**27.1** *Credit Checks.* The User hereby authorizes ARESC to obtain information about the credit history of the User and acknowledges that ARESC may provide information to credit bureaus about the User's credit experience with ARESC.

**27.2** *Personal Information.* To obtain access to and management of the Services, the User will be required to share certain personal information with ARESC, Fuel and Rogers. Notwithstanding any other term or condition contained in this Agreement, the User consents to ARESC accessing the User's account information held by Fuel and Rogers and to Fuel and Rogers disclosing such information to ARESC from time to time in order to monitor the User's use of the Services or for management of the ARESC Account. Further, the User consents to ARESC's use, collection and retention of certain of the User's personal information, such as name, phone number and usage



details, in order to assist with the administration of the Services or for management of the ARESC Account. Such information will be kept confidential and not disclosed other than to Fuel or Rogers for the purposes of this Agreement.

## **28. Intellectual Property**

**28.1** ARESC owns and retains all rights in and to its intellectual property, including, without limitation, trademarks, copyright, brand concepts, names, logos, designs, content, information, software, images, files, logos, service names, graphics, text, documents and applications, (as well as the selection and arrangement of these listed items) and all other intellectual property and proprietary rights, titles, interests and assets (the “ARESC IP”). The User has no rights, including any right or license to, and shall not, use, copy, publish, distribute any of the ARESC IP. The User acknowledges that the ARESC IP is of significant and unique value such that breach of any of the rights of ARESC in the ARESC IP will result in immediate and irreparable harm to ARESC, and damages will be an inadequate remedy. Accordingly, the User acknowledges and agrees that, in the event of any breach of this Section by the User, ARESC shall be entitled to seek injunctive or other equitable relief against the User in addition to any other remedies it may have, all of which are reserved.

## **29. Governing Law**

**29.1** Any dispute, litigation, interpretation, damages or loss which arise directly or indirectly in connection with this Agreement shall be subject to and governed by the laws of the province of Alberta and the federal laws of Canada applicable therein and the Parties hereto irrevocably attorn to the jurisdiction of the courts of the Province of Alberta.

## **30. Force Majeure**

**30.1** Other than with respect to the payment of charges and other amounts to ARESC, in no event shall ARESC or the User have any liability for failure to comply with the terms of this Agreement if such failure results from the occurrence of any contingency beyond the reasonable control of that person or entity including, without limitation, strike or other labour disturbance, damage to facilities, riot, theft, fires, flood, lightning, storm, any act of God, power failure, war, national emergency, interference by any government or governmental agency, embargo, seizure, or enactment of any law, statute, ordinance, rule, or regulation.

## **31. General**

**31.1** If any provision of this Agreement shall be prohibited by or judged by a court to be unlawful, void or unenforceable, then such provision shall be severed from this Agreement. The remaining provisions of this Agreement shall not, as far as possible, be changed or modified, and all other terms and conditions not so severed shall continue in full force and effect.

**31.2** The failure of either Party at any time to require strict performance by the other of any provision hereof shall in no way affect the full right to require such performance at any time thereafter. Neither shall the waiver by either Party of a breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

**31.3** All notices given under this Agreement shall be in writing to the addresses provided for



each Party below and shall be deemed to have been duly delivered and effective: (a) upon receipt if hand delivered; (b) three business days after being deposited, postage prepaid, return receipt requested, in the mail; or (c) if sent by email to ARESC, when the email was received, as determined by the records maintained by ARESC, or if sent my email to the User, when the email was delivered, as determined by the records maintained by ARESC.

**If to the User at:**

the municipal or email address that they have provided to ARESC through Fuel

**If to ARESC at:**

Suite 217, 3332 20 Street SW

Calgary, Alberta T2T 6T9

Attention: Member Services

Email: [memberservices@albertarealtor.ca](mailto:memberservices@albertarealtor.ca)

Any Party may at any time give notice in writing to the other Party of a change of address of the party giving such notice. From and after the giving of such notice, the address specified therein shall be deemed to be the address of such Party for the giving of notices hereunder.

**31.4** This Agreement ensures to the benefit of and is binding on the User and ARSEC and their respective assigns and successors. The User may not assign or transfer this Agreement or its rights or obligations thereunder without ARESC's prior consent. ARESC may assign or transfer this Agreement or any of ARESC's rights or obligations in this Agreement without the User's consent.

**31.5** The provisions of Sections 2.3, 9.4, 11, 16.4, 16.5, 16.6, 17.1, 19.1, 19.2, 20.4, 20.5, 20.7, 21, 22.1, 22.2, 22.3, 23.1, 24.1, 25.1, 26.3, 27.1, 27.2, 28.1, 29.11 and 32.1(F), and any other term which is stated or implied to survive, shall survive termination of this Agreement.

## **32. Additional Terms Applicable to Users Purchasing a Device through Rogers**

**32.1** The User may, at any time and subject to the subject purchase being permitted by ARESC in its sole discretion, contact Fuel to purchase a Device through the ARESC Account with Rogers and, further in such regard:

- A. Devices will be new, unless otherwise indicated.
- B. Devices will come unlocked or have an unlock code sticker/identifier on the box.
- C. Any warranties received from the Device manufacturer will be passed on to the User. The User acknowledges that any attempt to repair, service or tamper with the Device by a person other than Rogers or the applicable manufacturer may invalidate the manufacturer's warranty and may result in an impaired user experience.
- D. The User assumes the risk of loss and damage to any Device purchased. Upon delivery of a Device to the User, ARESC and Rogers will be considered to have carried out their obligations relating to the Device under the terms of this Agreement.
- E. Any software included with the Device purchased is licensed strictly in accordance with the terms provided by the original equipment manufacturer.
- F. The User will be responsible for all costs associated with the purchase of a new Device. The User will pay the full purchase price for the Device on delivery, or as otherwise required by ARESC, in which case title to the Device will pass to the User at that time, or, subject to the approval of ARESC in its sole discretion, the User may pay the purchase price for the Device over a period of up to 24 consecutive months (the "**Commitment Period**") by way of monthly device fee installments to ARESC.



Further to the foregoing, if the User purchases a Device on an installment plan:

- I. the User may be subject to an initial device charge, the amount of which will depend on the Device chosen and will be communicated at the time of purchase. The initial device charge will be billed following delivery of the subject Device;
  - II. the User will pay a monthly device fee on top of the monthly mobility plan fee paid for the Services for so long as any of the purchase price remains outstanding, the amount of which monthly device fee (and the duration of the Commitment Period) will be communicated at the time of purchase. The first month in which the monthly device fee will be charged will be the first month following delivery of the Device;
  - III. title to the Device will pass from ARESC to the User upon payment in full of the purchase price and all related charges and fees (e.g. initial device charge, monthly device fees and Termination Fee (defined below), if applicable);
  - IV. until title to the Device passes from ARESC to the User, the User shall not sell, lease, mortgage, transfer, assign or encumber the Device;
  - V. at all times after delivery the User shall be responsible for the loss of or damage to the Device;
  - VI. the User at all times use the Device in accordance with all of the terms and conditions set out in this Agreement, as applicable;
  - VII. notwithstanding any other term or condition in this Agreement, should the User or ARESC at any time terminate this Agreement prior to the expiration of the Commitment Period, the User will pay ARESC all monthly device fees that would have been payable, but for the termination, to the end of the Commitment Period (the “**Termination Fee**”), plus \$100, and any applicable taxes. The Termination Fee is due and payable immediately on the date this Agreement terminates. The User acknowledges and agrees that the Termination Fee is a reasonable estimate of ARESC’s liquidated damages and represents consideration for the Device and is not a penalty.
- G. If the User cancels an order for a Device prior to the delivery or performance of the order, a restocking fee of 15% of the Device cost will be charged to and paid by the User. Returns or refunds will not be accepted for: (a) Devices that have already been delivered to the User; (b) Devices that are non-stock, specially ordered or customized; or (c) Devices that have been discounted or sold to the User at an incentive price.



## Appendix 1 Chart: YOUR AREA WIRELESS PLAN

Offered Plan Tiers	
<b>Unlimited 20GB Plan</b>	\$50 per month plus applicable taxes
	Unlimited data (Includes 20GB of Max Speed Data per line, per billing cycle. After 20GB, data speed is throttled to speeds of up to 512 kb/s)
<b>Unlimited 50GB Plan</b>	\$90 per month plus applicable taxes
	Unlimited data (Includes 50GB of Max Speed Data per line, per billing cycle. After 50GB, data speed is throttled to speeds of up to 512 kb/s)
<b>Unlimited 100GB Plan</b>	\$150 per month plus applicable taxes
	Unlimited data (Includes 100GB of Max Speed Data per line, per billing cycle. After 100GB, data speed is throttled to speeds of up to 512 kb/s)
Included Features for all Plan Tiers	
Voice	Unlimited North American calling from Canada
Text	Unlimited Canada, US and International text messaging (SMS/MMS) from Canada
Included Options	2500 Minutes of Call-Forwarding per billing cycle Call Display and Name Display Call Waiting and Conference Calling VoLTE (Voice over LTE) Wi-Fi Calling for compatible devices Enhanced Voicemail & Visual Voicemail (applicable devices)
Plan Add-Ons	
Data Only for Tablet and Smart Watch	\$10 addition per month to add a Smart Watch to your plan \$15 addition per month to add a Tablet to your plan  Includes an additional 1GB of max speed data to your selected Plan Tier per billing cycle
Travel & Roaming	<b>Roam Like Home™</b> Roam Like Home™ lets you use the talk, text and data included in your monthly plan just like you would at home. This feature is automatically enabled on all subscriber lines. Once you arrive in your destination, you will receive a



	<p>welcome notification confirming that Roam Like Home™ is active and ready to use. Once Roam Like Home™ has been activated, the duration will last for 24 hours; at which time, should you continue using Roam Like Home™, you will incur an additional charge applicable to the destination you are in. The charges are as follows:</p> <p>\$8/day for US Destinations \$14/day for International Destinations</p> <p><b>Flex Roaming</b> Flex Roaming is a feature that is enabled based on where you are travelling and is offered in countries where Roam Like Home™ is not available. Flex Roaming offers different Tiers based on your usage requirements. Flex Roaming will be automatically enabled in countries that do not have Roam Like Home™ coverage. For more details please see <a href="https://www.rogers.com/consumer/wireless/travel">https://www.rogers.com/consumer/wireless/travel</a></p> <p>For Users who do not wish to incur charges, all voice, text and/or data functions should be turned off, as applicable, for the duration of time spent in US and international destinations. It is important to keep in mind that ARESC and Rogers have no control over what third-party wireless services may charge in the country where roaming occurs.</p> <p>Neither ARESC nor Rogers will offer credits on unexpected bills, as charges are reflective of a Device's use.</p> <p>Please contact your Area WIRELESS Concierge with any questions <u>prior</u> to travelling for information and pricing on travel packages and roaming.</p>
International Long Distance Saver	\$5.00 per month, per line, plus usage charges, for reduced rates on international calling. Details on rates can be found here: <a href="#">US and International Preferred Rates</a>
411 Charges	\$4.25 per call, plus airtime
Voicemail to Text	\$4.00 per month, plus voicemail charges where applicable



Special Messaging	Voicemail-to-text, text-to-landline and others, are not included as part of the unlimited texting of your plan. Users are responsible for all costs associated with special messaging.

Questions should be directed to the Area WIRELESS Concierge at 1-888-819-3612 or email: [area@mywirelessconcierge.ca](mailto:area@mywirelessconcierge.ca)