



# 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. '**Area WIRELESS**' is the various tiers and plans of wireless service offered to Users, through the ARESC Account, and supplied by Rogers, Rogers roaming partners and the providers of Third Party Services.
- C. '**ARESC**' is AREA Real Estate Services Corporation.
- D. '**ARESC Account**' is the corporate account with Rogers through which the Services are provided.
- E. '**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 Section 32 (but only after the Device has been paid in full, whether by a single payment or when the Device Fee has been paid in full by User).
- F. '**Commitment Period**' has the meaning given to that term in Section 32.1 herein.
- G. '**CRTC**' is the Canadian Radio-television and Telecommunications Commission.
- H. '**Device**' is the tool used to access the Services.
- I. '**Device Fee**' is a combination of the cost of the Device, plus all applicable taxes and a 5.5% program fee, divided by the Commitment Period.
- J. '**Fuel**' is 1399493 Alberta Inc. (operating as Fuel Mobile and marketed as 'Area WIRELESS Concierge') a vendor contracted for billing and customer service for Users.
- K. '**Parties**' means ARESC and the User and 'Party' means either one of them.
- L. '**Rogers**' is Rogers Communications Canada Inc.



- M. **'Rogers Wireless Network'** has the meaning given to that term in Section 8.1 herein.
- N. **'Services'** are the mobile voice, data and related services provided on an Area WIRELESS plan on the ARESC Account for in this Agreement. For certainty, any materials the User accesses through the internet, or downloads, do not form part of the Services.
- O. **'Third Party Services'** has the meaning given to that term in Section 11.1 herein.
- P. **'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, as applicable, 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 without limitation 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 Schedules, 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 amendments to the 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 1 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, to be addressed pursuant to Section 3 of this Agreement.

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

5.1 ARESC 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.

**8.4** The Services are provided by Rogers, and only made available by ARESC, and User acknowledges and agrees the ARESC makes no representation, warranty or guarantee regarding the Services and is not responsible or liable for any issue, interruption, cessation or damage of, or caused by, the Services, pursuant to Section 21 and 22 of this Agreement.

## **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, without limitation:

- 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 Fuel. **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.**

**9.6** The Services are provided by Rogers and its roaming partners, and only made available by ARESC, and User acknowledges and agrees the ARESC makes no representation, warranty or guarantee regarding the Services and is not responsible or liable for any issue, interruption, cessation or damage of, or caused by, the Services, pursuant to Section 21 and 22 of this Agreement.

## **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 1 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 Fuel.

**10.2** The Services are provided by third-party service providers, and only made available by



ARESC, and User acknowledges and agrees the ARES C makes no representation, warranty or guarantee regarding the Services and is not responsible or liable for any issue, interruption, cessation or damage of, or caused by, the Services, pursuant to Section 21 and 22 of this Agreement.

## **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 ARES C 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 ARES C 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.

**12.2** ARES C reserves the right to block, turn off or cancel any of the Services without notice if, in ARES C's sole discretion, ARES C deems that additional costs may be incurred by the ARES C 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 phone 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.

**14.2** ARES C is not responsible or liable for any claim or damages and is not liable if the User experiences any issues, delay or inability to port their phone number as set out above.

## **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 ARESC 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. ARESC 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 ARESC policies, as modified, supplemented and replaced from time to time;
- C. all Rogers policies, including without limitation Rogers Acceptable Use Policy, the IP Address Policy, the Privacy Policy, all as modified, supplemented and replaced 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, ARESC may, without any advance notice and/or reasons for taking such action, terminate the Services if the User engages in or ARESC suspects, in its sole discretion, that the User is engaging activities which are contrary to the prohibitions and restrictions set forth in this Section 16. ARESC 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 ARESA 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, ARESA shall have the right to suspend all or part of the Services or access to the Services immediately if ARESA 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 ARESA 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 any 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 ARESA.* In addition to any other termination rights set out in this Agreement, ARESA may terminate this Agreement, without liability:

- A. at any time, if the master agreement between Rogers and ARESA is terminated or Rogers ceases to offer the Services to ARESA;
- B. at any time, if ARESA 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 end of the month in which the termination date occurred. The termination date is the date the User receives notice from ARESA 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 by the User under this Agreement, including without limitation for Services up to the end of the month in which the termination date occurred, and, as applicable, the accelerated remainder of any Device Fee, in full, will be reflected on the next bill and due and payable upon bill receipt, and will be paid pursuant to Section 20 hereof.

**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 ARESA through Fuel. ARESA 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, ARESA will treat that as the User's decision to terminate the Services as of the transfer date. The User will cease receiving the Services on the termination date and all amounts then owing by the User under this Agreement, including without limitation for Services up to the end of the month in which the termination date occurred, and, as applicable, the accelerated remainder of any Device Fee, in full, will be reflected on the next bill and due and payable upon bill receipt, and will be paid pursuant to Section 20 hereof.

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

**20.1** User must at all times have on record with Fuel valid, active and current credit card information and a current municipal (mailing) address, which are requirements of being on the ARESA Account.

**20.2** A User account which does not have a valid, active and current credit card or a current



mailing address on file at any time may be suspended or cancelled by ARESC immediately on notice of same 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 User's credit card on file will be charged when the User is informed that their monthly invoice is available for viewing. The date Fuel first attempts to pay the User's bill with the credit card on file for the User is the required payment date. **This Agreement constitutes good and valid authority from the User for Fuel, on behalf of ARESC, or ARESC directly, to charge the User's credit card on file upon the issuance of any and all bills to the User, for all costs, fees, charges, late fees, interest and other amounts incurred by User under this Agreement. For certainty, this right to charge User's credit card continues after this Agreement is terminated for all costs, fees, charges, late fees, interest, accelerated charges and other amounts incurred by User under this Agreement.**

**20.4** If payment of an amount due on the User's account is not received by ARESC by the required payment date (such as, without limitation, the credit card on file not being valid or payment being declined), 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 late fees, interest and other charges will also be charged to User's credit card, along with all outstanding invoices, once valid, active and complete credit card information is provided to Fuel. 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, any outstanding Device Fee and all other amounts accruing under this Agreement will continue to be incurred and will be payable by the User during the suspension period. ARESC has, at its sole discretion, the ability to use any other rights under this Agreement, at law or in equity to pursue outstanding payment, including without limitation, termination of this Agreement, collections, seizure and legal action.

**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, reverse or remove 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, or a Device Fee, if the User opts to purchase the Device over the Commitment Period (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. all amounts billed by Rogers, Rogers roaming partners, third party service providers, Fuel or others that are attributed or allocated to the User;
- H. any fees incurred by ARESC for collection efforts due to non-payment; and
- I. all applicable taxes and similar charges relating to the above listed items.

**20.9** User should contact Fuel 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 acts or omissions of Rogers or its agents or representatives;
  - V. any acts or omissions of Fuel or its agents or representatives;
  - VI. any acts or omissions of any provider of Third Party Services, or their agents or representatives;
  - VII. any disruption of any part of the equipment used to provide the Services;
  - VIII. 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;
  - IX. any event of force majeure; or
  - X. any suspension or termination of the Services for any reason whatsoever.
- B. ARESC does not warrant:
  - I. the performance, availability, uninterrupted use of, error-free state 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. the performance, availability, uninterrupted use of, error-free state or operation



of the Services or the User's connection to the Services;

- IV. ; or
  - V. 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. ARESA 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 ARESA, 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 ARESA is only able to provide the Services, through Rogers, at the fees agreed upon on the basis that ARESA 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, ARESA 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 ARESA, Rogers, Fuel and the User, even if ARESA 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, delay or inability in connection with the transfer of telephone numbers to or from another telecommunications service provider or any limitation connected thereto.
- D. Damages arising, in whole or in part, out of the User's own acts, defaults, neglect or omissions.
- E. Damages arising, in whole or in part, 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 ARESA.

**22.3** Notwithstanding any other term or condition contained in this Agreement, the User further agrees that any and all claims by User against ARESA, or against any person who can claim contribution from ARESA, for damages, regardless of cause of action, whether in contract, tort, product liability, strict liability or otherwise, under this Agreement or at law or in equity , will in



all cases and in any event, have a lifetime aggregate limit 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 following 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 or liability 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, Fuel, Roger's roaming partners and providers of Third Party Services, for, on account of or arising from or related to 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;
- 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); or
- E. any use or mis-use of the Services by the User or any other person.

## **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 the ARESC Equipment loaded, issued or provided to the User as part of the provision of Services 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 and Fuel (on behalf of ARESC) to obtain information about the credit history of the User and acknowledges that ARESC and Fuel 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 and Fuel's use, collection and retention of certain of the User's personal information, such as name, phone number, address, credit card information 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. For certainty, the provision of the Services does not give the User any right, title or interest in 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 under this Agreement, which shall be payable by User regardless of the occurrence of a force majeure event, 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 hereunder 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, 8.4, 9.4, 9.6, 10.2, 11, 14.2, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31 and 32, 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**

**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, and compatible with, the ARESC Account 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 the device provider specified by Fuel on initial purchase 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 will be considered to have carried out their obligations relating to the Device under the terms of this Agreement and ARESC will be released of all risk and liability.
- E. Any software included with the Device purchased is licensed strictly in accordance with the terms provided by the original equipment manufacturer.
- F. ARESC is not liable for any hardware, software or any other issues with the Device, its delivery, its condition or its performance.
- G. 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 36 consecutive months (the "**Commitment Period**") with 0% down payment and 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 will pay the monthly Device Fee on top of, and concurrently with, the monthly fee for Services attributed to the User on the ARESC Account for so long as any of the Device Fee 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;
  - II. title to the Device will transfer from ARESC to the User upon payment in full of the purchase price for the Device, or the Device Fee, as applicable, and all related charges and fees (e.g. late interest, if applicable);
  - III. until title to the Device passes from ARESC to the User, the User shall not sell, lease, mortgage, transfer, assign or encumber the Device;
  - IV. at all times after delivery the User shall be responsible for the loss of or damage to the Device and, regardless of such occurrence, continue to be responsible to pay in full for the Device, including the Device Fee;
  - V. the User at all times shall use the Device in accordance with all of the terms and conditions set out in this Agreement, as applicable;
  - VI. 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 the remainder of the Device Fee, accelerated, due and payable immediately upon invoice, which shall automatically be paid by the credit card on file for the User, and if there is any issue with charging the credit card for the full amount, interest shall accrue, all pursuant to Section 20,
  - VII. If the user wishes to pay out the remaining balance in its entirety before the end



of the Commitment Period, all interest is due and payable as if the Device Fee had been paid over the duration of the Commitment Period.

- VIII. Any Device Fee that remains outstanding at the time of termination, regardless of the cause or reason for termination, will be accelerated, due and payable pursuant to Sections 19 and 20 hereof.
- H. 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 25GB Plan</b>	\$50 per month plus applicable taxes
	Unlimited data (Includes 25GB of Max Speed Data per line, per billing cycle. After 25GB, 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 or 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 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,



	<p>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>\$12/day* for US Destinations          \$15/day* for International Destinations  <i>*Rates are set by Rogers and are subject to change without notice          *charged for a maximum of 20 days per billing cycle</i></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 Fuel with any questions <u>prior</u> to travelling for information and pricing on travel packages and roaming.</p> <p><b>Canada/US Snowbird Roaming</b>          If you travel to the US for longer periods of time, the Canada/US Snowbird Roaming Add-on allows you to utilize your talk, text and data included in your Area WIRELESS plan while roaming in the US. Contact Fuel for details and to have this feature added-on before you leave the country</p> <p>\$20.00 per month (minimum of 3 full billing cycles)</p>
International Long Distance Saver	<p>\$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></p>





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.
Note:	<i>Rates are set by Rogers and are subject to change without notice</i>

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