



BCREA Mobile Terms of Service Agreement (the “Agreement”)

1. Definitions

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

- (a) “Affiliates” has the meaning as defined in the *Canadian Business Corporations Act*.
- (b) “ARESC” is AREA Real Estate Services Corporation.
- (c) “ARESC Account” is the corporate account with Rogers under which the Services are provided and includes a pooled data plan.
- (d) “CRTC” is the Canadian Radio-television and Telecommunications Commission.
- (e) “Device” is the tool used to access the Services.
- (f) “Involved Parties” means any entity other than Rogers and Simplex that ARESC has contracted with related to providing, administering, supporting or marketing the Services.
- (g) “Managed Services” are the account management and other services provided by Simplex to the User pursuant to the Service Agreement as defined in the Schedule.
- (h) “Parties” means ARESC and the User and ‘Party’ means either one of them.
- (i) “Rogers” is Rogers Communications Canada Inc.
- (j) “Services” are the mobile voice, data and related services provided in this Agreement. Any materials the User accesses through the internet, or downloads, do not form part of the Services.
- (k) “Simplex” is Simplex Mobility Inc.
- (l) “User” is the individual person that is responsible for the use of the services.

2. Agreement

- 2.1 This Agreement is between the User and AREA Real Estate Services Corporation, a corporation duly incorporated under the laws of Alberta.
- 2.2 This Agreement, including any Schedules, and any ARESC, Simplex 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, Rogers or an Involved Party in this Agreement also applies to the directors, officers, Affiliates (in the case of ARESC that being The Alberta Real Estate Association), contractors, employees and agents of those parties.
- 2.4 By using the Services, the User agrees to accept and 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 with Rogers, will provide the Services to the User at the rates and with the features based on the plan summarized in the chart below in accordance with the terms and conditions of service set out in this Agreement.

4.2 As the account holder, ARESC reserves the right to make decisions that impact all Users under the ARESC Account in its sole discretion and without consultation with Users. For example, ARESC may change the User’s allocated data contribution to the pool, as described in section 12 (Data Use) of this Agreement, at any time without notice, unless the change increases the monthly fee for Services charged to 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 clause 3.1 of this Agreement.

YOUR BCREA MOBILE PLAN

Monthly Fee	\$50 per month + GST
Voice	Unlimited North American calling from Canada
Text	Unlimited Canada, US and International SMS/MMS from Canada
Data	Pooled data with minimum 3 GB contribution per user <i>*Please consult the BCREA Mobile Policies for current policy on data use.</i>
Voicemail	Enhanced (Voicemail 35) OR Visual on supported devices
Travel	Roaming packages for country of travel must be purchased <i>*Call 1.844.707.7676 or use your online BCREA Mobile account for pricing and ordering.</i>
Included Features	Call Display/Name Display, Call Waiting, Group Calling, 2,500 minutes of Call Forwarding per month
Long Distance Calling	\$5 per month addition available for reduced rates on international calling – can be added at registration or contact 1.844.707.7676 or mobile@bcrea.bc.ca . Consult http://www.rogers.com/cms/page-specific/addons/modules/rates/standard-longdistance-rates-en.html for current long distance calling charges
411 Charges	\$3.50 per call, plus airtime
Voicemail to Text	\$4.00 per month, plus voicemail charges where applicable



5. Account Registration and Management

- 5.1 Account registration and management of the Services will be handled by Simplex, on behalf of ARESC. The User warrants that any information provided to Simplex to register for the Services is true and consents to Simplex managing the User's Services and account.
- 5.2 In consideration for the Managed Services provided by Simplex to the User, the User will comply with the terms and conditions of use of these services set out in Schedule "A" of this Agreement. These terms and conditions are in addition to and not in substitution for the terms and conditions contained in the main body of this Agreement. In the event of any conflict between Schedule "A" and the terms and conditions in the main body of this Agreement to the extent that they apply to the User's obligations to Simplex in respect of the Managed Services, the Schedule shall prevail and take priority.

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 reserves the right, in its discretion and without notice, to 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>. The User acknowledges that the map is a general representation of wireless coverage only and is subject to the terms of use provided with the map including, but not limited to, disclaimers on quality and location of 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 Service Area within which Rogers provides some Services may vary.
- 8.4 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

- 9.1 As part of the Services, the User will have access to extended coverage.
- 9.2 Extended coverage is meant to provide 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 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.

10. Roaming

- 10.1 Coverage is provided outside of Canada by third-party service providers. The User agrees to pay any 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. The User should consult with BCREA Mobile Policies for current roaming charging practices which can be found at [BCREA Mobile Policies](#). Any additional questions that the User has about the costs of travelling should be directed to Simplex.

11. Third Party Applications

- 11.1 The installation and/or use of Third-Party Services shall be at the sole risk of the User. 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 together with any maintenance and support relating thereto (collectively, "Third Party Services"), whether offered by such third parties, Rogers or a separate third party. Where Third Party Services are offered, directly or indirectly, by Rogers, Rogers may charge fees to the User with respect to such Third-Party Services. Neither Rogers nor ARESC shall have responsibility hereunder 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.



12. Data Use

- 12.1 The ARES Account is built on a pooled data plan. In other words, all data contributed to the plan by the User is shared amongst all account users. The User should consult with BCREA Mobile Policies for current data charging practices which can be found at [BCREA Mobile Policies](#).
- 12.2 The User contributes a minimum of 3 gigabytes (GB) of data per month to a pool from which all ARES Account users draw their data. ARES may change the User's contribution to the pool at any time in order to manage the pool and avoid data overage charges to the ARES Account from Rogers. The User shall make their best efforts to use 3 GB or less per month. ARES reserves the right to charge for any data use beyond the threshold established in AREA Wireless Policies.
- 12.3 Should ARES opt not to exercise its rights to charge for data use beyond the threshold established in AREA Wireless Policies, this will not be deemed to be a waiver or release of ARES's right to charge for exceeding the threshold in the next or future months. Further, any data use beyond the threshold accepted in one month will not constitute the User's new data limit nor will it constitute ARES's expected behavior of the User for future data use.
- 12.4 ARES reserves the right to block, turn off, or cancel any of the User's Services without notice if, in ARES's sole discretion, ARES deems that unreasonable costs may be incurred by the ARES Account because of the User's data use.
- 12.5 Actual billed rates for data usage may vary from those incurred as a result of rounding rules, including, without limitation, rounding up to the nearest cent and rounding for minimum message length. The User agrees that, to the extent there is any dispute as to the amount of data transmitted to and from a Device in a particular period of time, the amount of data transmitted as determined by Rogers' billing system shall govern. The following items must be considered by the User in transmitting or receiving data, as they may affect billed amounts:
- (a) Transmission Control Protocol/Internet Protocol overhead characters shall be added to all data transmissions, which characters shall be included in the calculation of kilobytes used.
 - (b) Compression may impact the total amount billed to the User.
 - (c) The Rogers Wireless Network may resend data packets to ensure complete delivery. The User will be billed for those resent packets. Retransmissions by the network will be counted.
 - (d) All transmissions due to the Rogers Wireless Network on the air link are not included in the count of application resent packets as the usage records are picked up by the network after the air link retransmissions.
 - (e) The User will be charged for all data usage sent through the Rogers Wireless Network, including any advertisements that appear on the User's Device, regardless of whether the Device actually receives the information.

13. Rates

- 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 to the User, 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 outstanding Rogers charges.

15. Substitute Services

- 15.1 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 other than the Rogers Equipment 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 in compliance with:
- (a) all laws;
 - (b) all ARESC policies, as modified from time to time. The ARESC policies are found at [AREA Wireless Policies](#);
 - (c) all Rogers policies, including the 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/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 Services are only to be used for the User's own individual, personal and non-commercial purposes.
- 16.4 The User may not resell, remarket, transfer or share any of the Services.
- 16.5 The User will not use any feature of the Services to provide the Services to a third party.
- 16.6 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.
- 16.7 The User will use only a Rogers approved Device and other hardware with the Services and will not use any SIM, Device or other hardware that has not been approved by Rogers.
- 16.8 In addition to the termination rights set out elsewhere in this Agreement, ARESC or Rogers may, without any advance notice and/or reasons for taking such action, terminate the Services if the User engages in or Rogers or ARESC suspects that the User may be engaging in one or more of the above prohibited activities, including but not limited to, contravention of Rogers' Acceptable Use Policy. Neither ARESC nor Rogers shall be obliged to justify the cancellation 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 action by ARESC or Rogers.

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

17. Equipment

- 17.1 Rogers Equipment shall at all times be and remain the exclusive property of Rogers, wherever located, including on the User's premises. Upon termination or expiration of this Agreement or the Services, the User shall return the Rogers Equipment to Rogers at the User's expense. The User shall be responsible for the loss of or damage to the Rogers Equipment except if caused by the negligence or willful misconduct of Rogers. The User shall ensure at all times that the Rogers Equipment is stored in a manner and in an environment, that conforms to relevant specifications provided by Rogers. Rogers Equipment means all material, intellectual property, equipment, and software required for the User to use the Services or Devices and made available to the User by Rogers, and any other equipment, including fibre optic cable, patch panels, transport conductors and switching equipment, used by Rogers in providing the Services. Rogers Equipment does not include any products, software or Devices purchased by the User under this Agreement.

18. Suspension

- 18.1 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, the Rogers Equipment, the Rogers Wireless Network, or to maintain or improve service, if the User is in breach of any of their obligations under this Agreement, or for other business reasons.

19. Cancellation

19.1 ARESC Rights

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 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). In the case of (c), the termination date is the day following the last day of the 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 User Rights

The User may terminate the provision of Services and this Agreement at any time by contacting ARESC through Simplex. ARESC will cease providing the Services and consider this Agreement terminated on the day Simplex receives the User's instructions to cancel. If the User has their 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 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 are a requirement of being on the ARESC Account. The User must have an active credit card on file with Simplex.
- 20.2 The User will be billed monthly. The credit card on file will be charged when the monthly invoice is received from Rogers and processed by Simplex. The date it is processed by Simplex is the required payment date.
- 20.3 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 can charge any unpaid and outstanding amount, including any late payment charges, on the User's account to the User's credit card.
- 20.4 The User agrees to pay to ARESC all amounts set forth in each invoice issued by Simplex, including but not limited to the charges applicable to the Services used on the User's Device, regardless of the User's own role in incurring them.
- 20.5 Charges for roaming packages, and charges for exceeding roaming packages or roaming without a package, are the User's responsibility. The User should be aware of these costs by contacting Simplex prior to travel.
- 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 Devices, 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, Device and other equipment described in this Agreement;
 - (c) fees for roaming services provided in those areas served by other wireless mobile operators;
 - (d) deposit(s), the price of software, Devices, other equipment and accessories (if any), shipping and handling and any other fees, charges or costs that arise out of this Agreement;
 - (e) any charges for unreasonable data usage, as determined by ARESC in accordance with AREA Wireless Policies;
 - (f) any fees incurred by ARESC for collection efforts due to non-payment; and
 - (g) all applicable taxes and similar charges relating to the above listed items.

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, OTHER ROGERS EQUIPMENT AND THIRD-PARTY SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND WITHOUT WARRANTY, GUARANTEE OR CONDITION BY ROGERS OR ARESC OF ANY KIND WHATSOEVER, EXPRESS,



STATUTORY OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, 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, NEITHER ROGERS NOR ARESC SHALL HAVE 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 THE DEVICES, ROGERS 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 OFFICERS, EMPLOYEES, AGENTS OR CONTRACTORS INCLUDING, WITHOUT LIMITATION, DEFAMATION OR COPYRIGHT INFRINGEMENT;
 - (IV) ANY DISRUPTION OF ANY PART OF THE EQUIPMENT USED TO PROVIDE THE SERVICES BY PERSONS OR ENTITIES OTHER THAN ROGERS;
 - (V) ANY INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS ARISING FROM OR IN CONNECTION WITH THE USER'S USE OF THE DEVICES, ROGERS EQUIPMENT, THE SERVICES OR THE THIRD-PARTY SERVICES;
 - (VI) ANY EVENT OF FORCE MAJEURE, AS DESCRIBED IN THE AGREEMENT; OR
 - (VII) ANY SUSPENSION OR TERMINATION OF THE SERVICES.
- (b) NEITHER ROGERS NOR ARESC GIVES ANY CONDITIONS OR WARRANTS THE PERFORMANCE, AVAILABILITY, UNINTERRUPTED USE OF OR OPERATION OF THE INTERNET OR THE USER'S CONNECTION TO THE INTERNET.
- (c) NEITHER ROGERS NOR ARESC GIVES ANY CONDITIONS OR WARRANTS 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.
- (d) NEITHER ROGERS NOR ARESC WARRANTS OR GIVES ANY CONDITIONS AS TO THE CONTENT, AVAILABILITY, ACCURACY OR ANY OTHER ASPECT OF ANY INFORMATION INCLUDING ALL DATA, FILES AND OTHER INFORMATION OR CONTENT IN ANY FORM, ACCESSIBLE OR MADE AVAILABLE TO THE USER THROUGH THE USE OF THE SERVICES.
- (e) 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 SIMPLEX, OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY CONDITIONS, REPRESENTATIONS OR WARRANTIES REGARDING THE OWNERSHIP OR FUNCTIONALITY OF SUCH CONTENT.

22. Exclusion and Limitation of Liability for ARESC

- 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, 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 FORSEEABLE OR UNFORESEEABLE LOSS, HOWEVER CAUSED) DIRECTLY OR INDIRECTLY RESULTING FROM OR RELATED TO THIS AGREEMENT, THE SERVICES, SIMPLEX'S MANAGED SERVICES AND APPLICATIONS OR OTHERWISE ARISING FROM DEALINGS BETWEEN ANY ONE OR ALL OF ARESA, ROGERS, SIMPLEX, THE INVOLVED PARTIES AND THE USER, EVEN IF ARESA HAS BEEN NEGLIGENT, WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR SUCH DAMAGES WERE FORSEEABLE.
- (b) THE DENIAL, RESTRICTION, BLOCKING, DISRUPTION OR INACCESSIBILITY OF ANY SERVICES, INCLUDING 911 OR SPECIAL NEEDS SERVICES, ROGERS EQUIPMENT OR IDENTIFIERS.
- (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) DEVICES, ROGERS EQUIPMENT, THIRD-PARTY SERVICES, THE ROGERS WIRELESS NETWORK, THE USE OF THE ROGERS WIRELESS NETWORK BY OTHER TELECOMMUNICATION CARRIERS, THE USER'S OWN EQUIPMENT OR CHARGES, INCLUDING BUT NOT LIMITED TO CHARGES FOR ROAMING CALLS.
- (e) ANY ACTS OR OMISSIONS OF A TELECOMMUNICATIONS CARRIER WHOSE FACILITIES ARE USED TO ESTABLISH CONNECTIONS TO POINTS THAT ROGERS DOES NOT SERVICE.

22.3 NOTWITHSTANDING ANY OTHER TERM OR CONDITION CONTAINED IN THIS AGREEMENT, THE USER FURTHER AGREES THAT ANY AND ALL CLAIMS AGAINST ARESA 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 CAP 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. THE USER ALSO AGREES THAT ARESA WILL HAVE NO LIABILITY WHATSOEVER FOR ANY ACTION OR FAILURE TO ACT OF ROGERS, OR BY ANY THIRD PARTY NOT UNDER THE CONTROL OF ARESA, INCLUDING, WITHOUT LIMITATION, ANY FAILURE BY ROGERS TO PROVIDE EMERGENCY SERVICES, OR ANY OTHER SERVICE.

23. Exclusion and Limitation of Liability for Rogers and Involved Parties

23.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER ROGERS, NOR ANY INVOLVED PARTY WILL BE LIABLE TO THE USER FOR:

- (a) ANY DIRECT, 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 OFTHER FORSEEABLE OR UNFORESEEABLE LOSS, HOWEVER CAUSED) DIRECTLY OR INDIRECTLY RESULTING FROM OR RELATED TO THIS AGREEMENT, THE SERVICES, OR OTHERWISE



ARISING FROM DEALINGS BETWEEN ANY ONE OR ALL OF ARESC, ROGERS, AND THE INVOLVED PARTIES AND THE USER, EVEN IF ROGERS, OR THE INVOLVED PARTIES HAVE BEEN NEGLIGENT, WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR SUCH DAMAGES WERE FORSEEABLE.

- (b) THE DENIAL, RESTRICTION, BLOCKING, DISRUPTION OR INACCESSIBILITY OF ANY SERVICES, INCLUDING 911 OR SPECIAL NEEDS SERVICES, ROGERS EQUIPMENT OR IDENTIFIERS.
- (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) DEVICES, ROGERS EQUIPMENT, THIRD-PARTY SERVICES, THE ROGERS WIRELESS NETWORK, THE USE OF THE ROGERS WIRELESS NETWORK BY OTHER TELECOMMUNICATION CARRIERS, THE USER'S OWN EQUIPMENT OR CHARGES, INCLUDING BUT NOT LIMITED TO CHARGES FOR ROAMING CALLS.
- (e) ANY ACTS OR OMISSIONS OF A TELECOMMUNICATIONS CARRIER WHOSE FACILITIES ARE USED TO ESTABLISH CONNECTIONS TO POINTS THAT ROGERS DOES NOT SERVICE.

24. Emergency Services

24.1 This section applies only to the provision of emergency services on a mandatory basis. In respect of the provision of emergency services on a mandatory basis, Rogers is not 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.

25. No Other Remedies

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

26. Content

26.1 The User acknowledges and agrees that there is some content accessible through the Services that may be offensive to the User or another end 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. ARESC and Rogers assume no responsibility for, and exercise no control over the availability, accuracy or any other aspect of the content contained or accessible through the Services. The User agrees that all content that the User and any end users access using the Services is accessed and used by the User and any end users at their own risk, and that ARESC and Rogers will not be liable for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to the User's and/or any end users' access to such content.

27. Indemnification

27.1 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, Simplex, an Involved Party or any other third party in any way related to the User, including but not limited to:

- (a) for infringement of patents or other proprietary rights arising from combining with or using any device, system or service in connection with Rogers Equipment;
- (b) for libel, slander, defamation or infringement of copyright or other proprietary right with respect to material transmitted by the User over the Rogers Equipment;
- (c) for injury, death or property damage arising in connection with the misuse of the Services or the Rogers Equipment; or
- (d) for breach by the User of any of the terms or conditions of this Agreement.

28. Security of Information

28.1 ARESC and Rogers give no conditions and make no representations, warranties or covenants 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.

28.2 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.

28.3 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.

28.4 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.

29. Personal Information and Privacy

29.1 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.

29.2 Personal Information

To obtain access to and management of the Services, the User will be required to share certain personal information with ARESC, Simplex and Rogers. The User consents to the following collection, use and disclosure of the User's personal information:

(a) By Simplex

On the terms and conditions set out in Schedule "A" to this Agreement.

(b) By Rogers

Unless the User provides express consent, or disclosure is pursuant to a legal power, all information regarding the User that is kept by Rogers, other than the User's name, address and listed telephone number, is confidential and may not be disclosed by Rogers to anyone other than:

- (I) the User;
- (II) ARESC;
- (III) a person who, in Rogers' reasonable judgment, is seeking the information as the User's agent;
- (IV) another telephone company, provided the information is required for the efficient and cost-effective provision of telephone service, and that the disclosure is made on a confidential basis with the information used only for that purpose;
- (V) a company involved in supplying the User with telephone or telephone directory related services, provided the information is required for that purpose, and that the disclosure is made on a confidential basis with the information used only for that purpose;
- (VI) an agent retained by Rogers in the collection of the User's account or to perform other administrative functions for Rogers, provided the information is required for and used only for that purpose;
- (VII) a law enforcement agency whenever Rogers has reasonable grounds to believe that the User has knowingly supplied Rogers with false or misleading information or is otherwise involved in unlawful activities directed against Rogers;
- (VIII) an agent retained by Rogers to evaluate the User's creditworthiness, provided the information is required for and used only for that purpose; or

- (IX) a public authority or agent of a public authority if, in Rogers' reasonable judgment, it appears that there is imminent danger to life or property which could be avoided or minimized by disclosure of the information.

Express consent may be taken to be given by the User where the User provides:

- (i) written consent;
 - (ii) oral confirmation by an independent third party;
 - (iii) electronic confirmation through the use of a toll-free number; or
 - (iv) electronic confirmation via the Internet.
- (c) By ARESC
- Notwithstanding any other term or condition contained in this Agreement, the User consents to ARESC accessing the User's account information held by Simplex and Rogers and to Simplex 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 Simplex or Rogers for the purposes of this Agreement.

30. Intellectual Property

- 30.1 Each of ARESC, its Affiliate, The Alberta Real Estate Association, and Rogers own and retain all rights in and to their respective 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 "IP"). The User has no rights to any of the IP, including any right or license to use, copy, publish, distribute or display the IP, except as specifically permitted under this Agreement. The User acknowledges that the IP of each of ARESC, The Alberta Real Estate Association and Rogers are of significant and unique value such that breach of any of the rights of any one or more of ARESC, The Alberta Real Estate Association or Rogers in their IP will result in immediate and irreparable harm to the affected party or parties, and damages will be an inadequate remedy. Accordingly, the User acknowledges and agrees that, in the event of any such breach by the User, any one or more of ARESC, The Alberta Real Estate Association or Rogers, as applicable, 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.

31. Governing Law

- 31.1 Both Parties to this Agreement acknowledge and confirm that any dispute, litigation, interpretation, damages or loss which arise directly or indirectly as a result of this Agreement shall be subject to the laws of Alberta or the federal laws of Canada, as applicable, and no other jurisdictions shall be applicable.

32. Force Majeure

32.1 Other than with respect to the payment of charges and other amounts to ARESC, in no event shall ARESC, Rogers, or the User have any liability for failure to comply with or related to 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.

33. General

33.1 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.

33.2 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.

33.3 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, when the email was received, 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 Simplex

If to ARESC at: Suite 217, 3332 20 Street SW
Calgary, Alberta T2T 6T9
Attention: Member Services
Email: communications@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.

33.4 This Agreement enures to the benefit of and is binding on the User, the User's heirs, the User's legal personal representatives, and on the respective assigns and successors of the User and ARESC. The User may not assign or transfer this Agreement 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.

33.5 The provisions of clauses 2.3, 9.4, 11.1, 16.8, 16.9, 17.1, 19.1, 19.2, 20.7, 21.1, 22.1, 22.2, 22.3, 23.1, 24.1, 25.1, 26.1, 27.1, 28.3, 29.1, 29.2, 30.1 and 34.11 survive termination of this agreement.

34. Additional Terms Applicable to Device Plan Users

34.1 The User may contact Simplex to purchase a Device through the ARESC Account with Rogers.

34.2 Devices will be new, unless otherwise indicated.

- 34.3 Devices are locked and restricted to be used only on the Rogers Wireless Network, but may also be used on the networks operated by any of the carriers with which Rogers has roaming agreements. If attempts are made to unlock a Device through a provider other than Rogers, it may become permanently unusable.
- 34.4 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.
- 34.5 The User assumes the risk of loss and damage to any Device that has been delivered to its premises. Upon delivery, ARESC and Rogers will be considered to have carried out their obligations relating to the Device under the terms of this Agreement. By installing or using Devices or other products, the User agrees that software included with the Device purchased is licensed strictly in accordance with the terms provided by the original equipment manufacturer.
- 34.6 Title to any Device purchased through the ARESC Account with Rogers shall pass to the User upon receipt at the User's premises. The User acknowledges that rights in respect of trademarks, trade names, copyrights, patents and other intellectual property rights connected with the Device do not pass to the User.
- 34.7 The User must use the Device in accordance with all other terms and conditions set out in this Agreement.
- 34.8 If the User cancels an order for a Device or Devices in full or in part prior to the delivery or performance of the order, a restocking fee of 15% of the Device cost will be charged. 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.
- 34.9 Users who purchase a Device will be subject to an initial device charge of \$100-\$150 depending on the Device chosen. The User will be advised of the amount of the initial device charge at the time of purchase. The initial device charge will be billed following receipt of the User's Device.
- 34.10 Users who purchase a Device will pay a monthly device fee on top of the \$50 monthly fee paid for the Services. The User will be advised of the amount of the monthly device fee at the time of purchase. The monthly device fee will be charged on the User's account for 24 consecutive months of billing (the "Commitment Period") with the first month charged following receipt of the User's Device.
- 34.11 Notwithstanding any other term or condition in this Agreement, should the User terminate the Services at any time prior to the end of the Commitment Period, the User must pay ARESC the remaining monthly device fee up to the end of the Commitment Period (the "Termination Fee"), plus \$100. The Termination Fee is due and payable immediately on the date the User terminates the Services and is calculated as follows: monthly device fee multiplied by the number of months left in the Commitment Period. 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.

Schedule "A"
Terms and Conditions of Use - Simplex

1. Definitions and Interpretations

1.1 In this Schedule, unless there is something in the subject matter or context that is inconsistent therewith, capitalized terms shall have the following meanings:

- (a) "Applications" means the mobile device applications of Simplex, including, without limitation, Simplex Anywhere® and Simplex Direct®, and any other mobile device applications of Simplex that may be conceived, created or developed during the term of the Service Agreement (as defined below);
- (b) "Claims" means, in respect of any matter, any and all liabilities (statute or otherwise), obligations, claims (including direct or indirect claims), losses, damages, costs and expense of whatever kind or nature and howsoever arising (including, without limitation, all legal and other professional fees and disbursements, fees paid to any government authority, interest, fines, penalties and amounts paid in settlement or in satisfaction of a judgment) arising directly or indirectly as a consequence of such matter, but expressly excluding loss of property value, loss of profit or revenue, loss of business, loss of benefits, consequential and incidental damages, special damages, punitive damages and exemplary damages and any other kind or type of economic loss;
- (c) "Confidential Information" means any trade secrets, patent and patent applications, works, industrial designs, copyrights, inventions, ideas, processes, drawings, engineering or technical data or information, software programs, source and object codes, works of authorships, know how, show how, improvements, discoveries, techniques, business information, unpublished financial information, business strategies, marketing plans, customer lists or information, cost structures, vendor pricing, suppliers, budgets, research and development, whether or not marked or identified as confidential, this Schedule and all terms and conditions contained therein, and any other information which is identified as confidential at the time of disclosure;
- (d) "including" means including but without limiting the generality of the foregoing, unless the context otherwise expressly provides, such as "including only", and "includes" has a corresponding meaning;
- (e) "Intellectual Property" means any and all industrial or intellectual property (registered or unregistered) owned or licensed by Simplex or used in the operation, conduct or maintenance of the business of Simplex, as it is currently and has historically been operated, conducted or maintained, including without limitation: (i) all inventions (whether patentable or un-patentable and whether or not reduced to practice), and all patents, patent applications and patent disclosures, together with all re-issuances, continuations, continuations-in-part, revisions, extensions and re-examinations thereof; (ii) all trade-marks, trade-names, logos, business names, corporate names, domain names, uniform resource locators (URL's) and the internet websites related thereto, and including all goodwill associated therewith and all applications, registrations and renewals in connection therewith; (iii) all copyrightable works, all copyrights and industrial designs and all applications, registrations and renewals in connection therewith; (iv) all proprietary, technical or confidential information, including all trade secrets, processes, procedures, know-how, show-how, formulae, methods, data, compilations, databases and the information contained therein; (v) all computer software (including all source code, object code and related documentation); (vi) any other industrial or intellectual property; (vii) all copies and tangible embodiments of the foregoing (in whatever form or medium); (viii) all improvements,

modifications, translations, adaptations, refinements, derivations and combinations in respect of any of the foregoing, including the New Intellectual Property; and (ix) all intellectual property rights related to the foregoing;

- (f) "Service Agreement" means the contract between ARESC and Simplex under which services are provided to the User by Simplex as modified, extended or supplemented from time to time.
- (g) "New Intellectual Property" means intellectual property that may be conceived, created or developed during the term of the Service Agreement;
- (h) "Parties" means the User and Simplex and "Party" means either one of them;
- (i) "Person" includes any individual, body corporate, partnership, joint venture, trust, estate or unincorporated association (including a trade union) or any trustee, executor, administrator or other legal or personal representative, government body or regulatory authority (including any government authority) however designated or constituted; and
- (j) "Third Party" means a Person who is not a Party or ARESC.

All other capitalized terms in this Schedule that are not defined above shall have the same meaning as defined in the main body of this Agreement.

1.2 This Schedule sets forth all terms and conditions, obligations, responsibilities, liabilities and remedies as between Simplex and the User in respect to the Managed Services to be provided by Simplex to the User based on the Service Agreement and the User confirms that the User:

- (a) has read and understands the terms and conditions in this Schedule and accepts and agrees to be bound by the terms and conditions of this Schedule;
- (b) understands that the terms and conditions in this Schedule fully sets out the obligations and limitations of liabilities of Simplex, Simplex's shareholders, directors, officers, employees, agents, and suppliers, to the User, notwithstanding any other prior or contemporaneous writing (including any related packaging or advertisements), promise, understanding, or oral representations made by Simplex or any other Person(s);
- (c) acknowledges and agrees that the Managed Services and Applications are being sub-licensed to them through the Service Agreement and that this Schedule does not confer upon the User or any of its employees, independent contractors, subcontractors, agents, or any other persons the User represents, any legal ownership rights to the Managed Services, Applications, Intellectual Property or Confidential Information of Simplex.

2. Consent to Use of Personal Information of User

2.1 The User consents to the collection of the User's personal information by Simplex in connection with the Managed Services. The User consents to the use and disclosure of such personal information by Simplex for the purpose of providing to ARESC and the User the Managed Services and notice of product updates and services available from Simplex and Simplex agrees to hold, use and disclose the User's personal information in accordance with Simplex's privacy policy as it appears on their website, <http://simplexmobility.com/privacy-policy/> and in accordance with applicable laws.



3. Covenants, Representations and Warranties

3.1 Simplex covenants, represents and warrants to ARESC in the Service Agreement that Simplex:

- (a) has all necessary power and authority to enter into and perform its obligations under the Service Agreement;
- (b) has the requisite skill, ability and resources to complete the Managed Services for ARESC and the User in accordance with the provisions of the Service Agreement and shall render the Managed Services under the Service Agreement in an honest and diligent manner, in good faith and to the best of its ability; and
- (c) will perform all Managed Services in accordance with the Service Agreement and in compliance with applicable laws.

3.2 The User covenants, represents and warrants to Simplex that:

- (a) the User will grant access or cause access to be granted to Simplex to the information in the power and possession of the User necessary in order for Simplex to perform the Managed Services;
- (b) the User will provide, or cause to be provided, all information as may be reasonably requested by Simplex, and promptly notify Simplex of any material facts or information of which it is aware, in relation to and which may affect the performance of the Managed Services;
- (c) the User will not use, directly or indirectly, or make available to any Third Party the Intellectual Property; and
- (d) the User consents to the Managed Services and Applications being used in relation to their respective Devices and have agreed to be bound by the terms and conditions of this Schedule.

4. Confidentiality and Non-Disclosure

4.1.1 With respect to the use and disclosure of Confidential Information, the Parties agree as follows:

- (a) Each Party acknowledges, covenants and agrees that it shall not use or disclose the other Party's Confidential Information (or any portion thereof) except as and limited to the extent such use is actually necessary and required in connection with facilitating the provision of, or providing the Managed Services (the "Purpose"). The Party receiving Confidential Information ("Receiving Party") of the other Party ("Disclosing Party") shall keep the Disclosing Party's Confidential Information in strictest confidence and shall limit access to the Confidential Information to only those executives, employees and agents of the Receiving Party who actually need to know or need to have access to the Confidential Information in connection with the Purpose and who have been informed of the confidential nature of the Confidential Information and their obligation with respect to its use and disclosure and who agree (in writing or otherwise) to keep the Confidential Information confidential. Release of Confidential Information to a Third Party shall require the written consent of the Disclosing Party.
- (b) Each Party agrees to protect the other's Confidential Information from inadvertent or unauthorized disclosure, access, or use in the same manner as the Receiving Party protects its own Confidential Information of a similar nature; provided that the Receiving Party shall exercise no less than reasonable care. Confidential Information shall not be reproduced in any form except as required to accomplish the Purpose. Any reproduction of any Confidential Information shall remain the property of the Disclosing Party. Each of the Parties acknowledges and agrees that it shall promptly return to the other Party, upon the completion of the Purpose or at any time upon



the other Party's request, all Confidential Information including all copies, compilations and notes made thereof.

- (c) The Parties shall, and shall ensure that their respective employees, agents, contractors and third persons acting under their direction and control shall keep the other Party's Confidential Information confidential and not use, observe or record any of the other Party's Confidential Information except as necessary to meet its obligations hereunder.
- (d) If a Receiving Party is unclear as to whether information is, or is to be regarded as the Disclosing Party's Confidential Information, then it shall be the Receiving Party's responsibility to contact the Disclosing Party for clarification and, until directed otherwise, to assume that such information is to be regarded as the Disclosing Party's Confidential Information.
- (e) Notwithstanding any other provisions of this Schedule, Confidential Information does not include information which the Receiving Party can demonstrate (i) is, or becomes, publicly known through no wrongful act or omission on the part of the Receiving Party; or (ii) is prior to the time of disclosure under this Schedule, lawfully in the possession of the Receiving Party without restriction on disclosure; or (iii) is, or subsequently becomes, rightfully and without breach of the terms and conditions of this Schedule, in the Receiving Party's possession from a source other than the Disclosing Party and where that source has not breached a duty of confidence; or (iv) is required to be disclosed by law; or (v) is expressly authorized for release by written authorization of the Disclosing Party.

4.2 The provisions of Section 4 above shall survive the cancellation or termination of the Service Agreement.

5. Intellectual Property Rights

- 5.1 The User hereby covenants and agrees that it will not communicate or divulge or use for its own benefit or the benefit of any other person, firm, partnership, association, corporation or other entity any Confidential Information, trade secrets, Intellectual Property, or other proprietary information of Simplex, including, but not limited to, the Applications and the Managed Services provided by Simplex.
- 5.2 The content, information, software, images, files, logos, service names, graphics, text, documents, Applications and Managed Services offered by Simplex, as well as their selection and arrangement, are protected by copyright, trademark, patent, and/or other intellectual property laws, and any unauthorized use of the Intellectual Property may violate such laws and the terms and conditions of this Schedule. Except as expressly provided herein, Simplex does not grant any express or implied rights to the User, or any of its employees, independent contractors, subcontractors or agents, to use of the Intellectual Property.
- 5.3 The User acknowledges that in the event of a breach of the provisions of this Section 5, damages will be inadequate and that Simplex shall be entitled to seek and obtain injunctive or other equitable relief in addition to any other remedies it may have. Any void, illegal or unenforceable provisions of this Section 5 shall be deemed severed and the remaining portions shall be binding and enforced and construed without such severed portions.
- 5.4 The User acknowledges and agrees that the restrictions set forth in this Section 5 and imposed upon it are reasonable in all respects, are valid and are enforceable against it and further acknowledge and agree that Simplex would not have entered into a Service Agreement with ARESC to provide the Managed Services to ARESC and the User unless the User had agreed to be bound by this Section 5 and therefore, that all the restrictions imposed upon it herein are of significant value to Simplex and acknowledge and agree that the restrictions imposed upon them herein are necessary to protect the legitimate interests of Simplex and any violations of such restrictions may result in immediate and substantial irreparable injury to Simplex.
- 5.5 The provisions of this Section 5 shall survive the cancellation or termination of the Services Agreement.

6. Indemnity for Breach of Privacy Law

- 6.1 In the event that the User fails to comply with all applicable laws, including any privacy laws governing the protection of personal information, the User shall indemnify Simplex for any and all Claims suffered or incurred by Simplex in relation thereto.

7. Indemnity

- 7.1 The User does hereby indemnify and holds harmless Simplex, its shareholders, directors, officers, employees, successors and assigns from and against any and all Claims that Simplex may suffer or incur, relating to, accruing from or with respect to any of the following: (a) the failure of the User to observe or perform any of its obligations pursuant to the terms and conditions of use in this Schedule; and/or (b) the breach by the User of any of the terms or conditions of use in this Schedule.

8. Disclaimers

- 8.1 No oral or written information or advice given by Simplex or its authorized representatives shall increase the scope of the representations, warranties or conditions contained herein, or create any new representations, warranties or conditions in connection with the Managed Services or Applications.
- 8.2 Simplex makes no representations or warranties regarding any Third-Party content, even if accessed by means of a link provided directly or indirectly by Simplex, or otherwise, including without limitation any representations or warranties regarding the ownership or functionality of such content.

9. General Provisions

- 9.1 Entire Agreement – The terms and conditions in this Schedule constitute the entire agreement between the User and Simplex pertaining to 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 the User and Simplex except as specifically set forth or referred to in this Schedule.
- 9.2 Waiver - The failure of either Simplex or the User through ARESC, at any time to require strict performance by the other Party 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 Simplex or the User through ARESC, 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.
- 9.3 Severability - Each article, paragraph, clause, sub-clause and provision of this Schedule shall be severable from each other and if for any reason any article, paragraph, clause, sub-clause or provision is invalid or unenforceable, such invalidity or unenforceability shall not prejudice or in any way affect the validity or enforceability of any other article, paragraph, clause, sub-clause or provision.
- 9.4 Choice of Law and Jurisdiction - This Schedule, and any matter or thing arising out of this Schedule or pursuant thereto, shall be construed and interpreted in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein. The User and Simplex hereby irrevocably submit and attorn to the jurisdiction of the Courts of the Province of Alberta.
- 9.5 Notices – Any notice or other communication which may be or is required to be given or made pursuant to this Schedule shall be given by the User to Simplex through ARESC and likewise, by Simplex to ARESC through the User in accordance with the methods of communication established in the Service Agreement.

- 9.6 Modification of Schedule - This Schedule may not be modified or amended unless such modification or amendment is duly agreed to and signed by ARESC and Simplex in accordance with the Service Agreement. The User has no right to modify or amend the terms of this Schedule.
- 9.7 Assignment – The terms and conditions in this Schedule are based on the Service Agreement which is not assignable by Simplex or ARESC without the prior written consent of Simplex or ARESC, which consent may be unreasonably withheld; provided that, notwithstanding the foregoing, Simplex shall be entitled to assign the Service Agreement, including the terms in this Schedule without the consent of, but with prior notice to, ARESC if such assignment is to be made in connection with the sale of all or substantially all of the business and undertaking of Simplex. The User has no right to assign the Schedule.
- 9.8 Survival - The User’s obligations under this Schedule will survive the termination of the Service Agreement.
- 9.9 Enurement – The terms and conditions of this Schedule shall enure to the benefit of and be binding upon the User and Simplex including, their heirs, administrators, successors and legal representatives.
- 9.10 Further Assurances – The User will promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as Simplex may reasonably require from time to time for the purpose of giving effect to the terms and conditions of this Schedule and will use reasonable efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Schedule.
- 9.11 Contra Proferentem – The legal doctrine of contra proferentem shall not apply to the terms and conditions of this Schedule.
- 9.12 Compliance with Laws - The User shall comply with all applicable laws, ordinances, regulations and legislation in any way relating to the use and possession of Simplex’s Applications including, but not limited to, privacy laws, and import and export laws and regulations of Canada and the United States and other applicable export and import laws to assure that neither Simplex’s Applications, nor any direct product thereof, are exported, directly or indirectly, in violation of applicable laws.