



## APPENDIX D3 TO DIR-SDD-1539

### CERTIFICATE OF LIMITED HARDWARE WARRANTY

Hardware Product Model:

Hardware Serial #:

#### 1. Warranty

1.1 For a period of ONE (1) year from the date of delivery of the Hardware as specified on the customer Order Form (“Warranty Period”), Mutualink, Inc. (“Company”) warrants to Customer (as set forth on the Order Form) that: (a) it has sufficient rights to and in the Hardware purchased by Customer from Company or an authorized agent of Company to sell such Hardware and (b) during the Warranty Period the Hardware shall (i) materially conform to the specifications and (ii) will be free from material defects in workmanship and materials. In no event shall Company have any obligation to make repairs, replacements or corrections required, in whole or in part, as the result of (t) normal wear and tear, (u) accident, disaster or event of force majeure, (v) misuse, fault or negligence of or by Customer, (w) use of the products in a manner for which they were not designed, (x) causes external to the Hardware such as, but not limited to, power failure or electrical power surges, (y) improper storage of the Hardware or (z) use of the Hardware in combination with equipment or software not supplied by Company. If Company provides repair services or replacement parts not covered by the warranty hereunder, Customer shall pay or reimburse Company for all costs of investigating and responding to such request at Company’s then prevailing time and materials rates. ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE HARDWARE PERFORMED BY ANY PERSON OR ENTITY OTHER THAN COMPANY WITHOUT COMPANY’S PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS NOT SUPPLIED BY COMPANY, SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED HARDWARE.

1.2 During the Warranty Period, Company shall, without undue delay, use commercially reasonable efforts to correct or replace any Hardware or component thereof that does not conform to the warranties stated in Subsection 1.1, provided Customer has promptly, as may be reasonable under the circumstances, notified Company in writing of the non-conformity, and cooperates with Company in its correction efforts. All returned Hardware must be packed appropriately so as to not cause any damage to the Hardware while in transit and shall conspicuously bear the Return Materials Authorization (“RMA”) number Customer must obtain from Company prior to return. Customer shall be solely responsible for all packaging and shipping costs associated with returned Hardware. The sole remedy of Customer with respect to any Hardware warranty or defect is as stated in this Subsection 1.2.

1.3 COMPANY DOES NOT WARRANT THE RESULTS THAT MAY BE OBTAINED BY USING THE HARDWARE NOR THAT OPERATION OF THE HARDWARE SHALL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED.

EXCEPT FOR THE WARRANTIES MADE DIRECTLY TO CUSTOMER IN SECTION 1.1 ABOVE, TO THE GREATEST EXTENT ALLOWED BY LAW, COMPANY MAKES NO WARRANTIES TO ANY PERSON WITH RESPECT TO THE HARDWARE OR ANY LICENSES AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF COMPANY HAD BEEN INFORMED OF SUCH PURPOSE) AND NON-INFRINGEMENT.

1.4 Company's sole liability with respect to Third Party Hardware or any other equipment, materials, or parts of third parties shall be limited to the assignment by Company to Customer of any such third party warranty to the extent the same is assignable, unless the warranty is issued directly from a third party to Customer for the Third Party Hardware. Company makes no representations or warranties regarding the merchantability, suitability or fitness of Third Party Hardware in relation to the Hardware other than that the same, when delivered, is compatible with the Hardware in material respects when used or operated in its installed default configuration and in accordance with applicable Specifications. Company shall have no responsibility to Customer to process or administer any warranty claims made by Customer under Third Party Hardware warranties, nor does Company guaranty or warranty the performance of such parties.

1.5 “Hardware” shall mean the equipment manufactured and assembled by Company and identified by serial number(s) as listed on this Warranty Certificate and specifically excludes Third Party Hardware. “Third Party Hardware” shall mean those Hardware items listed on the Customer Order Form that are manufactured and sold as finished goods or products by third parties, whether or not sold as part of, or affixed, attached to, or connected to the Hardware. “Specifications shall mean the technical information that is furnished to Customer concerning the Hardware or other technical information relating to Third Party Hardware, including without limitation, drawings, sketches, models, manufacturing level schematics, computer or other apparatus programs, user manuals, trouble shooting guides and descriptions of the same or which are otherwise furnished to Customer from time to time, including technical updates and notices.

1.6 The foregoing are Customer’s sole and exclusive remedies for breach of warranty.

#### 2. Limitation of Liability

2.1 COMPANY SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS HEREUNDER OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES EVEN IF IT HAS BEEN ADVISED OF

THE POSSIBILITY OF SUCH DAMAGES. THE LIABILITY OF COMPANY TO THE CUSTOMER FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE AMOUNT PAID TO COMPANY BY CUSTOMER FOR THE HARDWARE THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING WITHOUT LIMITATION TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. CUSTOMER UNDERSTANDS AND AGREES THAT THE REMEDIES AND LIMITATIONS HEREIN ALLOCATE THE RISKS OF PRODUCT AND SERVICE NONCONFORMITY BETWEEN THE PARTIES AS AUTHORIZED BY THE UNIFORM COMMERCIAL CODE AND BY OTHER APPLICABLE LAWS.

2.2 No employee, agent, representative or affiliate of Company has authority to bind Company to any oral representations or warranty concerning the Hardware. Any written representation or warranty not expressly contained herein is not enforceable.

### 3. Indemnification

Indemnity will be handled in accordance with DIR Contract No. DIR Contract No. DIR-SDD-1539, Appendix A, Section 9A.

### 4. Miscellaneous

4.1 The laws of the State of Texas and state courts of Travis County, Texas shall govern the validity, construction, interpretation, and performance of this Certificate of Warranty. Each party irrevocably agrees that any legal action, suit or proceeding brought by it arising out of this Certificate of Warranty must be brought solely and exclusively in the appropriate state courts within Travis County, Texas. Nothing herein shall be construed to waive the Sovereign Immunity of the State of Texas.

4.2 The remedies stated in this Certificate of Warranty are the sole and exclusive remedies available, and all others, whether at law or in equity, are irremovably and expressly waived by Purchaser.

4.3 If any provision, or part thereof, in this Certificate of Warranty, is held to be invalid, void or illegal, it shall be severed from the remainder, and shall not affect, impair, or invalidate any other provision, or part thereof, and if possible it shall be replaced by a provision which comes closest to such severed provision, or part thereof, in language and intent, without being invalid, void or illegal. Company shall be entitled to rely upon the enforceability of the provisions of the Certificate of Warranty as being duly valid and enforceable notwithstanding any administrative regulation, policy statement or executive order to the contrary which may be binding upon and restrict the actual authority of any governmental agency or entity, unless the Company is notified in writing in advance of any such limitation on authority, and an addendum is issued acknowledging such limitation and restriction and revising the terms hereof. To the greatest extent possible, every Customer that is a governmental entity waives sovereign immunity with respect any claim or action relating to or arising out of the subject matter of this Certificate of Warranty.

4.4 The rights, duties and obligations of Customer under this Certificate of Warranty may not be assigned or transferred in whole or in part by operation of law or otherwise. Company may assign this Certificate of Warranty, subject to applicable law governing assignment. Any purported transfer or assignment in contravention of this Section 4.5 is void. This Certificate of Warranty and the rights and obligations hereunder shall be binding on the parties and their respective successors and permitted assigns, heirs and representatives.

4.5 All waivers under this Certificate of Warranty must be in writing. Any express waiver or failure to exercise promptly any right

under this Certificate of Warranty will not create a continuing waiver or any expectation of non-enforcement of such right or any other.

4.6 Customer acknowledges that its use of the Hardware may require certain governmental permits and licenses and hereby represents that it has acquired or prior to use of the Hardware shall acquire any such required permits or licenses. The parties hereby agree that Company shall have no obligation to inform Customer of any required permits or licenses and, further, shall have no obligation to secure any of the foregoing.

4.7 Customer shall only use the Hardware in a manner that would not violate the requirements of applicable laws.

4.8 This Certificate of Warranty, including the Customer Order Form, (and, if purchased through an authorized reseller or distributor, any required terms and provisions imposed by the Company that must be included in any reseller purchase order form or sales agreement, or a supplemental agreement for the benefit of the Company) is the entire agreement relating to this subject matter. It supersedes all prior or contemporaneous oral or written agreements, communications, proposals, conditions, representations and warranties with respect to its subject matter. No modification of this Certificate of Warranty will be binding, unless in writing and signed by an authorized representative of Company.

\*\*\*\*\* END DOCUMENT\*\*\*\*\*