

# ZULTYS, INC.

## TERMS AND CONDITIONS FOR SERVICES

**PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY.**

**YOUR EXECUTION OF A PURCHASE ORDER FOR THE SERVICES DESCRIBED HEREIN, YOUR DOWNLOADING, INSTALLING, OR USING ANY ZULTYS SOFTWARE APPLICATIONS OR SERVICES, CONSTITUTE: (I) YOUR ACCEPTANCE AND AGREEMENT TO BE BOUND BY ALL OF THESE TERMS AND CONDITIONS; (II) YOUR AGREEMENT TO ABIDE BY AND COMPLY WITH THESE TERMS AND CONDITIONS AND (III) YOUR AFFIRMATION THAT YOU EITHER ARE OVER THE AGE OF MAJORITY IN YOUR JURISDICTION OF RESIDENCE, ARE AN EMANCIPATED MINOR, OR POSSESS LEGAL PARENTAL OR GUARDIAN CONSENT, AND THAT YOU ARE FULLY ABLE AND COMPETENT TO ENTER INTO THE TERMS, CONDITIONS, OBLIGATIONS, AFFIRMATIONS, REPRESENTATIONS, AND WARRANTIES SET FORTH IN THESE TERMS AND CONDITIONS.**

**IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT DOWNLOAD, INSTALL, OR USE ANY ZULTYS SOFTWARE APPLICATIONS OR SERVICES DESCRIBED HEREIN, INCLUDING THE ZULTYS WEBSITE ("WEBSITE").**

### **Parties**

These Terms and Conditions of Service of Zultys, Inc., a Delaware corporation (“Zultys”, “we” or “us”, “our”), including any related policies, pricing and charge schedules, rules or supplemental agreements of Zultys incorporated herein by reference (“Terms and Conditions”) constitute a binding contract between Zultys and the party set forth in an applicable purchase order form, user of the Services (as defined below) or user of the Website (“you”, “You”, “customer” or “user”) and supersede all prior agreements, discussions and writings between you and Zultys regarding the subject matter of these Terms and Conditions. The term “Zultys” includes its respective subsidiaries, affiliates, agents, employees, predecessors in interest, successors, attorneys and any other service provider that furnishes services or devices to you in connection with these Terms and Conditions.

### **Changes to Terms and Conditions**

These Terms and Conditions (including any policies incorporated by reference) and pricing for the Services may be changed by Zultys at any time in its sole discretion by posting the changes made to these Terms and Conditions, as revised, on its Website or by providing you with separate notice (electronic or written), including, but not limited to, notice set forth in billing statements. Your use of the Website or the Services following the posting or notice of such changes or revised Terms and Conditions shall constitute your acceptance of any such changes. If you do not agree to these Terms and Conditions, or any other policy governing your access to or use of our Services or the Website, then you should immediately terminate your access to and use of the Services or the Website. If you have any question regarding these terms or your access to or use of the Services or the Website, please email Customer Support at [support.mxvirtual@zultys.com](mailto:support.mxvirtual@zultys.com). For purposes of clarity, revised or

modified terms shall replace and supersede all previously agreed to electronic and written terms, as well as any prior versions of these Terms and Conditions. You agree that you are solely responsible for (a) making sure that your registered email account with Zultys is current and functional, (b) checking your registered email account on a routine basis, (c) checking the Zultys Website and your account page on a routine basis, and (d) making sure that Zultys communications are not blocked or rendered undeliverable by you, your computer, any software installed on your computer, your Internet service provider, or for any other reason.

## **Zultys Services**

You are vitally important to us and Zultys strives to provide and deliver to you professional, high quality and cost-effective services.

The term "Services" shall mean Zulty's unified voice and data communications solutions and services, including, but not limited to, its cloud-based solutions for enterprises and managed service providers and its Internet Protocol phone systems. The voice component of the Services may be generically referred to as "Voice over Internet Protocol" or "Voice over IP" ("VoIP").

### **Not a Telephone Service**

You acknowledge and understand that the Services are not a telephone service and important distinctions exist between telephone service and the Services offered provided by Zultys. The Services are subject to different regulatory treatment than telephone service and as a result may limit or otherwise affect your rights of redress before federal and state and local telecommunications regulatory agencies or judicial forums.

Events beyond our control may affect the Services, such as power outages, fluctuations in the internet, your underlying ISP or broadband service, or maintenance.

### **No 0+ or Operator Assisted Calling; May Not Support X11 Calling**

You acknowledge and agree that the Services (i) do not support 0+ or operator assisted calling, including, without limitation, collect calls, third party billing calls, 900, calling card calls or dial around calls and (ii) may not support 311, 511, and other x11 services in one or more (or all) service areas.

### **Maintenance**

You acknowledge and understand that Zultys may periodically perform routine maintenance on the Services and as a result, the Services may be temporarily interrupted and/or suspended. Zultys will make every effort to perform such maintenance after normal business hours.

### **911 Matters**

**YOU ACKNOWLEDGE, UNDERSTAND, AND AGREE THAT ZULTYS' VOICE SERVICE IS INTERNET BASED AND THEREFORE 911/E911 SERVICES ARE DIFFERENT FROM TRADITIONAL WIRELINE BASED SERVICES.**

## 911 May Not be Available or Limited

Zultys hereby advises you of the circumstances under which 911 may not be available or may be in some way limited by comparison to traditional 911 service. Such circumstances include:

- *Internet Connection Failure.* If the connection to the wired broadband Internet over which your Zultys VoIP Service is provided is interrupted, you would not have access to Zultys VoIP Service during that interruption and therefore will not have access to VoIP 911 service during that interruption.
- *Number Flexibility & Service Portability.* Traditional 911 service automatically sends your 911 call to the appropriate local emergency responder, or Public Safety Answering Point ("PSAP"), based on your telephone number. Traditional Enhanced 911 service (also known as E911) automatically sends your 911 call to the appropriate PSAP along with your registered address and telephone number. Because the Zultys VoIP Service permits you to obtain a telephone number that does not correspond to your geographic location (for example, you may obtain a Zultys VoIP telephone number with a California area code even if you do not have a California address) and allows you to use Zultys VoIP Service anywhere you have wired broadband Internet, the VoIP 911 Service functions differently than traditional 911 service in certain respects:
  - Because your address does not necessarily correspond with your telephone number, you must provide Zultys with the street address(es) where you will be using Zultys VoIP Service ("Registered Location(s)") when you sign up for the Service.
  - If you relocate any equipment (PC with softphone, IP phone, or ATA with traditional phone) that you use to access the VoIP Service, you must update your Registered Location(s). If you do not update your Registered Location(s), any 911 calls you make using the VoIP Service will be routed based on your previously provided Registered Location and therefore may not be routed to the appropriate PSAP for your new location.
  - In addition, because the VoIP Service will, where possible, automatically transmit your Registered Location to the PSAP, you must update your Registered Location to ensure that the VoIP Service transmits accurate location information to the PSAP.
  - Once you notify us of a change in your Registered Location via email, there may be a delay in making the new Registered Location available to properly route 911 calls and advise PSAPs of your new Registered Location.
  - In some parts of the country where direct routing to PSAPs is not available for VoIP 911 Service, the Service will route your call to the National Emergency Call Center where trained agents will ask for the name, location, and telephone number of the person calling 911 and will contact the appropriate PSAP to send help. The call center will not automatically receive your address and telephone

number. In these situations, public safety response times may be delayed. As a result, there may be an additional delay before emergency services arrive.

- *Loss of Electrical Power.* Unless you have a backup system to power your wired broadband Internet connection and any equipment (PC with softphone, IP phone, ATA with traditional phone) that you use to access your VoIP Service, you will not have phone service or 911 service during any power outage.
- *Registration of Physical Locations Required.* As discussed above, you must register the Registered Location where you will be using VoIP Service for each phone number you use from Zultys (e.g., if you purchase a Zultys solution/product with three phone numbers, you must provide a Registered Location for each of them). Zultys will obtain your Registered Location as part of the Service initiation process and will not provide VoIP Service until you have provided your initial Registered Location. However, you must update your Registered Location when you use your VoIP Service from a new location. Regardless of what address you register, in some circumstances, such as unavailability of direct routing to PSAPs or the use of portable devices to access the VoIP Service, emergency calls will be routed to the National Emergency Call Center.

You agree to provide true, accurate, current, and complete Registered Location information to Zultys as part of the Service initiation process and to update as soon as possible your Registered Location with true, accurate, current, and complete information whenever you use your VoIP Service from a new location. If you provide Registered Location information that is, or that Zultys suspects to be, false, inaccurate, not current, or incomplete, Zultys has the right to suspend or terminate the Services and refuse any and all current or future use of all Services, or any portion thereof. **YOU ACKNOWLEDGE AND AGREE THAT (A) IN THE EVENT THE SERVICES ARE SUSPENDED, THEN YOU MAY NOT HAVE THE ABILITY TO MAKE A 911 CALL DURING SUCH SERVICE SUSPENSION AND (B) IN THE EVENT THE SERVICES ARE TERMINATED, YOU WILL NOT HAVE THE ABILITY TO MAKE A 911 CALL USING THE SERVICES.**

You can only update your Registered Location by submitting a request via email to [support.mxvirtual@zultys.com](mailto:support.mxvirtual@zultys.com). We do not accept updates to your Registered Locations over the phone. However, please call phone number 408-328-5427 to expedite any prior email request regarding such 911 address change. For purposes of 911 dialing, you may only register one Registered Location for each phone number.

You should inform all business colleagues, household residents, guests, and other persons who may be present at the physical location where you utilize the VoIP Service that 911 may not be available or may be in some way limited in comparison to traditional 911 service.

### **Disclaimer of 911 Liability / Indemnification**

Zultys disclaims all responsibility for the conduct of PSAPs, the National Emergency Call Center, and all other third parties involved in the provision of emergency response services. Zultys does not have any control over PSAPs, the National Emergency Call Center, or other third parties and is therefore not responsible for whether they answer 911 calls made using the VoIP Service, how they answer these calls, or how they handle or respond to these calls.

YOU ACKNOWLEDGE AND AGREE THAT NEITHER ZULTYS, ITS UNDERLYING CARRIER(S), NOR ANY OTHER THIRD PARTIES INVOLVED IN THE ROUTING, HANDLING, DELIVERY OR ANSWERING OF EMERGENCY SERVICES OR IN RESPONDING TO EMERGENCY CALLS NOR THEIR OFFICERS OR EMPLOYEES, MAY BE HELD LIABLE FOR ANY CLAIM, DAMAGE, LOSS, FINE, PENALTY OR COST (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) AND YOU HEREBY WAIVE ANY AND ALL SUCH CLAIMS OR CAUSES OF ACTION, ARISING FROM OR RELATING TO THE PROVISION OF ALL TYPES OF EMERGENCY SERVICES TO YOU. YOU FURTHER AGREE AND ACKNOWLEDGE THAT YOU ARE INDEMNIFYING AND HOLDING HARMLESS ZULTYS FROM ANY CLAIM OR ACTION FOR ANY CALLER PLACING SUCH A CALL WITHOUT REGARD TO WHETHER THE CALLER IS YOU OR AN EMPLOYEE OR CUSTOMER OR AGENT OF YOURS. YOU ACKNOWLEDGE AND AGREE THAT ANY INJURY ARISING OUT OF A LACK OF OR MISROUTING OF 911 CALLS, REGARDLESS OF WHETHER THE CALL FAILED OR WAS ROUTED BY A PUBLIC SAFETY ANSWERING POINT OR AN OFFICIAL EMERGENCY OPERATOR, IS NEITHER THE FAULT NOR LIABILITY OF ZULTYS AND YOU HOLD ZULTYS AND ITS SUBSIDIARIES AND AFFILIATES, AS WELL AS THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES AND AGENTS HARMLESS FROM ANY DAMAGES OR LIABILITIES. THESE LIMITATIONS APPLY TO ALL CLAIMS REGARDLESS OF WHETHER THEY ARE BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCT LIABILITY, TORT AND ANY OTHER THEORIES OF LIABILITY.

### **Alternative 911 Arrangements**

YOU ACKNOWLEDGE THAT ZULTYS DOES NOT OFFER PRIMARY LINE OR LIFELINE SERVICES, AND THAT ZULTYS STRONGLY RECOMMENDS THAT YOU ALWAYS HAVE AN ALTERNATIVE MEANS (LIKE A CELL PHONE) OF ACCESSING TRADITIONAL 911 SERVICES.

### **Equipment and Incompatibility with other services**

The Services require that (i) you obtain certain equipment from Zultys or one of its authorized representatives or third party partners and (ii) you have, at your own cost, broadband connection to the internet with a minimum 80 kbps for each simultaneous call (upstream and downstream) and this bandwidth is either dedicated for Voice Over IP traffic OR has higher priority than other types of Internet traffic on your border router. The Services are designed to work with such high-speed broadband connections but Zultys cannot and does not guarantee that the Services will be continuous or error-free since VoIP depends on broadband connectivity, sufficient power supply and equipment configuration. The Services may also be interrupted for equipment, network, or facility upgrades or modifications.

Please note that if the broadband connection you are using in connection with the Services is outside the United States and/or your ISP places restrictions on the usage of VoIP services, Zultys does not represent or warrant that use of the Services by you is permitted by any other jurisdictions or by any or all the ISPs. If you remove Zultys equipment to a country other than the United States or use the Services from there, you do so at your own risk, including the risk that such activity violates local laws in the country where you do so. You will be solely responsible for any violations of local laws

and regulations or violations of ISP terms of service resulting from such use. You also agree to indemnify Zultys for any claims, damages or expenses resulting from your use of the Services outside of the United States. Zultys reserves the right to disconnect the Services immediately if Zultys determines, in its sole and absolute discretion that you have used the Services or the equipment provided with the Services in violation of applicable laws, including, without limitation, laws of jurisdictions outside the United States. You are solely liable for any and all use of the Services and/or equipment provided with the Services by any person making use of the Services or equipment provided to you.

There may also be other services with which our Services may be incompatible. Some providers of broadband service may provide modems that prevent the transmission of communications using the Services. Zultys does not warrant that the Services will be compatible with all broadband services and expressly disclaim any express or implied warranties regarding the compatibility of the Services with any particular broadband service.

You acknowledge and understand that the Services are not compatible with all non-voice communications equipment, including but not limited to, some home and office security systems that are set up to make automatic phone calls, emergency phones in elevators, some aspects of satellite TV systems, digital entertainment systems, fax machines, modems and medical monitoring devices. By accepting these Terms and Conditions you waive any claim you may have against Zultys for interference with or disruption of such systems due to the Services.

### **Pricing of Services**

You acknowledge and agree that all prices, taxes, surcharges, and fees are subject to change at any time. You are responsible for paying all charges for the Services for your account, including but not limited to toll -free, local, long distance, international, additional feature charges, 411 and operator assisted charges, and directory assistance charges, and for all taxes, surcharges, and fees imposed on you or us as a result of your use of the Service. Customers with a past due balance on previous or multiple accounts will be charged the full balance upon opening a new account or updating their credit card information on file. Zultys also reserves the right to charge termination and transfer fees consistent with each plan's terms and conditions and as provided in these Terms and Conditions.

Zultys fees and charges for the Services are supplied to you during the ordering process. You agree to pay any applicable one-time, recurring charges, nonrecurring charges, including, but not limited to, account setup fees, adapter fees, equipment charges, shipping and handling and other nonrecurring charges.

### **Unlimited Outbound Domestic Calling Plans**

These plans are for domestic outbound calling only. Zultys reserves the right to review, periodically, usage levels of unlimited minute service plans to ensure that you are not using such service in violation of our terms and conditions. In the event you violate any of these terms and conditions Zultys may terminate or adjust the plan as appropriate. You agree to use the unlimited domestic minute service plan for traditional voice calling only of duration comparable to that of the average business customer presently utilizing Zultys' service and will not employ methods, devices or procedures to take advantage of unlimited plans by using any of our services excessively or for means not intended by Zultys. Excessive use is defined by Zultys as use that exceeds the average call volume or duration

used by all other Zultys unlimited plan customers, and attempting to originate or terminate multiple concurrent phone calls through any single line of service and short duration calling as described below. The following types of services are specifically prohibited and may not be done through our unlimited service plan: conference calling, monitoring services, data transmissions, transmission of broadcasts or transmission of recorded material. We may terminate your service or change your service plan if, in our sole discretion, we determine that your use of the unlimited plan violates this prohibition or is otherwise "unreasonable" or results in abuse of the unlimited minute service plan. The unlimited domestic calling plan excludes calls made to any 911 type service, any 411 type services, any 900 type services or any other numbers that are typically billable under non unlimited calling plans

**Our unlimited plan may also be immediately terminated and you may be billed at our standard per minute rates in effect at the time for the following reasons:**

- If you resell, re-brand, or commercially exploit in any form our Unlimited Service Plan, without our written consent, in order to aggregate traffic from more than one customer over an "unlimited" line or trunk;
- set up routing functionality such that only outbound long-distance traffic is sent over the Unlimited Service; or
- engage in any other conduct which is fraudulent, illegal, harassing or results in significant network congestion, or degradation.
- Autodialing, predictive-dialing, or robo-dialing.
- Continuous, repetitive or extensive call forwarding
- Harassing, threatening or abusive calls.
- Unsolicited calls if such unsolicited activities could reasonably be expected to, or actually do in fact, provoke complaints.
- False information for you or any users of the Service.
- Continuous or extensive conference call participation.
- Free conference calling or similar services that participate in traffic simulation practices or schemes that result in excessive charges.
- Repetitive and/or continuous messaging or calling to the same destination number if such activity could reasonably be expected to, or in fact actually does, provoke complaints.
- We receive any complaints from any government or regulatory agency regarding your calls or calling patterns and habits
- Long duration calls (defined as calls to the same number in excess of four hours (continuous or cumulative) within a 24 hour period) and/or calls placed to specific numbers/destinations for the purpose of generating charges or fees for or with a third party.
- Calls that consist of uninterrupted recorded messages.
- Use of the unlimited plan in any call center/contact center environment
- Continuous call session connectivity
- Fax broadcasting and/or blasting
- Telemarketing; or
- Any other activity that would be inconsistent with reasonable business use patterns, causes network congestion or jeopardizes the integrity of our network.

**SHORT DURATION CALLS:** Zultys reserves the right to charge all short duration calls (calls under 10 seconds in length) a fifteen cent (\$.15) per call additional fee if in our sole discretion we determine that you have an excessive volume (more than 10% of your total calls in any given month) of calls that consist of short duration calls. You agree that calls, as defined herein for billing purposes, shall

include all call traffic when accepted by Zultys for termination whether such calls are terminated or not (incomplete calls) for any reason. We will bill you for all calls completed to our equipment regardless if the call is completed to the called party. Accordingly, you understand your obligations in regards to incomplete calls and you agree that Zultys shall incur no liability as a result of or, in relation to, said incomplete calls.

## **Billing**

When you subscribe to the Services, you will provide Zultys with a payment method. Our billing procedures provide for the delivery of monthly bills in electronic format and for payment by credit/debit card or by ACH Transfer. Accordingly, Zultys requires that you execute and deliver a recurring payment authorization which will be kept on file at Zultys' offices. Such Recurring Payment Authorization Form is available from your Zultys authorized dealer or by contacting Zultys at [support.mxvirtual@zultys.com](mailto:support.mxvirtual@zultys.com)

Any authorization will remain valid until thirty (30) days after you terminate our authority to charge your payment method. Upon termination, Zultys will charge you any fees and any other outstanding charges and disconnect your service. You agree to advise and notify us of any changes to your payment method, such as credit card account number or expiration date changes. If the credit card or other payment method on your account is declined or fails for any reason, Zultys will use reasonable efforts to contact you and advise you of the failed billing attempts. Notwithstanding the foregoing, Zultys reserves the right to disconnect your Service and terminate your account if your credit card on file is declined or fails for any reason or your checks are returned for nonpayment, and Zultys reserves the right to pursue any other legal remedies available to Zultys.

In the event you desire to receive monthly invoices from Zultys by mail or remit payment by check, instead of credit/debit card or ACH Transfer, Zultys may add an administrative charge to your monthly invoice. The administrative charge will not exceed \$25.00 per month.

Time is of the essence for payment. Therefore, you agree to pay us interest at the lesser rate of (a) 18% per annum or (b) the highest rate allowed by law for any amounts unpaid as of the due date. Acceptance of late or partial payments (even if marked "Paid in Full") shall not waive any of Zultys' rights to collect the full amount due. We may assess an additional fee of the lesser of (a) fifty dollars (\$50) or (b) the highest amount allowed by law for any credit card chargeback or check returned for nonpayment.

Upon termination of your account for any reason, all unused calling credits, if any, shall expire in their entirety on the termination date. No refund, transfer or proration shall be made of any unused credits or of any remaining periods/months on any Service plan.

Billing cycle end dates may change from time to time. When a billing cycle covers less than or more than a full month, we may make reasonable adjustments and prorate the charges to your account.

You must dispute any charges for the Services in writing to Zultys within thirty (30) days of the date of the charge by Zultys. If you fail to provide a written statement explaining in reasonable detail your reasons for disputing the charge within such time period, you hereby irrevocably waive any objection



and further recourse with regard to such charges. Written statements disputing charges must be sent to [support.mxvirtual@zultys.com](mailto:support.mxvirtual@zultys.com)

### **Agreement Term and Termination**

Customer agrees to the term of the agreement shown on the Service Order signed by you. You are responsible for all charges during the term or extension of the term and it is non-cancellable for this period of time. At the end of the initial term of the agreement, the agreement will automatically renew for the same period of time as stated on the agreement unless you send written notice to Zultys 30 days in advance of the initial, or any extension of the agreement, expiration date.

### **Phones and Other Related Equipment**

The purchase of equipment, such as phones, to be used on your premises in connection with the Services, shall also be governed by the terms and conditions provided to you by the Zultys dealer, Zultys channel partners or Zultys representatives providing such equipment.

Phones and any other related equipment that are provided by Zultys and included in the monthly invoice on a recurring basis shall remain the property of Zultys, Inc. and no title is passed to you, the Customer. At the end of the term of your agreement or any termination prior to the end of the term of the agreement, for whatever reason, you shall return the equipment to Zultys, Inc. within 30 days of said termination.

### **Limited Use License to You and IP Ownership Rights of Zultys**

Zultys grants you a limited, personal, revocable, non-exclusive, non-sublicensable, non-assignable, non-transferable, non-resellable license and right to use the Zultys Services, equipment and any firmware or software used to provide the Services or utilized in the equipment to provide the Services in strict accordance with these Terms and Conditions. All rights not expressly granted under these Terms and Conditions are retained by Zultys.

You acknowledge and agree that any and all patents, copyrights, trademarks, service marks, trade secrets, and all other intellectual property rights (collectively, "IP Rights") in the Services and any firmware or software used to provide the Services or utilized in the equipment to provide the Services are and shall remain the sole and exclusive property of Zultys and its licensors. Nothing in these Terms and Conditions intends to or shall grant, transfer, or assign any IP Rights to, or vest any IP Rights in, you. You are only entitled to the limited use of the rights expressly granted to you in these Terms and Conditions. You will not take any action to jeopardize, limit, or interfere with the IP Rights. You acknowledge and agree that any unauthorized use of the IP Rights is a violation of these Terms and Conditions, as well as a violation of applicable intellectual property laws. You acknowledge and understand that all title and rights in and to any third party content that may be accessed through the Services or the Website is the property of the respective content owners and may be protected by applicable copyright or other intellectual property laws and treaties.

You agree not to sell, assign, rent, lease, distribute, export, import, act as an intermediary or provider, or otherwise grant rights to third parties with regard to the Services or any part thereof, including,

without limitation, the equipment (or software or hardware therein) used in connection with the Services without Zultys' prior written consent.

You agree not to undertake, cause, permit, or authorize the modification, creation of derivative works, translation, reverse engineering, decompiling, disassembling, or hacking of the Services, or any firmware or software used to provide the Services or utilized in the equipment to provide the Services or parts thereof. You agree not to intercept, capture, emulate, decrypt, or redirect the communications protocols used by Zultys for any purpose, including, without limitation, causing the firmware or software to connect to any computer server or other device not authorized by Zultys or in a manner not authorized by Zultys.

All websites, portals, corporate names, service marks, trademarks, trade names, logos and domain names (collectively "marks") of Zultys are and shall remain the exclusive property of Zultys and nothing in these Terms and Conditions shall grant you the right or license to use any of such marks.

You expressly agree that the equipment provided for the Services is exclusively for use in connection with the Services and that Zultys will not provide any passwords, codes or other information or assistance that would enable you to use such equipment for any other purpose. If you elect to use the Services through an interface device not provided by Zultys, which Zultys generally prohibits, you warrant and represent that you possess all required rights, including software and/or firmware licenses, to use that interface device with the Services and you will indemnify and hold harmless Zultys against any and all liability arising out of your use of such interface device with the Services.

### **Local Number Portability**

In the event you are transferring an existing phone number that currently is subscribed to another carrier, such transfer is subject to the following terms and conditions. You hereby authorize Zultys to process your order for the Services and to notify your local service provider of your decision to switch your local services to Zultys and to transfer your telephone number, and represent that you are authorized to take these actions. You may be required to complete a letter of authorization, provide us with a copy of your most recent bill from your service provider, as well as provide us with any other information required by your service provider to port your number. Failure to provide any information requested by Zultys or the third party services provider will delay the porting of the number to Zultys. Zultys shall not be responsible for any delay in the port of your number and will not provide credit for any such delays. You agree and acknowledge that you must install and activate your equipment prior to the date that the number switch becomes effective. Zultys has the right to refuse to import a number if, in its sole discretion, it does not have the infrastructure to support the number.

### **New phone numbers**

When ordering or porting local or toll free phone numbers, Zultys expects customers to perform test calls to insure that the phone services and numbers are working in a satisfactory manner upon their activation and report any issues to Zultys immediately. Failure to do so may result in unreported issues, for which Zultys will not be liable. Do not advertise or publish newly ordered or ported phone numbers until you have tested that the number(s) are functioning to your satisfaction. Zultys is not responsible, nor accepts any liability, for any number that you make available to the general public that you have not confirmed to be functioning properly.

## **Customer Representations**

You represent and warrant as to the following:

- You are at least eighteen (18) years of age or, as applicable, the age of majority in the country, state or province in which you reside, and that you possess the legal right and ability to enter into this contract.
- Your data, name, phone number, contact information, registered location and all other information provided to Zultys in connection with your account and/or obtaining the Services are true and correct at all times and you understand that any false, incorrect or misleading information from you may result in Service provisioning and delivery delays, the suspension or termination of the Services and the inability of a 911 dialed call to be correctly routed to emergency service personnel, as further explained herein. You hereby agree to notify Zultys of any changes to your personal or billing information (including, but not limited to, your name, address, e-mail address, telephone number, and credit card number and expiration date).
- You will make every reasonable effort to maintain at all times wireless or traditional wireline telephone service that will enable you to call 911 and any other applicable emergency service number.
- You agree to be financially responsible for your use of the Services as well as for authorized or unauthorized use of your account by others.
- You have properly configured and working internet service and/or Public Switched Telephone Network ("PSTN") service (i.e., mobile and/or landline phone service) and hereby agree, at your sole expense: to (1) obtain access to your own internet and/or PSTN service with a third party provider other than Zultys; (2) be responsible for payment of internet and/or PSTN connection or service fees and all equipment necessary to establish a connection to such internet and/or PSTN service, as may be required to use the Services; (3) supply and pay third-party providers for all additional phone service and features required for your use of the Services.
- You will not use the Services in environments requiring fail-safe performance or in which the failure of the Services could lead directly to death, personal injury, or severe physical or environment damage.
- You will not use the Services in violation of these Terms and Conditions.

## **Right to Disconnect and Cancel Service**

Zultys reserves the right to discontinue its Services, cancel your account, and/or block your access to its network, without incurring any liability, immediately and without notice if:

- You materially breach these Terms and Conditions, as determined in the sole discretion of Zultys;

- You used a fraudulent credit card or debit card to pay for the Service charges on your account;
- You act in a manner that is insulting, threatening, obscene, harassing, or abusive to Zultys personnel, employees, agents or other representatives;
- You do not respond to Zultys' phone calls or emails to contact you about your account or billing statement;
- You refuse to provide information or provide false information that (i) is essential for billing; or (ii) pertains to your creditworthiness, your past or current use of common carrier communications service, or your planned use of such service;
- Your Service usage charges exceed established parameters based on your history of usage, which may indicate a likelihood of non-payment or possible fraud;
- You have been given notice by Zultys of any past due amount (which remains unpaid, in whole or in part) for any of Zultys' or an affiliated carrier's service to which you either subscribe or had subscribed or used;
- You either refuse to pay when billed for the Services or indicate to Zultys or an entity billing on Zultys' behalf that you do not intend to pay for the Services used by you;
- You use, or attempt to use, the Services with the intent to avoid the payment, either in whole or in part, of the charges for the Services by (i) using or attempting to use service by rearranging, tampering with, or making connections to the Services in an unauthorized manner; or (ii) using tricks, schemes, false or invalid numbers, false credit devices, or other fraudulent means or devices;
- You act, or fail to act, in a manner that hinders or frustrates any investigation by Zultys or others having legal authority to investigate your legal obligations;
- You were previously provided with notice of breach of contract, took corrective action, but thereafter engage in the same breach activity;
- You did not or will not reasonably comply or cooperate with any applicable law or regulation.
- Zultys is ordered by law enforcement or other government agencies to suspend or terminate the Services to your account;
- You bring any legal action or proceeding, including, without limitation, in any court, regulatory, or administrative body, arbitral body, or mediator, against Zultys, or participate in any class action lawsuit against Zultys;
- You make any disparaging statement (whether written, oral, electronic, or otherwise) against Zultys, its Services, or its employees, contractors, agents, investors, affiliates, or other representatives;
- You negligently, recklessly, knowingly, or intentionally transmit any material that contains viruses, time bombs, trojan horses, worms, malware, spyware, or any other programs that may be harmful or dangerous;
- You create a false caller ID identity ("ID spoofing") or forge email/SMS addresses or headers, or otherwise attempt to mislead others as to the identity of the sender or the origin of any communication made using the Services;
- You transmit any material that may infringe, misappropriate, or otherwise violate the foreign or domestic intellectual property rights or other rights of third parties;
- You use the Services in excess of what, in Zultys' sole discretion, would be expected of normal business use, including without limitation, allowing more than one user to use a single VoIP line or using a single VoIP line in excess of what would be expected of a single user;
- You use or employ methods and/or devices that are designed or likely to take advantage of, bypass, exploit, or otherwise avoid these Terms and Conditions; or

- Zultys determines that such action is necessary to protect, maintain, or improve the Services; to prevent fraud or misrepresentation by affirmative acts and/or omissions; to protect Zultys, its customers, or other third parties affiliated with Zultys; or for any other good cause.

In the event of the discontinuance of the Services by Zultys pursuant to these provisions, you will be charged for all outstanding charges as well as all monthly, usage and disconnect fees associated with the Services through the end of your then-current subscription period, all of which immediately become due and payable. Zultys will charge your credit card or debit card or other automatic bill pay for all such charges. Upon any termination or suspension of your account, Zultys may immediately deactivate or delete your account and all related information and files in your account and/or restrict any further access to such files, information, or the Services or related applications and equipment. Zultys shall not be liable to you or any third party for any reason for terminating or suspending your use or access to the Services.

### **Taxes and Fees**

All fees for Services advertised or otherwise listed on your invoice are exclusive of any federal, state, local sales, international excise, value-added, and similar taxes or fees and administrative or recovery fees or charges (collectively "Taxes and Fees"). You agree to pay all Taxes and Fees and/or similar liabilities, however denominated, that may now or hereafter be levied on the Services which are chargeable to or recoverable from customers by any federal, state, local, or international law or regulation, as well as any administrative and recovery fees and charges levied on the Services by Zultys, whether or not mandated by law or regulation. Should Zultys pay or be required to pay such liabilities (including any Taxes and Fees that were due but not charged or previously collected), you agree that Zultys may charge your credit card or debit card on file for such payments upon receipt of an invoice and showing of indebtedness to Zultys or add such additional payments to your next invoice for prompt payment by you.

### **Force Majeure**

Zultys shall be excused from any delay or failure in performance hereunder caused by reason of occurrence or contingency beyond its reasonable control, including, without limitation, acts of God, embargoes, strikes, earthquake, fire, flooding, fiber cuts, actions or inactions of third party providers or suppliers or late delivery by such providers/suppliers, riots, sabotage, war, government requirements or intervention, or other events that are beyond Zultys's reasonable control.

### **Security and Privacy**

You acknowledge and understand that Zultys cannot guarantee that IP communications are private or secure since IP communications utilize, in whole or in part, the public Internet and third party networks to transmit voice and data communications. You agree that Zultys is not liable for any lack of privacy or security that you may experience with regard to the Services. You are responsible for taking precautions and providing security that best suits your intended use of the Services. You also agree that Zultys may access all features of your account and the Services to determine whether the Services are being used fraudulently and/or in violation of these Terms and Conditions, and for any other purposes.

### **Collection of Your Information**

Zultys collects personally identifiable information, including, but not limited to, name, physical address, email address, telephone number, credit card information and other personal information (collectively, "PII"), when initiating the Services and in connection with the provision or marketing of the Services. Zultys may collect PII from other persons in connection with any visit to our Website or portal, any communication about our Services and products or other transactions or interactions with Zultys. Zultys may also collect non-personally identifiable information regarding the usage of Zultys Services or its Website or portal ("Non-PII"). Non-PII may include website pages viewed, time spent using certain services, demographic data, cookies and other information which does not specifically identify any one individual.

"**Cookies**" are pieces of information that may be placed on your computer by a web site for the purpose of facilitating and enhancing your communication and interaction with that web site. Many web sites use cookies for these purposes. Zultys may use cookies to customize your visit to its Website and portal and for other purposes to make your visits more convenient or to enable us to enhance the Zultys Service.

In addition to cookies, Zultys may also use (and its third party advertisers may use) clear gifs, web beacons and third party cookies to improve the performance of its web site and portal, to provide certain features such as advertising or to anonymously track usage of its Website or portal and to track online activity. In addition, Zultys may use such devices in its HTML-based emails to track the usage of such emails in much the same manner as usage of its web site or portal is tracked.

You may stop or restrict the placement of cookies on your computer, including third party cookies, or flush them from your browser by adjusting your web browser preferences, in which case you may still use the Zultys web site or portal, but it may interfere with some of its functionality.

## **Use of Information**

Zultys will use PII (1) to market products and services to persons whom Zultys believes may have an interest, (2) to provide requested services and products, (3) to bill and collect for Services and products provided, and (4) to enable its vendors, contractors, and resellers to provide and assist Zultys in the marketing, provision, billing and collection of such services and products. However, Zultys will not share your credit card information with any third parties unless they are involved in processing payments for services that you have purchased from Zultys. Zultys only works with partners whom it believes maintain high standards with respect to privacy and consumer rights. Zultys may also use and disclose PII to investigate and help prevent potentially unlawful activity or activities that threaten the integrity of our service or network, to investigate fraud or violations of these Terms and Conditions or as required by courts or administrative agencies or in connection with a sale, merger or reorganization of Zultys's business. Non-PII may be shared with any number of third parties by Zultys.

## **CPNI**

In the course of providing services to you, Zultys collects and maintains certain customer proprietary network information ("CPNI"). CPNI includes the types of services you currently purchase, related

usage and billing information for those services. Your telephone number, name and address are not CPNI. Zultys values its relationship with you and is committed to respecting and protecting your CPNI. Accordingly, Zultys does not sell, trade or share your CPNI, including your calling records, outside of Zultys' family of service providers or with anyone not authorized to offer Zultys products or services, or to perform functions on Zultys' behalf, except as authorized by you or required by law. Generally, Zultys can use your CPNI to offer additional services to you, and for billing and collections purposes. Zultys can also disclose your CPNI for legal or regulatory reasons, including in response to subpoenas and court orders. Zultys can also use CPNI to investigate fraud and to prevent violation of these Terms and Confirmation and the unlawful use of Zultys' network, Services and other customers.

The agreement to protect CPNI ("CPNI Protection agreement") is made by and among Zultys, Inc. and Customer, Inc. and its Affiliates ("Customer"), on the day of submission of New Customer Registration form ("Effective day"), through their authorized representatives' signatures on the New Customer Registration Form and Zultys, Inc. acceptance of them. Zultys, Inc. acceptance occurs upon Zultys, Inc. verification that an unaltered Customer-signed document is received by Zultys, Inc. implementation center.

Whereas, the parties have entered into one or more agreements (each a "Service agreement") relating to provision by Zultys, Inc. to Customer of telecommunication services and any other services that may hereafter become subject to Federal Communication Commission rules governing Customer Proprietary Network Information ("CPNI"); and

Whereas, the parties desire to amend the Service Agreement by this Agreement to establish term under which CPNI may be provided by Zultys, Inc. to Authorized Customer Representatives (as defined below);

Now, therefore, in consideration of the mutual promises set forth below, and intending to be bound hereby, the parties agree to add the following to the Service Agreements.

## **1. Protection of Customer CPNI**

1.1 Zultys, Inc. will protect the confidentiality of Customer CPNI in accordance with applicable laws, rules, and regulations and as set forth in this Agreement.

1.2 Zultys, Inc., may provide Customer CPNI (including, without restriction, call detail) to representatives authorized by Customer ("Authorized Customer Representatives" as defined below).

1.3 Zultys, Inc. may provide Customer CPNI to Authorized Customer Representatives via any means authorized by Zultys, Inc., including, without restriction: to the Customer's email address(es) of record (if any) or other email addresses furnished by Authorized Customer Representatives, to the customer's telephone number(s) of record or other telephone numbers provided by Authorized Customer Representatives, to the customer's postal (US Mail) address(es) of record or other postal addresses furnished by Authorized Customer Representatives, or via Zultys, Inc. online customer portal or other online communication mechanism.

- 1.4 Authorized Customer representatives include Customer employees, Customer agents, Customer contractors, and persons authorized in written notice(s) (including email) from Customer to Zultys, Inc. Authorized Customer Representatives also include those individuals with access to the Customer's Address of Record (postal or electronic addresses associated with the account for more than 30 days) or Telephone Number of Record (telephone number associated with the underlying Zultys, Inc. service). Authorized Customer Representatives shall remain such until Customer notifies Zultys, Inc. in writing that they are no longer Authorized Customer Representatives as described below. Customer agrees, and will cause Authorized Customer Representatives to abide by reasonable authentication, password or other procedures developed by Zultys, Inc. in connection with disclosure of customer CPNI to Authorized Customer Representatives. Customer further acknowledges and agrees that, as described in Section 1.6 below, CPNI authorizers can also designate Authorized Customer Representatives, as well as designate additional CPNI authorizers.
- 1.5 Customer's notices of authorization or de-authorization must be sent to Zultys, Inc. and must contain the following information:
- the name, title, postal address, email address, and telephone number of the person authorized or de-authorized;
  - that the person is being authorized, or is no longer authorized (as applicable) to access CPNI; and
  - the full corporate name of the Customer whose CPNI (and whose Affiliates' CPNI) the person can access or can no longer access as applicable.
- 1.6 During the Service Agreements, Customer will at all times have designated, in the New Customer Registration form, or in a separate writing sent to the service manager or account manager, representatives ("CPNI Authorizers") with the power to authorize Customer representatives to access CPNI under this Agreement, and who are themselves authorized to access CPNI of Customer and its Affiliates. Additions or removals of CPNI authorizers will be effective within a reasonable period after Zultys, Inc. has received a signed writing of the change, including the affected person(s)' name title, postal address, email address, and telephone number.

## **Disclaimer**

THE ZULTYS SERVICES AND EQUIPMENT PROVIDED TO YOU ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND ZULTYS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY SIMILAR WARRANTY, WHETHER SAID WARRANTY ARISES UNDER PROVISIONS OF ANY LAW OF THE UNITED STATES OR ANY STATE THEREOF OR ANY COUNTRY. ZULTYS MAKES NO REPRESENTATIONS OR WARRANTIES THAT THE SERVICES ARE FREE OF RIGHTFUL CLAIMS OF ANY THIRD PARTY FOR INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY OR OTHER PROPRIETARY RIGHTS (INCLUDING PATENT AND TRADE SECRET RIGHTS). THE ENTIRE RISK ASSOCIATED WITH THE USE OF THE SERVICES AND EQUIPMENT SHALL BE BORNE SOLELY BY YOU.

ZULTYS MAKES NO WARRANTY ON UP-TIME, RESPONSE TIMES, LATENCY, MEAN-



TIME BETWEEN FAILURES, QUALITY OF SERVICE, AND/OR QUALITY OF VOICE OR FAX COMMUNICATIONS. ZULTYS EXPRESSLY DISCLAIMS ANY WARRANTY THAT THE SERVICES ARE APPROPRIATE FOR HIGH-RISK OR OTHER ACTIVITIES WHERE FAILURE OF THE SERVICE COULD RESULT IN SERIOUS HARM TO PERSONS OR PROPERTY.

ZULTYS EXPRESSLY DISCLAIMS ANY WARRANTY THAT THE SERVICES ARE APPROPRIATE FOR USE AS A REPOSITORY OR MEANS BY WHICH TO STORE PHI ON A NON-TEMPORARY BASIS OR FOR USE BY A HIPAA-COVERED ENTITY TO TRANSMIT, RECEIVE, OR STORE PHI WITHOUT ACTIVATION OF THE ZULTYS HIPAA CONDUIT SETTING.

ZULTYS MAKES NO WARRANTY THAT THE SERVICES WILL MEET YOUR REQUIREMENTS, OR THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE OR THAT ANY DEFECTS IN THE SERVICES WILL BE CORRECTED. ZULTYS IS NOT RESPONSIBLE FOR MESSAGES OR INFORMATION LOST OR MISDIRECTED DUE TO INTERRUPTIONS OR FLUCTUATIONS IN THE SERVICES OR THE INTERNET IN GENERAL. ZULTYS IS NOT RESPONSIBLE FOR THE CONTENT OR FUNCTIONALITY OF ANY THIRD PARTY NETWORK USED IN CONNECTION WITH THE SERVICES.

ZULTYS DOES NOT WARRANT THE ACCURACY OR RELIABILITY OF THE RESULTS OBTAINED THROUGH USE OF THE SERVICES OR ANY DATA OR INFORMATION DOWNLOADED OR OTHERWISE OBTAINED OR ACQUIRED THROUGH THE USE OF THE SERVICES. YOU ACKNOWLEDGE THAT ANY DATA OR INFORMATION DOWNLOADED OR OTHERWISE OBTAINED OR ACQUIRED THROUGH THE USE OF THE SERVICES ARE AT YOUR SOLE RISK AND DISCRETION AND ZULTYS WILL NOT BE LIABLE OR RESPONSIBLE FOR ANY DAMAGE TO YOU OR YOUR PROPERTY.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM ZULTYS, ITS EMPLOYEES, DEALERS, RESELLERS, PARTNERS, OR AFFILIATES OR THROUGH OR FROM THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS AND CONDITIONS.

ALTHOUGH EVERY EFFORT IS MADE TO ENSURE THAT VOICEMAILS AND FAX TRANSMISSIONS ARE SECURE, ZULTYS MAKES NO GUARANTEES OF SECURITY.

SOME JURISDICTIONS DO NOT PERMIT THE DISCLAIMER OF CERTAIN IMPLIED WARRANTIES, SO CERTAIN OF THE FOREGOING DISCLAIMERS MAY NOT APPLY TO YOU. TO THE EXTENT THAT ZULTYS CANNOT DISCLAIM ANY SUCH WARRANTY AS A MATTER OF APPLICABLE LAW, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW.

### **Limitation of Liability**

IN NO EVENT SHALL ZULTYS OR ITS OFFICERS, DIRECTORS, STOCKHOLDERS OR EMPLOYEES BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, OR ANY OTHER DAMAGES OF ANY KIND WHETHER IN AN ACTION IN CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE) OR OTHERWISE,

ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OR INABILITY TO USE THIS WEBSITE OR THE EQUIPMENT OR THE SERVICES OBTAINED FROM ZULTYS, OR ACCESSED THROUGH, THIS WEBSITE, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES CAUSED BY OR RESULTING FROM RELIANCE BY USER ON ANY INFORMATION OBTAINED FROM ZULTYS, OR THAT RESULTS FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES OR E-MAIL, ERROR, DEFECTS, VIRUSES, DELAYS IN OPERATION OR TRANSMISSION OR ANY FAILURE OF PERFORMANCE, WHETHER OR NOT RESULTING FROM ACTS OF GOD, COMMUNICATIONS FAILURE, THEFT, DESTRUCTION OR UNAUTHORIZED ACCESS TO ZULTYS' RECORDS, PROGRAMS OR SERVICES.

IN NO EVENT SHALL ZULTYS BE LIABLE TO YOU, YOUR REPRESENTATIVES OR AUTHORIZED ASSIGNS OR ANYONE ELSE FOR ANY INCIDENTAL, DIRECT, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, OR FOR ANY DAMAGES FOR LOSS OF DATA, LOSS OF REVENUE OR PROFITS, RELATING TO OR ARISING OUT OF THE SERVICES OF ZULTYS, THE USE OF OR INABILITY TO USE THE SERVICES, THE ABSENCE, DELAY, FAILURE OR OUTAGE OF THE SERVICES, THE INABILITY TO DIAL 911 OR TO ACCESS EMERGENCY SERVICE PERSONNEL, THE INABILITY TO DIAL SECURITY, LAW ENFORCEMENT OR FIRE PREVENTION/ PROTECTION SERVICES OR SYSTEMS, THE EQUIPMENT OF ZULTYS FOR THE SERVICES, THE USE OF AND/OR INABILITY TO USE SUCH EQUIPMENT, THE INSTALLATION OF SUCH EQUIPMENT, AND/OR THESE TERMS AND CONDITIONS.

NOR SHALL ZULTYS BE LIABLE FOR ANY DELAY OR FAILURE TO PROVIDE THE SERVICES, INCLUDING 911 DIALING, AT ANY TIME OR FROM TIME TO TIME, OR FOR ANY INTERRUPTION OR DEGRADATION OF VOICE QUALITY CAUSED BY ANY REASON INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING: AN ACT OR OMISSION OF AN UNDERLYING CARRIER, SERVICE PROVIDER, VENDOR OR THIRD PARTY, EQUIPMENT, NETWORK OR FACILITY FAILURE, EQUIPMENT FAILURE, NETWORK OR FACILITY UPGRADE, SERVICE, MAINTENANCE, MODIFICATION, SHORTAGE, OR RELOCATION, FORCE MAJEURE EVENTS SUCH AS, BUT NOT LIMITED TO, ACTS OF GOD, ADVERSE WEATHER, STRIKES, FIRE, WAR, RIOT, GOVERNMENT ACTIONS OR TERRORISM, SERVICE, DEVICE, EQUIPMENT, NETWORK OR FACILITY FAILURE CAUSED BY THE LOSS OF POWER OR INTERNET SERVICE TO ZULTYS OR CUSTOMER, AND ANY CAUSE THAT IS BEYOND ZULTYS' CONTROL, INCLUDING, WITHOUT LIMITATION, THE FAILURE OF AN INCOMING OR OUTGOING COMMUNICATION, THE INABILITY OF COMMUNICATIONS TO BE CONNECTED OR COMPLETED, INCLUDING 911 DIALING, OR DEGRADATION OF VOICE QUALITY.

ZULTYS SHALL NOT BE LIABLE FOR UNAUTHORIZED ACCESS TO ZULTYS OR CUSTOMER'S TRANSMISSION FACILITIES OR PREMISES, EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF, CUSTOMER'S DATA FILES, PROGRAMS, PROCEDURES, OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES OR ANY OTHER METHOD, REGARDLESS OF WHETHER SUCH DAMAGE OCCURS AS A RESULT OF ZULTYS' NEGLIGENCE OR OTHER ACTS OR OMISSIONS.

ZULTYS' LIABILITY FOR ANY ACT OR OMISSION SHALL IN NO EVENT

EXCEED THE SERVICES CHARGES WITH RESPECT TO THE AFFECTED TIME PERIOD. THE LIMITATIONS SET FORTH HEREIN APPLY TO ALL CLAIMS FOUNDED IN BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCT LIABILITY, TORT, AND ANY AND ALL OTHER THEORIES OF LIABILITY, AND APPLY WHETHER OR NOT ZULTYS WAS INFORMED OF THE LIKELIHOOD OF ANY PARTICULAR TYPE OF DAMAGE. FURTHER, YOU AGREE TO REIMBURSE ZULTYS FOR ALL COSTS AND EXPENSES RELATED TO THE DEFENSE OF ANY SUCH CLAIMS, INCLUDING ATTORNEYS' FEES AND LITIGATION COSTS. THE PROVISIONS OF THIS SECTION SHALL BE APPLIED TO THE FULLEST EXTENT OF THE LAW, BUT IF ANY PORTION OF THIS SECTION IS DETERMINED TO BE UNLAWFUL, THEN THIS SECTION SHALL BE CONSTRUED TO LIMIT LIABILITY AGAINST ZULTYS TO THE FULLEST EXTENT POSSIBLE UNDER THE LAW.

### **Publicity Rights**

You agree that Zultys may identify you as a user of the Services in its business deals; press releases; marketing materials; electronic, printed, and broadcast advertising; newsletters; mailings; tradeshow; other promotional materials; on Zultys' Website; or any other third-party website where Zultys or its designated agents may promote the Services. You hereby grant Zultys and its agents an irrevocable, perpetual, worldwide, non-exclusive, fully paid-up, royalty-free license (with right to sublicense) to use, reproduce, publish, and display your name, trademarks, service marks, designs, logos, and symbols in connection with such purpose.

### **Indemnification**

To the maximum extent permitted by applicable law, you shall indemnify and hold harmless, individually and collectively, Zultys, its affiliates, agents, resellers, and other providers who furnish goods and services to you in connection with the Services, and their officers, directors, managers, employees, and stockholders (the "Indemnified Parties") from and against any and all liability, claims, losses (including loss of profits, revenue and goodwill), damages, fines, penalties, injuries to persons or property, costs, and expenses (including reasonable attorneys' fees and dispute resolution expenses) arising from or related to (1) the use of or reliance upon the Services and equipment by you or any third party acting upon your permission, knowledge, authority or direction, (2) a breach of these Terms and Conditions by you, (3) any negligent acts, omissions to act or willful misconduct by you or any third party acting with your permission, knowledge, authority or direction, (4) the inability to use the Services or equipment or failure or outage of the Services or equipment for any reason, including, but not limited to, those related to calling, "911" or other emergency responders, (5) the use of the Services and equipment in connection with a violation of any applicable law, code, regulation, or ordinance, and/or (6) the misappropriation, breach, violation, or infringement of any right, title or interest of any third party, including, but not limited to, contractual rights, intellectual property rights (including patent, trademark, copyright, and trade secret rights), rights of privacy, and rights of publicity and personality.

### **Severability and Nonwaiver**

If any provision of these Terms and Conditions shall be deemed unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from these Terms and Conditions and shall not affect the validity and enforceability of any remaining provisions. The failure of Zultys to

insist upon or enforce strict performance of any of the provisions of these Terms and Conditions or to exercise any rights or remedies under these Terms and Conditions will not be construed as a waiver or relinquishment to any extent of Zultys' right to assert or rely upon any such provisions, rights, or remedies in that or any other instance; rather, the same will be and remain in full force and effect.

## **Notices**

**Notices to You** shall be effective on the date sent to your registered electronic mail address when sent by email or, at Zultys' option, three (3) days following the date deposited in regular United States Mail, postage prepaid, and addressed to your current address on your account. You are responsible for notifying Zultys of any changes in your contact information or address through your account settings page or by contacting customer service at [support.mxvirtual@zultys.com](mailto:support.mxvirtual@zultys.com).

**Written notice to Zultys** shall be effective when directed to Zultys' Director, Cloud Operations and received at Zultys' then-current address as posted on Zultys' Website, available at [www.zultys.com](http://www.zultys.com). Your notice must specify your name, account information, and security verification question and answer. All notices from you to Zultys must be made in writing.

## **Applicable Law/Jurisdiction and Venue**

The laws of the State of California will govern and construe these Terms and Conditions without giving effect to any conflict of laws provisions to the contrary. By use of the Services (and related applications and equipment) and the Website, you irrevocably consent, for any and all disputes with Zultys, to the jurisdiction of and the venue in the federal district court for the Northern District of California and in the courts of the State of California in Santa Clara County, California. If you access the Website from outside the United States, you do so at your own risk and are responsible for compliance with the laws of your jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms and Conditions or your sign up or use of the Services or equipment related thereto.

## **Attorneys' Fees**

Should any litigation be commenced between the parties concerning the rights or obligations of the parties under these Terms and Conditions, the party prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for its attorneys' fees in such litigation. This amount shall be determined by the court in such litigation or in a separate action brought for that purpose.

## **Post Judgment**

In addition to any amount received as attorneys' fees, the prevailing party also shall be entitled to receive from the party held to be liable, an amount equal to the attorneys' fees and costs incurred in enforcing any judgment against such party. This Section is severable from the other provisions of these Terms and Conditions and survives any judgment and is not deemed merged into any judgment.

## **Cause of Action**

You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of these Terms and Conditions must be filed within one (1) year after such claim or cause of action arose or be forever barred.

### **Admissibility of Printed Version**

A printed version of these Terms and Conditions and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these Terms and Conditions to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

### **Export Control Laws / Restrictions**

You agree to comply fully with all relevant export laws and regulations of the United States, including, but not limited to, the U.S. Export Administration Regulations, administered by the Department of Commerce, Bureau of Industry and Security. You also expressly agree that you shall not export, directly or indirectly, re-export, divert, or transfer any portion of the Services or equipment, including, without limitation, to any destination, company, or person restricted or prohibited by U.S. export controls. You represent and warrant that you are not listed on any U.S. Government list of prohibited or restricted parties relating to exports. You also expressly agree to comply with all applicable foreign laws that apply to Zultys as well as end-users end-use, and destination restrictions imposed by U.S. and foreign governments.

### **Assignment**

Zultys may assign these Terms and Conditions and any of its rights and obligations hereunder at any time. You may not transfer or assign these Terms and Conditions or any of your rights or obligations under these Terms and Conditions. Any purported transfer or assignment in violation of this section is void. Subject to the foregoing, these Terms and Conditions shall be binding on and inure to the benefit of the parties, their successors, permitted assigns, and legal representatives.

### **Construction**

The headings of these Terms and Conditions are for convenience only and are not to be considered in construing these Terms and Conditions. The language of these Terms and Conditions shall be construed according to its fair meaning and not strictly for or against any party.

### **DMCA Copyright Notice**

The Digital Millennium Copyright Act of 1998 (the “DMCA”) protects copyright owners who believe that material which appears on the internet infringes upon their rights under U.S. copyright law. If you believe any materials accessible on or from Zultys’ Website infringe your copyright, you may send us a notification requesting to remove the material or block access to it. Zultys will delete all content if correctly notified that such content encroaches or violates another's intellectual property rights. All notices and counter notices must meet the then current statutory requirements imposed by the DMCA; see <http://www.loc.gov/copyright> for details. Zultys’ agent for copyright issues relating to this website is as follows: by mail to Designated Agent, ZULTYS Inc., 785 Lucerne Drive, Sunnyvale, CA 94085 or email to DesignatedAgent@Zultys.com.

## **Questions and Contact Information**

General questions may be directed to Zultys' Customer Support at [support.mxvirtual@zultys.com](mailto:support.mxvirtual@zultys.com)