



KOSMOS
by EchoNous

STANDARD TERMS AND CONDITIONS OF SALE

EchoNous, Inc. ("EchoNous") is the exclusive distributor of EchoNous' products in the USA. If you are purchasing products manufactured by EchoNous under a GPO or IHN contract EchoNous, the terms of such GPO/IHN contract, and not these Standard Terms and Conditions (this "Product Agreement"), will govern your purchase of EchoNous products.

This Product Agreement is the exclusive terms and conditions governing the sale of products listed on the Confidential Quotation attached hereto (the "Products") by EchoNous to the customer identified on Page 1 of the attached Confidential Quotation ("Customer"). All Software included as a part of any Product or separately identified on Page 1 of the Confidential Quotation, are further governed by the software terms and conditions (the "Software Agreement") attached as Annex A. The Product Agreement, the Software Agreement, and the Confidential Quotation attached hereto (together, the "Kosmos Agreement") sets forth the entire contract between the parties and supersedes all prior understandings or agreements of EchoNous and Customer with regard to the purchase and sale of Products and the use of the Software. EchoNous will not be bound by, and specifically objects to, any term, condition, or other provision that is different from or in addition to the provisions of the Kosmos Agreement (whether or not it would materially alter any agreement) that Customer proffers in any purchase order, receipt, acceptance, confirmation, correspondence, or other document, unless EchoNous specifically agrees to such provision in a written instrument signed by EchoNous. All capitalized terms used in this Product Agreement and not otherwise defined shall have the meanings given to them in the Software Agreement.

- 1. Acceptance, Performance and Credit Approval.** EchoNous will deliver to Customer, and Customer will accept and pay for all Products ordered by Customer pursuant to an order that has been accepted by EchoNous. All orders are subject to acceptance by EchoNous either in writing or by shipping Products. EchoNous may accept any order in whole or in part and EchoNous' shipment of less than all Products ordered will constitute acceptance only as to those Products shipped. Each shipment will constitute a separate sale, and Customer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Customer's purchase order. EchoNous will not be liable for any non-delivery of Products, except that EchoNous will deliver the Products within a reasonable time or adjust the invoice in respect of such Products to reflect the actual quantity delivered. A condition of EchoNous' obligation to deliver the Products is its approval of Customer's credit and payment arrangements.
- 2. Firm Order.** Customer may cancel any Product order or modify it by reducing the quantity of Products ordered, prior to Product shipment, without additional charge. In the event of any cancellation or modification of an order within thirty (30) days after shipment of Products has occurred: (a) EchoNous may charge Customer a re- stocking fee equal to fifteen percent (15%) of the amount otherwise payable under this Product Agreement for the affected excess Products; and (b) Customer shall return all cancelled Products in new and unopened condition within 15 days of such cancellation or modification, at Customer's cost. Any failure by Customer to return the cancelled Products within the time frame and in condition above set forth shall result the Customer being responsible for the full purchase price of the affected Products, and in consideration of this, the Customer shall retain (or if EchoNous has received opened, used, damaged or otherwise unacceptable product, then EchoNous will return, at Customer's cost) the excess Products it has purchased from EchoNous. To the extent legally permissible, Product orders may not be cancelled or modified more than thirty (30) days after Products are shipped to the Customer.

3. **Delivery.** EchoNous will use reasonable efforts to meet any delivery date specified in the orders but will not be liable for any failure to meet such dates. Unless otherwise specified in this Product Agreement, EchoNous will deliver the Products FOB destination freight prepaid and added. The risk of loss, damage or casualty to the Products transfers to Customer at the time EchoNous delivers the Products to the Customer's address indicated on the Confidential Quotation. Title to the Products transfers to Customer once EchoNous has received, in cleared funds, the purchase price for Products.
4. **Prices.** Unless specified otherwise in this Product Agreement, the purchase prices, charges, and other amounts payable by Customer for the Products will be as specified by EchoNous in the Confidential Quotation attached hereto.
5. **Taxes.** The prices described in paragraph 4 do not include any sales, use, value-added, withholding or similar taxes. Customer will pay or reimburse EchoNous for all taxes or other amounts payable to governmental authorities in connection with the applicable transactions (other than EchoNous' net income taxes) or will provide EchoNous with an exemption certificate satisfactory to EchoNous.
6. **Payment.** EchoNous will issue invoices for all amounts payable under this Product Agreement. If EchoNous approves extending credit to Customer, Customer will pay the amount set forth on EchoNous' invoice within thirty (30) days from the date of such invoice, or any alternative time period agreed to on the Confidential Quotation. If Customer's credit rating is not satisfactory to EchoNous, EchoNous may require shorter payment terms or payment in advance. Any amount not paid within the time period specified on the Confidential Quotation will be subject to a finance charge equal to 1.5% per month or the highest rate allowable by applicable law, whichever is higher, determined and compounded daily from the date due until the date paid. Payment of such finance charges will not excuse or cure Customer's breach or default for late payment. If Customer has provided Customer's credit card or debit card for payment, Customer hereby authorizes EchoNous to charge such credit card or debit card to obtain payment. Customer shall be responsible for the payment of all costs (including court costs and reasonable attorneys' fees) incurred by EchoNous in connection with the collection of any amounts owed by Customer.
7. **Trade-In Equipment.** Customer agrees to return to EchoNous, upon receipt of the Products purchased under this Product Agreement, any authorized trade-in equipment listed on the Confidential Quotation as being traded in by Customer and used to reduce the price of Products (the "Trade-In Equipment"). Customer shall return the Trade-In Equipment to EchoNous via insured delivery, to the address notified by EchoNous, and EchoNous will issue Customer with a receipt for the Trade-In Equipment. In the event Customer does not return the Trade-In Equipment by insured delivery within the 30 days following delivery of the New Equipment, EchoNous may invoice Customer for the Trade-In Equipment in an amount equal to the value of the credits shown in the Confidential Quotation. Customer agrees to pay the amount of such invoice within 30 days of date of such invoice. Any amount not paid within that time period shall be subject to the finance charge specified in Section 6. Customer must provide all Trade-In Equipment to EchoNous in good working condition, reasonable wear and tear excepted.
8. **Express Warranty and Disclaimer of Other Warranties.** EchoNous' official warranties for the Products are contained in the attached EchoNous Warranty Schedule, which forms an integral part of this Product Agreement. EchoNous MAKES NO OTHER REPRESENTATION, WARRANTY OR PROMISE OF ANY KIND, WHETHER EXPRESS OR IMPLIED, REGARDING THE PRODUCTS (OR ANY SPARE OR COMPONENT PARTS, ACCESSORIES OR SERVICES SUPPLIED BY ECHONOUS HEREUNDER) OR ANY OTHER GOODS OR SERVICES SUPPLIED OR PROVIDED UNDER THIS PRODUCT AGREEMENT OR WHICH ARE IMPLIED BY LAW OR CUSTOM. WITHOUT LIMITATION, ECHONOUS HEREBY EXPRESSLY DISCLAIMS AND EXCLUDES ANY WARRANTY OF ACCEPTABLE QUALITY, MERCHANTABILITY, FITNESS FOR ANY OR A PARTICULAR PURPOSE, NON- INFRINGEMENT OF THIRD-PARTY RIGHTS, OR ANY WARRANTY, TERMS, CONDITIONS OR GUARANTEES ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, USAGE OR TRADE, CUSTOM, STATEMENTS OF

ECHONOUS' REPRESENTATIVES, OR SAMPLES PREVIOUSLY SUPPLIED.

9. **Exclusive Remedy and Release of Other Liabilities.** In the event of any breach of the EchoNous Warranty Schedule, Customer shall follow the procedure specified therein, and EchoNous will provide the remedy specified in the EchoNous Warranty Schedule. TO THE EXTENT PERMITTED BY LAW, THIS REMEDY SHALL BE THE EXCLUSIVE AND SOLE REMEDY OF CUSTOMER FOR ANY BREACH OF THE EchoNous WARRANTY SCHEDULE. The warranties, obligations and liabilities of EchoNous and the remedies of Customer set forth in this Product Agreement are exclusive, and except as provided for in Section 10, CUSTOMER HEREBY WAIVES, DISCLAIMS AND RELEASES, ALL OTHER RIGHTS, CLAIMS AND REMEDIES OF CUSTOMER AGAINST EchoNous express or implied, arising by law or otherwise, with respect to the Products and any other goods or services delivered under this Product Agreement including, without limitation, any obligation, liability, right, claim or remedy in tort (including claims for EchoNous' own negligence or strict liability) or for infringement.
10. **Indemnification.** EchoNous will defend and indemnify Customer from and against any third party claim for bodily injury (including death) or damage to tangible property to the extent caused by a defect in the design or manufacture of the Products, provided that Customer: gives EchoNous prompt written notice of the claim; allows EchoNous to control the defense and settlement of the claim; assists and cooperates with EchoNous in connection with the defense and settlement of the claim; complies with any court order or settlement made in connection with the claim; and does not settle the claim without EchoNous' prior written consent. This Section 10 will not apply to any claim to the extent such claim arises out of or results from: (a) the failure to operate, maintain or store the Product in accordance with applicable specifications, instructions and manuals; the dismantling, repair or alteration of the Product by unauthorized personnel; any use of the Product in connection with any equipment or other items not furnished by EchoNous; (d) any negligence or willful misconduct (such as abuse or intentional damage of the Product); (e) further use of the Product after Customer's knowledge of any defect; and (f) Products manufactured by third party suppliers which do not carry the EchoNous label, even if such products are sold by EchoNous.
11. **Limitations of Liability.** To the maximum extent permitted by law, EchoNous WILL NOT IN ANY EVENT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES OR LOSS OF REVENUE, LOSS OF BUSINESS OR OTHER FINANCIAL LOSS, OR ANY LOSS OF DATA, ARISING OUT OF OR IN CONNECTION WITH ANY PRODUCT OR OTHER GOODS OR SERVICES FURNISHED UNDER THIS PRODUCT AGREEMENT. EchoNous' liability (whether in contract, tort or otherwise, and notwithstanding any fault, negligence, strict liability or product liability of EchoNous) with regard to any Product or other goods or services furnished under this Product Agreement will not exceed three (3) times the purchase price paid by the Customer to EchoNous for the same.
12. **Embedded Software.** EchoNous retains title to all Software. Customer's use of such Software is governed by the Software Agreement and Customer agrees to be bound by such terms.
13. **Stand-Alone or Downloadable Software.** EchoNous, retains title to all Software that is furnished by EchoNous on a separate medium (whether electronic or physical) from a Product ("Stand-Alone Software") or any Software that maybe downloadable into the Product ("Downloadable Software"). Customer's use of the Stand-Alone Software and Downloadable Software is governed by the Software Agreement, attached herein, and Customer agrees to be bound by such terms.
14. **Intellectual Property Rights.** The Products, Software and the videos and other content embedded in the Products have associated with them valuable patent, copyright, trademark, trade secret and other intellectual property rights of EchoNous or EchoNous. Each of EchoNous and EchoNous reserves all such rights. No title to or ownership of any intellectual property rights related to any Product is transferred to Customer pursuant to this Product Agreement. Customer will not attempt to reverse engineer any Product or component thereof (including any Software) or to otherwise misappropriate, circumvent or violate any intellectual property rights of EchoNous.
15. **Confidential Information.** EchoNous may disclose to Customer certain trade secret, proprietary or confidential information ("Confidential Information"). Except as otherwise authorized by EchoNous in

writing, Customer will use such Confidential Information only for the purposes for which it is disclosed by EchoNous, will not disclose it to any third party, and will take appropriate steps to protect it from any unauthorized use or disclosure; provided that, upon or promptly after disclosure by EchoNous, the information is marked or otherwise identified as trade secret, proprietary or confidential or the Customer otherwise knows or has reason to know that the same is trade secret, proprietary or confidential. Customer agrees that the terms of the Kosmos Agreement is a Confidential Information of EchoNous.

16. **Medicare/Medicaid Disclosure.** If and to the extent any discount, credit, rebate or other purchase incentive is paid or applied by EchoNous with respect to the Products or Software purchased under this Product Agreement, such discount, credit, rebate or other purchase incentive shall constitute a “discount or other reduction in price,” as such terms are defined under the Medicare/Medicaid Anti-Kickback Statute, on the Products purchased by Customer under the terms of this Product Agreement. EchoNous and Customer agree to use their best efforts to comply with any and all requirements imposed on sellers and buyers, respectively, under 42 U.S.C. § 1320a- 7b(b)(3)(A) and the “safe harbor” regulations regarding discounts or other reductions in price set forth in 42 C.F.R. §1001.952(h). In this regard, Customer may have an obligation to accurately report, under any state or federal program that provides cost or charge based reimbursement for the products or services covered by this Product Agreement, the net cost actually paid by Customer.
17. **Reimbursement Disclosure.** Any reimbursement and coverage information provided by EchoNous is intended to assist Customer in determining appropriate codes and the other information for reimbursement purposes. It represents the information available to EchoNous as of the date it was provided. Subsequent guidance might alter the information provided. EchoNous disclaims any responsibility to update the information provided. Customer bears sole responsibility for determining and submitting appropriate codes, modifiers, and claims for the services rendered. Before filing any claims, Customer should verify current requirements and policies with the applicable payer. EchoNous makes no guarantees concerning reimbursement or coverage, and Customer should not rely on any information provided by EchoNous in submitting any claim for payment, without confirming that information with an authoritative source.
18. **Authorized Users.** The Products purchased by Customer may only be used by or on the order of a licensed practitioner authorized to prescribe or administer medical ultrasound.
19. **No waiver.** Any failure by EchoNous to enforce performance by Customer of any of the provisions of the Kosmos Agreement or to exercise any right or remedy under the Kosmos Agreement or applicable law will not be construed as a waiver or relinquishment to any extent of EchoNous’ right to assert or rely upon any such provision, right or remedy in that or any other instance.
20. **Assignment.** The Kosmos Agreement will inure to the benefit of and be binding upon the parties and their respective successors, assigns and legal representatives. Other than the one-time transfer of the warranty as set forth in the attached EchoNous Warranty Schedule, Customer may not assign the Kosmos Agreement. EchoNous may assign the Kosmos Agreement without the prior consent of Customer.
21. **Severability of Unenforceable Provisions.** If any provision of any of the Kosmos Agreement is found to be invalid or unenforceable, then the remainder of such agreement shall have full force and effect, and the invalid provision shall be partially enforced to the maximum extent permitted by law to effectuate the purpose of such agreement.
22. **Applicable Law and Venue.** The Kosmos Agreement will be interpreted, construed, and enforced in all respects in accordance with the laws of the State of Washington, without reference to its choice of law principles to the contrary. The provisions of the U.N. Convention on Contracts for the International Sale of Goods will not apply to the Kosmos Agreement. Customer consents to the personal jurisdiction and venue of the state and federal courts located in King County, Washington regarding any suit, proceeding or claim arising out of or related to the Kosmos Agreement or its subject matter and will

not commence or prosecute any such claim, suit or proceeding other than in such courts.

23. **Amendment.** No amendment, modification, or waiver of the Kosmos Agreement will be valid unless set forth in a written instrument signed by both parties.
24. **Export Controls.** EchoNous is prohibited from selling products to persons and entities who are the subject of certain trade and other sanctions imposed under the US federal laws. Customer understands that under applicable law, EchoNous may be required to check the name of the purchasers of its Products against certain lists maintained by the US governmental authorities. In particular, Customer understands that it may be subject to the International Emergency Economic Powers Act (50 U.S.C. § 1701) and all other laws administered by Office of Foreign Assets Control or any other US governmental authority imposing economic sanctions and trade embargoes (“Economic Sanctions Laws”) against countries (“Embargoed Countries”) and persons designated in such laws (collectively, “Embargoed Targets”). Customer agrees it will not (a) directly or indirectly export, re- export, transship or otherwise deliver the Products or any portion of the Products to an Embargoed Target; or (b) broker, finance or otherwise facilitate any transaction in violation of any Economic Sanctions Law with respect to the Product. Customer represents that it is not an Embargoed Target, and that EchoNous may conduct such screening as it deems reasonably necessary to confirm such representation, including by providing Customer’s name and address to third parties for such purpose.
25. **Entire Agreement.** The Kosmos Agreement, together with any other documents incorporated herein or therein by reference and all related Exhibits, constitutes the sole and entire agreement of the Parties with respect to the subject matter of the Kosmos Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter.
26. **Force Majeure.** In no event shall EchoNous be liable to Customer, or be deemed to have breached the Kosmos Agreement, for any failure or delay in performing its obligations under the Kosmos Agreement, if and to the extent such failure or delay is caused by any circumstances beyond EchoNous’s reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo. In the event that any Force Majeure Event delays a party’s performance for more than thirty (30) days following notice by such party pursuant to this Product Agreement, the other party may terminate this Agreement immediately upon written notice to such party.
27. **Notice.** Any notice required or permitted to be given by this Product Agreement by Customer to EchoNous shall be given postpaid, first class, registered or certified mail, or by courier, properly addressed to the other party at the respective address as shown below:

EchoNous, Inc.
ATTN: Legal Department
8310 154th Ave. NE, Building B, Suite 200
Redmond, WA 98052

with cc email to: legal@echonous.com

All notices hereunder shall be in writing and shall be deemed to have been given on the date received if delivered personally or by recognized overnight delivery service, or three days after the date postmarked if sent by registered or certified mail, return receipt requested, postage prepaid, addressed to such party as set forth herein. Either party may change the address to which to send notices by notifying the other party of such change of address, in writing, in accordance with the foregoing, without formal amendment

ANNEX A SOFTWARE AGREEMENT

This Software Agreement is the exclusive terms and conditions governing the Customer's use of: (A) all software embedded in or downloadable to the Product used or designed for the management or the operation of the hardware and the software comprising the Product ("Operating Software"); (B) all other proprietary software of EchoNous, Inc. ("EchoNous") embedded in or downloadable to the Product that are designed for the acquisition, interpretation, calculation, storage, display or transportation of clinical data, including all KOSMOS AI algorithmic software applications ("Application Software"); and (C) any binary codes and documentation related to the Operating Software and the Application Software (collectively, the "Original Software"), as they may be updated or replaced by any release or other adaptation or modification of the Original Software which may contain error corrections, enhancements, improvements, or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency, or quality of the Original Software ("Maintenance Software"), whether in read only memory, on any other media or in any other form (the Original Software and Maintenance Software are collectively referred to as the "Software"). By purchasing or using the Product or using the Software, the Customer agrees to be bound by this Software Agreement. All capitalized words used in this Software Agreement have the meanings given to them in the Product Agreement, unless otherwise herein defined. In case of any conflict between this Software Agreement and the Product Agreement, the Software Agreement shall apply with respect to any Software.

1. License.

(a) **License to Software.** Subject to and conditioned on Customer's payment of Fees and compliance with all other terms of the Software Agreement, EchoNous hereby grants Customer a limited non-exclusive license during the Term (defined below) to use the Software on a single Product. Unless as provided in a separate agreement between Customer and EchoNous, this License does not allow the Software to exist on more than one Product at a time, and Customer may not distribute or make the Software available over a network where it could be used by multiple Products at the same time.

(b) **License to Maintenance Software.** Subject to and conditioned on Customer's payment of Fees and compliance with all other terms of the Software Agreement, EchoNous hereby grants Customer a limited non-exclusive license during the Term to download the Maintenance Software that may be made available by EchoNous for the Product to update or restore the Software on any such Product that is owned or controlled by the Customer. This License does not allow the Customer to update or restore any Product that the Customer does not control or own, and Customer may not distribute or make the Maintenance Software Updates available over a network where they could be used by multiple Products at the same time.

2. **Maintenance Software.** During the Term, EchoNous will provide Customer with all Maintenance Software (including updated documentation) that EchoNous may, in its sole discretion, make generally available to its Customers at no additional charge. All Maintenance Software provided by EchoNous to Customer are deemed Software. Customer will install all Maintenance Software as soon as practicable after receipt or notification of availability.

3. **Application Software and New Versions.** Unless otherwise set forth in a separate agreement between Customer and EchoNous, Customer does not have any right hereunder to receive any new Application Software or any New Versions of any Software (other than Maintenance Software in accordance with Section 2) that EchoNous may, in its sole discretion, release from time to time. "New Version" means any new version of existing Software with substantially new functionality that EchoNous may from time to time introduce and market generally as a distinct licensed product (as may be indicated by EchoNous's designation of a new version number), and which EchoNous may make available to Customer at an additional cost under a separate written agreement. Any New Versions of any Software is considered Software under the Software Agreement.
4. **Term.** The Term means the following provided that the Customer is in compliance with other terms of the Software Agreement: (A) with respect to the Operating Software and the EF Workflow AI App version 1.0, in perpetuity; and (B) with respect to all other Application Software, during the duration set forth in the Confidential Quotation or during the duration of the subscription as Customer may subscribe to from time to time pursuant to a separate subscription agreement signed between the Customer and EchoNous.
5. **Use Restrictions.** Customer may not, and Customer agrees not to or enable others to, copy, decompile, reverse engineer, disassemble, attempt to derive the source code of, decrypt, modify, or create derivative works of the Software or any services provided by the Software or any part thereof (except as and only to the extent any foregoing restriction is prohibited by applicable law or by licensing terms governing use of open-source components that may be included with the Software). Customer agrees not to remove, obscure, or alter any proprietary notices (including trademark and copyright notices) that may be affixed to or contained within the Software. Customer agrees to not use or offer the Software on a service bureau basis, host or stream the Software, circumvent technological measures intended to control access to the Software, develop, distribute, or use with the Software, products that circumvent the technological measures or rent, lease, sell, sublicense, or assign or transfer Customer's rights into the Software (except as set forth on Section 8). Customer agrees to not use the Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.
6. **Reservation of Rights.** EchoNous or its licensors reserves all rights not expressly granted to Customer hereunder. Except for the limited rights and licenses expressly granted herein, nothing in this Software Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Software.
7. **Third-Party Products.** EchoNous may distribute certain third-party products with the Software. Such third-party products are subject to their own license terms and the applicable flow through provisions referred to in Exhibit A. If Customer does not agree to abide by the applicable terms for such third-party products, then Customer should not install or use the Products. The Software also contains certain open source software identified on Exhibit A. Customer understands and acknowledges that such open source software is not licensed to Customer pursuant to the provisions of this Software Agreement and that this Software Agreement may not be construed to grant any such right and/or license. Customer shall have only such rights and/or licenses, if any, to use the open source software as set forth in the licenses referenced in Exhibit A.
8. **Feedback.** If Customer or any of its employees or contractors sends or transmits any communications or materials to EchoNous or any of its affiliates by mail, email, telephone, or otherwise, suggesting or recommending changes to the Software, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("Feedback"), EchoNous and its affiliates are free to use such Feedback irrespective of any other obligation or limitation between the parties governing such Feedback. Customer hereby assigns to EchoNous and its assignees, on Customer's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and EchoNous and its assignees are free to use,

without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although EchoNous and its affiliates are not required to use any Feedback.

9. **Warranty.**

- (a) Warranty.** EchoNous warrants that the Software will substantially conform to the applicable documentation provided with the Software or made available at www.echonous.com during the Warranty Term and that at the time of shipment the Software does not contain any virus or other malicious code that would cause the Software to become inoperable or incapable of being used in accordance with the documentation. "Warranty Term" means: (A) with respect to Operating Software, five (5) years from the date of shipment of the Product to the Customer; (B) with respect to the EF Workflow AI App version 1.0 five (5) years from the date of shipment of the Product; and (C) with respect to all other Application Software, during the duration set forth in the Confidential Quotation or during the duration of the subscription as Customer may subscribe to from time to time pursuant to a separate subscription agreement signed between the Customer and EchoNous. This warranty does not apply if the Software, the Product or any other equipment upon which the Software is authorized to be used: (i) has been altered, except by EchoNous or its authorized representative, (ii) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by EchoNous, (iii) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence, or accident; (iv) is licensed for beta, evaluation, testing, or demonstration purposes or other circumstances for which EchoNous does not receive a payment for the Product or a Fee for the license; or (v) has not been provided by EchoNous.
- (b) Exclusive Remedy.** During the Warranty Term, in case of breach of the warranty provided in Section 10(a), at EchoNous's option and expense, EchoNous shall repair or replace the non-conforming Software. This remedy is conditioned on Customer reporting the non-conformance in writing to EchoNous within the Warranty Term. If EchoNous repairs or replaces the Software, the warranty will continue to run for the remaining duration of the Warranty Term. The remedies set forth in this Section 10(b) are Customer's sole remedies and EchoNous's sole liability under the limited warranty set forth in Section 10(a).
- (c) Transfer of Warranty.** Customer may transfer the Software Warranty only to the transferee of the Product warranty in accordance with the requirements of the Product Agreement and the Warranty Schedule applicable to such Product. All other transfers are strictly prohibited.
- (d) Third Party Products.** THE FOREGOING WARRANTIES DO NOT APPLY, AND ECHONOUS STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY PRODUCTS.
- (e) DISCLAIMER OF OTHER WARRANTIES.** EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 10(a), THE SOFTWARE IS PROVIDED "AS IS" AND ECHONOUS HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. ECHONOUS SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 10(a), ECHONOUS MAKES NO WARRANTY OF ANY KIND THAT THE SOFTWARE, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE FREE FROM ANY INTRUSION OR ATTACK, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

10. **Indemnification.**

(a) **EchoNous Indemnification.** EchoNous shall indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, and costs (including reasonable attorneys' fees) ("Losses") incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("Third-Party Claim") that the Software, or any use of the Software or documentation in accordance with this Agreement, infringes or misappropriates such third party's US intellectual property rights, provided that Customer promptly notifies EchoNous in writing of the claim, cooperates with EchoNous, and allows EchoNous sole authority to control the defense and settlement of such claim.

i. If such a claim is made or appears possible, Customer agrees to permit EchoNous, at EchoNous's sole discretion, to (A) modify or replace the Software, or component or part thereof, to make it non-infringing, or (B) obtain the right for Customer to continue use. If EchoNous determines that none of these alternatives is reasonably available, EchoNous may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer.

ii. Section 11(a) will not apply to the extent that the alleged infringement arises from: (A) use of the Software in combination with data, software, hardware, equipment, or technology not provided by EchoNous or authorized by EchoNous in writing; (B) modifications to the Software not made by EchoNous; or (C) use of any version other than the most current version of the Software delivered to Customer; or (D) any third party products.

(b) **Customer Indemnification.** Customer shall indemnify, hold harmless, and, at EchoNous's option, defend EchoNous from and against any Losses resulting from any Third-Party Claim based on Customer's: (i) negligence or willful misconduct; or (ii) use of the Software in a manner not authorized or contemplated by this Agreement (iii) use of the Software in combination with data, software, hardware, equipment or technology not provided by EchoNous or authorized by EchoNous in writing; (iv) modifications to the Software not made by EchoNous; or (v) use of any version other than the most current version of the Software delivered to Customer, provided that Customer may not settle any Third-Party Claim against EchoNous unless such settlement completely and forever releases EchoNous from all liability with respect to such Third-Party Claim or unless EchoNous consents to such settlement, and further provided that EchoNous will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

(c) **Sole Remedy.** THIS SECTION 11 SETS FORTH CUSTOMER'S SOLE REMEDIES AND ECHONOUS'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SOFTWARE INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. IN NO EVENT WILL ECHONOUS'S LIABILITY UNDER THIS SECTION 11 EXCEED THE FEES PAID BY THE CUSTOMER FOR THE SOFTWARE THAT IS THE SUBJECT OF A THIRD-PARTY CLAIM.

11. **Limitations of Liability.** IN NO EVENT WILL ECHONOUS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE

THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER ECHONOUS WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL ECHONOUS'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID BY THE CUSTOMER FOR THE SOFTWARE THAT IS THE SUBJECT OF ANY THIRD-PARTY CLAIM.

12. **Termination.**

- (a) Termination. In addition to any other express termination rights:
- i. EchoNous may terminate this Agreement, effective on written notice to Customer, if Customer: (A) fails to pay any amount when due hereunder, and such failure continues more than 15 days after EchoNous's delivery of written notice thereof; or (B) breaches any of its obligations under Section 5;
 - ii. either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured 30 days after the non-breaching Party provides the breaching Party with written notice of such breach; or
 - iii. either Party may terminate the Software Agreement, effective immediately upon written notice to the other Party, if the other Party:
(A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.
- (b) **Effect of Expiration or Termination.** Upon expiration or earlier termination of the Software Agreement, the license granted hereunder will also terminate, and Customer shall cease using the Software. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination, or entitle Customer to any refund.

- (c) **Survival.** Sections 1, 2, 3, 5, 6, 7, 9, 11, 12 and 13 survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement.

13. **Miscellaneous.**

- (a) **Equitable Relief.** Customer acknowledges and agrees that a breach or threatened breach of its obligations under Section 5 would cause EchoNous irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, EchoNous will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.
- (b) **US Government Rights.** Each of the documentation and the Software is a "commercial item" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. Accordingly, if Customer is an agency of the US Government or any contractor therefor, Customer only receives those rights with respect to the Software and Documentation as are granted to all other end users under license, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48C.F.R. § 12.212, with respect to all other US Government Customers and their contractors.

Exhibit A

List of Third Party Software

- Android – Google
- iOS - Apple
- DCMTK – OFFIS
- Qualcomm Neural Processing SDK – Qualcomm
- Qualcomm Multimedia Video (MMV)
- Aculimages

List of Open Source Software

- LibPng
- LibAums
- OpenCV
- SQLite
- IoT Hub Java Device Client
- IoT Provisioning Device Client
- IoT Provisioning Security
- Microsoft Azure Storage SDK for Android
- Retrofit
- Retrofit Converter Gson
- Gson
- RxJava
- RxAndroid
- OpenCL
- LIBJPEG
- Code Aur