

6295 Northam Drive, Unit 1  
Mississauga, ON Canada L4V 1W8

T: 905-672-echo (3246)  
F: 905-612-0201  
Toll Free: 1 -866-echolog (324-6564)



## EchoShore-DX Distribution Leak Detection - Pilot System

Prepared for Mr. Brant Keller, PhD, Public Works Director, City of Griffin, GA

Prepared by Michael Becker

Proposal Number: 42215266

May 6, 2016





May 6, 2016

Mr. Brant D. Keller, PhD,  
City of Griffin - Public Works Director  
100 S. Hill Street  
Griffin, GA 30223  
Email: BKeller@cityofgriffin.com

Subject: EchoShore®-DX Pilot Project for the City of Griffin

Dear Dr. Keller,

Echologics, LLC ("Echologics") is pleased to present the City of Griffin ("Client"), our proposal for EchoShore-DX Distribution Main Monitoring System for the City of Griffin's Pilot Project.

It is our understanding that the City of Griffin wishes to proactively monitor for leaks within your distribution piping system. It is also our understanding that the City of Griffin supports 611 miles of mains, deploys 4,221 hydrants, while producing 9.0 MGD per day at an average cost to pump and treat water at \$0.92/1000. In its on-going efforts to address and reduce a 19% non-revenue water loss, the City of Griffin approached Echologics concerning leak detection monitoring for distribution water pipeline mains.

Recognized as a leader in the development of acoustic technologies used for leak detection and pipe integrity testing in fluid delivery pipelines, Echologics provides the best-in-class technology to meet the demands of today's professional water leak detection industry, by offering non-invasive and cost-effective solutions. Echologics has the full range of expertise needed to successfully execute the engineering services described in this proposal.

As a company, we have done numerous projects similar in size and scope, providing leak detection sensors, hydrophones, cables and communication equipment necessary to analyze water mains. Echologics' leak monitoring system, EchoShore®-DX platform, incorporates the latest generation of acoustic sensors to transform your underground assets into a smart water network, and provides utilities with a new generation of leak monitoring solutions. This exposure makes us uniquely qualified to provide and competently undertake the services described in this proposal.

We trust that the attached proposal will be viewed favorably and we look forward to bringing value to the City of Griffin, as the chosen engineering services provider for this project.

Should you have questions, or if I can be of further assistance, please contact me immediately.

Best Regards,

*Michael J. Becker*

Mr. Michael J. Becker,  
Echologics Regional Sales Manager, US Southeast  
214-883-9729,  
MBecker@echologics.com.

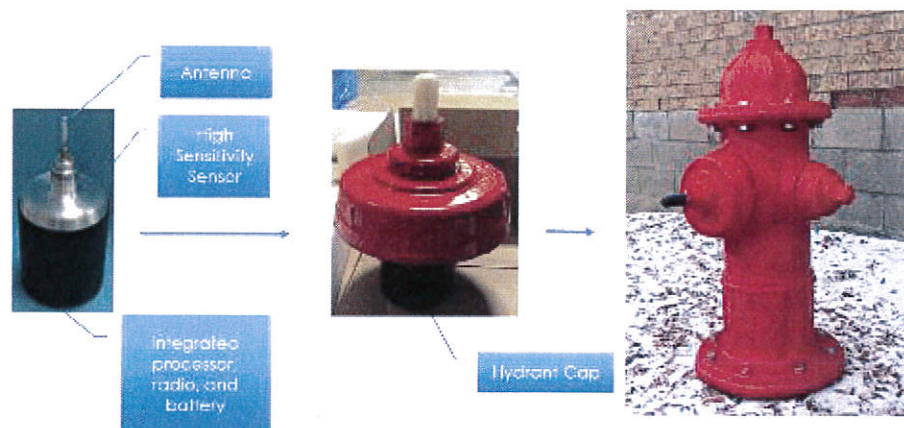
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## 1. System Description

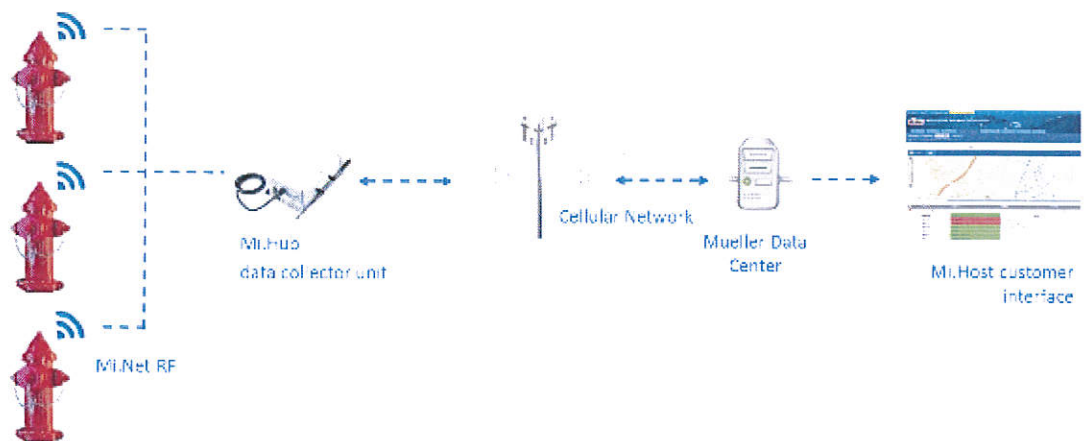
The EchoShore-DX automated leak detection system integrates acoustic-based leak detection technology from Echologics with the Mi.Net network communications infrastructure from Mueller Systems. Mi.Net is an advanced fixed, two-way network for utilities that incorporates fully automated meter readings with leak detection.

The system consists of a network of leak detection nodes. A node incorporates radio frequency transceivers, Echologics' sensors, a logger board, communications hardware and a battery power source. The nodes, are housed in a cast-iron or high density plastic enclosure that replaces the pumper nozzle caps of wet and dry barrel fire hydrants. This arrangement is shown in Figure 1.



**Figure 1 Node Arrangement: Designed for installation in 90% of the pumper nozzle caps in North America.**

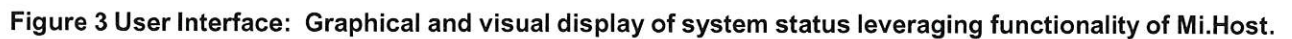
Leak detection is performed by a pair of nodes in a similar fashion as the LeakFinder™ correlator. The nodes collect acoustic data from the pipelines before generating and wirelessly transmitting data files to the Mi.Net System's host software component, Mi.Host. Figure 2 depicts the network architecture.



**Figure 2 EchoShore-DX System: Based on next-generation proven LeakFinderRT™ technology.**



Detected leaks can be viewed by utility workers online through the Mi.Host user interface, which is integrated with ESRI GIS Mapping software. Figure 3 shows the user interface.



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## 2. Project Description

It is our understanding that the City of Griffin wishes to proactively monitor for leaks within your distribution piping system. It is also our understanding that the City of Griffin supports 611 miles of mains, deploys 4,221 hydrants, while producing 9.0 MGD per day at an average cost to pump and treat water at \$0.92/1000. In its on-going efforts to address and reduce a 19% non-revenue water loss, the City of Griffin approached Echologics concerning leak detection monitoring for distribution water pipeline mains.

Echologics' proposes to install the EchoShore-DX automated leak detection system within the pilot area of distribution mains defined by the City of Griffin in Figure 4. Based on the information provided by the City of Griffin, Echologics conducted a comprehensive propagation study to determine the exact coverage and equipment requirements to support this pilot test.

The propagation study identified 27 loggers and 1 XR Mi.Hub Collector are required to support the estimated service area identified in Figure 4. The XR Mi.Hub Collector is proposed to be mounted at the following location and coordinates.

Collector Type	Height Assumption	Asset Name	Latitude (Decimal Degrees)	Longitude (Decimal Degrees)
Mi.Hub Collector XR-R	100'	Coke Tank	33.246196	-84.257989

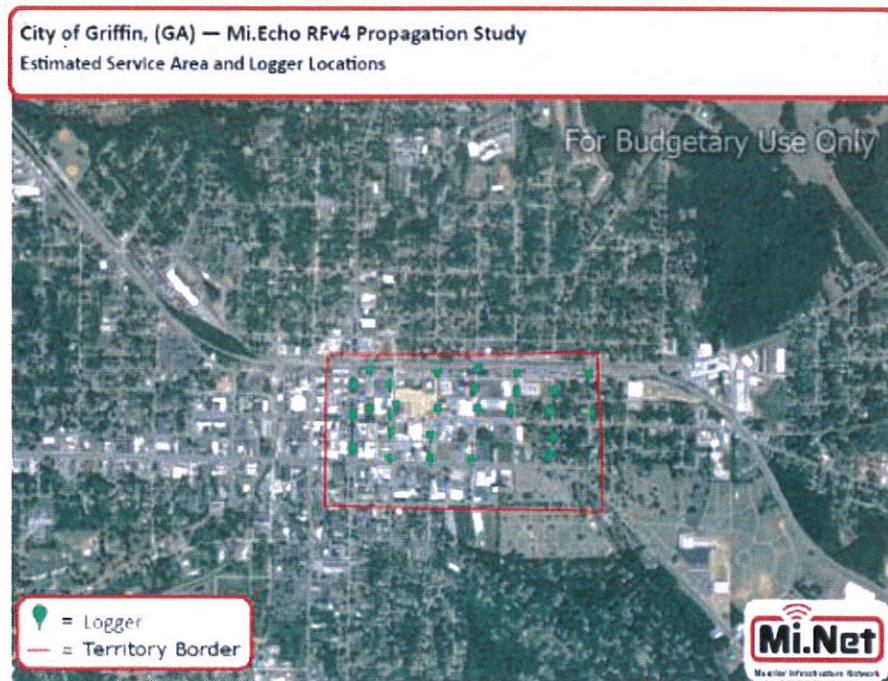


Figure 4: Proposed EchoShore-DX pilot monitoring zone

Pricing to purchase the system is provided in the *Pricing Information* section.



### 3. Pricing Information

Figure 5 shows pricing for the supply and installation of the EchoShore-DX system.

System	Quantity
Leak Detection Nodes and Collectors	\$44,200.00 USD
Node Installation	Included
Project Management, Commissioning, Interface, and Startup	Included
Mi.Net Advanced 2-way Network Infrastructure	Included
Mi.Net Installation	Included
<b>EchoShore-DX System</b>	<b>\$44,200.00 USD</b>
Monitoring	Quantity
<b>EchoShore-DX Monitoring For Pilot Monitoring One Year</b>	<b>\$10,545.00 USD</b>
<b>Total Pilot Project</b>	<b>\$54,745.00 USD</b>

Figure 5 –Pricing Table in [USD]. Valid until September 1, 2016, not including any applicable taxes.

Upon completion of the network propagation study, should the selected area require additional infrastructure beyond what is listed in the table above, such as an additional Mi.Hub or repeaters, the quoted price would need to be revisited.

The price includes installation of the system. Should any civil works or traffic control be required for installation, this would be the responsibility of the City of Griffin.

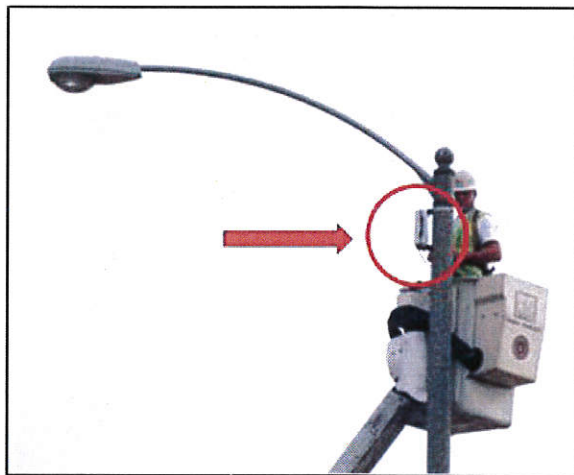
## 4. Statement of Work

Echologics and Mueller Systems propose the following technical details critical for the installation and operation of the Mi.Net network communications system.

**Acoustic Survey** – Echologics will survey the proposed area to conduct a thorough acoustic analysis of the piping network and to validate and supplement the data provided by the City of Griffin. Specific hydrants selected for installation of leak detection sensors will be dependent upon input from Echologics.

**Data Backhaul** – Either GPRS or 3G Wide Area Network supported by AT&T will be used as the default communications to/from the Mi.Hub collector unit(s) and the Mi.Host data server.

**Network Installation** – The required Mi.Hub Collector is proposed to be installed either on a Streetlight Pole owned by the City of Griffin or a local building owned by the City. If affixed to a streetlight pole, it will be secured to the vertical portion of the light pole near the intersection of the pole and the mast arm (refer Fig. 6).



**Figure 6 – Typical Mi.Hub collector installation**

Echologics and Mueller Systems anticipate using an “Always-On” Light Pole – this is a pole that has a continuous AC power supply controlled via a photocell switch atop the Cobra Head Lamp. The final Mi.Hub location will be addressed during the propagation study.

### 4.1 Echologics & Mueller Systems Responsibilities:

- 1) Cooperate with Utility to identify locations for all Mi.Net infrastructure, the Acoustic Leak Detection modules.
- 2) Prior to the commencement of the system,
  - a. Provide all required AMI system hardware
  - b. Set-up a hosted Mi.Host AMI server and website for use the customer.



- c. Provide the services of a qualified Mueller Systems Project Manager to conduct product hardware, software and service tool training for the Customer, as applicable.
- 3) Set up network communication between the EchoShore-DX node, Mi.Hub collectors and the Mi.Host Software.
- 4) Supply all necessary system operational training to utility personnel during the pilot period.
- 5) Fully cooperate with the City of Griffin in performing the required testing of the pilot products.
- 6) Assist Utility with installation and commissioning, as applicable for the product, and provide Customer Support in accordance with Echologics/ Mueller Systems policies, procedures and practices.

## 4.2 Utility Responsibilities:

- 1) Assist Echologics/ Mueller Systems with site location and equipment installation of all products in accordance with Echologics/ Mueller Systems standard product installation recommendations, including but not limited to:
  - a. Mi.Hub network collectors.
  - b. OWL or DC repeaters.
- 2) Provide traffic control during installation of repeaters.
- 3) Assist Mueller Systems in selecting locations for the EchoShore-DX nodes.
- 4) Cooperate with Echologics/ Mueller Systems in performance testing of all the communications network system components for proper functionality.
- 5) Utility will monitor data via the Echologics/ Muller Systems Mi.Host User Interface (UI) web site.
- 6) Provide feedback on accuracy of data being supplied by Echologics/ Mueller System's AMI Network and Components for daily reads of the EchoShore-DX nodes.
- 7) Utility to identify one person as a primary user and contact and data manager (Utility Project Manager) to provide a single channel of communication.

## 5. Future Benefits

In addition to the permanent leak monitoring of the area the EchoShore-DX system is deployed in, the system has following additional benefits for growth and expansion.

- For additional or expanded coverage, additional hardware can be installed and incorporated with the existing system very easily.
- Echologics and Mueller Systems has recognized that there may be areas that do not have sufficient hydrants available to provide the necessary leak detection coverage desired. As we start to expand our system, additional logging devices may be developed to adapt to fitting other than hydrants.
- The Mi.Host software can also double as the platform for the EchoShore Transmission Main monitoring system.
- The Mi.Net network that operates between the EchoShore-DX nodes and Mi.Hub data collectors is the same infrastructure needed for the Mueller Systems AMI meter. Should the City of Griffin look

to progress to AMI solutions for the meter program, the backbone of the Mi.Net system will already be in place allowing for easier set up and implementation.

## 6. Service Agreement

### Proposal [#] AGREEMENT

This Service Agreement ("Agreement") is entered into by and between Echologics, LLC ("Echo"), a Delaware limited liability company having its principal place of business at 1200 Abernathy Rd, NE, Suite 1200, Atlanta, GA 30328 and City of Griffin, a municipal corporation formed under the laws of Georgia ("Customer") having its principal place of business at 100 S. Hill St. 3rd Fl. Griffin, Ga 30223, and is entered into as of the date of last signature below (the "Effective Date").

This Agreement consists of (i) this signature page, (ii) the Service Agreement Terms and Conditions (including all Exhibits) and (iii) the Services and Services Descriptions Customer has elected to purchase in Attachment A, which are incorporated in this Agreement by this reference.

The parties have caused this Agreement to be duly executed. Each party warrants and represents that its respective signatories whose signatures appear below are on the date of signature authorized to execute this Agreement.

City of Griffin, Georgia

(Customer)

Authorized Signature

Print Name

Title

Date

Echologics, LLC

(Echo)

Authorized Signature

Print Name

Title

Date

APPROVED AS TO FORM

THIS 11<sup>th</sup> DAY OF May, 2016

BY: Andrew J. Whalen, Jr.  
CITY ATTORNEY

subject to changes in terms and conditions being accepted by Echologics, LLC

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Proposal # 42215266



## PROPOSAL [#] AGREEMENT - TERMS AND CONDITIONS

1. **Definitions** are those set out in the Glossary of Terms at the end of the Agreement.
2. **Scope.** This Agreement describes the terms and conditions for (i) purchases by Customer of Services and delivery by Echo of the Services, (ii) the leasing of Equipment and Software and/or (iii) purchases of Equipment.
3. **Leasing Option: Equipment and Software License Fees.** Customer shall pay Echo license fees for the Equipment and Software in the amounts and at the times specified in Exhibit B ("License Fees"). All License Fees payable by Customer to Echo hereunder shall be paid to Echo at the address specified in Exhibit C, or at such other place as Echo may designate in writing to Customer from time to time.

**Purchase Option: Equipment Costs and Software License Fees.** Customer shall pay Echo the amounts specified in Exhibit B ("Purchase Fees"). All Purchase Fees payable by Customer to Echo hereunder shall be paid to Echo at the address specified in Exhibit C, or at such other place as Echo may designate in writing to Customer from time to time. For the avoidance of doubt, all Software is being licensed and not sold to Customer. If Customer selects this purchase option, the terms and conditions specified in Exhibit D shall apply to the sale of the Equipment. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions specified in Exhibit D, the terms and conditions of Exhibit D shall govern the purchase of the Equipment.

4. **Service Fees.** Customer shall pay Echo the amounts set forth in Exhibit B. All stated amounts are exclusive of any freight, handling and shipping insurance charges, taxes, fees and duties or other amounts. Any taxes related to Services purchased pursuant to this Agreement shall be paid by Customer or Customer shall present an exemption certificate acceptable to the taxing authorities. Applicable taxes shall be billed as a separate item on the invoice, to the extent possible.

**Installation and Set-up Fees.** Installation and set-up fees related to the Equipment and Software shall be as specified in the applicable invoice, purchase order, statement of work or other order form executed by the parties.

5. **Payment.** Unless otherwise agreed upon in writing by the parties hereto, payment terms shall be net thirty (30) days from the date of invoice. All payments shall be made in United States currency. Any sum not paid by Customer when due shall bear interest from the due date until paid at a rate of (i) twelve (12) per cent per annum or (ii) the maximum rate permitted by law, whichever is less.
6. **Invoicing.** Fees for Services, Software and Equipment shall be invoiced in advance of delivery of Services and in accordance with the Equipment and Software schedule in Exhibit B.
7. **Term and Termination.**
  - (a) The term of this Agreement shall commence on the Effective Date and shall continue for a period of ~~ONE~~ (1) years. Such term will be renewed automatically for successive one (1) year terms unless either party notifies the other of its intent to terminate at least sixty (60) days prior to the expiration of the then current term.
  - (b) This Agreement may be terminated immediately by either party upon written notice:
    - (i) if the other party breaches any of the material provisions of this Agreement and the breach is not capable of being cured or after providing thirty (30) days written notice to the breaching party if the breaching party fails to cure such breach within such period.
    - (ii) if the other party: (i) ceases to carry on business as a going concern; or (ii) becomes or may become the object of the institution of voluntary or involuntary proceedings in bankruptcy or liquidation; or (iii) a receiver or similar officer is appointed with respect to the whole or a substantial part of its assets; or (iv) an event similar to any of the foregoing occurs under applicable law.
    - (iii) Either party assigns (by operation of law or otherwise, including merger) or transfers any of the rights or responsibilities granted under this Agreement without the prior written consent of the other party, or in the event

of a sale of all or substantially all of such party's assets, or transfer of a controlling interest in such party to an unaffiliated third party. Notwithstanding the above, Echo shall be authorized to transfer or assign any of its rights or responsibilities to an Affiliate of Echo without the consent of Customer.

- (c) If Services fees are not paid when due and payment has not been received within thirty (30) days after notice from Echo of such past due payment, Echo may withhold the provision of Services until all amounts past due are paid in full, and/or terminate immediately this Agreement.
- (d) All leases and licenses related to the Equipment and Software shall terminate immediately upon termination of the Agreement.
- (e) Unless otherwise agreed upon in writing, upon expiration or termination of this Agreement, Customer shall, at Customer's cost, return, or arrange to have returned, the Equipment and Software to Echo no later than sixty (60) days after expiration or termination of this Agreement in good repair, condition and working order, ordinary wear and tear excepted.
- (f) Upon termination of the Agreement, Customer shall pay Echo for all work performed hereunder up to the effective date of termination.

- ATW*
- To the extent allowed by law,*
8. **Confidentiality.** Customer and Echo agree that in connection with this Agreement and their relationship, they may obtain Confidential Information. *ATW* The receiving party shall at all times keep in trust and confidence all such Confidential Information, and shall not use such Confidential Information other than as expressly authorized by the disclosing party under this Agreement, nor shall the receiving party disclose any such Confidential Information to third parties without the receiving party's written consent. Notwithstanding the above, Echo shall be authorized to disclose Customer's Confidential Information to contractors or employees of Echo who have a business need to have access to such information. Customer shall immediately return to Echo all Confidential Information (including copies thereof) in the Customer's possession, custody, or control upon termination or expiration at any time and for any reason of this Agreement. The

obligations of confidentiality shall not apply to information which (a) has entered the public domain, except where such entry is the result of the receiving party's breach of this Agreement; (b) prior to disclosure hereunder was already rightfully in the receiving party's possession; or (c) subsequent to disclosure hereunder is obtained by the receiving party on a non-confidential basis from a third party who has the right to disclose such information to the receiving party. The receiving party will be authorized to disclose Confidential Information pursuant to a valid order issued by a court or government agency, provided that the receiving party provides (i) prior written notice to the disclosing party of such obligation and (ii) the opportunity to oppose such disclosure. This Agreement shall terminate five (5) years from the date of expiration or termination of this Agreement. Notwithstanding the foregoing, all Confidential Information that is also a "trade secret", as defined under applicable law, shall not be disclosed by either party for so long as such Confidential Information shall remain a trade secret.

*To the extent allowed by law,* *ATW*  
Customer shall not disclose, advertise, or publish the terms and conditions of this Agreement without the prior written consent of Echo. Any press release or publication regarding this Agreement is subject to prior review and written approval of Echo.

9. **Service Warranty.** ALL SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN A WORKMANLIKE MANNER. EXCEPT AS SPECIFIED IN THIS SECTION, ECHO HEREBY DISCLAIMS AND CUSTOMER WAIVES ALL REPRESENTATIONS, CONDITIONS AND WARRANTIES (WHETHER EXPRESS, IMPLIED, OR STATUTORY), INCLUDING WITHOUT LIMITATION, ANY WARRANTY OR CONDITION (A) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, TITLE, SATISFACTORY QUALITY, QUIET ENJOYMENT, ACCURACY OR (B) ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN THE INDUSTRY. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE DISCLAIMED, SUCH WARRANTY IS LIMITED IN DURATION TO THE APPLICABLE EXPRESS WARRANTY PERIOD. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY SHALL BE, AT ECHO'S OPTION, RE-PERFORMANCE OF THE SERVICES OR TERMINATION OF THIS AGREEMENT AND RETURN OF THE PORTION OF THE SERVICE



FEES PAID TO ECHO BY CUSTOMER FOR SUCH NON-CONFORMING SERVICES.

**Equipment and Software Warranty.** Echo warrants that on the date of shipment and for a period of 12 months thereafter (the "Warranty Period"), the Equipment and Software when properly installed and operated, will perform in accordance with the specifications contained in the user documentation and will be free of any material defects in workmanship and material. Equipment and Software may be manufactured using some refurbished components or may have been used internally for reliability or performance testing. Spare parts may be refurbished. In the event that the Equipment and Software do not operate as specified above during the Warranty Period, Customer must notify Echo in writing prior to the expiration of the Warranty Period in order to avail of the remedies contained in this section. Upon receipt of such notification, Echo may repair or replace the Equipment and Software at no additional cost to Customer. If Echo cannot repair the Equipment and Software or replace it with working Equipment and Software, then Echo will refund to Customer any amounts paid by Customer for the Equipment and Software in question. This section contains Customer's entire rights and Echo's liability in the event the warranty contained in this section is not fulfilled. EXCEPT AS OTHERWISE STATED HEREIN, CUSTOMER ACKNOWLEDGES THAT THERE ARE NO REPRESENTATIONS OR WARRANTIES CONCERNING THE PHYSICAL AND MECHANICAL CONDITION, SUITABILITY, DURABILITY, MERCHANTABILITY OR FITNESS OF THE EQUIPMENT AND SOFTWARE FOR ANY PURPOSE, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR INTENDED PURPOSE OR THAT THE EQUIPMENT AND SOFTWARE OR DOCUMENTATION WILL MEET CUSTOMER'S NEEDS OR WILL BE AVAILABLE FOR USE AT ANY PARTICULAR TIME OR WILL BE ERROR FREE

**10. Limitation of Liability and Consequential Damages Waiver.**

ALL LIABILITY OF ECHO, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND SUPPLIERS COLLECTIVELY FOR CLAIMS ARISING UNDER THIS AGREEMENT OR OTHERWISE HOWSOEVER

ARISING SHALL BE LIMITED TO THE GREATER OF (I) THE MONEY PAID TO ECHO FOR SERVICES UNDER THIS AGREEMENT DURING THE SIX (6) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES FIRST GIVING RISE TO SUCH LIABILITY OR (II) ONE HUNDRED THOUSAND (\$100,000) US DOLLARS. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER-INCIDENT.

SUBJECT TO CUSTOMER'S BREACH OF SECTION 11 (LICENSE), IN NO EVENT SHALL EITHER PARTY, ITS RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR SUPPLIERS BE LIABLE FOR ANY ~~SPECIAL~~ <sup>ATW3</sup> INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR LOST REVENUE, LOST PROFITS, OR LOST OR DAMAGED DATA, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY THEREOF.

11. **License.** Echo grants to Customer a limited, nonsublicenseable, nonexclusive and nontransferable license to access and use for Customer's internal business use Equipment and Software provided as a result of or in relation to the Services. Customer agrees that it is licensed to use Software only on and with Equipment covered under this Agreement and solely in the conduct of its internal business, in a manner and for the use contemplated by the manufacturer thereof, and in compliance with all laws, rules and regulations of every governmental authority having jurisdiction over the Equipment, Software or Customer. The license in this paragraph is valid until the earlier of: (i) the expiration or termination of this Agreement; or (ii) Echo's request to Customer that the Equipment and Software be returned to Echo. All rights not expressly provided to Customer by Echo herein are expressly reserved by Echo.

Except as expressly authorized, Customer shall not (and shall not permit a third party to) download more than one copy of the Software, copy, in whole or in part, any Software, make error corrections or otherwise modify, decompile, decrypt, reverse engineer, disassemble or otherwise reduce all or any portion of any Software to human-readable form, or transfer, sublicense, rent, lease, distribute, sell, or create derivative works of any Software.



Customer acknowledges that the Equipment and Software may contain and Echo may use in the performance of the Services and other obligations hereunder know-how, intellectual property, methodologies, processes, technologies, algorithms, development tools, data, modules, components, designs, utilities, subsets, objects, program listings, models, programs, systems, analysis frameworks, leading practices, specifications, inventions, original works of authorship, developments, improvements, and trade secrets owned by Echo ("Echo IP"). In consideration included herein, Customer agrees not to provide any third party access to Echo IP.

Customer shall be solely responsible, at its own expense, for (a) the delivery of the Equipment and Software to Customer, such delivery method being subject to Echo's sole discretion, (b) the packing, rigging and delivery of the Equipment and Software back to Echo, upon expiration or termination of this Agreement, in good repair, condition and working order, ordinary wear and tear excepted, and (c) the de-installation, maintenance and repair of the Equipment and Software. Customer shall, at its expense, keep the Equipment and Software in good repair, condition and working order, ordinary wear and tear excepted. If any of the Equipment, upon its return to Echo, is not in good repair, condition and working order, ordinary wear and tear excepted, Customer shall be obligated to pay Echo for the out-of-pocket expenses Echo incurs in bringing such Equipment and Software up to such status; provided, however, if such Equipment and Software cannot be repaired, Customer shall pay the applicable replacement cost. Echo shall be entitled to inspect the Equipment and Software at reasonable times.

12. **Ownership / Intellectual Property.** Echo shall at all times retain all right, title and interest in and to all pre-existing Intellectual Property owned by Echo as of the Effective Date and all Intellectual Property in and to the Services, Echo Equipment and Software, or other Intellectual Property provided or developed by Echo or a third party on Echo's behalf, including improvements, enhancements and derivative works made thereafter or created, developed or discovered pursuant to this Agreement. Except as expressly provided herein, Echologics expressly reserves all rights, title and interest in the Equipment, Software, Services and related intellectual property. Customer shall at all times retain all right, title and interest in and to all pre-existing

Intellectual Property owned by Customer as of the Effective Date.

Echo agrees that the Deliverables shall be the sole property of Customer. Customer hereby grants Echo a worldwide, perpetual, nonexclusive, royalty-free, fully paid-up right and license to use the Deliverables.

Echo makes no express or implied representation or warranty that the Services, Equipment and/or Software will not infringe any third party patent, copyright or other intellectual property rights. Customer acknowledges the great value of goodwill associated with the name and trademarks of Echo, and the identification of the Services, Equipment and/or Software therewith. Customer will not obscure, effect or permit the removal or alteration of any trademarks, copyright notices, patent numbers, serial numbers or the like affixed to any Services, Equipment and/or Software.

13. **Force Majeure.** Except for the obligation to pay monies due and owing, neither party shall be liable for any delay or failure in performance due to events outside the defaulting party's reasonable control, including without limitation acts of God, earthquake, labor disputes, industry wide shortages of supplies, actions of governmental entities, riots, war, terrorism, fire, epidemics, or delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the defaulting party will be extended for a period equal to the time during which the event prevented the party's performance.
14. **Applicable law and Jurisdiction.** The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of ~~Delaware~~ **Georgia**. *ASIO*
15. **Export Control.** Customer shall comply with such laws and regulations governing use, export, re-export, and transfer of Echo Services, Equipment and/or Software and will obtain all required authorizations, permits, or licenses.
16. **Assignment.** Neither party may assign, by operation of law or otherwise, or delegate its rights or obligations under this Agreement. Any purported assignment shall be null and void. Notwithstanding the above, Echo shall be authorized to transfer or assign any of its rights or responsibilities to an Affiliate of Echo without the consent of Customer.

17. **Notices.** All notices required or permitted under this Agreement will be in writing and will be deemed given one day after deposit with a commercial express courier specifying next day delivery (or two (2) days for international courier packages specifying 2-day delivery), with written verification of receipt. All communications will be sent to the addresses set forth on the cover sheet of this Agreement or such other address as may be designated by a party by giving written notice to the other party pursuant to this paragraph.

18. **Entire Agreement.** This Agreement is the complete agreement between the parties concerning the subject matter of this Agreement and replaces any prior oral or written communications between the parties, except as agreed between the parties. There are no conditions, understandings, agreements, representations, or warranties expressed or implied, that are not specified herein. This

Agreement may only be modified by a written document executed by the parties hereto.

19. **No Waiver.** The waiver by either party of any right provided under this Agreement shall not constitute a subsequent or continuing waiver of such right or of any other right under this Agreement.

20. **Severability.** In the event that one or more terms of this Agreement becomes or is declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, each such term shall be null and void and shall be deemed deleted from this Agreement. All remaining terms of this Agreement shall remain in full force and effect.

21. **Survival.** Sections 5, 7, 8, 9, 10, 11, 12, 13, 14, 15), 177, 18, 19, 20, and 21.

[End of Document]



## EXHIBIT A

### GLOSSARY OF TERMS<sup>1</sup>

**Affiliate** means a Person that, directly or indirectly, controls, is controlled by or is under common control with the first Person.

**Confidential Information** means proprietary and confidential Information received by Echo or Customer in connection with the Agreement and their relationship. Such Confidential Information may include, but is not limited to, trade secrets, know how, inventions, techniques, processes, programs, schematics, Software source documents, data, customer lists, financial information, and sales and marketing plans or information which the receiving party knows or has reason to know is confidential, proprietary or trade secret information of the disclosing party; *provided, however, the term*

**Deliverable** means the reports and tangible items delivered by Echo to Customer as specified in writing and agreed upon by the parties hereto.

**Equipment** means tangible equipment, devices, or components licensed to Customer by Echo in relation to the Services.

**Intellectual Property** means any and all tangible and intangible: (i) rights associated with works of authorship throughout the world, including but not limited to copyrights, neighboring rights, moral rights, and mask works, and all derivative works thereof, (ii) trademark and trade name rights and similar rights, (iii) trade secret rights, (iv) patents, designs, algorithms and other industrial property rights, (v) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise, and (vi) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

**Person** means an individual, partnership, corporation, business trust, joint stock company, estate, trust, unincorporated association, joint venture, governmental authority or any other entity of whatever nature.

**Services** means one or more of the services selected by the Customer and identified in Attachment A.

**Services Descriptions** mean the detailed descriptions of the Services purchased by Customer which are incorporated in the MSA by reference and attached in Attachment A.

**Software** means the software programs licensed to Customer by Echo for use with the Equipment.

*STW*

*"Confidential Information" shall not include any public record of the City subject to disclosure under the Georgia Open Records law.*

<sup>1</sup> Other terms defined

throughout this Agreement.



**EXHIBIT B**

**Equipment / Software / Fees**

**EXHIBIT C**

**Payment Remittance**

**Mail payments by cheque to:**

Echologics LLC

23418 Network Place

Chicago, IL 60673-1234

**E-mail wire transfer remittance advices to:**

Finance@echologics.com

**Wire instruction:**

Bank Name: JP Morgan Chase

Address: 1 Chase Manhattan Plaza

New York, NY 10005

R/T # 021 000 021

Swift code: CHASUS33 AC # 716486022

**ACH Payment:** R/T #071 000 013

## EXHIBIT D

### Terms and Conditions of Sale

**Controlling Provisions:** Echologics' Terms & Conditions of Sale (these "Terms") will govern all sales of Echologics' products, including products, equipment, and parts manufactured or sold by Echologics (together, "Products") to Buyer (this "Order"). These Terms supersede any prior written or oral agreement understanding, representation or promise, and any pre-printed or standard terms and conditions contained in Buyer's request for quote, purchase order, invoice, order acknowledgement or similar document. These Terms may not be amended, supplemented, changed or modified except by concurrent or subsequent written agreement, signed by an authorized representative of Echologics and Buyer. Echologics' acknowledgement of Buyer's purchase order will not constitute acceptance of any terms and conditions contained therein, regardless of how such terms and conditions may be prefaced or described.

**Prices and Designs:** Prices and designs are subject to change without notice. All prices are F.O.B Point-of-Shipment, unless otherwise stated.

**Shipments:** All Products sent out by Echologics will be carefully examined, counted and packed. The cost of any special packing or special handling caused by Buyer's requirements or requests will be added to the price of the Order. No claim for shortages will be allowed, unless made in writing within 10 days of receipt of shipment. Claims for goods damaged or lost in transit should be made on the carrier, as Echologics' responsibility ceases on delivery to the carrier.

**Delivery:** Echologics will use its commercially reasonable efforts to complete shipment as indicated. In the event Buyer requests a delay or suspension in completion and/or shipment of Products or any part thereof for any reason, the parties will agree upon any cost and/or scheduling impact of such delay and allocate such costs to Buyer's account. Any delay beyond 30 days after original scheduled shipment date will require Buyer to take title and risk of loss of such Products and make arrangements for storage. Echologics' invoice will be issued upon Echologics' readiness to ship Products. Echologics will select the method of shipment and the carrier to be used to deliver Products, unless otherwise agreed. Unless otherwise agreed, shipment will be FCA (Incoterms 2000) Echologics' designated shipping point (currently Decatur, IL, except for shipments made in Canada which are shipped from Toronto, Ontario). Echologics will not be responsible for any loss or damage to Products following delivery to the carrier. Failure to deliver by the specified date will not be a sufficient cause for cancellation.

**Changes:** Buyer may request modifications as to the amount, scope and/or nature of Products to be supplied by a written change request. If, in the opinion of Echologics, any modification will affect the agreed fixed price and/or time of delivery, Echologics will notify Buyer thereof in writing and will not be obligated to perform any modification unless agreed to by Echologics. Buyer will confirm that such change is authorized and accepted by issuing an Order revision.

**Cancellation:** Buyer may cancel this Order only upon written notice and payment to Echologics of reasonable cancellation charges.

**Returns:** No returns will be accepted by Echologics without Buyer first obtaining Echologics' written consent. In the case such consent is obtained, the price paid for the Product will be credited subject to the following: (a) all Product returned is, on its arrival at Echologics' facility, found to be in first-class condition; if not, the cost of putting the Product in a salable condition will be deducted from the credit memoranda; (b) a handling charge deduction will be made from the credit memoranda issued for Product returned; and (c) transportation charges, if not prepaid, will be deducted from the credit memoranda.

**Force Majeure:** Echologics will not be liable for delay in delivery due to causes beyond its reasonable control, including, but not limited to, acts of God, acts of government, acts of Buyer, fires, labor disputes, boycotts, floods, epidemics, quarantine restrictions, war, insurrection, terrorism, riot, civil or military authority, freight embargos, transportation shortages or delays, unusually severe weather or inability to obtain necessary labor, materials or manufacturing facilities due to such causes. In the event of a delay, the date of delivery will be extended for a length of time equal to the period of delay.

**Warranty:** Echologics warrants that on the date of delivery and for a period of 12 months thereafter (the "Warranty Period"), the Products when properly installed and operated, will perform in accordance with the specifications contained in the user documentation and will be free of any material defects in workmanship and material. Products may be manufactured using some refurbished components or may have been used internally for reliability or performance testing. Spare parts may be refurbished. In the event that the Products do not operate as specified above during the Warranty Period, Buyer must notify Echologics in writing prior to the expiration of the Warranty Period in order to avail of the remedies contained in this section. Upon receipt of such notification, Echologics may repair or replace the Product at no additional cost to Buyer. If Echologics cannot repair the Product or replace it with a working Product, then Echologics will refund to Buyer any amounts paid by Buyer for the Products in question. This section contains Buyer's entire rights and Echologics' liability in the event the warranty contained in this section is not fulfilled. EXCEPT AS OTHERWISE STATED HEREIN, BUYER ACKNOWLEDGES THAT THERE ARE NO REPRESENTATIONS OR WARRANTIES CONCERNING THE PHYSICAL AND MECHANICAL CONDITION, SUITABILITY, DURABILITY, MERCHANTABILITY OR FITNESS OF THE PRODUCTS FOR ANY PURPOSE, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR INTENDED PURPOSE OR THAT THE PRODUCTS OR DOCUMENTATION WILL MEET BUYER'S NEEDS OR WILL BE AVAILABLE FOR USE AT ANY PARTICULAR TIME OR WILL BE ERROR FREE.



**Limitation of Liability:** The remedies set forth herein are exclusive, and the total liability of Echologics, including its affiliates, officers, employees, agents, subcontractors, suppliers and representatives, with respect to this Order or any breach thereof, whether based on contract warranty, tort, indemnity, strict liability or otherwise, will not exceed the Order price of the specific Products which gives rise to the claim. In all cases where Buyer claims damages allegedly arising out of defective or nonconforming Products, Buyers exclusive remedies and Echologics' sole liability will be those specifically provided for under the Warranty Section. IN NO EVENT, WHETHER ARISING BEFORE OR AFTER COMPLETION OF ITS OBLIGATIONS UNDER THE CONTRACT, WILL ECHOLOGICS BE LIABLE FOR SPECIAL INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES OF ANY KIND (INCLUDING BUT NOT LIMITED TO LOSS OF USE, REVENUE OR PROFITS, INVENTORY OR USE CHARGES, COST OF CAPITAL OR CLAIMS OF CUSTOMERS) INCURRED BY BUYER OR ANY THIRD PARTY.

*To the extent allowed by law, ATTOR*  
**Indemnity:** Buyer agrees to indemnify, hold harmless and defend Echologics, including its affiliates, officers, employees, agents, subcontractors, suppliers, and representatives, against any and all judgments, losses, damages, expenses, costs, including defense costs and legal fees, arising from any and all lawsuits, demands, or claims for personal injury, death, property damage, or other liability arising or claimed to arise from any act or omission of the Buyer or Echologics in any way related to this Order or Products, whether such claims are based upon contract, warranty, tort (including but not limited to active or passive negligence), strict liability, failure to comply with any applicable law, or other allegation of fault. To the extent the aforesaid obligation of the Buyer to so indemnify Echologics is prohibited by the laws and statutes of the state(s) or province(s) where this Agreement is in effect, then the obligation created under this provision will, but only to the extent of such prohibition, be null and void. The remainder of the Buyer's indemnity obligations will remain in effect and be binding upon the parties.

**Taxes:** Echologics' price, unless otherwise agreed, is fixed and does not include, and Echologics is not responsible for, payment of any tax levied for sales, use, excise, value-added, goods and services, business (franchise or privilege) or any duties, charges or other such taxes.

**Set-Off:** All amounts that Buyer owes Echologics under an Order will be due and payable according to the terms of the Order. Buyer may not set-off such amounts or any portion thereof, whether or not liquidated, against sums that Buyer asserts are due it or any of its affiliates under other transactions with Echologics or any of its affiliates.

**Non-Disclosure and Non-Use of Echologics' Information:** Buyer agrees that it will not disclose or make available to any third party any of Echologics' data or other information pertaining to this Order without obtaining Echologics' prior written consent.

**Intellectual Property.** Echologics makes no express or implied representation or warranty that the Products will not infringe any patent, copyright or other intellectual property rights. Echologics will make reasonable efforts to ensure that the Products will not infringe third party intellectual property rights. Buyer acknowledges the great value of goodwill associated with the name and trademarks of Echologics, and the identification of the Products therewith. Buyer will not obscure, effect or permit the removal or alteration of any trademarks, copyright notices, patent numbers, serial numbers or the like affixed to any Product, related materials or packaging. All rights, title and interest in and to the designs, models, patterns, specifications, copyrights, patents, trade secrets, trademarks and other intellectual and industrial property in the Products, documentation and related materials will remain vested in Echologics or its third party suppliers.

**Export/Import:** Buyer agrees that it will comply with all applicable import and export control laws and/or regulations, including without limitation those of the United States and/or other jurisdictions from which Products may be supplied or to which Products may be shipped. In no event will Buyer use, transfer, release, import, export or re-export Products in violation of such applicable laws and/or regulations.

**Assignment:** Buyer will not assign an Order or any portion thereof without the prior written consent of Echologics.

**Waiver:** Failure by Echologics to assert all or any of its rights upon any breach of an Order will not be deemed a waiver of such rights either with respect to such breach or any subsequent breach, nor will any waiver be implied from the acceptance of any payment of service. No waiver of any right will extend to or affect any other right Echologics may possess, nor will such waiver extend to any subsequent similar or dissimilar breach.

**Severability:** If any portion of these Terms is determined to be illegal, invalid or unenforceable for any reason, then such provision will be deemed stricken for purposes of the dispute in question and all other provisions will remain in full force and effect.

**Compliance with Laws/Anti-Bribery:** Echologics and Buyer agree to comply with all applicable laws, regulations, codes and standards, including but not limited to those of the United States and other jurisdictions where the parties conduct business. Additionally, Buyer has not and will not offer, promise authorize or make, directly or indirectly, any payments (in money or any other item of value), contributions or gifts to any non-U.S. government agency, department official or government owned or controlled entity in order to obtain or retain business, or secure any other improper business advantage, which would violate the U.S. Foreign Corrupt Practices Act and/or any other applicable anti-bribery laws.

**Time Limitation to Bring Action:** It is agreed that no suit or cause of action or other proceeding will be brought against either party more than 1 year after accrual of the cause of action or 1 year after the claim arises, whichever is shorter, whether known or unknown when the claim arises or whether based on tort, contract or any other legal theory.

**Choice of Law Provision:** In the event that Buyer is located in Canada, these Terms will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in Ontario, and will be treated, in all respects, as an Ontario contract. In the event that Buyer is located outside Canada, these Terms will be governed by and construed in accordance with the laws of the State of Georgia (without giving effect to conflict of law principles) as to all matters and the parties irrevocably submit to the exclusive jurisdiction of the federal court in the State of Georgia.

**ATTACHMENT A**  
**Services and Services Descriptions**