

Data Act Addendum **("Addendum")**

This Addendum implements the Data Act (as defined below). This Addendum is entered into between Echory GmbH, Graf-Adolf-Platz 15, 40213 Düsseldorf ("**Echory**") and the Customer (as defined in the Agreement), and will be subject to, and governed by the terms in the Agreement (as defined in the MSA). This Addendum applies to data processing services ("**Data Processing Service**", see Art. 2(8) of the Data Act) provided by Echory to Customer under the Agreement, including but not limited to the Echory real-time AI decision support platform and any other cloud-based Software or services.

In the event of a conflict between this Addendum, the Agreement or any Annexes or other schedule to the Agreement, this Addendum will prevail, except for the data processing agreement referenced in the Agreement.

1. Definitions

All terms used but not defined herein shall have the meanings given to them in the Agreement or in Regulation (EU) 2023/2854 of the European Parliament and of the Council of December 13, 2023, on harmonized rules for fair access to and use of data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828 ("**Data Act**").

2. Information Obligations of Echory

- 2.1 Customer acknowledges that before placing the order for the Data Processing Services as described and defined in the Agreement, Echory provided the Customer with clear information about:
 - 2.1.1 Echory fees and, where applicable, fees for early termination;
 - 2.1.2 Services that require a highly complex or costly switch or where a switch is not possible without significant disruption to Data, digital assets ("**Digital Assets**", see Art. 2(32) of the Data Act), or service architecture, if relevant;
 - 2.1.3 Specific services to which the switch and exit obligations do not apply, if relevant.
- 2.2 Echory provides an on-line register with describing data ("**Data**", see Art. 2(1) of the Data Act) structures and formats, relevant standards and open interoperability specifications, where exportable data ("**Exportable Data**", see Art. 2(34) of the Data Act) are available at <https://www.echoryflow.com/data-register.html>.

3. Switching Checklist

- 3.1 The switching checklist in Appendix 2, which forms an integral part of the Agreement, includes:
 - 3.1.1 an exhaustive specification of categories of Data and digital assets ("**Digital Assets**", see Art. 2(32) of the Data Act) that can be transferred with the use of Switching tools, including at a minimum all Exportable Data;
 - 3.1.2 an exhaustive specification of categories of Data specific to the internal functioning of Echory's Data Processing Service that will be exempted from the obligation to export Data where there is a risk of breach of Echory's trade secrets;

- 3.1.3 clear information concerning known risks to continuity in the provision of the functions or services on the part of Echory;
- 3.2 Switching shall be treated as a Professional Service under the Agreement.
- 4. Switching Request, Procedure**
- 4.1 The Customer initiates the Switching by sending Echory notice of its intent to switch in the form of a Valid Request, in accordance with this Clause 4 and as indicated in Clause 11. The notice period will commence when Echory receives a Valid Request.¹ If the Customer wishes to switch only with regard to certain Products and Services and the corresponding Data or Digital Assets, this must be specified in the Valid Request.
- 4.2 Customer shall specify in the request the relevant Data Processing Service and whether the Customer intends:
- 4.2.1 to switch to a destination provider of the Same Service Type. In this case the Customer shall provide necessary details of the destination provider and the services offered by the destination provider;
- 4.2.2 to switch to Customer's on-premises ICT infrastructure;
- 4.2.3 erase its Exportable Data (altogether "**Valid Request**").
- 4.3 In addition to the information set out above, a Valid Request must include all other details necessary for Echory to enable the Switching or the erasing of Exportable Data, including, as applicable, details about the destination provider, the destination ICT infrastructure, the envisaged timing and the Customer representative(s) responsible for the process. The determination of whether a specific service qualifies as the same service type ("**Same Service Type**", see Art. 2(9) of the Data Act) shall be made by Echory in good faith, taking into account the primary purpose, essential features of the services as described in the Valid Request by the Customer. In the scenario contemplated by Clause 4.4, below, a Valid Request will also include the proof of authorization.
- 4.4 Echory confirms to the Customer the receipt of the Valid Request using the same way of communication as the one used by the Customer. If the request received does not contain the information required to constitute a Valid Request, Echory will promptly inform the Customer of which information is missing, and Customer may resubmit the Valid Request with the missing information.
- 4.5 A Valid Request may also be submitted by a third party authorized by the Customer, in which case the request must include proof of the Customer authorization to the third party.
- 4.6 Echory and the Customer shall, and the Customer shall ensure that any destination provider involved in the Switching will, cooperate in good faith to make the Switching effective, enable the timely transfer of Data and maintain the continuity of the Data Processing Services concerned.
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5. Transitional Period

- 5.1 The transitional period ("**Transitional Period**", see Art. 25(2)(a) of the Data Act) shall be thirty (30) days or such other time as agreed by the Parties in writing.³
- 5.2 If Echory determines that it will not be technically feasible to complete the Switching within the agreed Transitional Period, Echory shall:
- 5.2.1 notify the Customer within 14 Business Days after receipt of the Valid Request;
 - 5.2.2 indicate an alternative Transitional Period, which must not exceed seven (7) months⁴ from the date of the Customer's Valid Request; and
 - 5.2.3 explain why adhering to the Transitional Period is not technically feasible.
- 5.3 The Customer shall confirm receipt of the notice for such alternative Transitional Period within three (3) Business Days.⁵ Failure to confirm receipt will be treated as acceptance of the alternative proposal.
- 5.4 The Customer may extend the Transitional Period once, for a period but in no case for any period longer than three (3) months ("**Alternative Transitional Period**").⁶ Customer shall notify Echory of the change before the end of the initial Transitional Period and indicate the Alternative Transitional Period.

6. Obligations of Echory during the Switching. Echory shall provide reasonable assistance to the Customer and third parties authorized by the Customer to assist with the Switching once the Switching process starts and throughout its duration. To this effect, Echory shall:

- 6.1 act with due care to maintain business continuity and continue to provide the functions or Data Processing Service(s) under the Agreement;
- 6.2 maintain a high level of security throughout the Switching, in particular for the security of the Data during their transfer, consistent with the level of security provided in accordance with the terms of this Agreement; and
- 6.3 if problems are detected during the Switching and cannot be resolved through technical support, together with the Customer, analyze the causes and agree on the solutions.

7. Obligations of the Customer During the Switching

- 7.1 The Customer undertakes to take all reasonable measures to achieve effective Switching. The Customer undertakes to be responsible for the import and implementation of Data and Digital Assets in its own ICT infrastructure or in the systems of the destination provider, including where the Customer uses the Data Processing Services of a third party for these actions.

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- 7.2 Customer shall notify Echory of the successful Switching promptly and without undue delay. Any costs associated with Customer's delay shall be borne by the Customer.
- 7.3 If applicable and without prejudice to Article 30(6) of the Data Act, Customer and Echory, or third parties mandated by them, undertake to respect the intellectual property rights of any materials provided in the Switching by Echory, as well as Echory's trade secrets, which are considered Confidential Information under the Agreement. The Customer undertakes to provide access to, and enable the use of these materials by third parties mandated by them only insofar as this is absolutely necessary to complete the Switching and only upon the Echory's explicit authorization and provided that such third parties are bound by appropriate contractual confidentiality obligations. The access to and use of the Echory's materials related to the Switching which are protected by intellectual property rights and/or trade secrets related to the Switching will be terminated no later than at the end of the agreed Transitional Period, including the Alternative Transitional Period, in full compliance with the confidentiality commitments and the intellectual property rights owned by Echory. In all other aspects, the Customer's confidentiality obligations as provided by the Agreement shall remain unchanged by this Addendum.
- 7.4 The Customer shall act in good faith to implement any instructions related to the Switching given by Echory.

8. Data Retrieval and Data Erasure

- 8.1 The Customer may retrieve or erase its Exportable Data during the Data Retrieval Period (as defined below). The period of the retrieval of Exportable Data shall be thirty (30) days ("**Data Retrieval Period**").
- 8.2 At the end of Data Retrieval Period, and if the Switching has been successfully completed, Echory shall erase all Exportable Data generated by the Customer or directly related to the Customer.

9. Switching Charges and Early Termination Fees

- 9.1 For each Valid Request made before 12 January 2027, Echory may charge Customer for switching services provided by Echory or a third party, as described in the plan and based on the list of Switching charges provided to Customer before the Effective Date of the Agreement or by 12 September 2025 (whichever is later), or, absent such list, based on hourly rates for professional services set forth in the Agreement and the time directly spent on the Switching concerned (rounded up or down to the next full hour, as applicable).⁸
- 9.2 If a Valid Request results in the termination of the Agreement pursuant to Clause 10 prior to the agreed fixed term of the Agreement, Echory may invoice Customer for an amount equal to the Fees that would have been due or payable by Customer if the Agreement had not been terminated before the end of its term, minus any costs directly attributable to the performance of the Agreement that Echory would have incurred by the end of that term but will not incur due

to the early termination ("**Early Termination Charges**"). The Early Termination Charges shall become due and payable in accordance with the payment terms of the Agreement.

10. Termination. Notwithstanding any provision to the contrary in the Agreement, and without limitation to the termination rights set out in the Agreement, the Agreement will be considered terminated between the Parties on the date that one of the following events occurs:

10.1 Where applicable, upon the successful completion of the Switching. If the successful completion of the Switching occurs before the expiry of the agreed duration of the Agreement, then the Early Termination Charges set out in Clause 9.2 will become due; or

10.2 At the end of the notice period, if the Customer has requested the erasure of its Exportable Data, upon termination of the Data Processing Service, unless otherwise agreed by the Parties.⁹

11. Notices. The Parties agree any notification between them in respect of Switching and exit to be done as agreed in the Agreement.

12. Order of Precedence. In the event of any conflict or inconsistency between these clauses on Switching and exit and any other applicable contractual arrangements, terms, conditions or other applicable Agreements related to Switching between Data Processing Services, these clauses will take precedence.

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Appendix 1 – Switching and Exit Plan¹⁰

1. Contact Now

Contact person at Echory for switching and termination: alex@echoryflow.com

Contact person of the Customer for the change and withdrawal: as indicated in the order.

2. The Customer must make an admissible request

3. Obligations of Echory to respond to the written notification

Within 20 days, Echory will respond to the Customer in writing with the following information:

- a. Confirmation of the categories of Exportable Data to be transferred during the switch
- b. List of Data categories excluded from Switching.

4. Confirmation of the Data to be migrated

The Customer specifies which Exportable Data it would like to receive within the agreed (or alternative) Transitional Period.

5. Order, Schedule and Test

During the Transitional Period:

- a. The agreed order and timeline for exporting and transferring the selected Exportable Data is as follows: Day 1-14: Structured Data, Day 14-25: documents
- b. Echory or the Customer will test the export and transfer to the agreed location using Echory's tools and processes with a portion of the agreed Data and Digital Assets to confirm or adjust the order and schedule.
- c. The Customer tests the import and implementation of the agreed Exportable Data in its own systems or the systems of the destination provider.
- d. In the event of problems with the tests or the test results, Echory and the Customer will determine whether they are due to the export of the agreed Exportable Data and the transfer processes under the responsibility of Echory or to their import and implementation under the responsibility of the Customer.

6. Implementation of the Switch

- a. Echory exports (without deletion) the Exportable Data by electronic or physical means to the location specified by the Customer, and the Customer (or third parties authorized by the Customer) imports and implements the Exportable Data into its own systems or into the systems of the destination provider.
- b. The Customer (or third parties authorized by the Customer) tests the functions in its environment or in the environment of the destination provider and documents for Echory any

problems arising from (i) the quality of the Exportable Data or (ii) insufficient information from Echory.

- c. Echory must react in such a way that the Customer can switch within the Transitional Period.

7. Successful Change

As soon as the Customer informs Echory of the successful completion of the Switching, Echory undertakes to inform the Customer immediately of the termination of the Agreement. If the Customer does not inform Echory of the successful completion of the Switching, although Echory has reason to believe that the switch has been successfully carried out by the Customer, Echory may send the Customer a request to confirm the successful completion of the Switching. If the Customer does not confirm the successful completion of the Switching within 14 calendar days of this request, the switch will be considered unsuccessful, and the Agreement will not be terminated.

Appendix 2 – Switching Checklist

- a. Either the information required is explicitly mentioned hereunder or the information required can be found at <https://echoryflow.com/data-register/> Specification of all categories of Exportable Data that can be transferred: <https://echoryflow.com/data-register/>
- b. Specification of all categories of Exportable Data specific to the internal functioning of Echory's Data Processing Service, with risk of a breach of Echory's trade secrets, which are exempted from Switching <https://echoryflow.com/data-register/>
- c. Exportable Data protected by the intellectual property rights of Echory or third parties, which are exempted from Switching: <https://echoryflow.com/data-register/>
- d. Information on procedures for Switching and porting with the use of switching tools: <https://echoryflow.com/data-register/>
- e. Estimate of the time needed to export and transfer the Exportable Data: 1-25 business days
- f. Known risks to continuity in the provision of the functions or Services of Echory: Dependence on external cloud providers, planned or unplanned maintenance work, security incidents or cyberattacks, natural disasters or large-scale power outages, faulty updates or software deployments that cause temporary service interruptions
- g. IT resources which will be ensured by Echory for an effective Switching: Technical support