

Terms of Service echory Platform ("ToS")

Echory GmbH, Graf-Adolf-Platz 15, 40213 Düsseldorf, registered with the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Düsseldorf under HRB 111878 ("**echory**", "**we**", "**our**" or "**us**"), is a technology company that provides a real-time AI decision intelligence platform as a software-as-a-service (SaaS) application that enables real-time decision and knowledge support during live professional conversations.

Section 1

Welcome and Scope of these ToS

- 1.1 These ToS form a legal contract between you, either (a) an individual user or (b) a business organization (in either case the "**Customer**", "**You**" or "**Your**"), and echory with respect to the provision of the echory Services. These ToS are intended for entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB) and for business organizations. By subscribing to the Services, You represent that You are acting in Your capacity as an entrepreneur or on behalf of a business organization, and not as a consumer within the meaning of Section 13 BGB.
- 1.2 If You subscribe to the Services through our website, the Agreement is concluded in the online checkout process when You confirm that You accept these ToS by ticking the corresponding checkbox and click the "Subscribe with obligation to pay / Kostenpflichtig abonnieren" button. By doing so, You agree to be bound by the terms of these ToS. Your account is created after completion of the online checkout process.
 - 1.2.1 If You are an individual entering into these ToS on behalf of a company or other legal entity, You represent that You have authority to bind that entity to these terms. If You do not have that authority, or do not wish to be bound by these ToS, You must not accept them or access or use the Services.
 - 1.2.2 Please read these ToS carefully before using the Services. You may contact echory regarding these ToS at hello@echoryflow.com.
- 1.3 Using the Platform and Creating an Account
 - 1.3.1 Certain Services require an account. Registration requires Your full name, a valid email address, a password, and Your company or business name. For billing and invoicing purposes, You must also provide Your billing address, and if applicable, Your company registration number, tax identification number (*Steuernummer*) and VAT identification number (*Umsatzsteuer-Identifikationsnummer*). The registration form supports international address formats.
 - 1.3.2 You must provide truthful, current and complete information during registration and while using the Platform. You are solely responsible for the completeness and accuracy of the information provided.

- 1.3.3 You may engage with the Software via an authentication method ("**Authentication Method**") provided by echory or a third-party authentication provider. Your use of a third-party Authentication Method is governed by the terms and conditions of the respective provider. echory is not responsible for Your use of the Authentication Method or any act or omission of a third-party provider, including (a) failure of the authentication method, (b) bugs or errors in the authentication method, or (c) inaccurate identities at login. To the extent Authentication Methods are made available by echory, they are provided without any representation or warranty unless explicitly stated otherwise.
- 1.3.4 You must keep Your user ID and password confidential, store them securely and not share them with any unauthorized person. You are responsible for all actions taken using Your account and passwords and must promptly notify echory of any unauthorized access.

1.4 Subscription and Online Orders

- 1.4.1 You may subscribe to Services through our website. The Subscription Plan, features, usage limits and Fees will be displayed during the online checkout process. The current Subscription Plans (e.g., Basic, Professional and Business) and their Fees are published on the echory website.
- 1.4.2 Your subscription is confirmed upon completion of the online checkout process. The confirmation of the subscription, together with these ToS and the applicable Annexes, forms the Agreement between You and echory.
- 1.4.3 The Effective Date of the Agreement is the date on which You complete the online checkout process.
- 1.4.4 The following Annexes form integral parts of these ToS:
 - a) Annex 2 – Data Processing Addendum (if applicable) (available under <https://www.echoryflow.com/assets/legal/echory-data-processing-addendum-v1-0.pdf>);
 - b) Annex 3 – Data Act Addendum (if applicable) (available under <https://www.echoryflow.com/assets/legal/echory-data-act-addendum-v1-0.pdf>); and
 - c) Annex 4 – Service Level Addendum (available under <https://www.echoryflow.com/assets/legal/echory-service-level-addendum-v2-0.pdf>).

- 1.5 In the event of a conflict between these ToS and an Annex, the terms of the Annex shall prevail.

Section 2

Definitions and Interpretation

- 2.1 In these ToS and the Annexes, capitalized terms have the following meanings:

- 2.1.1 "**Agreement**" means these ToS, the applicable Subscription Plan and the Annexes.

- 2.1.2 **"AI"** means artificial intelligence.
- 2.1.3 **"AI Functionality"** means those certain artificial intelligence features and functionalities powered by an AI Subprocessor and enabled for use by You in the Software, if any.
- 2.1.4 **"AI Subprocessor"** means those certain third-party providers currently used by echory to provide a certain AI Functionality.
- 2.1.5 **"Applicable Law"** means all laws, rules and regulations applicable to echory's or Your performance under these ToS, including those applicable to the processing of personal data, in particular the European General Data Protection Regulation 2016/679 ("**GDPR**") and national laws validly amending those rules.
- 2.1.6 **"Confidential Information"** is information of a business, financial, operational, technical or other nature, as well as information that is not generally known or readily accessible and is therefore of economic value, which is protected by appropriate confidentiality measures of the disclosing party ("**Discloser**") or an affiliate of the Discloser and in which there is a legitimate interest in confidentiality ("**Trade Secret**"), and which a Recipient receives from the Discloser ("**Recipient**") and which:
- a) is available in written, recorded, graphic, or other tangible form and is marked as "confidential", "trade secret", or with a similar designation;
 - b) is communicated orally and is classified as "confidential" or "trade secret" or a similar designation by the Discloser at the time of disclosure and such classification is confirmed in writing within thirty (30) days of disclosure; or
 - c) to the extent that it concerns information as referred to in Section 2.1.6 a) or b), is received without appropriate marking under such circumstances that could reasonably be interpreted as an obligation of confidentiality or the Recipient could reasonably assume that the information is secret.
- Confidential Information also includes all summaries and abstracts of Confidential Information. For the avoidance of doubt, Your Confidential Information includes Customer Data.
- 2.1.7 **"Contributions"** means any feedback, suggestions, ideas, feature requests, bug reports, improvements, or other input You voluntarily provide to echory regarding the Software or echory Services, whether in writing, orally, or through the Software.
- 2.1.8 **"Customer AI Data"** means (a) any input You provide to be processed through the AI Functionality ("**AI Input**") and (b) any output generated and returned by the AI Functionality based on Your AI Input ("**AI Output**"). Customer AI Data is a subset of Customer Data.
- 2.1.9 **"Customer Data"** means any and all data supplied, submitted, ingested, processed, stored, posted, displayed or otherwise made available by or on behalf of You for processing by or use with the Software.

- 2.1.10 **"Data"** means any outputs, reports, and aggregated results generated by the Software from Customer Data and permitted third-party sources.
- 2.1.11 **"Data Processing Services"** means any digital service that is provided to a customer that enables ubiquitous and on-demand network access to a shared pool of configurable, scalable, and elastic computing resources of a centralized, distributed, or highly distributed nature that can be rapidly provisioned and released with minimal management effort or service provider interaction.
- 2.1.12 **"Documentation"** means the technical specification documentation generally made available by echory to its customers with regard to the then-current version of the Software from time to time.
- 2.1.13 **"echory Services"** means the Software and any features, functionalities and related services that echory makes available under a Subscription Plan.
- 2.1.14 **"Effective Date"** means the date on which You complete the online checkout process for the Services.
- 2.1.15 **"Fees"** means the remuneration payable by You as displayed during the online checkout process or on the applicable Subscription Plan.
- 2.1.16 **"Free Services"** means Trial Services and any other services or features that echory makes available free of charge.
- 2.1.17 **"Intellectual Property"** means any property that is protected in any manner by Intellectual Property Rights.
- 2.1.18 **"Intellectual Property Rights"** means any and all intellectual property rights or similar proprietary rights, including (a) patent rights and utility models, (b) copyrights and database rights, (c) trademarks, trade names, domain names, and trade dress and the goodwill associated therewith, (d) trade secrets, (e) mask works, and (f) industrial design rights, in each case, including any registrations of, applications to register, and renewals and extensions of any of the foregoing in any jurisdiction in the world.
- 2.1.19 **"Internal Usage"** means use of the Software or the Data for which You are the primary beneficiary, in changed or unchanged form, by You or Your Users without onward dissemination to third parties.
- 2.1.20 **"Software"** means the software functionality that echory provides to You as software as a service, as described in the Documentation and under the applicable Subscription Plan.
- 2.1.21 **"Software as a Service"** means the provision of a computer program under a subscription or managed service model where the computer program is hosted in a multi-tenant cloud environment and maintained remotely either by echory or a third party, including in particular echory's real-time AI decision support platform.
- 2.1.22 **"Subscription Plan"** means the plan selected by You during the online checkout process, including its features, usage limits, Fees and billing cycle. The available

Subscription Plans are: (a) Basic; (b) Professional; and (c) Business (for teams and agencies). The features and limits of each Subscription Plan are described on the echory website and may be updated from time to time.

- 2.1.23 **"Subscription Term"** means the period during which You are authorized to access and use the echory Services under a valid subscription, commencing on the Effective Date and continuing until expiration or termination of the Agreement.
- 2.1.24 **"Taxes"** means taxes (e.g., value-added tax), levies, duties, or similar governmental assessments of any nature (collectively).
- 2.1.25 **"Term"** means the Subscription Term and any applicable billing periods during which the Agreement remains in force.
- 2.1.26 **"Third-Party Software"** means any software contained in the Software that is licensed to echory by a third party, including but not limited to open-source software.
- 2.1.27 **"Trial Period"** means the period for which Trial Services are made available to You.
- 2.1.28 **"Trial Services"** means services or features made available to You on a trial basis.
- 2.1.29 **"User"** means any authorized person who accesses or uses the Software on Your behalf.
- 2.1.30 **"Withholding Tax"** means any tax that a governmental authority requires to be deducted from payments made to a recipient.

2.2 Interpretation

- 2.2.1 Unless a contrary indication appears or is clearly required by the context, the term "including" (and similar terms such as "in particular") means "including without limitation", and the term "through" when describing a range, period, span, or scope always means "through and including".
- 2.2.2 Unless a contrary indication appears, a term used in the Annexes or notice given under or in connection with this ToS has the same meaning as in this ToS.

Section 3

Scope of the echory Service

- 3.1 echory provides the echory Services to You as included in the applicable Subscription Plan and as described in the Documentation.
- 3.2 echory may update and further develop the echory Services at any time, insofar as this is necessary or expedient, in particular to adapt to changes in legal situations or technical developments, improve IT security, performance or user-friendliness, or correct errors. In doing so, echory shall take appropriate account of Your legitimate interests and ensure that the functionality of the Software is maintained. echory will use reasonable efforts to inform You of updates that result in significant changes to functionality, operation or system requirements before they take effect, except where advance notice is not feasible, such as for urgent security updates.

- 3.3 echory will not intentionally remove or materially degrade the core capabilities of the echory Services during Your then-current Subscription Plan, except where required for security, legal or technical reasons, or echory provides functionally equivalent capabilities.

Section 4

Software and Data License

- 4.1 With respect to Software and Data, subject to these ToS, the applicable Subscription Plan and Your payment of the Fees, echory grants to You the non-exclusive, non-transferable and non-sublicensable right during the Term to access and use:
- 4.1.1 the Software in accordance with the Documentation;
 - 4.1.2 the Documentation; and
 - 4.1.3 the Data,
- solely for Your Internal Usage and solely in accordance with these ToS, the applicable Subscription Plan and any applicable third-party terms. Except as expressly granted, there are no other rights of access or licenses granted to You, express or implied. All rights not granted are reserved by echory.
- 4.2 You may designate Users to use the Software on Your behalf. Use of the Software by You and the Users in the aggregate must remain within any restrictions set forth in the applicable Subscription Plan. You must require all Users to keep their user IDs and password information confidential and not share them with any unauthorized person. You are responsible for all actions taken using Your accounts and passwords.
- 4.3 The Software may contain Third-Party Software, including open-source software used as a dependency and not incorporated into the Software, in which Intellectual Property Rights are owned by a third party. These ToS do not apply to Third-Party Software, which is subject to its own terms and is deemed licensed directly to You by the relevant third party under those terms.
- 4.4 The Software is a general tool designed for the purposes described in the Documentation. It has not been customized, and will not be customized, to Your requirements.
- 4.5 echory will grant You access to the Software and the Documentation in German or English by electronic means within a reasonable period following the Effective Date.
- 4.6 You shall not, directly or indirectly, and You shall not permit any User or third party to
- 4.6.1 distribute (except as expressly permitted herein), sell, sublicense, rent, lease, or use Software as a Service on a temporary basis, in a service bureau, hosting or for service provider or similar purpose,
 - 4.6.2 perform vulnerability scanning, penetration testing, or other security testing, including network discovery, port and service identification, password cracking, and remote access testing, of echory's systems or Software as a Service,
 - 4.6.3 modify, edit or alter, disassemble, decompile, or reverse engineer any part of the Software (this prohibition includes, but is not limited to, examining data structures or

similar program-generated materials) or access and use the Software to create or support echory's competing Software or services and/or assist any third party in such creation and support,

- 4.6.4 access libraries, data, or databases which are integrated into the Software, or which are made available by means other than through the Software itself,
 - 4.6.5 change the Documentation (in whole or in part) or create a work derived from the Documentation (or a part thereof), except for Your Internal Usage or if echory has expressly agreed to this in writing,
 - 4.6.6 remove any product labeling, proprietary notices, copyright notices, or other notices in the Software or Documentation or,
 - 4.6.7 publicly disseminate any performance data or analysis (including, but not limited to, benchmarks) related to the Software or Documentation, regardless of its origin.
- 4.7 Mandatory rights remain unaffected, including, where applicable, non-waivable rights under the German Copyright Act ("**UrhG**"), including but not limited to Sections 60d, 69d and 69e UrhG.
- 4.8 With respect to any AI Functionality included in the Software, echory will process Customer AI Data only as necessary to provide and maintain the echory Services and in accordance with Applicable Law and the DPA. You acknowledge that AI-generated recommendations may be inaccurate and cannot replace professional judgment.
- 4.8.1 Unless otherwise stated in the applicable Subscription Plan, the following applies to the use of Customer Data for echory's internal purposes:
 - a) **Basic Subscription Plan:** Customer acknowledges and agrees that echory may use anonymized and aggregated data derived from Customer Data for the purposes of internal analytics, product improvement, training and optimization of echory's own AI models, and the generation of aggregated market insights. echory will take appropriate technical and organizational measures to ensure that such anonymized data cannot be re-identified with reasonable effort. Customer Data in its original, non-anonymized form will not be used for these purposes without Customer's prior consent. Data obtained through Google APIs (including Google Calendar data) is excluded from these purposes and will not be used to develop, improve or train AI models.
 - b) **Professional and Business Subscription Plans:** Customer Data will not be used by echory for internal model training, analytics or the generation of market insights, unless Customer has given its prior written consent. Customer Data is processed solely for the purpose of providing the echory Services.
 - c) Regardless of the Subscription Plan, echory configures and operates the AI Functionality so that, by default, Customer AI Data is not used by AI Subprocessors for the training or improvement of their general-purpose models.

- 4.8.2 As between You and echory, and to the extent permitted by law, You retain all rights in Customer AI Data. You are solely responsible for ensuring that Customer AI Data complies with Applicable Law and for reviewing AI-generated recommendations before relying on them.
- 4.8.3 The Software is designed for use as a real-time AI decision support tool in professional conversations. It provides context-aware recommendations and insights during live interactions. The Software is **not** intended to autonomously make decisions on behalf of You or to replace human judgment.
- 4.8.4 You, as the deployer of the AI system within the meaning of Regulation (EU) 2024/1689 ("**EU AI Act**"), shall comply with applicable deployer obligations, including using the Software only within its intended use, implementing appropriate human oversight, monitoring operation and fulfilling applicable information obligations.
- 4.8.5 You must not use the Software for employment-related decisions, performance monitoring or behavioral control of employees, or for any purpose that would classify the AI system as a high-risk AI system under Annex III of the EU AI Act, unless echory and You have first agreed the required use and allocation of obligations in writing.
- 4.8.6 The rights granted under these ToS are subject to any applicable third-party terms and usage policies for AI Functionality made available through the Software. You must comply with those terms and policies.
- 4.9 If You are an organization, You grant echory a non-exclusive, worldwide, royalty-free, fully paid-up, non-transferable and non-sublicensable right to use Your company name, logo and related company trademarks for the purpose of identifying You as a customer of echory. This license includes, without limitation, the right to display the Customer's name, logo, and trademarks on echory's website, in sales presentations, marketing materials, press releases, case studies, and other promotional or informational materials, in any media or format now known or hereafter developed. This license is revocable by You at any time upon written notice to echory. Upon receipt of such notice, echory shall, within a reasonable period, cease any new use of Your name, logo, or trademarks; provided, however, that echory shall not be required to remove or recall any materials already produced, published, or distributed prior to the effective date of revocation, nor to cease any use required by law or regulation.
- 4.10 All Intellectual Property Rights in and to Your Contributions shall vest in and be owned exclusively by echory.
- 4.11 To the extent that any copyrights (*Urheberrechte*) in Your Contributions cannot be transferred under Applicable Law, You grant echory an exclusive, transferable and sublicensable license, unlimited in time, territory and scope, to use, reproduce, modify, adapt, translate, publish, publicly display, distribute and otherwise exploit Your Contributions for purposes of developing, improving, marketing and commercializing the echory platform and related products and services.
- 4.12 You agree not to exercise any moral rights (*Urheberpersönlichkeitsrechte*), in particular the right of attribution and the right to object to modifications, in a manner that would impair echory's use of Your

Contributions as set forth herein, to the extent permissible under Applicable Law and customary in the industry.

- 4.13 All Intellectual Property Rights in and to Customer Data belong to and shall remain vested in You or the relevant third-party owner. Data specifically provided by You shall remain Your property.

Section 5

Free Services

- 5.1 echory may make Trial Services available free of charge for a limited Trial Period of 14 days.
- 5.2 The Trial Period shall terminate on the earlier of the end of the Trial Period or termination by echory in its sole discretion.
- 5.3 Upon expiry of the Trial Period, the subscription automatically converts to the standard paid Subscription Plan selected during registration unless You cancel before the end of the Trial Period. Payment data is collected at the time of Trial registration and will be charged upon conversion to the paid subscription.
- 5.4 Unless otherwise agreed, use of Free Services is subject to these ToS and may be subject to limits displayed in connection with the Free Services. echory may terminate access to Free Services at any time. You are responsible for exporting Customer Data before termination of access.
- 5.5 All Free Services are provided "as is" without warranty, support or indemnification of any kind. You are solely responsible for Your use of, and reliance on, any results obtained through Free Services. The warranties in Section 9 are excluded to the extent permitted by Applicable Law.

Section 6

Your Obligations

- 6.1 You are responsible for:
- 6.1.1 maintaining a suitable internet connection and compatible devices and software necessary to access and use the Software;
 - 6.1.2 properly configuring and using the Services in accordance with the Documentation; and
 - 6.1.3 taking appropriate action to secure, protect and back up Your account and Customer Data.
- 6.2 echory is not responsible for supplying hardware, software or equipment not included in the Software. You are responsible for reviewing the Documentation and ensuring that the Software meets Your needs and is compatible with Your devices.
- 6.3 You acknowledge that echory neither endorses the contents of Your communications or Customer Data nor assumes responsibility for material contained therein, infringement of third-party rights arising therefrom or any crime facilitated thereby. You are solely responsible for the completeness, integrity, quality, accuracy and lawful sourcing of Customer Data. You must use the Services in accordance with Applicable Law and the acceptable use standards set forth in the Documentation.

- 6.4 You shall use the storage capacities provided as part of the Software only for purposes related to the use of the Software. You shall not store unrelated data. In case of a breach, echory may terminate these ToS in accordance with Section 12.3.3.
- 6.5 You shall reasonably cooperate with echory and provide information reasonably required for the provision and management of the Services.
- 6.6 You shall provide accurate, current and complete account, billing and contact information and promptly update it when it changes.
- 6.7 You are responsible for any prejudice and additional costs resulting from Your breach of this Section 6. You are not relieved of the obligation to pay Fees if echory cannot provide Services due to Your deficient or default contributions.
- 6.8 You shall notify echory promptly if You become aware of unauthorized use of Customer Data and take reasonable measures to stop that use.
- 6.9 You are responsible for ensuring that Your use of the Software and any processing of personal data through the Services complies with Applicable Law.

Section 7

Payment and Billing

- 7.1 You shall pay the Fees and any other charges in accordance with this Section and the applicable Subscription Plan.
 - 7.1.1 The Fees and any other charges will be charged to Your payment method on the specific payment date indicated on Your account page. The billing cycle depends on the Subscription Plan chosen at sign up.
 - 7.1.2 To use the paid Services, You must provide one or more payment methods. You authorize echory to charge another payment method associated with Your account if Your primary payment method is declined or unavailable. You remain responsible for any uncollected amounts.
 - 7.1.3 Payment is processed by the payment service provider Stripe Payments Europe, Limited, 1 Wilton Park, Wilton Place, Dublin 2, D02 FX04, Ireland ("**Stripe**"). For payment, You are redirected to a checkout page operated by Stripe under the domain checkout.echoryflow.com, where Stripe processes Your payment data. Please see Stripe's terms at <https://stripe.com/legal/ssa> and privacy policy at <https://stripe.com/privacy> for information on how Stripe processes payment data.
 - 7.1.4 You can cancel Your subscription at any time, and You will continue to have access through the end of Your billing period. To cancel, go to Your account page at app.echoryflow.com/company/subscription and follow the cancellation instructions.
 - 7.1.5 Fees are net amounts exclusive of Taxes. If echory is responsible for paying Taxes in respect of any Fees under Applicable Law, the corresponding amounts will be added to the applicable charge and paid by You together with the Fees.

7.1.6 If Applicable Law requires You to withhold Taxes from a payment to echory, You shall make the withholding and provide evidence of it. You shall increase the payment so that echory receives the amount it would have received absent the withholding, unless prohibited by Applicable Law.

7.1.7 The applicable Subscription Plan and Fees are those displayed at sign-up. The current Subscription Plans and Fees are published on the echory website.

7.2 You may offset echory's remuneration claims under these ToS only against claims that have been legally established by final judgment or accepted by echory.

Section 8

Data Protection, Data Act Compliance and Service Level

8.1 By accessing and using the Software, echory may process Your personal data. Please read the Privacy Notice at <https://www.echoryflow.com/privacy-policy.html> for information about this processing.

8.2 The terms in **Annex 2 ("Data Processing Addendum" or "DPA")** apply where echory processes personal data on Your behalf as a processor or sub-processor under the GDPR. The DPA is available under <https://www.echoryflow.com/assets/legal/echory-data-processing-addendum-v1-0.pdf>.

8.3 The terms in **Annex 3 ("Data Act Addendum" or "DAA")** apply where echory qualifies as a data processing service provider within the meaning of Regulation (EU) 2023/2854 (Data Act) and You use the Software as a data processing service. The DAA is available under <https://www.echoryflow.com/assets/legal/echory-data-act-addendum-v1-0.pdf>.

8.4 The terms in **Annex 4 ("Service Level Addendum" or "SLA")** apply to the service levels applicable to the Software. The SLA is available under <https://www.echoryflow.com/assets/legal/echory-service-level-addendum-v2-0.pdf>

Section 9

Warranties

9.1 echory represents and warrants that it has the right and authority to provide the Services and grant the rights under these ToS. echory's sole representations and warranties in respect of the Software are as follows:

9.1.1 The Software as delivered by echory, to the best of echory's knowledge, does not infringe third-party Intellectual Property Rights within the Federal Republic of Germany and is free from third-party rights that would prevent Your use of the Software in accordance with these ToS.

9.1.2 The Software as delivered by echory complies with the specifications set forth in the Documentation and operates substantially in accordance with the Documentation.

9.1.3 The service level provided by echory with respect to the Software corresponds to the level described in the Service Level Addendum.

9.2 You represent and warrant that:

- 9.2.1 You own or otherwise have and will have the necessary and sufficient rights and consents in and relating to Customer Data as received by echory and processed in accordance with these ToS;
 - 9.2.2 Customer Data does not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, privacy rights or other rights of any third party, or violate Applicable Law; and
 - 9.2.3 Your use of the Software and all Customer Data is and will remain compliant with Your privacy policies and all Applicable Law.
- 9.3 In the event of any breach of an echory warranty relating to the Software, the terms, procedures and remedies set forth in the Service Level Addendum shall apply, subject to the limitations and exclusions contained therein. In the event of any other breach of warranty, You shall promptly inform echory in reasonable detail and give echory a reasonable opportunity to correct the non-conformity at no additional charge. Only if correction fails may You terminate the affected subscription and receive a pro-rata refund of Fees prepaid for the affected Services. You shall not be entitled to warranty claims to the extent the error was caused by misuse, unauthorized modifications or third-party hardware, software or services, the Services were provided free of charge or for evaluation, or You culpably failed to notify echory within thirty (30) days after the error became apparent.
- 9.4 If and to the extent that the Software infringes any third-party right, echory may, at its option:
 - 9.4.1 secure sufficient licenses or other rights to use the relevant third-party right; or
 - 9.4.2 change or replace the Software in such a manner that it no longer infringes the relevant third-party right while substantially maintaining the warranted functionality of the Software.
- 9.5 Your right of termination for failure to provide the use of the Software pursuant to Section 543 (2) sentence 1 no. 1 German Civil Code (BGB) shall be excluded unless the provision of the contractual use of the Software is deemed to have failed.
- 9.6 Any claims for damages due to a breach of warranty and claims for compensation of wasted efforts due to defects are subject to Section 10. Together with Section 10, this Section 9 sets out Your sole remedies for any breach of warranty.
- 9.7 You acknowledge that the Software is an AI-powered tool and that AI-generated recommendations may contain errors. The accuracy and reliability of recommendations depend on factors outside echory's control, including audio quality, network stability and the accuracy and completeness of Customer Data. echory is not liable for inaccuracies attributable to those factors. The Software does not replace professional judgment, and all AI-generated recommendations must be reviewed by You before acting upon them.

Section 10

Liability

- 10.1 echory will be liable in accordance with the applicable law (i) for willfulness and gross negligence; (ii) for damage to life, limb, or health; (iii) for breach of a specific guarantee; (iv) for fraudulent misrepresentation and fraudulent concealment of a defect; and (v) in accordance with the German Product Liability Act (*Produkthaftungsgesetz*).
- 10.2 echory will also be liable in the event of a breach of an essential obligation under these ToS due to ordinary negligence on the part of echory or any of its representatives, vicarious or surrogate agents, but limited to foreseeable, typical damage. Essential obligations are obligations that necessarily need to be fulfilled to enable performance of these ToS and on which You regularly rely and may reasonably rely.
- 10.3 Except as set forth in Sections 10.1 and 10.2, echory's liability is hereby excluded.
- 10.4 The exclusions and limitations of liability set forth in this Section 10 (Liability) equally apply to echory's legal representatives, or vicarious and surrogate agents.
- 10.5 Liability in accordance with Section 10.2 is excluded if the Services are provided by echory to You free of charge.
- 10.6 Notwithstanding any other provision of these ToS, and subject to the exclusions in Section 10.1 (willfulness, gross negligence, personal injury, fraud, product liability), echory's total aggregate liability to You under or in connection with these ToS, for all claims (whether in contract, tort, statute or otherwise) arising in any twelve (12) month period, shall not exceed the greater of (i) EUR 100,000 (one hundred thousand euros) or (ii) the total Fees actually paid by You to echory under these ToS in the twelve (12) months immediately preceding the first event giving rise to the relevant claim ("**Liability Cap**"). The Liability Cap applies to all claims combined, regardless of the number of incidents or the legal basis of the claim. For the avoidance of doubt, the Liability Cap applies equally to claims arising from the performance of any AI Subprocessors acting on echory's behalf.

Section 11

Confidentiality

- 11.1 The Recipient:
 - 11.1.1 may only disclose the Confidential Information to those employees, consultants, and affiliates who have a need to know the Confidential Information and who have agreed in writing to confidentiality terms substantially similar to those contained herein;
 - 11.1.2 shall exercise at least the same degree of care in protecting the Confidential Information of the Discloser as it would exercise in protecting its own information of a similar nature, but in no event less than reasonable care;
 - 11.1.3 may only use the Confidential Information in connection with its rights and obligations under these ToS; and
 - 11.1.4 must, at the request of the Discloser, either return or destroy the Confidential Information in whole or in part, at the Discloser's discretion, within a reasonable

timeframe, except to the extent that retention of such Confidential Information is required by Applicable Law.

- 11.2 Confidential Information shall remain confidential for a period of three (3) years after its disclosure. This time limitation does not apply to Confidential Information that is marked "trade secret" or otherwise constitutes a Trade Secret. Software, Documentation and technical information provided by echory and its affiliates (or their agents), information relating to the echory Services and the terms of these ToS shall be considered trade secrets without the need for labeling or other designation.
- 11.3 The Recipient's duty of confidentiality does not apply to information that:
- 11.3.1 was already legally in its possession prior to receipt or was already known to it beforehand;
 - 11.3.2 has become publicly known through no fault of the Recipient;
 - 11.3.3 the Recipient has lawfully received from a third party without breaching a confidentiality obligation;
 - 11.3.4 independently developed by employees of the Recipient who did not have access to this information;
 - 11.3.5 the Recipient was required to disclose by regulation, statute, or court order (but only to the extent necessary to comply with that regulation, statute, or court order and only after notifying the provider of the information); or
 - 11.3.6 the Recipient was allowed to disclose due to a regulation or a law.
- 11.4 Reverse engineering within the meaning of Section 3 (1) No. 2 of the German Trade Secrets Protection Act ("**GeschGehG**") is not permitted for You.

Section 12

Term and Termination

- 12.1 These ToS commence on the date You subscribe to the Services online and continue until terminated pursuant to Section 12.2.
- 12.1.1 Your subscription continues for the billing period applicable to the Subscription Plan selected by You.
 - 12.1.2 At the end of each billing period, Your subscription automatically renews for a further billing period unless You cancel it in accordance with Section 7.
- 12.2 You can cancel Your subscription at any time, and cancellation will take effect at the end of the then-current billing period. A termination notice is not required provided You terminate by unsubscribing within Your account page.
- 12.3 echory or You may terminate these ToS immediately upon notice for important cause. The following events, in particular, shall be deemed to constitute important cause:
- 12.3.1 echory may terminate these ToS if You fail to pay any amount when due and remain in default for more than fourteen (14) days after receiving notice of the non-payment;

- 12.3.2 echory or You may terminate these ToS, to the extent permitted by Applicable Law, if the other becomes insolvent, is unable to pay debts as they mature or ceases to conduct its operations in the normal course;
- 12.3.3 echory or You may terminate these ToS if the other materially breaches these ToS and does not remedy the breach within thirty (30) days after receiving written notice;
- 12.3.4 If You terminate these ToS for cause, echory shall refund any unused prepaid Fees covering the period after the effective date of termination. If echory terminates for cause, You shall pay all Fees due through the effective date. Termination does not relieve You of Fees payable for the period before termination.
- 12.4 Any termination notice will be effective only when sent to and received by the other party by email. No termination notice is required where You cancel through Your account page in accordance with Section 12.2.
- 12.5 Termination of these ToS terminates all subscriptions and related licenses, except to the extent a license is expressly granted for an indefinite period.
- 12.6 Within ten (10) days after termination, each Recipient shall:
 - 12.6.1 return to the Discloser, or at the Discloser's option destroy, all Confidential Information relating to these ToS in the Recipient's possession or control, including copies, extracts and portions thereof, except information retained as required by Applicable Law; and
 - 12.6.2 upon request, certify in writing to the Discloser that the foregoing has been completed.
- 12.7 At any time before or within thirty (30) days after termination, You may download Customer Data from the Software. The terms and conditions of the DAA remain unchanged.
- 12.8 To the extent that Customer Data includes personal data, it shall be returned to You or deleted in accordance with the DPA.
- 12.9 Termination or expiration of these ToS for any reason shall not affect rights or obligations that expressly or by their nature continue and survive, including payment terms and provisions concerning ownership, proprietary rights, confidentiality and limitation of liability.

Section 13

Amendment Clause

- 13.1 echory reserves the right to amend these ToS, provided that the amendment is reasonable for You and echory takes Your legitimate interests into account. Changes to the subject matter of the Agreement and the main performance obligations that would change the nature of the Agreement as a whole are excluded from this right.
- 13.2 An amendment is justified in particular if echory must ensure that the Services comply with Applicable Law, including a changed legal situation, or if echory is complying with a court order or official decision.
- 13.3 An amendment initiated by echory requires echory to notify You of the intended amendment via email, in-app notification or website posting at least four (4) weeks before the proposed date of entry into force.

You will be deemed to have consented if You do not notify echory of Your rejection before that date. echory will clearly identify the changes and draw Your attention to the consent effect of Your conduct.

- 13.4 If You object to the new provisions, echory may terminate these ToS without notice.
- 13.5 If You do not agree to a new version of these ToS, You may cancel Your subscription before the proposed effective date. The current version will continue to apply until cancellation takes effect.

Section 14

Miscellaneous

- 14.1 Any notice or communication required or permitted under these ToS shall be made in text form by electronic means, including email or in-app notification, and shall be deemed received upon confirmation of successful transmission.
- 14.2 Notices to echory must be sent to hello@echoryflow.com. All communications and notices under these ToS shall be in English or German.
- 14.3 These ToS shall be governed by the laws of Germany without regard to its conflict-of-law provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. To the extent legally permissible, the competent courts of Düsseldorf, Germany shall have jurisdiction over disputes regarding the validity, implementation, interpretation or termination of these ToS.
- 14.4 These ToS and the Annexes constitute the sole and entire agreement between You and echory regarding their subject matter and supersede all prior and contemporaneous understandings, agreements, representations and warranties, written or oral, regarding that subject matter.
- 14.5 No term or provision of these ToS shall be considered waived, and no breach excused, unless the waiver or consent is in writing from the party against whom it is asserted. No consent to or waiver of a breach shall constitute consent to, waiver of or excuse of any other, different or subsequent breach.
- 14.6 Any amendment to these ToS must be in text form to be effective, subject to Section 13. Electronic acceptance through the website may be used for amendments where permitted by Applicable Law.
- 14.7 echory may assign these ToS without Your consent in connection with a merger, reorganization, acquisition or transfer of all or substantially all of its assets or voting securities. You may transfer Your rights and obligations only as permitted by Applicable Law. These ToS bind permitted successors and assigns.
- 14.8 Neither echory nor You will be liable for delay or failure to perform an obligation under these ToS, except for a failure to pay Fees, if the delay or failure is due to events beyond the reasonable control of the affected party and could not be avoided through reasonable care and diligence, including strikes, blockades, war, terrorism, cyberattacks, riots, natural disasters or failures of power or telecommunications or data networks or services (a "**Force Majeure**"). If Force Majeure occurs and persists for thirty (30) days, either echory or You may terminate these ToS by email notice. Fees will be equitably adjusted to reflect any period in which echory cannot perform due to Force Majeure.
- 14.9 These ToS may be accepted electronically through the website. No separate signature on these ToS or any Annex is required; completion of the online checkout process and acceptance described in Section 1 constitutes acceptance of these ToS and the Annexes.

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