Apheris AI GmbH
Terms of Use

1. **Scope.** The following "**Terms of Use**" set out the conditions for the use of Apheris Computational Governance software solutions ("**Product**") developed and provided by Apheris AI GmbH, Kolonnenstr. 8 10827 Berlin ("**Apheris**", "**we**" or "**us**") by any user of such Product ("**User**"). The Users of our Product include (i) customers that have ordered paid services from Apheris by a separate and specific agreement ("**Customers**"), or (ii) any other entities or organisations that are granted access to our Product for or in connection with Customers or otherwise. For the avoidance of doubt, any User is fully responsible vis-à-vis Apheris that any individual accessing or using the Product on their behalf obeys the Terms of Use applying to the User. Please note that customers (*Verbraucher*) in the sense of Section 13 of the German Civil Code (*Bürgerliches Gesetzbuch, "BGB"*) may not contract the use of the Product under these Terms of Use or otherwise and Apheris is not offering or providing the Product or the use of the product to such customers (*Verbraucher*). Thus, only entrepreneurs in the sense of Section 14 BGB may contract the use of the Product under these Terms and Conditions and therefore be Users or Customers.

2. **Subject matter.** The subject matter of these Terms of Use is the temporary provision of the Product to Users via the internet, the granting of rights of use to the Product and the potential provision of services related to the Product. The Product is offered as a Software-as-a-Service ("**SaaS**"), i.e. Apheris provides the Users with the Product via the internet from data processing systems of Apheris or of third party service providers commissioned by Apheris ("**Server**") for use via remote data access, unless otherwise individually agreed; the provision of the Product by means of SaaS may require the installation of certain access software on the local systems of the User.

3. **Acceptance of the Terms of Use; Conclusion of a contract.** The User is requested to accept these Terms of Use in order to use our Product. Without acceptance of the Terms of Use, the use of our Product is prohibited. Upon the User's acceptance of these Terms of Use and the granting of access to the Product by us, an individual contract between such User and Apheris is concluded, which is governed by the conditions set out in these Terms of Use. If the User has concluded a contract governed by these Terms of Use with specific conditions or a separate and specific agreement with Apheris concerning the use of the Product, such agreement and its specific conditions shall take precedence in case of conflict, unless explicitly provided otherwise therein. Subject to proof to the contrary, the content of any concluded deviating individual agreements (collateral agreements, modifications, alterations, amendments, etc.) to a concluded contract, including to these Terms of Use, shall be determined by Apheris' written confirmation or a written agreement. In particular, deviating general terms and conditions imposed by a User of our Product apply only where these were acknowledged by Apheris in writing. Such terms are not otherwise binding upon Apheris even where they were not explicitly repudiated by Apheris.

4. **License.** Subject to these Terms of Use and a contract governed by them or any applicable separate and specific agreement concluded with Apheris, Apheris grants to the User a worldwide, non-exclusive, non-transferrable and non-sub-licensable right to access and use the Product and receive any related services by Apheris during the agreed term. If the access to Apheris' Product is granted to a User in connection with a separate and specific agreement between our Customer and Apheris, the conditions of such separate and specific agreement shall remain unaffected and apply vis-à-vis our Customer. This means, that the Customer is obliged to always comply with the separate and specific agreement with Apheris including the applicable duties related to the invitation and adding of a User to the Product and that, in case of conflict between provisions of these Terms and Conditions and provisions of such separate and specific agreement, the latter shall prevail.

5. **Prohibited use.** The User may not duplicate the Product unless this is necessary for the intended use or for the purposes of a reasonable backup or recovery or otherwise permitted under mandatory statutory provisions. For the avoidance of doubt, the loading of the Product into the main memory of the hardware used by the User and the resulting reproductions of the user interface of the Product, which is necessary for the display, is not an unauthorised reproduction and is therefore expressly permitted to the User as intended use. The source code of the Product shall not be made available to the User. With the exception of Sec. 69d, 69e German Copyright Act ("**UrhG**") (if applicable), User will not, nor allow any third party to reverse engineer, decompile or attempt to discover any source code or underlying ideas or algorithms of the Product. The User may only use the Product to the extent of the functionality provided by Apheris; any circumvention or falsification of the functionality of the Product is prohibited. The User is not entitled to make the Product available for use by third parties, whether for a fee or free of charge, to sublet it or otherwise transfer rights of use to third parties, with the exception, in case the User is a legal entity, of its employees on a need to know basis, unless expressly agreed with Apheris (e.g. in a specific contract governed by these Terms of Use or a separate and specific agreement concluded with Apheris).

6. **Intellectual Property Rights in the Product.** Unless otherwise stated by and agreed with Apheris, Apheris owns any and all rights in and to the Product including any of its components and associated services. Subject to the terms of any license granted and except as expressly provided in these Terms of Use or otherwise individually agreed, the User does not acquire any rights in the Product or any software documentation related to the Product. The Product and associated software documentation supplied by Apheris, all copies made by User thereof, all compilations, derivative products, programmatic enhancements, patches, revisions and updates to or relating to the Product, and all patent, utility model, trademark, design and copyright, trade secret, trade name and any other invention, design and information protected by law contained in any of the foregoing shall be and remain the sole property of Apheris.

In case the User provides or has provided feedback to Apheris regarding the Product including its components and associated services, any such feedback shall solely belong to Apheris (however any applicable mandatory data protection regulations shall however remain unaffected). Thus, any intellectual property rights regarding any amendments or changes to the Product and its components shall irrespective of whether or not such changes have been made on the basis of feedback from the User, solely be owned by Apheris. Any customizations

of the Product and its components specifically for the User shall equally be solely owned by Apheris.

If claims are asserted against the User in connection with the Product due to actual or alleged infringement of third party rights, the User must inform Apheris of this immediately. The defence against such claims shall then be coordinated in close consultation between Apheris and the respective User, with Apheris taking the lead.

7. **Databases, datasets and content sources made available by the User.** If the User provides data within the Product (in particular in case of connection of datasets) the User remains solely responsible for the content and format of these databases, datasets or content sources. Where the data stems from third party sources, the User is in particular responsible to ensure that the User has obtained any rights and consents from such third party that are necessary for the provision of data within our Product. The User undertakes to indemnify Apheris on first demand against all claims of third parties due to an infringement of third party rights (including intellectual property rights and data protection rights) for which the User is responsible in connection with the provision of databases, datasets and content sources within the Product and also to bear the reasonable costs of legal defence for Apheris in this regard.

The User shall not upload or have uploaded any personal data to any technical infrastructure managed by Apheris and shall not provide or have provided Apheris with, and Apheris shall not attempt or permit others to attempt, access to any personal data made available by the User which controls such data. Apheris shall not process any personal data under these Terms of Use, unless agreed otherwise.

The User remains solely responsible for the proper storage of the provided databases, datasets and content sources under applicable law and market standards, in particular, without limitation, with regard to Good Clinical Practice ("*GCP*") and other relevant good practice ("*GxP*"); a storage of such data in connection with the Product shall therefore never be the only active storage for such databases, datasets or content sources.

The User grants to Apheris the non-exclusive, worldwide, non-transferable, right to use the provided databases, datasets or content sources for the provision of services in connection with the Product during the agreed term and as further set out in the agreement governed by these Terms of Use or any separate and specific contract concluded with Apheris. Apheris may only grant sub-licenses to subcontractors if such sub-licenses are strictly necessary to provide the services in connection with the Product during the term.

For the avoidance of doubt: The allocation of rights in any computations or computation results generated in connection with the use of the Product is not subject to these Terms of Use but are subject to a separate agreement between the parties involved.

Moreover, the User has (i) provided to Apheris all necessary notifications and (ii) obtained and shall maintain, for the term of the use of the Product by User, all necessary consents, authorizations, confirmations, approvals, acknowledgements and/or agreements as required by any applicable laws to enable Apheris to provide for the use of the Product by or on behalf of User according to the scope, purpose, and instructions specified by User under these Terms of Use.

  a. **Duties to cooperate**. For the successful use of the Product, the User must fulfil the following necessary duties to cooperate:The User undertakes to establish the necessary data connection in order to use the Product (i.e. to the defined router exit of the data center in which the Server is located). It is the User's sole responsibility to establish and maintain the necessary data connection between the Server and the User's IT system.

  b. The User undertakes to provide Apheris with all information required for the contractual provision of the Product.

  c. The contractual use of the Product requires that the hardware and software used by the User, including computers, routers, data communication devices, etc., comply with the minimum technical requirements for the use of the Product.

8. **Duties of care.** The User is obliged to secure the Product against any access by unauthorised third parties by taking suitable and appropriate measures.

9. **Remuneration.** Any applicable remuneration and payment terms shall be subject to a separate and specific agreement with Apheris. If no specific agreement on remuneration exists between the User and Apheris, the provision of the Product and the corresponding granting of usage rights under these Terms of Use shall be deemed free of charge in relation between Apheris and such User. **Warranty (*Gewährleistung*).** Where the provision of the Product and the corresponding granting of usage rights are subject to remuneration, the warranty (*Gewährleistung*) for defects in the Product is governed by the applicable statutory warranty provisions of German rental law (Sec. 548a, Sec. 536 et seq. BGB) but with the proviso that, contrary to Section 536a (1) BGB, a liability for damages shall only exist in the event of fault in accordance with the provisions in Clause 12 (no guarantee liability – "*keine Garantiehaftung*"). Insofar as the Product is provided by us to Users free of charge, we shall be liable for defects in accordance only under the rules of the loan (Sections 598 et seq. BGB); in particular, we do not provide for any specific support or service levels or availability times for such Users.

10. **Liability.** Apheris shall be fully liable (i) for intent and gross negligence, (ii) for damages resulting from injury to life, body or health, (iii) in accordance with any indispensable legal liability provisions, in particular including the German Product Liability Act (*Produkthaftungsgesetz*) and (iv) to the extent, Apheris undertook a guarantee (*Garantie*) towards the User (which must be expressly designated as such in order to be deemed a guarantee in the legal sense). Other than the aforementioned cases, Apheris is liable for slight or simple negligence only in cases of a breach of a duty essential to the purposes of the respective agreement concluded under these Terms of Use (*Kardinalspflichten*). Duties are considered essential if necessary for the due execution of the Agreement so that User may generally rely on their proper observation. Such liability of breaches of essential contractual duties (*Kardinalspflichten*) is limited to the typical and foreseeable damages at the time of conclusion of the respective agreement.

Any further liability of Apheris of any legal basis and for any kind of damages is excluded, unless to the extent otherwise explicitly agreed with the User. For the avoidance of doubt, this does not limit any of the User's warranty rights under Clause 11.

The aforementioned exclusions and limitations of liability shall apply accordingly in favor of the legal representatives (*gesetzliche Vertreter*), officers, employees, agents and assistants (*Erfüllungsgehilfen*) of Apheris and its subcontractors in case of a direct liability towards User.

11. **Confidentiality.** Any and all confidential information, i.e. information that is either labelled as confidential or must be deemed confidential, from the perspective of a prudent business man, due to the nature of the information or the means of its disclosure, including but not limited to business and trade secrets and know-how pertaining to business, technical, organizational, financial, operational, regulatory or sales-related issues as well as research and development ("**Confidential Information**") disclosed or otherwise made available by one contractual party ("**Disclosing Party**") to the respective other contractual party ("**Receiving Party**") shall be kept confidential by the Receiving Party and in particular not be (i) forwarded or otherwise made available to any third party and (ii) used for purposes other than the purposes of the respective agreement. Furthermore, the Receiving Party is prohibited from obtaining Confidential Information by means of reverse engineering, provided, however, that Sec. 69d para. 1 UrhG shall remain unaffected.

12. **Term.** The contract concluded under these Terms of Use shall remain in force until terminated in accordance with the conditions of such contract. Unless otherwise agreed, the specific contract governed by these Terms of Use can be terminated by either contracting party at any time whereby the license granted with such contract in connection with these Terms of Use shall end correspondingly with the termination of the contract. In case of Apheris terminating the contract under this provision, the user will no longer be able to access the Product and will receive an error message upon any attempt to log in. If the license to use the Product is granted to a User in connection with a separate and specific agreement between Customer and Apheris, the term of the contract between Apheris and the User (and corresponding license) shall automatically end with the termination of such separate and specific agreement between such Customer and Apheris, unless provided otherwise.

13. **Governing law; venue.** These Terms of Use and any contract concluded under these Terms of Use, unless expressly agreed otherwise, are exclusively governed by and construed in accordance with the laws of the Federal Republic of Germany, however under exclusion of its conflict of laws provisions and the UN Convention of Contracts for the International Sale of Goods (CISG). The statutory provisions restricting the choice of law and the applicability of mandatory provisions, in particular of the country in which the User as a consumer has his or her habitual residence, shall remain unaffected.

If the User is a merchant, a legal entity under public law or a special fund under public law, the place of jurisdiction for all disputes arising from contractual relationships between us and the User shall be Berlin, Germany.

14. **Apheris Right of Reference.** User agrees that Apheris may from time to time, identify User (with User's name, logo, or trademark) as an 'Apheris user' in or on Apheris' website and sales materials. Apheris may not use User's name, logo, or trademark for any other purpose without obtaining User's prior written consent.

15. **Miscellaneous.** The User may only assign or transfer rights and obligations arising from a contract in connection with these Terms of Use to a third party with our prior written consent, which is subject to our reasonable discretion. Should a provision in these Terms of Use or a provision within the framework of other agreements between us and the User be or become invalid, this shall not affect the validity of all other provisions or agreements. Insofar as the invalid provision is an essential contractual provision, the parties undertake to jointly negotiate an effective provision.

*****