

TERMS & CONDITIONS OF THE RESHAPE CLOUD SOLUTION

PLEASE READ THIS TERMS AND CONDITIONS OF THE RESHAPE CLOUD SOLUTION BEFORE USING THE RESHAPE CLOUD SOLUTION. BY ACCESSING OR OTHERWISE USING THE RESHAPE CLOUD SOLUTION, YOU ARE AGREEING TO BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE TO THE TERMS, DO NOT ACCESS OR OTHERWISE USE THE RESHAPE CLOUD SOLUTION.

1 GENERAL

- 1.1 These general terms and conditions apply to the agreement entered into between RESHAPE and the Customer with respect to access and use of the RESHAPE Cloud Solution. No other terms and conditions shall apply unless otherwise agreed in writing by a representative of RESHAPE authorized to do so.

2 DEFINITIONS

- 2.1 “**Agreement**” means the agreement entered into between RESHAPE and the Customer regarding provision of the Services, including these Terms & Conditions for the RESHAPE Cloud Solution.
- 2.2 “**Customer**” means the person or entity who subscribes to the RESHAPE Cloud solution.
- 2.3 “**Customer Data**” has the meaning set out in Section 5.1 herein.
- 2.4 “**Disclosing Party**” has the meaning set out in Section 5.1 herein.
- 2.5 “**Equipment**” has the meaning set out in Section 4.6 herein.
- 2.6 “**Fees**” has the meaning set out in Section 6.1 herein.
- 2.7 “**Proprietary Information**” has the meaning set out in Section 5.1 herein.
- 2.8 “**Receiving Party**” has the meaning set out in Section 5.1 herein.

2.9 “**RESHAPE**” means Reshape ApS (Danish company reg. no.: 40056173) or an affiliate of Reshape ApS according to the order confirmation.

2.10 “**RESHAPE Cloud Solution**” means the on-demand software-as-a-service (SaaS) solution provided by RESHAPE to the Customer, including but not limited to online solutions for accessing and using hardware and software products provided by RESHAPE to the Customer as well as storing and handling data and for providing certain data analytics.

2.11 “**VAT**” means value added tax, sales tax, or any similar tax (if any) properly chargeable in any relevant jurisdiction.

3 PROVISION OF RESHAPE CLOUD SOLUTION

3.1 RESHAPE will use commercially reasonable efforts to provide Customer the RESHAPE Cloud Solution and provide Customer with reasonable technical support services in respect of the RESHAPE Cloud Solution.

3.2 Subject to the terms and conditions herein, the Customer is granted a limited, non-exclusive, non-assignable, non-sublicensable, license to test and use the RESHAPE Cloud Solution for purposes of accessing and using products and services provided by RESHAPE to the Customer, storing and handling data, and for conducting data analytics.

3.3 RESHAPE retains all ownership of the RESHAPE Cloud Solution (including, but not limited to, source code, object code, algorithms, and similar information) itself and reserve all rights not expressly granted to Customer.

4 RESTRICTIONS AND RESPONSIBILITIES

4.1 Customer will not, directly or indirectly: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the RESHAPE Cloud Solution; (ii) modify, translate, or create derivative works based on the RESHAPE Cloud Solution (except to the extent expressly permitted by RESHAPE or authorized within the RESHAPE Cloud Solution); (iii) use the RESHAPE Cloud Solution for timesharing or service bureau purposes or otherwise for the benefit of a third; (iv) or remove any proprietary notices or labels.

- 4.2 Customer will not, directly or indirectly: (i) upload, store, process or otherwise use personal data (meaning information relating to an identified or identifiable natural person) in the RESHAPE Cloud Solution; or (ii) upload, store or process any illegal materials in the RESHAPE Cloud Solution or otherwise use the RESHAPE Cloud Solution for any activities which are illegal in the Customer's jurisdiction as well as in any of the following jurisdictions: United States; European Union; and the United Kingdom.
- 4.3 RESHAPE may include software supplied by third parties in the RESHAPE Cloud Solution. RESHAPE is providing such third-party software to the Customer by permission of the respective licensors and/or copyright holders on the license terms provided by such parties. Such third-party license terms can be found in documentation accompanying the RESHAPE Cloud Solution (such as a read-me file). Customer must fully agree and comply with these license terms or must not use the software. The third-party license terms apply only to the respective software to which the license pertains.
- 4.4 Customer agrees to indemnify and hold harmless RESHAPE against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Customer's use of RESHAPE Cloud Solution.
- 4.5 Although RESHAPE has no obligation to monitor Customer's use of the RESHAPE Cloud Solution, RESHAPE may do so and may prohibit any use of the RESHAPE Cloud Solution it believes may be (or alleged to be) in violation of the foregoing.
- 4.6 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the RESHAPE Cloud Solution, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "**Equipment**"). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer's account or the Equipment with or without Customer's knowledge or consent.

5 CONFIDENTIALITY; PROPRIETARY RIGHTS

- 5.1 Each party (the “**Receiving Party**”) understands that the other party (the “**Disclosing Party**”) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as “**Proprietary Information**” of the Disclosing Party). Proprietary Information of RESHAPE includes non-public information regarding features, functionality and performance of the RESHAPE Cloud Solution. Proprietary Information of Customer includes non-public data provided by Customer to RESHAPE to enable the provision of the RESHAPE Cloud Solution (“**Customer Data**”). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in provision of the RESHAPE Cloud Solution or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by applicable law or regulation.
- 5.2 Customer shall own all right, title and interest in and to the Customer Data.
- 5.3 RESHAPE shall own and retain all right, title and interest in and to (a) the RESHAPE Cloud Solution as well as all improvements, enhancements and modifications thereto, (b) any software, applications, inventions or other technology developed in connection with implementation services or support in respect of the RESHAPE Cloud Solution, and (c) all intellectual property rights related to any of the foregoing. Notwithstanding anything to the contrary, RESHAPE shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the RESHAPE Cloud Solution and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and RESHAPE will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the RESHAPE Cloud Solution and for other development, diagnostic and corrective purposes in connection with the RESHAPE Cloud Solution and other RESHAPE offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business.

5.4 No rights or licenses are granted except as expressly set forth herein.

6 PAYMENT OF FEES

6.1 Customer will pay RESHAPE the then applicable fees described in the Agreement for the RESHAPE Cloud Solution in accordance with the terms therein (the “Fees”). If Customer’s use of the RESHAPE Cloud Solution exceeds the limits set forth in the Agreement or otherwise requires the payment of additional fees (as set out in the Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein.

6.2 RESHAPE reserves the right to change the Fees or applicable charges and to institute new charges and Fees upon thirty (30) days prior notice to Customer (which may be sent by email).

6.3 RESHAPE may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by RESHAPE thirty (30) days after the mailing date of the invoice.

6.4 RESHAPE shall be entitled to charge interest on overdue payments from the date when payment becomes due in the amount of 2% for each month or fraction thereof following the date of payment.

6.5 Customer shall be responsible for all taxes associated with RESHAPE Cloud Solution other than Danish taxes based on RESHAPE’s net income.

7 TERMINATION

7.1 The Agreement shall continue in force until terminated by either party as set out below.

7.2 Customer may, at any time and without cause, terminate the Agreement by giving one (1) month’s prior notice to RESHAPE.

7.3 Reshape may, at any time and without cause, terminate the Agreement by giving ten (10) days’ prior notice to Customer.

7.4 In addition to any other remedies it may have, either party may also terminate the Agreement with immediate effect, if the other party materially breaches any of the terms or conditions of the Agreement.

7.5 Customer will pay in full for the RESHAPE Cloud Solution up to and including the last day on which the RESHAPE Cloud Solution is provided. Upon any termination, RESHAPE will make all Customer Data available to Customer for electronic retrieval for a period of thirty (30) days, but thereafter RESHAPE may, but is not obligated to, delete stored Customer Data.

7.6 All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

8 WARRANTY AND DISCLAIMER

8.1 RESHAPE shall use reasonable commercial efforts consistent with prevailing industry standards to maintain the RESHAPE Cloud Solution in a manner which minimizes errors and interruptions. The RESHAPE Cloud Solution may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by RESHAPE or by third-party providers, or because of other causes beyond RESHAPE's reasonable control, but RESHAPE shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. HOWEVER, RESHAPE DOES NOT WARRANT THAT THE RESHAPE CLOUD SOLUTION WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE RESHAPE CLOUD SOLUTION. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED "AS IS" AND RESHAPE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

9 LIMITATION OF LIABILITY

9.1 In no event shall RESHAPE be liable for any special, indirect or consequential damages whatsoever, including, without limitation, damages for loss of profits, loss of business, corruption or loss of data, failure to transmit or receive any data or information, business interruption or any other commercial damages or losses,

arising out of or related to the use or inability to use the RESHAPE Cloud Solution, however caused, regardless of the theory of liability (contract, tort or otherwise) and even if RESHAPE has been advised of the possibility of such damages.

9.2 RESHAPE shall not be liable to the Customer or be deemed to be in breach of the agreement by reason of any delay in performing, or any failure to perform, any of RESHAPE's obligations in relation to the RESHAPE Cloud Solution if the delay or failure was due to any cause beyond RESHAPE's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the RESHAPE's reasonable control: act of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance, or requisition; acts, restrictions, regulations, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of RESHAPE or of a third party); difficulties in obtaining raw materials, labor, fuel, parts or machinery; or power failure or breakdown in machinery.

9.3 RESHAPE'S TOTAL CUMULATIVE LIABILITY TO THE CUSTOMER, INCLUDING FOR DIRECT DAMAGES AND ANY INDEMNIFICATION OBLIGATION UNDER THE AGREEMENT (AND WHETHER THE BREACH ARISES BECAUSE OF BREACH OF CONTRACT, NEGLIGENCE, OR FOR ANY OTHER REASON), WILL NOT EXCEED THE FEES PAID BY CUSTOMER TO RESHAPE FOR THE RESHAPE CLOUD SOLUTION UNDER THE AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT OR OMISSION THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT RESHAPE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.4 To the extent that RESHAPE should be held liable by a third party in excess of the liability of this Section 9, the Customer shall hold RESHAPE harmless from such liability.

10 PRODUCT LIABILITY

10.1 To the extent permitted under applicable law, RESHAPE shall not be liable for personal injury or property damage which is caused by defects in the RESHAPE Cloud Solution whether caused to the Customer, the Customer's personnel, the Customer's contractors, or any third party, unless it is demonstrated that the damage is due to RESHAPE's gross negligence or willful conduct.

- 10.2 If any third party should claim damages from the Customer based on allegations of product liability in relation to the RESHAPE Cloud Solution, the Customer must notify RESHAPE thereof immediately in writing.
- 10.3 The Customer shall accept to be sued at the court or other venue that tries any product liability case against RESHAPE arising out of or related to the RESHAPE Cloud Solution.
- 10.4 THE RESHAPE CLOUD SOLUTION IS NOT DESIGNED, INTENDED, OR AUTHORIZED FOR USE IN ANY TYPE OF SYSTEM, APPLICATION OR ACTIVITY IN WHICH THE FAILURE OF THE RESHAPE CLOUD SOLUTION COULD CREATE A SITUATION WHERE PERSONAL INJURY OR DEATH MAY OCCUR (E.G. MEDICAL TREATMENTS, MEDICAL DIAGNOSTICS, MEDICAL SYSTEMS, LIFE SUSTAINING OR LIFE SAVING SYSTEMS OR ACTIVITIES, QUALITY CONTROL SYSTEMS OR ACTIVITIES, AIRPLANES, NUCLEAR POWER INDUSTRY AND SPACE INDUSTRY). If the Customer makes such unauthorized use of the RESHAPE Cloud Solution, the Customer shall indemnify and hold harmless RESHAPE and its officers, employees, subsidiaries and affiliates against all claims, costs, damages, and expenses, and reasonable attorney fees arising out of any claim, including any claim of product liability, associated with the unauthorized use. The Customer is in any event solely responsible for determining the proper application and use of the RESHAPE Cloud Solution in compliance with applicable law, rules and regulations.
- 10.5 For the sake of clarity, and to the extent permitted under applicable law, RESHAPE's product liability is subject to the same limitations as in Section 9 (Limitation of Liability), in particular Section 9.1.

11 MISCELLANEOUS

- 11.1 If any provision of the Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that the Agreement will otherwise remain in full force and effect and enforceable. The Agreement is not assignable, transferable or sublicensable by Customer except with RESHAPE's prior written consent. RESHAPE may transfer and assign any of its rights and obligations under the Agreement without consent. The Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of the Agreement,

and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of the Agreement and Customer does not have any authority of any kind to bind RESHAPE in any respect whatsoever. In any action or proceeding to enforce rights under the Agreement, the prevailing party will be entitled to recover costs and reasonable attorneys' fees. All notices under the Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. The substantive law of Denmark shall apply, not taking into account its provisions that may lead to the application of any other substantial law than Danish law. Any dispute arising out of or in connection with the delivery of the RESHAPE Cloud Solution or the Agreement including any disputes regarding the existence, validity or termination thereof, shall be settled by arbitration administered by The Danish Institute of Arbitration in accordance with the rules of arbitration procedure adopted by The Danish Institute of Arbitration and in force at the time when such proceedings are commenced. Unless the claims, in the aggregate, are for more than DKK 1,500,000.00, the arbitral tribunal shall be composed of one (1) arbitrator and otherwise it shall be composed of three (3) arbitrators. The place of arbitration shall be Copenhagen, Denmark. The language to be used in the arbitral proceedings shall be English

1 2 AMENDMENTS

- 12.1 RESHAPE may at any time by providing the Customer with forty-five (45) days' prior written notice amend the Agreement.