

# **RESHAPE MASTER SERVICE AGREEMENT (“MSA”)**

## **TERMS & CONDITIONS OF THE RESHAPE PLATFORM SOLUTION**

BY ACCESSING OR OTHERWISE USING THE RESHAPE PLATFORM 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 PLATFORM SOLUTION.

### **1 GENERAL**

- 1.1 These general terms and conditions apply to the agreement between RESHAPE and the Customer concerning access and use of the RESHAPE Platform Solution. No other terms and conditions shall apply unless otherwise agreed in writing by RESHAPE.

### **2 DEFINITIONS**

- 2.1 “Agreement” means the agreement entered between RESHAPE and the Customer regarding the provision of the Services, including these Terms & Conditions for the RESHAPE Platform Solution.
- 2.2 “Customer” means the person or entity who subscribes to the RESHAPE Platform 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 Biotech Inc., a Delaware incorporated company or Reshape ApS, a Danish registered company with the registration number DK40056173 or any affiliates hereof according to the order confirmation.
- 2.10 “RESHAPE Platform Solution” refers to the integrated Robotics-as-a-Service (RaaS) platform offered by RESHAPE, encompassing both the cloud-based

software for data management and analytics, the hardware provided by RESHAPE, and the interactive interface for controlling and utilizing RESHAPE's hardware robots. This solution includes, but is not limited to, functionalities for remote operation of RESHAPE hardware, data storage, handling, and advanced data analytics services provided through the platform. "RESHAPE Platform Solution" includes the visual interfaces, graphics, design, compilation, information, data, computer code (including source code or object code), products, software, services, and all other elements of the platform, and all improvements, enhancements, modifications, and related intellectual property of the foregoing.

- 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 PLATFORM SOLUTION**

- 3.1 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 Platform 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.
- 3.2 RESHAPE retains all ownership and intellectual property rights in the RESHAPE Platform Solution, including, but not limited to, source code, object code, algorithms, hardware, design, documents, and related materials. No rights, title, or interest in these intellectual properties, including any and all derivative works, modifications, enhancements, or improvements thereof, are transferred to the Customer under this agreement, regardless of any contributions or suggestions made by the Customer. This expressly includes any intellectual property developed as a result of feedback or suggestions from the Customer.
- 3.3 If the Customer's subscription is cancelled, the data will be stored for 30 days, during which Customer can download the data before access to data is lost. RESHAPE will provide the necessary support to ensure data is exported timely.

### **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 Platform Solution; (ii) modify, translate, or create derivative works based on the RESHAPE Platform Solution (except to the extent expressly permitted by RESHAPE or authorized within the RESHAPE Platform Solution); (iii) use the RESHAPE Platform Solution for timesharing or service bureau purposes or

otherwise for the benefit of a third; (iv) or remove any proprietary notices or labels. In addition to the aforementioned restrictions, the Customer agrees to comply with all applicable export control laws and regulations in the use and distribution of the RESHAPE Platform Solution, acknowledging that the Solution may not be exported or re-exported in violation of any such laws and regulations.

- 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 Platform Solution; or (ii) upload, store or process any illegal materials in the RESHAPE Platform Solution or otherwise use the RESHAPE Platform 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 Platform 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 Platform Solution. The Customer acknowledges their responsibility to adhere to any updates, security requirements, or other conditions necessary for the use of third-party software included in the RESHAPE Platform Solution. The Customer further acknowledges that failure to comply with these requirements may result in the inability to effectively utilize the RESHAPE Platform Solution.
- 4.4 Customer agrees to indemnify and hold harmless RESHAPE and each of its officers, directors, employees, agents, successors or assigns, 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 platform Solution, including but not limited to third-party intellectual property infringement claims.
- 4.5 RESHAPE may, at its discretion, monitor the Customer's use of the RESHAPE Platform Solution for compliance with this agreement and applicable laws. In instances of suspected or confirmed non-compliance, RESHAPE reserves the right to take necessary actions, including access restrictions.

## 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 Platform Solution. Proprietary Information of Customer includes non-public data provided by Customer to RESHAPE to enable the provision of the RESHAPE Platform Solution (“Customer Data”). The Receiving Party agrees:

- (i) to take reasonable precautions to protect such Proprietary Information, and
- (ii) not to use (except in the provision of the RESHAPE Platform Solution or otherwise permitted herein) or divulge to any third person any such Proprietary Information.

- 5.2 The Disclosing Party agrees that the foregoing shall not apply for any Proprietary Information after five (5) years following the disclosure thereof or any information that the Receiving Party can document based on contemporaneous sources (a) is or becomes generally available to the public, or (b) was in its possession or known by its 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. To the extent any Proprietary Information constitutes a trade secret under applicable law, the Disclosing Party’s obligations of confidentiality shall remain for so long as such information constitutes a trade secret.
- 5.3 Customer shall own all rights, titles, and interests in and to the Customer Data.
- 5.4 RESHAPE shall own and retain all rights, titles, and interests in and to the RESHAPE Platform Solution. RESHAPE may collect, create, process, transmit, store, analyze, and use aggregated and/or deidentified data related to the RESHAPE Platform Solution, including Customer Data (collectively “Aggregated Data”), for machine learning and training, industry analysis, benchmarking, analytics or otherwise to improve the Platform. All such Aggregated Data will be in an aggregated and/or deidentified form only and will not identify Customer. Nothing in these terms and conditions gives Customer any rights in or to any part of the RESHAPE Platform Solution or Aggregated Data.

5.5 RESHAPE shall have the right to use Customer company logo (“Logo”) on Company’s website and other marketing material with prior written consent from Customer. The Logo will not be used in a manner that implies sponsorship or endorsement of any company, product, trademark, person, or service by Customer.

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

## **6 PAYMENT OF FEES**

6.1 Customer agrees to pay the applicable fees for the RESHAPE Platform Solution as described in the Agreement. If Customer’s use exceeds the limits outlined in the Agreement or otherwise requires 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 contract renewal with thirty (30) days prior notice to Customer (which may be sent by email).

6.3 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.

6.4 The combined yearly pricing on the sales order will be regulated upward by 5% on a year-by-year basis to reflect inflation and rising cost of goods sold. The pricing in this quotation is only valid until the expiration of the quote. The pricing in this quote is specific for the current proposal considered. Please inquire for other proposals as pricing is subject to change depending on the specific project requirements and as the RESHAPE product expands in scope.

## **7 TERMINATION**

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

7.2 Either Party may, with or without cause, terminate the Agreement by giving 90 days prior notice to the other party in writing, in which the termination will take place at the end of the current contract binding period, which usually runs on a 12-month term.

7.3 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.

- 7.4 Customer will pay in full for the RESHAPE Platform Solution up to and including the last day on which the RESHAPE Platform Solution is provided. Upon any termination, RESHAPE will make all Customer Data available to Customer for electronic retrieval for thirty (30) days, but thereafter RESHAPE may, but is not obligated to, delete stored Customer Data.
- 7.5 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 Platform Solution in a manner that minimizes errors and interruptions. The RESHAPE Platform Solution may be temporarily unavailable for scheduled maintenance or 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 PLATFORM 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 PLATFORM 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 either party be liable for any indirect, special, incidental, or consequential damages, including loss of profits. This limitation applies regardless of the form of action, whether in contract, tort, or otherwise.
- 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 Platform 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 A BREACH OF CONTRACT, NEGLIGENCE, OR FOR ANY OTHER REASON), WILL NOT EXCEED THE FEES PAID BY CUSTOMER TO RESHAPE FOR THE RESHAPE PLATFORM 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 Platform 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 Platform Solution, the Customer must notify RESHAPE thereof immediately in writing.
- 10.3 The Customer agrees to submit to the jurisdiction of the court handling any product liability claims against RESHAPE related to the RESHAPE Platform Solution.
- 10.4 The RESHAPE Platform Solution is not intended for use in safety-critical systems or activities where a failure could result in personal injury or death. This includes - but is not limited to - medical treatments, life support systems, aviation, nuclear power, or space technologies. If such unauthorized use leads to claims or damages, RESHAPE is **not liable**, and you agree to take full responsibility, including covering any related legal costs.

- 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

If any provision of the Agreement is found to be unenforceable or invalid, it will be modified to the minimum extent necessary to ensure that the Agreement remains in full force and effect. The Agreement cannot be transferred or sublicensed by the Customer without prior written consent from RESHAPE. RESHAPE may transfer and assign its rights and obligations under the Agreement. This Agreement is the entire and exclusive understanding between the parties, superseding all prior communications. Changes to the Agreement must be in writing and signed by both parties. This Agreement does not create an agency, partnership, or employment relationship. The Customer has no authority to bind RESHAPE in any way. Notices will be sent via email to the parties' registered email addresses. Notices are considered received by email on the day of delivery. The Agreement is governed by the laws of Denmark, and any disputes arising out of or in connection with the Agreement will be subject to the jurisdiction of Danish courts.





## APPENDIX A – HARDWARE & SHIPPING TERMS

### 1. SCOPE OF PROVISION

Reshape shall provide hardware, together with associated maintenance, parts replacement, and troubleshooting services, as part of the commercial license and service package under this Agreement. The provision of hardware and related services is contingent upon the Customer's reasonable and compliant use of the equipment and Services, in accordance with Reshape's documentation and operational guidelines. Please refer to the 'EXCLUSIONS' sections of this agreement for an overview of non-compliant use of hardware.

### 2. OWNERSHIP AND RISK

All hardware remains the property of Reshape throughout the lease term. Risk of loss or damage to the hardware transfers to the Customer upon delivery and installation. The Customer shall maintain the equipment in good working condition, provide appropriate environmental conditions, and use the equipment solely for its intended purpose. Installation is deemed complete when the device is physically installed and connected in accordance with Reshape's installation checklist.

### 3. MAINTENANCE AND SUPPORT

Reshape conducts continuous monitoring and updating of devices as reasonably required to ensure the continued performance and reliability of the hardware during the term of the Agreement. Maintenance activities may be scheduled remotely or onsite, depending on the nature of the service required.

Reshape will cover reasonable costs related to technician travel to the Customer's site for service-related issues covered under this Agreement. Costs incurred due to Customer-caused damage, misuse, or non-compliance may be charged to the Customer, with a minimum charge of \$20,000 per unit. Reshape may invoice travel costs for onsite visits requested by Customer that are not required to resolve a covered incident.

### 4. REPAIRS AND REPLACEMENTS

In the event of hardware malfunction or defect not caused by misuse, unauthorized modification, or external damage, Reshape shall repair or replace the defective components at no additional charge to the Customer.

Replaced or repaired hardware and/or components shall become the property of Reshape unless otherwise agreed in writing.

### 5. FIRMWARE AND SOFTWARE UPDATES

Reshape shall provide routine firmware and embedded software updates as necessary to maintain operational robustness and safety of the deployed devices. Updates may be deployed remotely or onsite depending on technical feasibility.

Reshape may update the Reshape Platform Solution, including firmware and embedded software, from time to time.

## **6. END OF TERM HANDLING**

Upon expiration or termination of the Agreement, the Customer shall return all leased hardware to Reshape within 15 days, in good working order, normal wear and tear excepted.

## **7. HARDWARE CONTINUITY**

Reshape shall be responsible for ensuring that all leased hardware remains fully functional and operational throughout the term of the Agreement.

In the event that any hardware component or part becomes obsolete, discontinued, or otherwise unavailable, Reshape shall, at its discretion, provide a replacement component or provide a replacement device that is functionally equivalent or superior to the original hardware.

## **8. SITE PREPARATION AND ACCESS**

The **Customer** shall ensure that each receiving site is adequately prepared and equipped for delivery and installation in accordance with Reshape's instructions.

Reshape shall not be liable for any delay or additional cost resulting from the Customer's failure to ensure site readiness or to comply with Reshape's installation requirements. Delays or additional costs arising from non-compliance with site requirements shall be borne by the Customer.

## **9. SERVICE LEVELS**

All hardware-related incidents, escalations, and resolutions shall be handled in accordance with the applicable Service Level Agreement (SLA).

## **10. SHIPPING TERMS**

Customer **MUST** refuse to accept the goods upon delivery if they are visibly damaged and immediately contact RESHAPE Biotech with image documentation of the shipment.

Shipping terms are as follows:

- All goods within EU are shipped with DAP incoterms
- All goods within North America are shipped with DAP incoterms
- All goods within other regions are shipped with EXW incoterms

## **11. EXCLUSIONS**

This Agreement does not cover:

- a. Damage caused by accident, negligence, or unauthorized repair

- b. Improper maintenance or failure to follow Reshape's documented maintenance, cleaning, or handling instructions
- c. Modifications or integrations made by third parties without Reshape's prior written consent
- d. Consumables, accessories, or external peripherals not supplied by Reshape
- e. Issues resulting from operation outside of Reshape's documented environmental or electrical specifications

## **12. SERVICE LEVEL AGREEMENT (SLA)**

Information about the SLA for the Reshape platform can be found through the following link: <https://www.reshapebiotech.com/sla-overview>.