

# AGREEMENT ON SERVICES, SERVICING AND IT DEVELOPMENT AND SUPPORT

## GENERAL TERMS AND CONDITIONS

### 1. Validity of General Terms and Conditions

1.1. General Terms and Conditions. These General Terms and Conditions (hereinafter referred to as the "**GTC**") of the Company apply to all services, servicing and IT development and support provided by the Company to the Customer, as well as any related contractual relations between the Company and Customer. The Parties acknowledge that granting the software licenses and basic license support is subject to a separate license and basic license support agreement.

1.2. Use of GTC. The GTC form an integral part of the Contracts concluded between the Company and the Customer and are valid in full, unless otherwise agreed in writing between the Company and the Customer. In case of discrepancy or differences between the mutual rights and obligations of the Company and the Customer contained in the GTC and a separate written Agreement, the terms of the Agreement concluded between the Parties shall prevail over the wording of the GTC, only to the extent of deviating provisions.

1.3. Amendments to the GTC. Changes or amendments to the GTC are valid and effective only if they have been confirmed in writing by the Company. The Customer and the Company agree that the Company is entitled to unilaterally amend the GTC and notify such change to the Customer and the Customer is obliged to familiarize itself with such changed GTC. Any general terms and conditions of the Customer shall not apply to the mutual relations between the Customer and the Company, even if the Company delivers the performance agreed upon in the Order with the Customer. In the event that the Customer does not agree with the changed GTC, it shall state so in writing (an e-mail delivered to emark@emarkanalytics.com is sufficient in this respect). In such a case, the Company is obliged to immediately stop the execution of the works and to refund all possible financial payments for unfinished work.

1.4. No benefits for third parties. The Company's warranties and other obligations under the Agreement arise only against the Customer and for the Customer's sole benefit. Except as provided in applicable law, no other person or entity shall be deemed to be a third party to whom the Company grants any benefit, claim or other right under the Agreement, nor is otherwise entitled to accept or enforce any rights or claims against the Company in connection with the Agreement.

### 2. Terms and Definitions

2.1. Terms and Definitions. The following terms and definitions have the meaning given in the paragraph 2.1. of the GTC:

2.1.1. "**Price**" is a payment for the delivered Services, the amount or method of determination of which is specified in the Agreement.

2.1.2. "**Delivery Date**" means the date agreed between the Parties as the date on which the Customer shall receive the ordered Services at the latest in line with the estimated period for the provision of the Services under para. 4.5 of the GTC.

2.1.3. "**Documentation**" means any other documentation relating to the contractual relationship between the Company and the Customer, except for the Agreement, whether in electronic or printed form. The Company is entitled to change, cancel and / or complete

the Documentation at its sole discretion, and the Customer is obliged to become aware of changes to the Documentation.

2.1.4. "**Confidential Information**" means non-public information that is made available to or on behalf of the Party under or in relation to the Agreement and which at the time of publication is identified as confidential or should reasonably be considered confidential or protected with regard to the nature of the information and / or circumstances related to its disclosure. Confidential information does not include information that: (i) is generally available to the public, except in the event of unauthorized disclosure by the receiving Party or one of its representatives; (ii) have been known to the receiving Party prior to the date of their disclosure from a source other than the other Party and the obligation of confidentiality does not apply to that source; (iii) arise from the recipient Party's own activities; or (iv) have been disclosed by the Party to a third party without bounding it by the obligation of confidentiality. In any dispute concerning these exemptions, the burden of proof shall be placed upon the receiving Party, and such evidence shall be clear and conclusive. Any technical, financial and business information in any form, including the content of the Agreement, prices and pricing policy of the Company, shall be deemed to be Confidential Information of the Company.

2.1.5. "**Material**" means any material distributed or made available directly or indirectly by the Company to the Customer and all or partial copies thereof, in particular: (i) the Agreement and Documentation; (ii) machine-readable instructions and code; (iii) technology, files, libraries, modules, menus, algorithms, tools, processes, procedures, calls, routines, metadata, macros, schedules, templates, scripts, commands, syntax and other components of the Software and Results of Services provided; (iv) the user interface of the Software and the Results of Services provided, all audiovisual content (such as display, images, shading, colors, organization, associations, structure, location, text, appearance and impression, recordings or images) associated therewith; and (v) Company's Confidential Information; and (vi) any other Company's materials (e.g. license keys, packaging, education material, counseling and product materials, maintenance and product services, professional services).

2.1.6. "**Intellectual Property Claims**" mean third party claims against the Customer arising out of a direct causal relationship regarding the Services provided by the Company under the Agreement, provided that these infringe copyright, trademark, patent or design rights registered by any member of the European Economic Area or violate a third party's business secrets.

2.1.7. "**Order**" means a written document through which the Customer orders the Services, whether in electronic or printed form; prior to the wording of the Contract and the GBC, the differing arrangements of the Parties contained in the Order shall prevail over the Agreement of the GTC only to the extent they differ.

2.1.8. "**Business day**" means a day that is not a public holiday or rest day in the Slovak Republic (including a Saturday that is also not considered a Business Day).

2.1.9. "**Intellectual Property Rights**" mean all rights, titles and claims to all forms of intellectual property,

including all patent applications and patents, copyrights, works, design rights, trademarks, trade names, domain names, trade secret rights, sui generis rights, Confidential Information rights, moral rights and other related rights, know-how rights and all other rights related to authorship and / or the creation of artistic, industrial or other intellectual property; and all forms of protection of a similar nature anywhere in the world and of any kind and nature; whether created based on law, contract, agreement or license; whether their results are expressed in tangible or intangible form; whether registered, wherever stored or published; including (i) all registrations, editions, amendments, renewals, continuations, splits and / or copies, in whole or in part, as well as all applications and the right to submit applications for any of the above rights, and (ii) all related legal rights, such as the right to grant a license or otherwise authorize the transfer and / or use of the rights by any third party and / or assert a claim, title or other right arising from any actual or imminent violation relating to the above, and to recover damages, costs and fees for past, present and future violations.

2.1.10. **"Services"** mean IT development, support and servicing specified in Art. 4 of the GTC.

2.1.11. **"Software"** means proprietary software developed and owned by the Company or one of the Company's partners, supplied to the Customer by the Company, the Company's partner, or a third party.

2.1.12. **"Company"** means the Company specified in the Order. The Company is an authorized reseller of all sold software solutions, is authorized to offer and sell them to end Customers as well as to provide Services to them.

2.1.13. **"Affiliate"** means a person who controls, is controlled or is under common control by the Party, and "control" means the legal or de facto ownership of the majority of all voting rights in that Party and only as long as such control exists or can be exerted.

2.1.14. **"Defect"** means that the results of the Services provided do not, at the date of provision of the Services, have the features and functionalities specified in the Agreement, the GTC and the Documentation relating to the Services.

2.1.15. **"Results of Services"** mean any tangible or intangible outcome of the Services provided, whether or not it is protected by the copyright and creative intellectual activity of the Company's authorized personnel (especially technology, files, libraries, algorithms, tools, user interface, audiovisual content, etc.).

2.1.16. **"Customer"** means a third party who is interested in the Services within the meaning of the GTC and who has concluded the Agreement with the Company.

2.1.17. **"Party"** means the Company and the Customer, jointly or individually, as the case may be.

2.1.18. **"Company's Brands"** mean trademarks (national, European and international), logos, trade names, designs or slogans of the Company or its Affiliate or products, services or other activities offered by the Company or its Affiliate, whether or not they are separately registered or final.

2.1.19. **"Agreement"** means the Agreement on Services, Servicing and IT Development and Support concluded between the Company and Customer.

### 3. Contract Proposals

3.1. **Offer.** The Company's proposal for the conclusion of the Agreement addressed to the Customer is non-binding and the data provided by the Company in the price lists, offer sheets as well as in other documents, especially in drawings, sketches, technical documents and on the website are of an indicative nature only and become binding only if expressly

confirmed in writing by the Company pursuant to par. 3.3 of the GTC.

3.2. **Proposal.** A proposal in the form of a completed version of the Agreement submitted by the Customer to the Company, or any other form clearly and comprehensibly expressing the Customer's will to conclude the Agreement or Order, shall be considered a proposal for concluding the Contract.

3.3. **Conclusion of the Agreement.** The Agreement is concluded at the moment the Customer's proposal to conclude the Agreement is confirmed by the Company.

### 4. Services

4.1. **Services.** Under the Agreement, the Company undertakes to provide the Customer with services, servicing and IT development and support, which are considered to be the Company's Services beyond the basic license support which is governed by a separate license delivery agreement and basic licensing support. In particular, the Services are considered:

4.1.1. **Implementation and creation of solutions**, in particular internal setup of the Software, connection to data and creation of user outputs; Implementation is in accordance with agile delivery methods, unless otherwise specified in the Agreement or in the Order.

4.1.2. **Analysis**, in particular an analysis to define the solution specification, detailed knowledge of the Customer's data environment, identification of the scope and structure of the necessary data and providing recommendations for collection and analysis of other data, data preparation, data analysis, modeling and validation;

4.1.3. **User interface design;**

4.1.4. **Testing;**

4.1.5. **Consulting services**, in particular in the field of data collection and management and work with data, setting up internal organization processes for their collection and appropriate range of collected data, business process analysis;

4.1.6. **Training**, in particular in working with the supplied Software and the created analytical environment;

4.1.7. **Software setup, checking and troubleshooting;**

4.1.8. **Regular service support;**

4.1.9. **Ad-hoc service support**, provided at Customer's request;

4.1.10. **Meetings and workshop;**

4.1.11. **Project management**, in particular communication, team coordination, project management and project administration;

4.1.12. **Preparation and delivery of documentation;**

4.1.13. **Other service** and development and support services provided at Customer's request.

4.2. **Service Request.** The Customer shall deliver a specific request for the provision of the Services by telephone or by e-mail to the contact person responsible for servicing or development activities of the Company, depending on the nature of the requested Service. Upon the Customer's request delivered in accordance with the previous sentence, the Company shall process the specification of the Services required to be executed by the Customer, the position of the authorized person, the estimated scope of the Services in man-days (MD), the price for the Services and the estimated period of provision of the Services; and shall include such data in the draft version of the Order, which shall be sent to the Customer.

4.3. **Binding Order.** If the Customer agrees with the contents of the Order, the Customer shall send a binding and confirmed Order of Services within five (5) working days to the person responsible for business affairs in the Company.

4.4. **Order Confirmation.** Subsequently, the Company either confirms the Order and starts providing the Services under the Order or fails to confirm the Order, in which case the Company will not provide the Services. The factual commencement of

the provision of the Services is also considered as confirmation of the Binding Order by the Company.

**4.5. Service Provision Period and Scope of Services.** The Service Provision Period and Scope of Services are determined by the Company with professional care and in agreement with the Customer in the Order. The Company shall respect the estimated Service Provision Period and the estimated Scope of Services. The Service Provision Period is the Service Provision Period specified in the Order, or any renewal of thereof confirmed by the Customer. The Customer acknowledges that the Service Provision Period and the Scope of Services may be adjusted by the Company if necessary to meet Customer's request, and the Company does not warrant in any way that the estimated Service Provision Period and the estimated Scope of Services provided will correspond to the Services actually provided. If there is a risk of exceeding the estimated Service Provision Period and / or the estimated Scope of Services, the Company shall notify the Customer of this fact without undue delay, stating the reason. If the Customer fails to notify the Company immediately after the delivery of the notice of exceeding the estimated Service Provision Period and / or the estimated Scope of Services to terminate the provision of the Services under the Order, the Company is entitled and at the same time obliged to continue to provide the Services which are necessary for the execution of the Customer's request, whereas the standard rates of the Company specified in the Order or other Documentation shall be used to calculate the Price of these Services over the estimated Service Provision Period and / or the estimated Scope of Services. In the event that the estimated Service Provision Period and / or the estimated Scope of Services is exceeded and the Company does not substantiate such exceedance, the Customer is entitled to withdraw from the Agreement. Unless otherwise specified in the Order, after the Service Provision Period, the Customer has the option to continue in the cooperation for the same or otherwise defined period under the same conditions. An e-mail sent to [emark@emarkanalytics.com](mailto:emark@emarkanalytics.com) will suffice to confirm such intent. If the Customer is interested in the guaranteed time period for the provision of the Services and the Scope of Services, the Customer may request the Company to prepare a project proposal that will be modified in a separate contract.

**4.6. Reaction times.** Reaction times for the provision of Services, if agreed with the Customer, are agreed in the Order. This paragraph of the GTC, i.e. the provision of Services within reaction times is not applicable if the Order and / or the nature of the Services implies that the Company is obliged to provide Services at a different time, outside the reaction times (e.g., agreed training on the work with the supplied Software and the analysis environment, which is set to be carried out within the agreed deadline), or if reaction times are not agreed.

**4.7. Place of Service Provision.** The Services will be provided by the Company at the location designated by the Company, unless otherwise agreed between the Parties.

**4.8. Method of Service Provision.** Except as otherwise provided in the Agreement, the Services will be provided directly at Customer's premises or by telephone consultation or remote access, depending on the nature of the Services and the Company's request.

## **5. Obligations of the Company**

5.1. The Company is obliged to fulfill the subject matter of the Agreement/ Order, i.e. to provide Services in accordance with the terms and conditions agreed in the Agreement and the GTC with professional care.

5.2. The authorized employee of the Company shall perform the following activities on his own or in cooperation with his colleagues and partners:

5.2.1. during the performance of the Agreement, to cooperate with the Customer's employees who the Customer designated in writing for cooperation with the Company and informed the Company about that;

5.2.2. to perform inspections and technical activities in connection with the provision of Services in accordance with the Agreement.

## **6. Customer's Obligations**

6.1.1. The Customer undertakes to provide the Company, prior to and during the execution of the subject matter of the Agreement, with up-to-date information on measures of its organizational nature or measures having a significant impact on the organization of the Company's activities and to promptly notify the Company of any new facts that it becomes aware of or ought to have learned in its activities and that are or may be material to the subject matter of the Agreement.

6.1.2. The Customer is obliged to provide the Company with all required cooperation during the term of the Agreement, including making available interfaces to third party systems, ensuring the technical and organizational conditions necessary to fulfill the obligations and rights of the Company (e.g. access to workstations, servers via remote access, etc.), or to provide the information necessary to execute the subject matter of the Agreement. The Company shall not be in delay with the fulfillment of its obligations, in particular with the provision of the Services, in the event the Customer fails to provide the requested cooperation.

6.1.3. The Customer undertakes to ensure the proper cooperation of all interested external partners and suppliers whose cooperation will be necessary for the implementation of the Agreement.

6.1.4. The Customer agrees to use the Results of the Services provided in an orderly manner, taking into account the purpose of their use as defined in the Agreement, Documentation or Materials, to comply with applicable generally binding legal regulations as well as the terms set forth in the Agreement and the Company's instructions.

6.1.5. The Customer is obliged to properly and timely fulfill its payment obligations it has towards the Company, as well as any other obligations specified in the Agreement and the GTC.

## **7. Price and Payment Terms**

7.1 The Customer undertakes to pay the Company the Price specified in the Order for the provided Services. If the Price for provided Services is not stated in the Order, the Company will not carry out the subject matter of the Order until the following rates and prices have been paid.

7.2 Unless stated otherwise in the Order, Value Added Tax, customs duties or other similar charges are not included in the Price. The Customer shall pay any taxes, duties or other similar charges related to the Price of the Services unless the Customer provides the Company with a valid exemption certificate or other evidence that the items hereinunder are not taxable in a timely manner.

7.3 The Company shall be entitled to the payment of travel expenses in accordance with the applicable legislation on travel expenses in the event that a trip outside Bratislava (Slovakia) is required. Furthermore, the Company has the right to a reimbursement of cash expenses and other costs if agreed upon in advance by the Customer.

7.4 One (1) man-day is considered to be eight (8) man-hours. The participation of each authorized employee of the Company is considered a separate Service and is charged separately, i.e. multiplied by the number of authorized personnel providing the Service.

7.5 **Approval of Services and Their Scope.** Unless otherwise specified in the Order, the Company shall, within fourteen calendar days (14) days after the end of the calendar month in which the Services were provided, send to the Customer a statement of works that have been subject to the provided

Services, including their content and duration. The minimum billing unit is one (1) man-hour. The Customer is obliged to comment on the Statement of Services within five (5) calendar days from the date of delivery of the Statement of Services. If the Customer does not comment on the Statement of Services within the given period, the Statement of Services has been approved and the Customer has no objections to it. If the Customer objects to the correctness of the Statement of Services within the stipulated deadline, the Customer is obliged to duly substantiate its objections, otherwise the Statement of Services shall be deemed to be approved without reservations; the Statement of Services shall also be deemed to have been approved if Customer's objections are not justified. In the event of Customer's reasonable objections to the Statement of Services, the Company shall correct the Statement of Services and send it to the Customer.

7.6 Unless agreed otherwise in the Order, an invoice on the Price of the Services shall be issued no later than five (5) days from the date of commencement of the Service Provision Period or from the date on which the new Service Provision Period start following the renewal agreed by the Customer.

7.7 Unless otherwise agreed in the Order, the due date of the Price as well as other receivables of the Company against the Customer is fourteen (14) calendar days from the date of issuing the invoice, and the Customer is obliged to pay the Price and other receivables within that period.

7.8 The Customer is obliged to pay the Price as well as other receivables of the Company by bank transfer to the Company's bank account specified in the relevant invoice or, if the invoice is not issued, in another manner notified to the Customer (e.g. specified in the Order). The date of payment shall be deemed the date of crediting the amount due to the Company's account.

7.9 Payments received from the Customer, unless otherwise agreed between the Parties, shall be accounted for in preference in the following order: to pay interests on late payments, damages and contractual penalties, and only then the principal of the claim, regardless of different requests of the Customer, shall be paid up. If the Company has several monetary obligations towards the Customer, the payment shall first cover a liability that is not fulfilled or is fulfilled to the least amount, otherwise the obligation that is due the first, regardless of different requests of the Customer.

7.10 The Customer shall not be entitled to withhold payment to satisfy any claim of the Company due to the active complaint proceeding regarding the Services or claims for damages or contractual penalty.

## **8. Sanctions and Default Interest**

8.1. In the event that the Customer is in default with the payment of the Company's monetary claim, the Company is entitled to apply a contractual penalty of 0.05% per day of the amount owed to the Customer for each and commenced day of delay until the payment is credited to the Company in its entirety and at the same time a contractual default interest of 0.05% of the outstanding claim for each day of delay; other claims of the Company shall remain unaffected.

8.2. In the event that the Company does not provide Services within the estimated Service Provision Period under para. 4.5 of this Agreement or in the additional period agreed with the Customer, the Customer has the right to demand a contractual penalty of 0.05% of the Price of the Services with which the Company is in delay for each day of delay following the futile expiry of the additional period. The basis for the calculation of the contractual penalty is the Price excluding VAT.

8.3. In case the Company fails to meet the reaction times according to par. 4.6 of the GTC, the Customer is entitled to claim a discount from the Price of the Services to which the failure to meet the reaction time relates to a maximum of 20%

of the Price of the Services for the respective month in which the failure to meet the reaction time occurred.

8.4. The Company's claim for damages is not affected by the payment of a contractual penalty or other sanction.

8.5. In the event of a threat of delay, either Party shall be entitled to request an extension of the period with which it is in default. The requested Party is entitled, but not obliged, to comply with this request. In the event that the requested Party does not approve the extension of the time limit, paragraphs 8.1 to 8.3 of the GTC shall apply. The request for extension of the time limit and its approval or refusal may also be delivered by e-mail to the contact persons specified in the Contract.

## **9. License**

9.1. License for Results of Services. Subject to the terms and any applicable restrictions laid down in the Agreement, the Company grants the Customer a non-exclusive, non-assignable, non-sublicensable right to use any Result of Services provided solely for the Customer's business and / or internal activities of the Customer. The Customer is directly responsible for any use of the Results of Services provided that is not in accordance with this Agreement.

## **10. Intellectual Property Rights**

10.1. Retention of rights. Unless expressly stated otherwise in the Order, the Parties agree that all Intellectual Property Rights relating to the Software, the Results of Services provided, the Agreement, the Documentation, the GTC and / or Materials, including methodology, designs, Software enhancements, and know-how, are at all time the exclusive property of the Company or its Affiliates or their respective licensors. If the Company or its Affiliates, or their statutory and / or employee, create any invention, work, product or result of creative intellectual activity (e.g., a computer program (software), data analysis with anonymous data, business intelligence solution) in the course of fulfilling the Agreement, the Company shall acquire all and any proprietary rights in thus created intellectual property, without any restriction or prohibition. The Company also grants the Customer a license to use these contractual outputs pursuant to Art. 9.

10.2. Company's Brands. The Company and / or Affiliates hold property rights to the Company's Brands. Therefore, the Party will not directly or indirectly challenge and / or contest the property and other rights of the Company or Affiliates to the Company's Brands. The Customer or any of its Affiliates shall not use, register or attempt to register any trade name, trademark, designation, design or domain the name of which, in whole or in part, involves the Company's Brand or may create a risk of confusion with any Company's Brands.

10.3. Protection of Intellectual Property Rights. The Parties agree to cooperate to protect the Intellectual Property Rights of the Company and to make reasonable efforts to protect the Intellectual Property Rights of the Company.

10.4. Property rights. The Agreement does not transfer any Intellectual Property Rights of the Company or its Affiliates or their respective licensors to the Customer. In the event that the Company makes any changes to the Software, and / or the Results of Services provided at the Customer's request, and the Company incorporates such changes in the Software and / or the Results of Services, the Company is entitled to change such Software and / or Results of Services, or any changes thereof, the Company is entitled to continue to use such changed Software and / or Results of Services, or any changes thereof, in its business activities, offer them to other customers and use them any other way, without any restrictions or additional claims of the Customer.

10.5. Third Party Materials. The Software may include certain open source software or other software, information files, or other third party materials (hereinafter referred to as "**Third**

**Party Materials**") that are specifically licensed by their respective owners. The Customer is obligated to comply with all license terms for Third Party Materials and to comply with any provisions regarding the source code and its modifications. THE COMPANY DOES NOT REPRESENT THIRD PARTIES, EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT OR THE GTC AND IS NOT LIABLE FOR ANY WARRANTY OR LIABILITIES RELATING TO THIRD PARTY MATERIALS. In light of the foregoing, the Company excludes any liability with respect to the use of Third Party Materials by the Parties to the maximum extent permitted by law.

10.6. Restrictions. The Customer shall not (or allow any third party) unless otherwise agreed in writing between the Parties: (a) copy, modify, re-create the Results of Services and / or any part of the Services and / or modify them in any way and / or delete parts of the Software and / or Results of Services designed to protect the Software and / or Results of Services from unauthorized copying and use, (b) divide, modify, enhance, distribute, decompile, disassemble, reverse engineer the Results of Services, or otherwise attempt to derive the source code of a computer program (software) if it constitutes the Result of Services in any way; (c) distribute the Result of Services as a standalone product or incorporate the Result of Services into any hardware or computer program (software) other than as approved by the Company; or (e) combine or integrate the Results of Services provided with Customer's solutions or any other solutions that may, as the case may be, result in infringement of any Intellectual Property Rights of the Company or third parties.

10.7. Notices. The Party shall promptly notify the Company of any suspected or actual or imminent infringement of the Company's Trademarks or other Intellectual Property Rights of the Company, as well as any claims or allegations that the Results of Services infringe any third party rights.

10.8. Customer's Solutions. The Customer declares that it has all applicable and legal rights to use its solutions, including but not limited to the right to integrate Customer's solutions into the Services provided, as well as to otherwise fulfill all Customer's obligations under the Agreement and the GTC.

10.9. Access and Security. The Customer is obliged to maintain adequate technical and procedural access controls and system security for the protection and is directly responsible for any infringement of Intellectual Property Rights by any person to whom it has granted access to the Software and / or the Results of Services.

10.10. Substantial infringement. Breach of the provisions set out in Article 10 is considered a material breach of the Agreement.

## **11. Infringement of Third Party Intellectual Property Rights**

11.1. Exclusions. The Company shall not be liable to the Customer for any Intellectual Property Claims that: (a) arise from the unauthorized use, reproduction or distribution of any software by the Customer, its Affiliate, subcontractors or customers; (b) arise from any modification or change to the Software and / or the Results of Services by anyone other than the Company; (c) arise in connection with the use of the Software and / or the Results of Services in combination with any other software or accessories not expressly listed in the Documentation; or (d) arise as a result of not allowing the latest update of the Software and / or Results of Services.

11.2. Corrective Measures. If the Results of Services are, or are likely to become, subject to a third party's Intellectual Property Claims, the Company is entitled, at its own expense and in its sole discretion, to: (a) ensure the right to continue to use the Results of Services in accordance with the provisions of the Agreement; (b) make such changes, modifications or additions to the Results of Services that will exclude the possibility of third party's Intellectual Property

Claims without compromising the performance or functionality of the Services; (c) replace the Results of Services with similar Services; or (d) provide the Customer with compensation for the price already paid for the Services subject to the third party's Intellectual Property Claim for the period during which the Customer is not entitled to use the Results of Services due to third party's Intellectual Property Claim.

11.3. Procedures. All obligations relating to the corrective measures under para. 11.2. of the GTC shall be subject to the following conditions: (a) the Customer shall provide the Company with an immediate written notice of any Intellectual Property Claims of third parties of which it becomes aware; (b) Customer enables the Company to take over and secure legal defense and protection against Intellectual Property Claims of third parties, including deciding on a strategy for such defense and protection; (c) the Customer shall use its best endeavors to minimize the impact of the Intellectual Property Claims of third parties (in particular the amount of damages, costs and expenses); and (d) the Customer provides the Company with the necessary cooperation, documentation, power of attorney, and information to the extent that can reasonably be required in relation to Intellectual Property Claims of third parties.

11.4. THIS ARTICLE 11 CONSTITUTES A FULL LIST OF THE COMPANY'S LIABILITIES AND ALSO THE ONLY CORRECTIVE MEASURES TO BE TAKEN IN RESPECT OF THE CUSTOMER IN CONNECTION WITH THE INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. LIMITATIONS, EXCLUSIONS AND RESTRICTIONS OF LIABILITY REFERRED TO IN ARTICLE 11 SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY LAW.

## **12. Defects and Exclusion of Liability**

12.1. The Company will provide Services duly and timely within the meaning of this Agreement, with due diligence in accordance with technical standards and general requirements applicable to information technology. The Company warrants that the Results of Services at the date of provision of the Services have the features and functionalities specified in the Agreement, the GTC and the Documentation relating to the Services, otherwise the Services have a Defect.

12.2. Claims Regarding the Defects. The Customer must inform the Company in writing of any claim of the Defects within seventy-two (72) hours from the date on which it became aware of the Defect, otherwise the Customer's right expires. In the event of a Customer's reasonable complaint, the Company may, at its sole discretion, either (i) remedy the Defect of a faulty or malfunctioning Result of Services by repair; or (ii) to refund the Customer the already paid Price for the Services whose Results are affected by the Defect for the period during which the Customer is not entitled to use the Services due to the Defect.

12.3. Returns of the Results of Services. In the event that the Company chooses to refund the Price paid for a defective Result of Services pursuant to clause 12.2 (ii) of the GTC, then: (i) the defective Result of Services and any related Materials provided by the Company must be returned to the Company without undue delay or the Customer must adequately prove to the Company that the defective Result of Services and any related Materials provided by the Company have been destroyed; and (ii) licenses for defective Result of Services will be automatically terminated.

12.4. Limitation of Liability for Defects. The Company is not liable for any claims arising from the liability for defects under para. 12.1. GTC, in the case of: (i) any use of the Result of Services in breach of the Agreement, GTC, Documentation and / or Materials; or (ii) any unauthorized change or modification of the Result of Services; or (iii) use of the Result of Services in combination with third party software or hardware not authorized by the Company; or (iv) Force Majeure; or (v) corrosive environment, excessive use,

lightning strikes, electrical outage, neglect, carelessness, accident, harmful conduct, incorrect or unusual use of the equipment used in connection with the Result of Services; or (vi) any error or failure as a result of misuse, improper installation or improper operation of the Result of Services; or (vii) any other act, failure to act or intervention by the Customer and / or a third party which the Customer allowed to interfere with the Result of Services or which the Customer did not prevent from such intervention; or (viii) delayed in reporting a defect or failure of the Result of Services; or (ix) if the Customer is in default of any payment to the Company.

12.5. Procedures. The Customer shall provide the Company with the assistance and means that the Company may reasonably require to determine the cause of the Defects and to perform corrective works under Article. 12 of the GTC. Such assistance also includes granting access to the devices on which the Result of Services is installed, the Result of Services itself, other software solutions, or any other data and information needed to properly identify or remedy the Result of Services.

12.6. EXCEPT AS EXPRESSLY STATED IN THE AGREEMENT OR THE GTC, THE COMPANY MAKES NO OTHER WARRANTIES WITH RESPECT TO THE RESULT OF SERVICES OR SERVICES, OR OTHER CONDITIONS OF THE AGREEMENT AND HEREBY DISCLAIMS ALL OTHER WARRANTIES THAT ARE EITHER EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO WARRANTIES RELATING TO THE TITLE OF USE, NON-INFRINGEMENT AND FULFILLMENT OF OBLIGATIONS, QUALITY, RELIABILITY OR FITNESS FOR A PARTICULAR PURPOSE (EVEN IF THE COMPANY WAS INFORMED ABOUT THIS PURPOSE). IF RIGHTS OR REFUNDS MANDATORY BY LAW ARE TO BE IMPLEMENTED, THEY ARE IMPLEMENTED IN ACCORDANCE WITH THIS LAW, PROCEDURES AND RESTRICTIONS EXPRESSLY PROVIDED FOR BY THIS LAW. THE COMPANY DOES NOT WARRANT THAT THE RESULTS OF SERVICES OR SERVICES PROVIDED WILL BE FULLY FREE OR ERROR OR THEIR PROVISION WILL BE UNINTERRUPTED OR ERROR-FREE.

### 13. Limitation of Liability

13.1. THE COMPANY, ITS AFFILIATES OR RESPECTIVE LICENSORS OR SUPPLIERS SHALL NOT BE LIABLE FOR DAMAGES, LOST PROFITS, LOSS OR DAMAGE TO DATA, TITLE, GOODWILL OR REPUTATION, INACCURACY OF ANY INFORMATION AND DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR SOFTWARE, OR ANY DIRECT, INDIRECT, EXPRESSED OR IMPLIED DAMAGES OR ANY OTHER LIABILITY CLAIMS (INCLUDING NEGLIGENCE OR OBJECTIVE LIABILITY) NOT EVEN IF THE POSSIBILITY OF THE INCURRENCE OF THESE DAMAGES WAS NOTIFIED OR POSSIBLE.

13.2. LIMITATION OF THE COMPANY'S LIABILITY IS INDEPENDENT FROM ANY AGREEMENTS AND SHALL APPLY TO THE EXTENT PERMITTED BY APPLICABLE LAWS. LIMITATIONS AND EXCLUSIONS OF LIABILITY OF THE COMPANY THAT ARE NOT IN ACCORDANCE WITH LAW SHALL BE CONSTRUED AS THE WARRANTIES AND LIABILITY WILL BE PROVIDED BY THE COMPANY TO THE MINIMUM EXTENT PERMITTED BY LAW. IF RIGHTS OR REFUNDS MANDATORY BY LAW ARE TO BE IMPLEMENTED, THEY ARE IMPLEMENTED IN ACCORDANCE WITH THIS LAW, PROCEDURES AND RESTRICTIONS EXPRESSLY PROVIDED FOR BY THIS LAW.

13.3. The maximum liability of the Company and its Affiliates for damage under the Agreement, regardless of the legal basis of liability, whether contractual or statutory (including but not limited to negligence or strict liability), shall not jointly exceed the total price paid by the Customer for Services provided during the first twelve (12) months after the conclusion of the Agreement.

13.4. If the statutory regulation does not stipulate a longer period of time, any Customer's claim under the Agreement

and the GTC may only be asserted against the Company no later than one (1) year from the date on which it has arisen, otherwise the Customer's claim shall expire; this does not affect shorter deadlines within the meaning of the Agreement and / or relevant generally binding legal regulations.

### 14. Damages

14.1. Damages. The Company and the Customer shall prevent any damage and / or injury that may occur to the other Party during the term of the Agreement as a result of a breach of their contractual and / or legal obligations and, in the event of such damage and / or injury, to the extent not more than twice the volume of the previous cooperation.

14.2. Substantial infringement. Breach of the provisions set out in this Article 14 is considered a material breach of the Agreement.

### 15. Other Provisions

15.1. Non-exclusivity. All rights granted or implied to the Customer under the Agreement are non-exclusive. The Company reserves the right to market, promote, distribute, sell, license the Service Results and provide the Service Results to third parties without any restrictions, and nothing in the Agreement restricts the Company in any way to appoint other distributors, resellers, OEM partners, license purchasers or agents, or directly or indirectly market, reproduce, distribute, or sell the Services anywhere in the world. All rights not expressly granted by the Company to the Customer are exclusive rights of the Company.

15.2. Feedback. The Customer is not obliged to provide any suggestions or feedback to the Company in connection with the Services provided, but if the Customer chooses to do so, the Company may use these suggestions or feedback for any purpose, including the development and improvement of the Services, without any liability, limitation or obligation to provide the Customer with any compensation.

15.3. Recommendations and case studies. The Customer hereby grants the Company the right to identify the Customer as a party to the Company in advertising and marketing materials, in particular on the Company's website and / or its Affiliate's website, in presentations intended for potential customers or partners, and in other promotional materials of the Company and / or its Affiliate. The Customer also agrees to use case studies for marketing and promoting the Company's Services; "Case studies" mean the description of the provision of Services to the Customer, including Customer's name, statement of the Customer's representative, contact information, key performance indicators, solutions, etc.

15.4. Prohibition of competition. The Company and the Customer undertake not to, during the term of the Agreement and within twenty-four (24) months thereafter, engage, directly or through third parties, in any manner that results or may entice the customer, business partner or employee of the other Party, or that results in, or may result in, disrupting, or adversely affecting the other Party's business, partnership or employment relationship with customers, business partners, or employees.

### 16. Confidentiality

16.1. Confidentiality. Each Party shall maintain the confidentiality of the Confidential Information of the other Party and not disclose or use such Confidential Information. The outputs of the Parties' cooperation (in particular architecture, analytical models, connectors, etc.) in their anonymized form shall not be considered as Confidential Information; the Company may continue to use these outputs of the cooperation at its discretion.



16.2. Disclosure. The Party may only disclose the Confidential Information of the other Party to its own employees or external personnel who need to know this Confidential Information for the purpose of fulfilling the rights or obligations under the Agreement and the GTC and who are committed to keeping such Confidential Information confidential. The Party to whom Confidential Information has been entrusted may not disclose the Confidential Information within its own organization, to the Affiliate or subcontractors, except those who need to know the Confidential Information in connection with the business relationship between the Parties. Notwithstanding the foregoing, the Party may disclose the Confidential Information of the other Party to a court, administrative or other public authorities upon their request to the extent permitted by law and provided that it promptly informs the other Party of such disclosure so that it may employ reasonable means of protection.

16.3. Duration. Each Party is required to maintain confidentiality under this Article for the duration of the Agreement and for a period of five (5) years following termination of the Agreement, but provided that this is due to the nature of each Confidential Information. The Party may also be required to maintain the confidentiality of such Confidential Information for a longer period of time (in particular, but not limited to, business secrets, protection of personal data within the meaning of GDPR).

16.4. Substantial infringement of obligations. Infringement of the obligations set out in this Article 16 is considered a material breach of the Agreement.

## 17. Privacy Policy

17.1. GDPR. The Company hereby confirms that it processes the personal data of the data subjects in accordance with the General Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of personal data (hereinafter referred to as "GDPR") and Act no. 18/2018 Coll. on the protection of personal data and on amendments to certain acts. More information about the privacy policy is published on the website:

[https://emarkanalytics.com/privacy\\_policy/](https://emarkanalytics.com/privacy_policy/).

17.2. Persons concerned. The Company processes the personal data of the persons concerned, in particular the Customer's employees, its statutory representatives, or other contact persons with whom communication is necessary for the performance of the Agreement. The Customer undertakes to make the information obligation under this Article of the Contract available to these concerned persons.

17.3. Recipients. The Company does not disclose personal data of data subjects to third parties or entities, with the exception of the Company's partners, as well as entities providing the Company with accounting services, legal services, IT services, etc., and these are therefore considered recipients within the meaning of GDPR. If so provided by law, personal data may also be provided to public authorities.

17.4. Categories of personal data. The Company only processes the common personal data of the persons concerned, in particular to the following extent: name and surname, job title, e-mail address, telephone contact.

17.5. Purpose. Personal data is processed for the purpose of the proper performance of this Agreement, as well as for the exercise of rights and obligations relating to the Customer-Company relationship.

17.6. Legal basis. The legal basis for the processing of personal data in question is a legitimate interest under Art. 6 par. 1, par. (f) GDPR. The legitimate interest in this case is the interest of the Parties in concluding and performing the Agreement, where personal data of persons who are not a

party but who are contact persons of the Party (e.g. statutory body, authorized employee) are processed. The processing of the personal data of these data subjects must be carried out in accordance with the applicable legislation, which the Company can ensure in accordance with the principle of proportionality by demonstrating its legitimate interest.

17.7. Retention period. Personal data will be processed for no longer than is necessary to fulfill the purpose of processing personal data, i.e. at least 4 years from the date of termination of the Contract, or longer if so provided by the generally binding legal regulations.

17.8. Rights of the data subject. The data subject has several rights under the GDPR, namely the right of access to personal data under Art. 15 of the GDPR, the right to rectify and / or supplement data under Art. 16 GDPR, the right to have them deleted in the cases referred to in Art. 17 GDPR, the right to limit their processing under Art. 18 GDPR, the right to object to their processing in cases under Art. 21 GDPR and the right to file a complaint with the Supervisory Authority - the Office for Personal Data Protection. Individual rights can be exercised by sending a request to the Company's email address or by sending a written request to the Company's registered office address.

17.9. Provision of personal data. The provision of personal data of the persons concerned is voluntary, but failure to provide such data may result in the inability to perform the Agreement properly and the obligations arising therefrom.

17.10. Personal data processing agreement. The provision of certain Services may, under GDPR, involve the processing of personal data of the persons concerned on behalf of the Customer as the controller. In such a case, the Customer as the controller shall entrust the Company as the processor with the processing of personal data in accordance with Art. 28 of the GDPR, for which purpose a contract on the processing of personal data shall be concluded between the Parties in accordance with Art. 28 par. 3 GDPR.

## 18. Term of the Agreement

18.1. Entry into force. The Agreement shall enter into force and effect on the date of its conclusion by the Parties pursuant to Art. 3 of the GTC.

18.2. Termination of the Agreement. The Parties agree that the Agreement shall terminate:

18.2.1. following the termination of the Agreement by any Party pursuant to para. 18.3. of the GTC;

18.2.2. withdrawal from this Agreement by either Party for the reasons set forth in the Agreement, the GTC or applicable generally binding legal regulations;

18.2.3. by agreement of the Parties.

18.3. Termination of Agreement. The Agreement may be terminated by both Parties without written reason by sending an unilateral written notice, even without giving a reason. In such a case, the Agreement shall terminate upon expiry of the notice period. The notice period is three (3) months and begins on the first day of the month following the month in which the notice was delivered to the other Party.

18.4. Withdrawal from the Agreement. The Company is entitled to withdraw from the Agreement:

18.4.1. in the event that the Customer breaches any of its obligations under the GTC pursuant to par. 6.2., par. 6.3., par. 6.4., par. 7.1, par. 7.7., par. 10.10., par. 14.2., par. 15.4., par. 16.4., of the GTC and the remedy will not occur within the additional period provided to the Customer by the Company,

18.4.2. if it is shown that any statement or information provided by Customer that has a material effect on the performance of the Agreement is false or incomplete,

18.4.3. if so stated in the Agreement, GTC or relevant generally binding legal regulations.

18.4. The Customer is entitled to withdraw from the Agreement if the estimated Service Provision Period and / or the estimated Scope of Services pursuant to para. 4.5 of the GTC is exceeded and the Company failed to justify such excess; also if the Company violates the provision 5.1.

18.5. In the event of withdrawal by either Party following the delivery of such withdrawal to the other Party, the Agreement, including its annexes and any amendments thereto, shall be terminated in their entirety.

18.6. All provisions of the Agreement and the GTC relating to the Company's Intellectual Property Rights, Limitation of Liability, Confidentiality Obligation, Non-Competition, Applicable Law and Jurisdiction of the Courts and those rights and obligations that are permissible in nature shall survive the termination of the Agreement.

## 19. General Provisions

19.1. Assignment. Neither Party shall assign in any way the Agreement or any rights and obligations arising from the contractual relationship to any third party without the prior written consent of the other Party. All provisions of the Agreement, the GTC and Documentation shall be deemed binding and shall be legally enforceable against the successors of the Company or the Customer.

19.2. Collection and use of statistical information. The Company may collect and use certain statistics to optimize, support and improve the performance and functionality of the Services and the Results of Services. "Statistics" mean non-personal, statistical, demographic or user data or metadata created in connection with the use of the Services and the Results of Services. The statistics do not contain any personal data or data that would be able to identify a specific individual and the rights to them remain with the Company.

19.3. Legal compliance. In performing the Agreement, the Customer agrees to comply with all applicable laws and regulations, which may include European Union export inspection laws and regulations, as well as regulations published by the Council or Parliament of the European Union (hereinafter referred to as "**Export Control Laws**"). The Party is required to ensure compliance with these laws and to protect the Company, its managers, agents and employees from any damages, costs, claims, penalties, actions, litigation and any other obligations or responsibilities (including legal representation costs) that may be incurred by the Company in connection with Customer's failure to comply with the Export Control Laws.

19.4. Force majeure. Neither Party shall be liable to the other Party for delay in performance of its obligations under the Agreement (except for the obligation to pay the Price) if such delay or failure to perform is due to unforeseeable events

occurring after the effectiveness of the Agreement beyond the reasonable control of the Party, such as strikes, blockades, wars, terrorism, riots, natural disasters, government's or other government agency's refusal to accept a license, if such an unforeseeable event causes the Party to default in its performance while being unable to prevent the force majeure, or to remedy its consequences by incurring reasonable costs (hereinafter referred to as "**Force Majeure**").

19.5. Notices. All notices and any other communication and documentation drawn up under the Agreement relating to breach or termination of the Agreement must be in writing and delivered in person, by post or by courier. The consignment shall be deemed to have been received the moment the addressee takes it over; in the event the addressee fails to take over the consignment, the consignment shall be deemed to have been received on the day on which the consignment is returned undelivered or marked as undeliverable. In the event of a change of address, the relevant Party shall notify the other Party in writing without undue delay.

19.6. Waiver. If either Party disregards or pardons any failure, breach, delay or failure to comply with any obligation under the Agreement or the GTC, then such conduct shall not constitute a waiver of such obligation with respect to its continued or subsequent occurrence or to any future breach or failure to comply and no such waiver will be considered effective unless it is expressed in writing in each individual case.

19.7. Decisive right. The mutual relations of the Parties arising from the Agreement and the GTC shall be governed by the law of the Slovak Republic, in particular by the provisions of the Commercial Code. The Parties hereby exclude the application of any conflicting provisions which would determine a law other than that of the Slovak Republic as the law applicable.

19.8. Jurisdiction of the courts. The Parties undertake to resolve any disputes that arise during the performance of the Agreement and the GTC by preference by mutual agreement. Should any attempt at reconciliation be unsuccessful, the Party which feels impaired in its rights shall take the case to the competent court. All disputes arising between the Parties shall be settled definitively by the competent court of the Slovak Republic.

19.9. Severability. In the event that any provision of the Agreement and the GTC, including its annexes and / or parts, becomes invalid and / or ineffective, such invalidity and / or ineffectiveness shall have no effect on the validity and / or effectiveness of other provisions, unless otherwise provided by applicable law. The Parties agree to replace the invalid and / or ineffective provisions with a new provision which, by its nature and nature, corresponds most closely to the original provision.