

SOFTWARE LICENSE AND SERVICES AGREEMENT

This Software License and Services Agreement (this “**Agreement**”) is effective as of _____, 2022 (the “**Effective Date**”) by and between Mark43, Inc. (“**Mark43**”), with a place of business at 250 Hudson Street, 3rd Floor, New York, NY 10013, and _____ (“**Subscriber**”), with a place of business at _____.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS.

- 1.1 “**Affiliate**” means, with respect to any entity, any other entity who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise.
- 1.2 “**Affiliated Agency**” means any other government agency to which Subscriber is legally or contractually bound to share information.
- 1.3 “**Applicable Law(s)**” means, with respect to any party, any federal, state or local statute, law, ordinance, rule, administrative interpretation, regulation, order, writ, injunction, directive, judgment, decree or other requirement of any international, federal, state or local court, administrative agency or commission or other governmental or regulatory authority or instrumentality, domestic or foreign, applicable to such party or any of its properties, assets or business operations.
- 1.4 “**Applications**” means the applications purchased by Subscriber as described in Schedule E.
- 1.5 “**Authorized Users**” means employees of Subscriber and any Affiliated Agency who are authorized to access and use the Applications through the applicable security designation(s), pursuant to which full or limited access to the applicable Applications may be granted.
- 1.6 “**Documentation**” means the knowledge base for the SaaS Services to which Subscriber will be granted access by Mark43.
- 1.7 “**Go Live**” means the date of cutover to each respective Mark43 Application.
- 1.8 “**Integrated Application**” means a third-party product, database or application requested by Subscriber and approved by Mark43 that will be installed, linked or enabled by Subscriber for use in connection with the SaaS Services (e.g. NCIC).
- 1.9 “**Integrated Application Data**” means all data, information, content and other materials stored on an Integrated Application.
- 1.10 “**Integrated Application Provider**” means any third party, including other vendors, state agencies and local agencies, that control products and/or databases with which Mark43 SaaS Services are to be interfaced.
- 1.11 “**Intellectual Property Rights**” means all intellectual and industrial property rights, whether now existing or existing in the future, including without limitation, (i) all patent rights, including any rights in pending patent applications and any related rights; (ii) all copyrights and other related rights throughout the world in works of authorship, including all registrations and applications therefor; (iii) all trademarks, service marks, trade dress or other proprietary trade designations, including all registrations and applications therefor (iv) all rights throughout the world to proprietary know-how, trade secrets and other confidential information, whether arising by law or pursuant to any contractual obligation of non-disclosure; and (v) all other rights covering industrial or intellectual property recognized in any jurisdiction.
- 1.12 “**Professional Services**” means any implementation, training, project management, consulting and other services (outside the scope of the Support Services) that are described in a Statement of Work.
- 1.13 “**SaaS Services**” means the Applications, Software, and related software-as-a-service, hosting, maintenance and/or support services made available by Mark43 for remote access and use by Subscriber, including any Documentation thereto.
- 1.14 “**Services**” means the services provided or required to be provided by or through Mark43, including without limitation, SaaS Services and Professional Services.

- 1.15 **“Software”** means the object code version of Mark43’s computer software and all Updates made available by Mark43 to Subscriber under this Agreement.
- 1.16 **“Statement of Work”** means a detailed plan of work to be agreed by the Parties in conjunction with this Agreement.
- 1.17 **“Subscriber Data”** means all data, information, content and other materials stored or transmitted by Subscriber and any Authorized User through the SaaS Services (i) in their user accounts; and (ii) on any Integrated Application, excluding any Third-Party Data and any Mark43 data.
- 1.18 **“Term”** means the Initial Term and any Renewal Terms.
- 1.19 **“Third-Party Component”** means a third-party application incorporated in, integrated with or accessed through the SaaS Services (e.g. a mapping provider).
- 1.20 **“Third-Party Data”** means any data, information, content and other materials made available by any third party, including without limitation through a Third-Party Component.
- 1.21 **“Updates”** means any and all new releases, new versions, patches and other updates for the SaaS Services that Mark43 makes generally available without additional charge to its other subscribers of the SaaS Services.
- 1.22 **“Website”** means any Internet website through which Mark43 provides the SaaS Services under this Agreement.
- 1.23 **“Work Product”** means all materials, software, tools, data, inventions, works of authorship and other innovations of any kind that Mark43, or personnel working for or through Mark43, may make, conceive, develop or reduce to practice, alone or jointly with others, in the course of performing Professional Services or as a result of such Professional Services, whether or not eligible for patent, copyright, trademark, trade secret or other legal protection.

2. PROVISION OF THE SERVICES AND SOFTWARE.

- 2.1 **SaaS Services.** Subject to the terms of this Agreement, and during the Term, Mark43 hereby grants a non-exclusive, non-transferable, non-sublicensable license to Subscriber and its Authorized Users to access and use the SaaS Services through the Website for Subscriber’s internal purposes and in accordance with the terms and conditions of this Agreement. Mark43 will be responsible for hosting the Website, and Subscriber and its Authorized Users will be responsible for obtaining internet connections and other third-party software, hardware and services necessary for it to access the Website through the internet, including as set forth at <https://mark43.zendesk.com/hc/en-us/articles/4409896858381-Technical-Requirements-for-Mark43-Applications>, which may be updated from time to time upon reasonable advance notice (email acceptable) to Subscriber. Subscriber will be responsible to Mark43 for compliance with the restrictions on use and other terms and conditions of this Agreement by any of its Authorized Users.
- 2.2 **Professional Services.** Mark43 will provide Professional Services in connection with the SaaS Services as further described on Schedule E and the Statement of Work. To the extent any Professional Services involve the development of any customization or configuration to the SaaS Services, all Intellectual Property Rights to such customization or configuration will be solely owned by Mark43 and will be deemed to be included in the definition of SaaS Services and licensed to Subscriber on the terms set forth herein.
- 2.3 **Access to Documentation.** Mark43 will provide Subscriber via the Website or other means with access to the Documentation, as may be updated from time to time. Subscriber may print copies of, use, and permit its Authorized Users to use, the Documentation solely in connection with the use of the SaaS Services.
- 2.4 **Support Services.** Subject to the terms and conditions of this Agreement, Mark43 will provide to Subscriber the support services detailed on Schedule A (the **“Support Services”**).
- 2.5 **Restrictions on Use.** Subscriber and its Authorized Users will not (and will not permit any third party to): (i) share Subscriber’s or any Authorized User’s login credentials; (ii) reverse engineer, decompile, disassemble, or otherwise attempt to discern the source code, underlying ideas, algorithms, file formats, or interface protocols of the SaaS Services or of any files contained in or generated by the SaaS Services; (iii) copy, modify, adapt or translate the SaaS Services or the Third-Party Data, or otherwise make any use, resell, distribute or sublicense the SaaS Services or the Third-Party Data other than in connection with this Agreement; (iv) make the SaaS Services available on a “service bureau” basis or allow any third parties to use the SaaS Services; (v) disclose the SaaS Services or

any of its components to third parties; (vi) remove or modify any proprietary marking or restrictive legends placed on the SaaS Services or the Third-Party Data; (vii) use the SaaS Services or the Third-Party Data in violation of any Applicable Law; (viii) create or augment any mapping-related dataset (including a mapping or navigation dataset, business listings database, mailing list, or telemarketing list) for use in an implementation that is not connected to the Services; (ix) introduce into the Services any viruses, worms, defects, Trojan horses, malware, or any items of a destructive nature; (x) use the Services to post advertising or listings; (xi) use the Services to defame, abuse, harass, stalk, or threaten others; (xii) permit access or use of the Services by any individual outside the United States; (xiii) hide or obscure any Authorized User's location; (xiv) permit access or use of the Services, for any activities other than to enhance Subscriber's own services, where reliance solely on, or failure to use, the Services could lead to death, personal injury, or property damages. Subscriber and its Authorized Users will not access the SaaS Services if in direct competition with Mark43, and will not allow access to the SaaS Services by any party who is in direct competition with Mark43, except with Mark43's prior written consent. Subscriber shall comply with additional restrictions on use of the Services in accordance with the Third-Party Component Terms.

- 2.6 Security Obligations.** Subscriber agrees it and its Authorized Users shall securely manage their respective password(s) for access to the SaaS Services. Subscriber agrees it shall notify Mark43 promptly in the event it becomes aware of any unauthorized access or use of the SaaS Services, or of any of its or its Authorized Users passwords or accounts. Unless expressly stated otherwise in this Agreement, a single username or password may not be used by more than one (1) Authorized User. In addition, Authorized Users may log into the SaaS Services from only one location at any given time; concurrent usage (or sign in) under a single username is prohibited, unless Subscriber has a business justification for concurrent usage, in which case Subscriber is responsible for providing approval for such usage to the applicable Authorized Users. Subscriber is responsible for all activities conducted within user accounts in use of the SaaS Services. Subscriber shall comply with all applicable local, state, federal and regional or other laws and regulations applicable in connection with use of the SaaS Services, including all those related to data privacy and the transmission of technical or personal data. Subscriber agrees to (a) provide true, accurate, current and complete registration data for each account it creates via the SaaS Services, and (b) maintain and promptly update the registration data to keep it true, accurate, current and complete.
- 2.7 Changes to Services.** Mark43 may make changes and Updates to its Services, provided that it does not materially derogate the overall quality of the Services. Mark43 does not guarantee that the Services are or will remain compatible with any particular third-party software or equipment, and may, upon written notice, terminate its support for, any software or equipment of Subscriber that Mark43 determines are incompatible with the operation of the Services.
- 2.8 Data Sharing.** Mark43 will allow Subscriber to grant other agencies specified levels of access to Subscriber Data pursuant to an executed data-sharing agreement between agencies, and with permissions subject to the parameters laid out in the relevant data-sharing agreement. Subscriber shall provide Mark43 with a copy of the executed data-sharing agreement prior to allowing any such data-sharing. As between Mark43 and Subscriber, Subscriber will be solely responsible for any liabilities that arise as a result of such data-sharing.

3. PROPRIETARY RIGHTS; SUBSCRIBER DATA.

- 3.1 Ownership of Subscriber Data.** As between Mark43 and Subscriber, Subscriber owns the Subscriber Data. Mark43 will have, and Subscriber hereby grants and agrees to grant to Mark43, a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use the Subscriber Data to configure and/or provide the SaaS Services, Software, Support Services and Professional Services to Subscriber, and/or to prevent or address service or technical problems, in accordance with this Agreement and the Documentation, or otherwise in accordance with Subscriber's requests or instructions. Mark43 may also use Subscriber Data in anonymized and/or aggregated form to develop analytics that may be used to provide products and services to Subscriber and/or to other Mark43 customers, provided that: (a) Mark43 makes available to Subscriber functionality and services based on anonymized data obtained from other Mark43 customers that are similar to the functionality and services provided to such other customers based on the anonymized data; and (b) Mark43 may not sell or offer for sale any Subscriber Data, whether in Subscriber identifiable, or anonymized and aggregated form. Mark43 shall comply with its obligations under all Applicable Laws in its provision of the Services and use of Subscriber Data.
- 3.2 Ownership and Reservation of Rights to Mark43 Intellectual Property.** As between Mark43 and Subscriber, Mark43, its Affiliates and/or its licensors own all right, title and interest in and to the Services, Software, Work Product and all related technology and Intellectual Property Rights.

Subject to the limited rights expressly granted hereunder, and except with respect to Third-Party Components, Mark43 reserves all rights, title and interest in and to the Services, Software, and Work Product, including all related technology and Intellectual Property Rights. No rights are granted to Subscriber hereunder other than as expressly set forth in this Agreement or as required by Applicable Law.

- 3.3 **Subscriber Feedback.** Subscriber and its Authorized Users may elect to provide Mark43 with suggestions, enhancement requests, recommendations and other feedback concerning the SaaS Services, Software, Support Services or Professional Services (the “**Subscriber Feedback**”). Subscriber hereby assigns and agrees to assign all Subscriber Feedback to Mark43 without lien or encumbrance and agrees that Subscriber Feedback will be the sole property of Mark43 and that Mark43 may use Subscriber Feedback in its discretion without obligation to Subscriber. Mark43 has no obligation to make Subscriber Feedback an improvement. For the avoidance of doubt, Subscriber Feedback does not constitute Confidential Information of Subscriber hereunder.
- 3.4 **Usage Data.** Mark43 may collect certain information in connection with Subscriber’s access to or use of the Services, such as access records, date and time stamps, transaction and activity records and system performance data (“**Usage Data**”). Mark43 may use Usage Data to deliver and manage its products and services, perform maintenance and support, and develop, test, analyze, and improve the Services and other Mark43 products and services, and generate statistical data about usage of its products and services. As between Mark43 and Subscriber, Mark43 owns the Usage Data.
- 3.5 **Data Security.** Terms applicable to the privacy and security of Subscriber Data are set forth in the Data Processing Addendum attached as Schedule D hereto (the “**Data Processing Addendum**”).

4. THIRD-PARTY COMPONENTS AND INTEGRATED APPLICATIONS.

- 4.1 **Third-Party Components.** Third-Party Components may be made available to Subscriber through the SaaS Services. In connection with the functionality provided by and/or through Third-Party Components, Subscriber hereby accepts and agrees to be bound by the terms and conditions set forth in Schedule C, which may be updated from time to time upon notice (email acceptable) to Subscriber (the “**Third-Party Component Terms**”). In the event of any inconsistency or conflict between the Third-Party Component Terms and the terms of this Agreement, the Third-Party Component Terms shall govern with respect to Subscriber’s access to and use of the applicable Third-Party Component.
- 4.2 **Integrated Applications.** To the extent Subscriber installs, links to or enables any Integrated Application for use with the SaaS Services, Subscriber grants and agrees to grant (and will cause the applicable Integrated Application Provider to grant) to Mark43 permission to access, retrieve, view, store, copy, modify and process Integrated Application Data from Subscriber’s existing account(s) on each such Integrated Application to the extent necessary to facilitate the interoperation of such Integrated Application with the SaaS Services. To the extent Subscriber requires an Integrated Application Provider’s assistance to install, link to or enable any Integrated Application for use with the SaaS Services, Subscriber shall separately contract with each such Integrated Application Provider for any such assistance. In no event will Mark43 be responsible for any Integrated Application or Integrated Application Data, or for any failure of an Integrated Application to properly interoperate with the SaaS Services; provided, however, to the extent that Mark43 creates, pursuant to the Statement of Work, an interface for an Integrated Application hereunder, Mark43 shall be responsible for such interface only, subject to the terms and conditions of this Agreement and the applicable Statement of Work. Mark43 may at any time, in its sole reasonable discretion, including upon the request of an Integrated Application Provider or due to an actual or potential security threat, disable any connection between an Integrated Application and the Applications, and any access, retrieval and viewing of Integrated Application Data via the Applications. For the avoidance of doubt, Subscriber’s access to and use of Integrated Applications and Integrated Application Data shall be subject to the terms and conditions of Subscriber’s agreement(s) with the applicable Integrated Application Provider.

5. FEES AND PAYMENT TERMS.

- 5.1 **Fees for the Services.** Subscriber will pay the fees as stated in Schedule E (the “**Fees**”) attached hereto in accordance with the payment schedule set forth in Schedule E. All Fees due hereunder will be due and payable by Subscriber within thirty (30) days of the invoice date. All payments of Fees are non-refundable. All amounts stated in this Agreement or on any invoice are in U.S. dollars, and all payments will be made in U.S. dollars.

- 5.2 Overdue Payments.** Any payment not received from Subscriber by the due date shall accrue late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by Applicable Law, whichever is lower, from the date such payment was due until the date paid.
- 5.3 Taxes.** Subscriber will pay all taxes, including sales, use, excise, and other governmental fees, duties, and charges (and any penalties, interest, and other additions thereto) that are imposed on Subscriber or Mark43 with respect to the transactions and payments under this Agreement (excluding taxes based on Mark43's income or employment) ("**Indirect Taxes**"). All Fees are exclusive of Indirect Taxes. If any such taxes are required to be withheld on any payment, Subscriber will pay such additional amounts as are necessary so that the net amount received by Mark43 is equal to the amount then due and payable under this Agreement.

6. TERM AND TERMINATION.

6.1 Term.

- (a) Initial Term. The initial term of this Agreement begins on the Effective Date and will continue for the period set forth on Schedule E, unless and until terminated in accordance with Section 6.2 (the "**Initial Term**").
- (b) Renewal Terms. Upon expiration of the Initial Term or any Renewal Term, this Agreement will automatically renew for successive periods as set forth on Schedule E (each, a "**Renewal Term**") at the rates set forth on Schedule E, unless either party provides the other with written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current term.

6.2 Termination; Suspension of Services.

- (a) Termination for Breach by Either Party. Either party may terminate this Agreement upon written notice to the other party, if the other party breaches a material term of this Agreement and such breach remains uncured for thirty (30) days after the other party's receipt of such notice.
- (b) Termination for Non-Appropriation. Subscriber's payment obligation under this Agreement extends only to funds appropriated annually by Subscriber or Subscriber's governing body for the purpose of this Agreement. For each succeeding fiscal period covered by this Agreement, Subscriber or other applicable agency or department responsible for this Agreement agrees to include in its budget request appropriations sufficient to cover the annual financial obligations under this Agreement. If Subscriber is appropriated insufficient funds to continue annual payments under this Agreement, Subscriber may terminate this Agreement by giving Mark43 not less than thirty (30) days' prior written notice. Upon termination under this paragraph, Mark43 shall be entitled to compensation for all Services rendered prior to the effective termination date, plus any prepaid Fees, as well as reimbursement for reasonable costs actually incurred in closing out this Agreement.
- (c) Suspension of Services. To the extent permitted by Applicable Law, in addition to any other rights or remedies it may have under this Agreement or by Applicable Law, Mark43 may immediately suspend provision of the Services without liability to Subscriber: (a) if Subscriber's account is more than sixty (60) days past due, until paid in full; (b) if Subscriber breaches Section 2.5 (Restrictions on Use) or Section 2.6 (Security Obligations); (c) to avoid harm or liability to Mark43, its Affiliates or its other customers, including in the case of denial of service attacks or other disruptions; or (d) if required by Applicable Law or requested by a governmental authority. Subscriber shall remain liable for any fees and other amounts payable under this Agreement during any period of suspension. Mark43 will use commercially reasonable efforts to restore Subscriber's rights to use and access those portions of the Services or accounts that gave rise to the suspension promptly after Subscriber has resolved the problem giving rise to the suspension.

6.3 Effect of Termination. In the event of any termination or expiration of this Agreement,

- (a) Subscriber will pay Mark43 all amounts payable hereunder as of the termination or expiration date;
- (b) all rights and licenses granted hereunder to Subscriber (as well as all rights granted to any Authorized Users of Subscriber) will immediately cease, including but not limited to all use of the SaaS Services; and
- (c) Mark43 will provide records to Subscriber in accordance with its transition assistance services ("**Transition Assistance**") as set forth in Schedule B.

- (d) Subscriber will, upon written request of Mark43, either return to Mark43 or provide Mark43 with written certification of the destruction of, all documents, computer files and other materials containing any Confidential Information of Mark43 that are in Subscriber's possession or control.

6.4 Survival. The following provisions will survive any termination or expiration of this Agreement: Section 3.1 ("Ownership of Subscriber Data"), Section 4 ("Third-Party Components and Integrated Applications"), Section 6.3 ("Effect of Termination"), Section 7 ("Confidentiality"), Section 8.2 ("Disclaimer"), Section 9 ("Limitation of Liability"), Section 10 ("Indemnification"), Section 11 ("Miscellaneous"), Schedule B ("Transition Assistance") and this Section 6.4 ("Survival").

7. CONFIDENTIALITY.

7.1 Definition of Confidential Information. For the purposes of this Agreement, "**Confidential Information**" means: (a) with respect to Mark43, the SaaS Services, and any and all source code relating thereto, as well as Documentation and non-public information or material regarding Mark43's legal or business affairs, financing, customers, properties or data, and (b) with respect to Subscriber, any non-public information or material regarding Subscriber's legal or business affairs, financing, customers, properties or data. Notwithstanding any of the foregoing, Confidential Information does not include information which: (i) is or becomes public knowledge without any action by, or involvement of, the party to which the Confidential Information is disclosed (the "**Receiving Party**"); (ii) is documented as being known to the Receiving Party prior to its disclosure by the other party (the "**Disclosing Party**"); (iii) is independently developed by the Receiving Party without reference or access to the Confidential Information of the Disclosing Party and is so documented; or (iv) is obtained by the Receiving Party without restrictions on use or disclosure from a third person who did not receive it, directly or indirectly, from the disclosing party.

7.2 Use and Disclosure of Confidential Information. The Receiving Party will, with respect to any Confidential Information disclosed by the Disclosing Party before or after the Effective Date: (i) use such Confidential Information only in connection with the Receiving Party's performance of this Agreement; (ii) subject to Section 7.4 below, restrict disclosure of such Confidential Information within the Receiving Party's organization to only those of the Receiving Party's employees and independent contractors who have a need to know such Confidential Information in connection with the Receiving Party's performance of this Agreement and (iii) except as provided herein, not disclose such Confidential Information to any third party unless authorized in writing by the Disclosing Party to do so.

7.3 Protection of Confidential Information. The Receiving Party will protect the confidentiality of any Confidential Information disclosed by the Disclosing Party using at least the degree of care that it uses to protect its own confidential information (but no less than a reasonable degree of care).

7.4 Employee and Independent Contractor Compliance. The Receiving Party will, prior to providing any employee or independent contractor access to any Confidential Information of the Disclosing Party, inform such employee or independent contractor of the confidential nature of such Confidential Information and require such employee or independent contractor to comply with the Receiving Party's obligations hereunder with respect to such Confidential Information.

7.5 Compelled Disclosure. A disclosure by one party of Confidential Information of the other party to the extent required by Applicable Law will not be considered a breach of this Agreement, provided the party so compelled promptly provides the other party with prior notice of such compelled disclosure (to the extent legally permitted) and provides reasonable assistance, at the other party's cost, if the other party wishes to contest the disclosure.

7.6 Public Records.

- (a) For purposes of this Section 7 (Confidentiality), the term "**Public Records Request**" shall mean any request for the disclosure of records pursuant to a state public records law or "sunshine" law, federal Freedom of Information Act or other comparable law.
- (b) To the extent Subscriber is subject to a Public Records Request that seeks the disclosure of any information or materials provided by Mark43 to Subscriber prior to or during the Term (including without limitation this Agreement), Subscriber shall, prior to any disclosure, promptly notify Mark43 of such Public Records Request (to the extent legally permitted to do so) and provide reasonable assistance, at Mark43's cost, if Mark43 wishes to contest the disclosure. Subscriber shall also identify for Mark43 the information or materials it intends to disclose, and provide Mark43 at least ten (10) days to review prior to disclosure, or if such time is not available or permitted under Applicable Law, at least as much time as would be reasonable to allow Mark43

to meaningfully review and seek appropriate relief. For the avoidance of doubt, and without limiting the foregoing, Subscriber hereby acknowledges that Mark43 shall have no implicit or explicit obligation to challenge, oppose or defend against any request described herein.

7.7 CJIS Standards; Employee Background Checks.

- (a) Subscriber understands and agrees that Mark43 utilizes third-party vendors (each, a “**Hosting Provider**”) to host the SaaS Services.
- (b) Subscriber may request reasonable records from Mark43 from time to time to assess Mark43’s adherence to requirements of the applicable CJIS Security Policy promulgated by the FBI. For the avoidance of doubt, Subscriber may need the consent of Hosting Provider to obtain any records or information from Hosting Provider.
- (c) Subscriber will have the opportunity to run, at Subscriber’s expense, reasonable background checks on Mark43 employees that will have direct access to Subscriber Data in Subscriber’s production environment (such employees, the “**Covered Employees**”), provided that Mark43 may assume that a Covered Employee has been cleared by Subscriber if Mark43 does not receive an adverse response from Subscriber within thirty (30) days of a submission of a background check request.

8. REPRESENTATIONS AND WARRANTIES.

8.1 Power and Authority. Each party represents and warrants that it has the full right, power and authority to enter into this Agreement and to discharge its obligations hereunder and that the person signing this Agreement on behalf of the party has the authority to bind that party. Subscriber represents and warrants that it has obtained, and shall have, all necessary approvals, consents, and authorizations necessary for procurement under this Agreement and that its obligations under this Agreement do not, and shall not, exceed any budget authority limitations, during the Term of this Agreement.

8.2 Disclaimer. USE OF THE APPLICATIONS IS NOT, AND IS NOT INTENDED TO BE, A SUBSTITUTE FOR THE PROFESSIONAL JUDGMENT OF AUTHORIZED PARTIES, INCLUDING DISPATCHERS, LAW ENFORCEMENT OFFICERS, INVESTIGATORS OR FIRST RESPONDERS. THE APPLICATIONS ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY AND THE DATA PROVIDED BY MARK43 THEREIN (INCLUDING ANY THIRD-PARTY DATA) SHOULD NOT REPLACE OTHER EMERGENCY INFORMATION AND SHOULD NOT BE EXCLUSIVELY RELIED-UPON IN AN EMERGENCY SCENARIO. SUBSCRIBER SHALL BE RESPONSIBLE FOR ALL ITS OWN ACTIONS OR FAILURE TO ACT IN CONNECTION WITH THE APPLICATIONS, INCLUDING WITH RESPECT TO COMPLIANCE WITH APPLICABLE LAWS, AND MARK43 ASSUMES NO RESPONSIBILITY OR RISK FOR SUBSCRIBER’S USE OR MISUSE OF, OR FAILURE TO USE, THE INFORMATION PROVIDED THROUGH THE APPLICATIONS. SUBSCRIBER ACKNOWLEDGES THAT THE APPLICATIONS DO NOT PROVIDE LEGAL ADVICE.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MARK43 MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE APPLICATION. MARK43 DOES NOT WARRANT THAT THE SERVICE WILL BE ERROR FREE OR UNINTERRUPTED OR THAT SUBSCRIBER DATA WILL BE SECURE OR NOT LOST OR DAMAGED. THE LIMITED WARRANTIES PROVIDED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES PROVIDED TO SUBSCRIBER IN CONNECTION WITH THE PROVISION OF THE SERVICES. MARK43 SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE ITS REASONABLE CONTROL, INCLUDING ANY HARM OR DAMAGES CAUSED BY ITS HOSTING PROVIDERS. MARK43 MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO ANY THIRD-PARTY DATA, THIRD-PARTY COMPONENT, INTEGRATED APPLICATION, OR ON BEHALF OF ANY INTEGRATED APPLICATION PROVIDER.

9. LIMITATION OF LIABILITY.

9.1 Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL MARK43’S (OR MARK43’S THIRD-PARTY LICENSORS’) TOTAL AND AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE AGGREGATE AMOUNT OF FEES PAID BY SUBSCRIBER TO

MARK43 PURSUANT TO THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM ARISES. THE FOREGOING LIMITATION IS CUMULATIVE, WITH ALL PAYMENTS FOR CLAIMS OR DAMAGES BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT, AND THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THAT LIMIT.

- 9.2 Exclusion of Damages.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, PERSONAL INJURY OR PROPERTY DAMAGES, HOWEVER CAUSED, OR FOR ANY LOST PROFITS, LOSS OF USE, LOSS OF DATA, COST OF DATA RECONSTRUCTION OR COST OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, WHETHER IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICES, SOFTWARE OR PROFESSIONAL SERVICES, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS OR SUBCONTRACTORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.
- 9.3 Exceptions.** NOTWITHSTANDING THE FOREGOING, THE EXCLUSIONS AND LIMITATIONS OF LIABILITY SET FORTH IN SECTION 9.1 AND SECTION 9.2 SHALL NOT APPLY TO DAMAGES ARISING FROM EITHER PARTY'S INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT OR EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

10. INDEMNIFICATION.

- 10.1 Indemnification by Mark43.** Mark43 shall indemnify Subscriber, and its employees, officers, and directors against any third-party claim alleging that Subscriber's use of the Services in the form provided by Mark43 and when used in accordance with the Documentation and in compliance with this Agreement infringes that third party's U.S. copyright, U.S. patent issued as of the Effective Date, or U.S. trademark, and shall pay the amount of any adverse final judgment or settlement to which Mark43 consents. Mark43 shall have no obligation or liability under this Section 10.1 (Indemnification by Mark43) to the extent the third party claim arises from: (a) Subscriber's or its Affiliates' failure to incorporate a software or other update or upgrade made available by Mark43 that would have avoided the alleged infringement; (b) modification of the Services, any Application, Software or Hardware by anyone other than Mark43; (c) specifications, instructions, features, functions or designs or other elements provided by or requested by Subscriber or its Affiliates; (d) use of the Services, any Application or Software in combination with any other product, service, process or material not provided by Mark43 (including, without limitation, Third-Party Applications, Third-Party Data and Subscriber Data); or (e) use of the Services, any Application or Software in a manner not contemplated by this Agreement. If the Services are (or Mark43 believes are likely to become) the subject of a claim for which Mark43 would be obligated to defend and indemnify pursuant to this Section, then Mark43 may, at its sole option, obtain for Subscriber the right to continue use of the Services or replace or modify the Services, as applicable, provided there is no material loss of functionality. If neither of the foregoing options is reasonably available to Mark43, in its judgment, then use of the Services may be terminated at the option of Mark43 and Mark43's sole liability will be to refund any prepaid fees for the Services applicable to periods following the effective date of termination. The remedies provided in this Section 10.1 (Indemnification by Mark43), are Subscriber's sole and exclusive remedies for any third-party claims of infringement or misappropriation of Intellectual Property Rights by the Services.
- 10.2 Indemnification by Subscriber.** To the extent consistent with Applicable Law, Subscriber shall indemnify Mark43, its Affiliates, and their respective employees, officers, and directors against any third-party claim arising out of or related to (a) Subscriber's breach of Section 2.5 (Restrictions on Use), Section 2.6 (Security Obligations) or Section 3.2 (Ownership and Reservation of Rights to Mark43 Intellectual Property); (b) Integrated Applications or Subscriber Data, including any third-party claim alleging that Subscriber Data infringes or misappropriates the rights of a third party or violates any Applicable Law, and shall pay the amount of any adverse final judgment or settlement to which Subscriber consents; and (c) Mark43's disabling a connection to an Integrated Application at Subscriber's request.
- 10.3 Procedures.** Each party shall give the other party prompt notice of any claim to which an indemnification obligation under this Section 10 (Indemnification) may apply and shall reasonably cooperate with the indemnifying party, at its expense, in the defense or settlement of any claim. An indemnifying party's payment obligations under this Section 10 (Indemnification) will be diminished

to the extent that it is materially prejudiced by the indemnified party's non-compliance with the foregoing procedures.

11. MISCELLANEOUS.

- 11.1 Notices.** Unless otherwise specified herein, all notices and other communications between the parties required or permitted by this Agreement or by Applicable Law, will be deemed properly given, if given by (i) personal service, (ii) registered or certified mail, postage prepaid, return receipt requested, or (iii) nationally recognized private courier service, to the respective addresses of the parties set forth below or such other addresses as the respective parties may designate by like notice from time to time. Notices so given will be effective upon (a) receipt by the party to which notice is given; or (b) on the fifth (5th) business day following mailing, whichever occurs first:

If to Mark43:

Mark43, Inc.
250 Hudson Street
3rd Floor
New York, NY 10013
Attn: David Jochim
Email: dave@mark43.com

If to Subscriber:

Copy to:

Mark43, Inc.
250 Hudson Street
3rd Floor
New York, NY 10013
Attn: General Counsel
Email: contractnotices@mark43.com

Copy to:

- 11.2 Assignment.** Neither party may assign or otherwise transfer any of its rights or obligations under this Agreement without the prior, written consent of the other party; provided, however, that a party may, without the consent of the other party, assign or otherwise transfer this Agreement to any of its Affiliates or to an entity with or into which it is merged or consolidated or to which it sells its stock or other equity interests or all or substantially all of its assets. Any assignment or other transfer in violation of this section will be null and void. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.
- 11.3 Governing Law.** This Agreement will be governed by the internal laws of the state in which Subscriber is geographically located, and any disputes between the parties may be resolved in a state or federal court of competent jurisdiction within such state. EACH PARTY HEREBY WAIVES ANY RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY ACTION OR LITIGATION IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT.
- 11.4 Dispute Resolution.** Prior to the initiation of any legal proceeding other than one for equitable relief as described in subsection (d) below, the parties shall first attempt to resolve their dispute informally, as follows:
- (a) Within five (5) business days following the written request of a party, designated individual(s) from Mark43 and Subscriber shall meet to resolve such dispute.
 - (b) The representatives referred to in paragraph (a) shall meet as often as the parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter at issue that the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of formal legal proceedings. The specified format for the discussions will be left to the discretion of the designated representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
 - (c) If the representatives referred to in paragraph (a) above are unable to resolve the dispute within thirty (30) business days after the dispute is escalated to them, then either party may escalate the dispute to the Chief Operating Officer of Mark43 and the Chief or Sheriff or comparable Subscriber official, for their review and resolution.

- (d) The provisions of this Section 11.4 shall not be construed to prevent a party from instituting, and a party is authorized to institute, judicial or other proceedings either to (i) seek injunctive relief or (ii) avoid the expiration of any applicable legal or contractual limitations period.
- 11.5 Force Majeure.** Except with respect to failure to pay any amount due under this Agreement, nonperformance of either party will be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts that are not caused by or within the control of the nonperforming party, orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party.
- 11.6 No Waiver.** The failure of either party to enforce at any time for any period any provision hereof will not be construed to be a waiver of such provision or of the right of such party thereafter to enforce each such provision, nor shall any single or partial exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver of any rights is to be charged against any party unless such waiver is in writing signed by an authorized representative of the party so charged.
- 11.7 Amendment.** No modification, change or amendment to this Agreement shall be effective unless in writing signed by Subscriber and Mark43. No term included in any invoice, estimate, confirmation, acceptance, purchase order or any other similar document in connection with this Agreement will be effective unless expressly stated otherwise in a separate writing signed by Subscriber and Mark43.
- 11.8 Relationship of the Parties.** The relationship of the parties established by this Agreement is that of independent contractors and nothing contained herein will be construed to (a) give any party any right or authority to create or assume any obligation of any kind on behalf of any other party or (b) constitute the parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking.
- 11.9 Subcontracting.** Mark43 may draw on the resources of (and subcontract to) its Affiliates and third-party contractors and subcontractors, within or outside of the United States (each, a **“Mark43 Vendor”**) for internal, administrative and compliance purposes or in connection with the hosting or provision of the Service and other products and services to be provided by Mark43 pursuant to this Agreement. Subscriber agrees that Mark43 may provide information, data and materials that Mark43 receives in connection with this Agreement (including Subscriber Data) to the Mark43 Vendors for such purposes. Mark43 shall be permitted to subcontract its obligations under this Agreement to the Mark43 Vendors identified on Schedule E as “Subcontractors” or such other subcontractors as approved in advance by Subscriber (each, a **“Subcontractor”**). Mark43 shall be responsible in accordance with the terms of this Agreement for performance failures by such Subcontractors that cause Mark43 to breach its obligations under this Agreement.
- 11.10 Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction will, to the extent the economic benefits conferred thereby to the parties remain substantially unimpaired, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions or affecting the validity or enforceability of any of such terms or provisions in any other jurisdiction.
- 11.11 Headings.** The titles and headings contained in this Agreement are for reference purposes only and shall not in any manner limit the construction or interpretation of this Agreement.
- 11.12 Counterparts.** This Agreement may be executed, including by electronic signature, in two or more counterparts, each of which shall be an original and all such counterparts together shall constitute one and the same instrument. Electronically executed or electronically transmitted (including via facsimile transmission) signatures have the full force and effect of original signatures.
- 11.13 Cumulative Remedies.** All remedies for breach of this Agreement are cumulative, and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 11.14 Export Compliance.** In connection with this Agreement, each party will comply with all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control.
- 11.15 Compliance with Laws.** Each party shall comply with all Applicable Laws relating or pertaining to the use of the Services. Subscriber shall ensure that its use of all Subscriber Data complies with all Applicable Laws relating to the privacy of third parties or the protection of their personal data promulgated by any governmental, municipal, or legal authority having jurisdiction over Subscriber

or the Subscriber Data covered by this Agreement. Each party shall comply with local anti-bribery laws as well as the U.S. Foreign Corrupt Practices Act, as well as any other Applicable Laws and regulations. In connection with its performance under this Agreement, neither party shall directly or indirectly: (A) offer, pay, promise to pay, or authorize the payment of any money, gift or other thing of value to any person who is an official, agent, employee, or representative of any government or instrumentality thereof or to any candidate for political or political party office, or to any other person while knowing or having reason to believe that all or any portion of such money, gift or thing of value will be offered, given, or promised, directly or indirectly, to any such official, agent, employee, or representative of any government or political party, political party official or candidate; (B) offer, promise or give any person working for, or engaged by, the other party a financial or other advantage to (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; or (C) request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement. Each party represents and warrants that it shall be responsible for compliance with this provision by all third parties engaged by it to perform services related to this Agreement and shall require that such third parties agree to comply with all legal requirements required of such party under this Agreement.

11.16 Entire Agreement. This Agreement supersedes all previous understandings, agreements and representations between the parties, written or oral and constitutes the entire agreement and understanding between the parties with respect to the subject matter thereof and incorporates all representations, warranties, covenants, commitments and understandings on which they have relied in entering into this Agreement, and, except as provided for herein, neither party makes any covenant or other commitment concerning its future action nor does either party make any promises, representations, conditions, provisions or terms related thereto.

11.17 Supporting Documents.

The following documents are, by this reference, expressly incorporated into this Agreement and are collectively referred to herein as the "Supporting Documents:"

- Schedule A: Support Services
- Schedule B: Transition Assistance
- Schedule C: Third-Party Component Terms
- Schedule D: Data Processing Addendum
- Schedule E: Order Form

This Agreement and the Supporting Documents shall be construed to be mutually complementary and supplementary whenever possible. In the event of a conflict that cannot be resolved, the provisions of this Agreement itself shall control over any conflicting provisions in any of the Supporting Documents.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

MARK43, INC.

SUBSCRIBER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULE A

Support Services

1. Support Services.

a. Error Reporting

When reporting a failure of the Services to perform substantially in conformance with this Agreement (an “**Error**”), Subscriber shall use the phone number, email address, or Mark43 Support Portal URL identified in this Agreement (or otherwise provided to Subscriber by Mark43 from time to time, including by email) during the hours of support set forth herein.

Subscriber personnel submitting support requests must be reasonably trained in the use and functionality of the Services and familiar with this Agreement and, before submitting a support request to Mark43 hereunder, must use reasonable efforts to ensure a perceived Error is not due to a problem with Subscriber’s (or its other third-party providers’) equipment, systems, software or connectivity or due to improper, non-conforming or unauthorized use of the Services by or on behalf of Subscriber.

Subscriber will include with each support request, further detailed in subsection (d) below: (i) Subscriber’s initial assessment of the Response Priority (including identification of the Error and the approximate percentage of Authorized Users impacted); (ii) sufficient information to enable Mark43 to identify and replicate the Error; and (iii) contact information for Subscriber personnel familiar with the Error who will be available to Mark43 to assist with resolution of the Error on an ongoing basis until the Error is resolved.

b. Response Priority Determination

Mark43 will validate Subscriber’s Response Priority designation, or notify Subscriber of its Response Priority designation if it is different than Subscriber’s. If requested, Mark43 will provide Subscriber with the basis of its determination. In the event of a conflict regarding the appropriate Response Priority designation, each party shall promptly escalate such conflict for resolution by the parties’ management, during which time the parties shall continue to handle the support issue in accordance with the Mark43 Response Priority designation. In the rare case that a conflict requires a management discussion, both parties shall be available within one hour of the escalation.

c. First Response, Resolution, and Updates

Upon notification by Subscriber of an Error in accordance with this Schedule and subject to Mark43’s identification and replication of the Error, Mark43 will respond to each case in accordance with the First Response Times and Communication Commitments described in the charts below. First Response Time is the period from the time the Error was logged with the Mark43 Support Team until Mark43 responds to Subscriber (and escalates within Mark43, if appropriate). A first response is defined as a non-automatic means where an agent will reach out to gather additional details and may not include a solution or workaround. Because of the widely varying nature of issues, it is not possible to provide specific resolution commitments. Actual resolution time will depend on the nature of the case and the resolution itself. Resolution methods are defined below. A resolution may consist of a fix, workaround, delivery of information, or other commercially reasonable solutions to the issue.

d. Subscriber’s Obligations

Mark43’s provision of the support services described in this Schedule is subject to Subscriber cooperating fully and on a timely basis with reasonable requests of Mark43 for accurate information and access to Subscriber personnel with sufficient availability and knowledge to enable Mark43 to provide the support services, including accurate information and assistance reasonably required to detect, replicate, and correct Errors. In the event Mark43’s response, resolution, or update times are negatively impacted by delayed responses by Subscriber personnel or Subscriber’s failure to otherwise comply with its obligations under this Schedule, timeframes will be extended.

First Response Commitment

Red	Orange	Yellow
------------	---------------	---------------

1 hour 24/7	2 hours 8am - 8pm EST, 7 days	8 hours 8am - 8pm EST M-F
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Communication Commitment

	Red	Orange	Yellow
Status page updates	A status update will be posted as soon as Mark43 is notified and updated every 30 minutes thereafter until resolved.	n/a	n/a
Email/phone updates	After initial Mark43 response, within 1 hour of any additional client questions about the same issue until resolved.	After initial Mark43 response, within 1 business day of any additional client questions until issue is resolved. Client will receive notification via email once the issue fix has been scheduled and again when the issue has been fixed.	After initial Mark43 response, within 2 business days of any additional client questions until issue is resolved. Client will receive notification via email once the issue has been fixed.

Priority Definitions

- *Red* - An Error due to Mark43's systems that results in the inoperability or substantial impairment of a core function for the majority of Subscriber's Authorized Users, provided there is no feasible workaround. Examples include: Authorized Users cannot access the Application; CAD units cannot be dispatched; reports cannot be created.
- *Orange* - An Error due to Mark43's systems that results in the inoperability or substantial impairment of a critical workflow for the majority of Subscriber's Authorized Users, provided there is no feasible workaround. Examples include: significant lagging/slowness; inability to process persons in custody; inability to export reports or cases for same or next day court deadlines; inability to submit reports.
- *Yellow* - An Error due to Mark43's systems for which a reasonable workaround is available.
- *None* - There are a number of low-impact issues, how-to questions, and feature requests that do not fall into one of the categories above and are not subject to the outlined First Response or Communication Commitments.

Issue Escalation & Resolution Methods: Subscriber-reported issues are escalated within Mark43 by a well-defined internal process. Mark43 works to resolve issues based on the issue severity/impact, by employing one or more of the following methods:

- Providing client with a reasonable workaround
- Adjusting system/hosting configurations or setup
- Direct database modifications
- Releasing a fix out-of-cycle (patching)
- Releasing a fix as part of the regular release cycle
- Other commercially reasonable solution

Subscriber will be notified of status changes either through Mark43's status page and/or via email updates in a support ticket.

2. **Service Level Agreement.** Mark43 shall provide the Applications in accordance with the following service levels ("SLA").
 - a. **Monthly Uptime Commitment.**

Following Cutover to the applicable In-Scope Application, Mark43 will use commercially reasonable efforts to make the In-Scope Application available with the Monthly Uptime Percentage corresponding to that Application (the “**Uptime Commitment**”), as follows:

- *RMS Application:* Mark43 will use commercially reasonable efforts to achieve a Monthly Uptime Percentage for the Mark43 RMS Application of no less than 99.90% in any calendar month.
- *CAD Application:* Mark43 will use commercially reasonable efforts to achieve a Monthly Uptime Percentage for the Mark43 CAD Application of no less than 99.95% in any calendar month.

For each In-Scope Application, the “Monthly Uptime Percentage” is calculated as set forth below by subtracting from one hundred percent (100%) the percentage of minutes during the month in which the In-Scope Application experienced Downtime.

Monthly Uptime Percentage = $(100) - ((\text{minutes of Downtime} * 100) / (\text{total minutes in month}))$

b. **Service Credit Calculation.**

Subject to the SLA Exclusions, if Mark43 does not achieve the Uptime Commitment in any given month due to Downtime, Subscriber may be eligible for credits as described herein (the “**Service Credits**”), as follows:

- *RMS Application:* If Mark43 does not achieve the Uptime Commitment for the RMS Application, Subscriber will (to the extent legally permitted) be eligible pursuant to the terms of this SLA to receive a credit equal to ten (10) times the amount paid for the RMS Application in respect of the period in which the actual RMS Downtime for the month exceeded the RMS Downtime allowable within the Uptime Commitment, up to a maximum credit of 25% of one month’s subscription fee paid in consideration for the RMS Application, as illustrated here:

RMS Service Credit = $(10) * ((1/12) * \text{annual subscription fee}) * ((\% \text{ of Downtime}) - (0.10\%))$

- *CAD Application:* If Mark43 does not achieve the Uptime Commitment for the CAD Application, Subscriber will (to the extent legally permitted) be eligible pursuant to the terms of this SLA to receive a credit equal to ten (10) times the amount paid for the CAD Application in respect of the period in which the actual CAD Downtime for the month exceeded the CAD Downtime allowable within the Uptime Commitment, up to a maximum credit of 25% of one month’s subscription fee paid in consideration for the CAD Application, as illustrated here:

CAD Service Credit = $(10) * ((1/12) * \text{annual subscription fee}) * ((\% \text{ of Downtime}) - (0.05\%))$

c. **Requesting Service Credits.**

In order to receive a Service Credit, Subscriber must notify Mark43 in writing at 250 Hudson Street, 3rd Floor, New York, NY 10013, Attn: Accounting, with a copy to accounting@mark43.com, or such other address provided by Mark43 from time to time, within fifteen (15) days following the end of the month in which the Downtime occurred. Claims must include the words “SLA Credit Request” in the subject line; the dates and times of each Downtime incident that Subscriber is claiming occurred; and any documentation to corroborate Subscriber’s claim of Downtime, ensuring removal or redaction of any confidential or sensitive information in these logs. All claims are subject to review and verification by Mark43 prior to any Service Credits being granted. Mark43 will acknowledge requests for Service Credits within fifteen (15) business days of receipt and will inform Subscriber whether such claim request is approved or denied.

If Mark43 confirms that the Uptime Commitment has not been met in the applicable calendar month, Subscriber will be issued a Service Credit within one billing cycle following the month in which Subscriber’s request is confirmed by Mark43. Subscriber’s failure to provide the request and other information as required above will disqualify Subscriber from receiving a Service Credit. Service Credits will not entitle Subscriber to any refund or other payment from Mark43 and are non-transferable. The parties acknowledge and agree that Service Credits are intended as genuine pre-estimates of loss that may be suffered as a result of any failure to achieve Uptime Commitments and will not be deemed to be penalties. To the extent legally permitted, the issuance of a Service Credit by Mark43 hereunder is Subscriber’s sole and exclusive remedy for any failure by Mark43 to satisfy the Uptime Commitment.

d. **Additional Definitions.**

“**Downtime**” with respect to any single In-Scope Application means time in which the Application is not accessible or available to Subscriber for reasons other than those resulting directly or indirectly from an SLA Exclusion. For the avoidance of doubt, slow performance does not constitute lack of accessibility or availability and shall not count as Downtime, unless there is a total loss of ability for the substantial majority

of Authorized Users to perform any one of the In-Scope Application Features so as to constitute a total loss of service of that Application, in each case in Mark43's reasonable discretion. The concurrent loss of service of two or more In-Scope Application Features within the same Application will count as a single Downtime event. At the end of each month, Mark43 adds "Downtime" periods together to calculate the overall monthly "Downtime."

"In-Scope Application" means the web-accessible Applications identified in subsection (a) above, provided that Subscriber has purchased a subscription for the Applications and signed a valid agreement with Mark43. Under no circumstance shall any reference to an Application that Subscriber has not purchased a subscription and signed an agreement for be construed to entitle Subscriber to use such Application. For the avoidance of doubt, In-Scope Applications do not include mobile versions or Applications that are in beta testing.

"In-Scope Application Features" means, in each case:

- For RMS Application: (i) the ability to login to the Mark43 RMS; (ii) the ability to view and edit reports and names, property, and vehicles; (iii) the ability to view and edit cases; and (iv) the ability to search for entities within the RMS.
- For CAD Application: (i) the ability to login to the Mark43 CAD; (ii) the ability to view / edit / clear events; (iii) the ability to view and edit units; (iv) the ability to search for CAD tickets; and (v) the ability to receive real-time updates when actively connected to an internet-enabled network.

"Monthly Uptime Percentage" has the meaning set forth in Section 2(a) of this SLA.

"Scheduled Maintenance" means scheduled work related to the Mark43 Application or the hosting environment, which may cause inaccessibility or unavailability of the Mark43 Application. Except as set forth below, Mark43 shall provide at least seven (7) days' advance notice of Scheduled Maintenance whenever practicable, and in no circumstances less than three (3) days' advance notice. In the event that Mark43 determines it is appropriate to perform emergency work related to the Mark43 Application or emergency work is performed related to the hosting environment, such work will be deemed Scheduled Maintenance, provided Mark43 uses reasonable efforts under the circumstances to provide Subscriber with notice at least twenty-four (24) hours prior to such emergency work. Notice of Scheduled Maintenance may be provided by email and, in the case of emergency work, may also be provided by telephone. The total amount of Scheduled Maintenance for the CAD Application shall not exceed sixty (60) minutes during any thirty (30)-day period.

e. **SLA Exclusions.** The Uptime Commitment does not apply to any inaccessibility or unavailability of an Application (the **"SLA Exclusions"**):

- That is not an In-Scope Application;
- That occurs prior to Cutover;
- That results from Scheduled Maintenance;
- That results from a suspension or remedial action, as described in this Agreement;
- Caused by factors outside of Mark43's reasonable control, including any force majeure event, Internet access, or problems beyond the demarcation point of the Mark43 cloud environment;
- That results from actions or inactions of Subscriber or any third party;
- That is attributable to Subscriber's own computer equipment or devices, or failure of any software, hardware or service not supplied by Mark43 pursuant to this Agreement, including, without limitation, issues related to network connectivity, internet connectivity or network performance issues at any Subscriber locations, server downtime related to connectivity issues resulting from third-party-managed VPN access to a hosted server or Subscriber's internal network problems, or Software (including interfaces) that is not supplied or maintained by Mark43;
- That results from any Integrated Application, Third-Party Data, or any Subscriber-provided application or program; or
- That results from the failure by Subscriber, its Affiliates, or any Authorized User to incorporate a Software or Service update or upgrade made available by Mark43.

SCHEDULE B

Transition Assistance

1. Preparation.

- a. Subscriber will provide the desired cutoff date of the SaaS Services (the “**Cutoff Date**”) to Mark43, at which time all existing user accounts will be terminated.
- b. For one (1) year following the Cutoff Date, Mark43 will provide one (1) transition account for Subscriber to access the Applications and retrieve all Subscriber Data as further detailed below

2. Content.

- a. Upon Subscriber’s request, Mark43 will deliver and make available Subscriber Data to Subscriber within four (4) weeks of the Cutoff Date. Subscriber Data will be delivered as follows:
 - Searchable PDFs: Mark43 will create searchable PDFs of each record (each, a “**Record**”) and provide them to the Subscriber for download. Subscriber may request, and Mark43 will consider, other formats in which to create the Records, but the final format of all Records will be determined in Mark43’s sole discretion. Records can be uploaded to Subscriber’s new system by the Subscriber or its new vendor.
 - Database Export: Subscriber Data will be provided to Subscriber as an export of Mark43’s Microsoft SQL Server Data Lake database. To use the data, Subscriber will need to have access to its own Microsoft SQL Server database.
 - Document/File Export: Documents/file attachments stored within the Mark43 system will be provided to the Subscriber in a zipped folder. Within the folder the Subscriber will find all files with a unique ID appended to the filename. A csv file will be provided to relate the unique file ID with the attached entity type and Mark43 ID.
- b. If files are too large for practical internet transmission, an encrypted hard drive will be provided.

3. Support.

- a. Mark43 will maintain Subscriber Data in the Mark43 Applications for up to one (1) year following the Cutoff Date.
- b. Mark43 will resolve any issues it deems to be the result of errors in the Mark43 platform or export process for a period of six (6) months after the Cutoff Date.
- c. No less than two (2) years after the Cutoff Date, Mark43 will delete Subscriber Data from all Mark43 online systems (e.g. primary database, replica databases, search databases, application caches, etc.) other than database backups, audit logs and server system logs.
- d. Within six (6) months from the date of deletion of Subscriber Data from all Mark43 online systems, all Subscriber Data will be erased from database backups.
- e. Notwithstanding the foregoing, Mark43 reserves the right to retain Subscriber Data on audit logs and server system logs and in support tickets, support requests and direct communications with Mark43.

4. Additional Services.

- a. Ongoing Web Access: Subscriber may elect to purchase a read-only tenant of the Mark43 system. This service enables Subscriber to utilize a single user log-in to view and access data entered into the Mark43 system up to the date of termination or expiration of this Agreement. Under this service, Subscriber will not have permission to change, modify or update any Subscriber Data.
- b. Additional Professional Services: If the Subscriber requires additional Professional Services, these will be billed according to the current market rate for such Services.

5. **Fees.** In the event that any Fees have not been paid as required under this Agreement, Mark43 may decline to provide the support outlined in this Schedule B until such Fees are paid in full.

SCHEDULE C

Third-Party Component Terms

Google: Users are bound by the Google Maps/Google Earth Additional Terms of Service (including the Google Privacy Policy), available by following these links:

Google Maps Terms: https://maps.google.com/help/terms_maps.html

Google Privacy Policy: <https://policies.google.com/privacy?hl=en&gl=us>

Acceptable Use: https://enterprise.google.com/maps/terms/universal_aup.html

Esri: Users are bound by the following Esri Terms of Service:

To the extent permitted by applicable law, Environmental Systems Research Institute, Inc. ("Esri") and its licensors disclaim liability for any damages or loss of any kind, whether direct, special, indirect, incidental, or consequential, arising from the use of Esri's solution ("Esri Solution") including, but not limited to, liability for use of the Esri Solution in high-risk activities or liability related to any data supplied by Esri.

In the event of any termination of the Agreement, the end user of the Esri Solution ("User") shall (i) cease access and use of the Esri Solution and any data supplied by Esri, and (ii) clear any client-side data cache derived from the Esri Solution or any data supplied by Esri.

User will comply with all relevant export laws and regulations of the United States with respect to the Esri Solution, including, but not limited to, the Export Administration Regulations (EAR), International Traffic in Arms Regulations (ITAR); and the United States Department of Treasury, Office of Foreign Assets Control (OFAC) regulations, and User will not export, reexport, transfer, divert, use, or access, directly or indirectly, the Esri Solution in violation of any United States export laws and regulations.

User will provide Esri with information about User's export and distribution activities as may be required for Esri to meet its obligations under the United States export control laws and regulations.

User shall not remove or obscure any patent, copyright, trademark, proprietary rights notices, or legends contained in or affixed to the Esri Solution or any Esri materials, output, metadata file, or online or hard-copy attribution page of any data supplied by Esri.

Esri and its licensors disclaim all terms in any "click-through" agreements included with the Esri Solution. Esri and its licensors do not warrant that the Esri Solution or any data or materials supplied by Esri will meet User's needs or expectations; that the use thereof will be uninterrupted; or that all nonconformities can or will be corrected. Esri and its licensors are not inviting reliance on data in the Esri Solution, and User should always verify actual data in the Esri Solution. Any warranty offered by Mark43 for Mark43's solution the Services shall only apply between Mark43 and User. Esri does not offer any warranties or indemnities to User for the Esri Solution.

User shall not use the Esri Solution for any revenue-generating activities. The Esri Solution is for the internal use of User only.

User shall not use the Esri Solution independently from the Mark43 solution or in any other product or service.

User shall not store, cache, use, upload, distribute, or sublicense content provided through the Esri Solution in violation of Esri's or a third-party's rights, including intellectual property rights, privacy rights, nondiscrimination laws, export laws, or any other applicable law or regulation.

User's login credentials for the Esri Solution are for User only and may not be shared with other individuals."

Amazon:

Universal Service Terms: <https://aws.amazon.com/service-terms/>

Acceptable Use: <https://aws.amazon.com/aup/>

Auth0 (if elected):

Acceptable Use: <https://cdn.auth0.com/website/legal/files/aup-19.pdf>

RapidSOS (if elected): Subscriber must sign up and accept the terms contained within the following link:

<https://info.rapidsos.com/rapidsos-integrations-signup>

CommSys (if elected): Subscriber must enter into an end user license agreement directly with CommSys.

SCHEDULE D

Data Processing Addendum

1. **Definitions.** For purposes of this this Data Processing Addendum (“**DPA**”), “**Subprocessor**” means a Mark43 Affiliate or other third party engaged by Mark43 for the purpose of hosting, storing or otherwise processing Subscriber Data as authorized by this Agreement or otherwise in writing by Subscriber. Terms not otherwise defined in this DPA have the meaning set out in this Agreement.
2. **Subscriber Data.** The obligations in this Schedule apply to Subscriber Data in the custody or control of Mark43 and its Subprocessors. They do not apply to Subscriber Data in the custody or control of any other party, including Subscriber Data under Subscriber’s custody or control outside of the Services or Subscriber Data maintained by an Integrated Application Provider or transmitted or accessed on or through an Integrated Application.
3. **Disclosure.** Mark43 will not disclose Subscriber Data to any third party except: (i) to Authorized Users; (ii) as permitted under this Agreement; (iii) to its Subprocessors, provided that each Subprocessor agrees to protect Subscriber Data in a manner substantially in accordance with this DPA; or as provided by this DPA with respect to any Disclosure Request. Notwithstanding the foregoing or anything in this DPA to the contrary, Subscriber acknowledges and agrees that (a) Mark43 utilizes major providers of cloud-based services for processing certain Subscriber Data through the Services (each, a “**Cloud Provider**”), (b) each Cloud Provider has its own data protection practices that are applicable to its delivery of services to its customers, and (c) Cloud Providers will not agree to separate data protection practices on a customer-by-customer basis; therefore, Cloud Providers will not be required to comply with the obligations in this DPA to the extent that they are inconsistent with each Cloud Provider’s own data protection practices, but Mark43 will use reasonable efforts to assess that each Cloud Provider complies with its own data protection practices, which may include periodic examination of SOC 2 reports or comparable reports made available by Cloud Provider.
4. **Information Security Program.** Mark43 will implement and maintain a written information security program that contains reasonable administrative, technical and physical safeguards intended to protect Subscriber Data from unauthorized access, disclosure, use, modification, loss or destruction.
5. **Access.** Mark43 will maintain appropriate access controls to Subscriber Data, including limiting access to Subscriber Data only to personnel who require such access in order for Mark43 to provide Services to Subscriber or to otherwise exercise Mark43’s rights or perform Mark43’s obligations under this Agreement. Mark43 will require its personnel to protect Subscriber Data in accordance with the requirements of this DPA and will provide its personnel with appropriate information security training.
6. **Information Security.**
 - a. Mark43 maintains its information security program and applicable safeguards at all Mark43 sites at which an information system that stores or otherwise processes Subscriber Data is located.
 - b. Mark43 maintains network security using commercially available equipment and industry standard techniques, including firewalls, router access control lists, intrusion detection and/or prevention systems, penetration testing, vulnerability scanning, and patch management tools.
 - c. Mark43 will encrypt, using industry-standard encryption tools, all Subscriber Data that Mark43: (i) transmits or sends wirelessly or across public networks; (ii) stores on laptops or removable storage media; and (iii) stores on portable devices. Mark43 will safeguard the confidentiality and availability of all encryption keys associated with encrypted Subscriber Data.
 - d. Mark43 installs and maintains endpoint security measures such as anti-virus and malware protection software intended to protect Subscriber Data from malicious code.
 - e. Mark43 undertakes appropriate logging and monitoring to enable recording of information security-related actions and identification of anomalous events.
 - f. Mark43 develops software used to deliver the Services in accordance with secure software development principles.
7. **Security Incident Management.** Unless otherwise prohibited by law, Mark43 will notify Subscriber promptly (and in any event within seventy-two (72) hours) in the event Mark43 reasonably believes that there has been any unauthorized access, acquisition, disclosure, use, modification, loss or destruction of Subscriber Data (“**Security Incident**”). Mark43 will promptly investigate the Security Incident, will take necessary steps to eliminate or contain the exposure of Subscriber Data, and will keep Subscriber informed of the status of the Security Incident. Mark43 will provide reasonable assistance and cooperation requested

by Subscriber or Subscriber's designated representatives to correct, remediate, or investigate the Security Incident or to mitigate potential damage resulting from it, including any notification that Subscriber may determine appropriate to send to affected individuals, regulators or third parties.

8. **Business Continuity.** Mark43 implements appropriate disaster recovery and business continuity plans and reviews and updates such plans regularly. Back-up copies of critical business information and software are created regularly and tested to verify their integrity.
9. **Audits.** Upon Subscriber's request, Mark43 will make available to Subscriber up to once per year a copy of a third-party assessment, such as a SOC 2 report or comparable report ("**Third-Party Report**"), if Mark43 has obtained such a Third-Party Report for the Services; or if Mark43 has not obtained a Third-Party Report for the Services, Subscriber may provide to Mark43 a security assessment questionnaire related to the Services, which Mark43 will accurately and promptly complete. Such a questionnaire must be reasonable in scope and may include questions seeking verification of compliance with the terms and conditions of this DPA. All Third-Party Reports or information accessed by or otherwise disclosed to Subscriber in connection with any such review will be considered Confidential Information of Mark43.
10. **Return/Disposal.** Upon termination or expiration of this Agreement, Mark43 will cease handling Subscriber Data and will take reasonable steps to return or destroy Subscriber Data according to the timeframes set out in Schedule B of this Agreement. If Mark43 has any legal obligation to retain Subscriber Data beyond the periods otherwise specified by Schedule B, Mark43 will notify Subscriber in writing of that obligation, to the extent permitted by applicable law, and will return or destroy the Subscriber Data in accordance with this DPA as soon as possible after that legally required retention period has ended. If Mark43 disposes of any paper, electronic or other record containing Subscriber Data, Mark43 will take all reasonable steps to do so by: (a) shredding; (b) permanently erasing and deleting; (c) degaussing; or (d) otherwise modifying Subscriber Data in such records to make it unreadable, unreconstructable and indecipherable.
11. **Location of Subscriber Data.** Subscriber Data stored or transmitted through the SaaS Services in Subscriber's user accounts shall be hosted by a Cloud Provider in the United States.

SCHEDULE E

Order Form

1. **Services.** The Services covered by this Agreement consist of the following:
SaaS Services with respect to the following Applications:
Professional Services as detailed in the Statement of Work.
2. **Subcontractors.**
3. **Initial Term.** The Initial Term is the _____ year period commencing on the Effective Date.
4. **Renewal Terms.** Any Renewal Terms shall be for a period of one (1) year.
5. **Fees.** For the Initial Term, the following Fees will apply:
[To be inserted]
6. **Payment Schedule.**
 - a. Initial Term: Subscriber will pay the Fees detailed in Section 5 above according to the following schedule during the Initial Term.
[To be inserted]
 - b. Renewal Term: Fees for any Renewal Term will be paid in full in advance on the first day of the Renewal Term.