

SOFTWARE LICENSE AND SERVICES AGREEMENT

This Software License and Services Agreement (this “**Agreement**”) is effective as of _____, 2020 (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 the City of Napa, a California charter city (“**Subscriber**”), with a place of business at 955 School Street, Napa, CA 94559.

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

1. DEFINITIONS.

- 1.1 Defined Terms.** Defined terms have the meanings set forth in this Article 1 (Definitions) and elsewhere in this Agreement when capitalized, and may be read in singular, plural or an alternative tense as the context requires.
- 1.2 “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.
- 1.3 “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 Records Management System and other applications as described in **Schedule A.**
- 1.5 “Authorized User”** means an employee or independent contractor of Subscriber (solely to the extent such contractor is providing services to Subscriber), the County of Napa or another Affiliate, in each case who has been authorized by Subscriber to use the SaaS Services.
- 1.6 “Documentation”** means the user guides and user manuals for the SaaS Services that Mark43 provides to Subscriber.
- 1.7 “Go-Live”** means the date of cutover to each respective Mark43 Application.
- 1.8 “Interface Control Document”** means the agreement, if applicable, governing any integrations with Third Party Applications.
- 1.9 “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.
- 1.10 “Professional Services”** means the evaluation, consultation, implementation, customization, configuration and other professional services being provided by Mark43 in connection with the SaaS Services.
- 1.11 “Regular Usage Period”** for any Application is the period commencing upon the occurrence of Go-Live for that Application.
- 1.12 “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.
- 1.13 “Services”** means the services provided or required to be provided by or through Mark43 pursuant to this Agreement, including without limitation, SaaS Services and Professional Services.
- 1.14 “Software”** means the object code version of Mark43’s computer software and all Updates made available by Mark43 to Subscriber under this Agreement.

- 1.15 **"Statement of Work"** means the Implementation Statement of Work agreed upon by the Parties in connection with this Agreement and incorporated herein by reference.
- 1.16 **"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 Third-Party Application, excluding any Third-Party Data and any Mark43 Data.
- 1.17 **"Term"** means the Initial Term and any Renewal Terms.
- 1.18 **"Third-Party Application"** means a third-party service (provided by a Third-Party Provider) approved by Mark43 and which may be connected to the SaaS Services via an application programming interface or other means.
- 1.19 **"Third-Party Components"** means any components of the SaaS Services from time to time that are provided by Vendors (e.g., Google Maps).
- 1.20 **"Third-Party Data"** means any data owned by a Vendor or other third party that Mark43 provides to Subscriber via the SaaS Service.
- 1.21 **"Third-Party Provider"** means third parties, including other vendors, state agencies and local agencies with whom Subscriber holds the direct relationship and/or directly contracts and that control products and/or databases with which Mark43 SaaS Services are to be interfaced.
- 1.22 **"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.
- 1.23 **"Vendors"** means third parties with whom Mark43 contracts to provide components of the SaaS Services, and includes without limitation, Amazon Web Services (for platform hosting) and Google (for Google Maps).
- 1.24 **"Website"** means any Internet website through which Mark43 provides the SaaS Services under this Agreement.

2. SERVICES.

- 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 without limitation as set forth in **Schedule C, "Technical Requirements."** 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 shall provide certain Professional Services in connection with the SaaS Services as further described on **Schedule A** and in 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. Mark 43 shall perform the Professional Services in accordance with the requirements set forth in the Statement of Work. Subscriber may request adjustments of the Professional Services being delivered in accordance with the change control process outlined in the Statement of Work; associated Fees will be updated accordingly.
- 2.3 **Access to Documentation.** Mark43 will provide Subscriber with access to the Documentation, as may be updated from time to time, via the Website or other means. 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.** Mark43 will provide a 24/7 telephone-based help desk through which it will respond to inquiries about the SaaS Services from Subscriber via telephone. Mark43 also provides a 24/7 email-based help desk for the SaaS Services as set forth in **Schedule A.**
- 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) use the SaaS Services or the Third-Party Data in violation of any Applicable Law; (x) introduce into the Services any viruses, worms, defects, Trojan horses, malware, or any items of a destructive nature; (xi) use the Services to post advertising or listings; (xii) use the Services to defame, abuse, harass, stalk, or threaten others; (xiii) permit access or use of the Services by any individual outside the United States; (xiv) hide or obscure any Authorized User's location; (xv) 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 Subscriber or its Authorized Users are 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 Additional Terms, as defined in Section 2.10 below.

- 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. Per CJIS Security Policy (Section 5.5.2.2(1.)), concurrent usage (or sign in) will be limited to those activities authorized by Subscriber, based on its operational business needs. Subscriber expects that individual officers will need to access the SaaS Services on multiple devices at the same time (e.g., their cell phone and their mobile data computer) using their unique login ID. Under no circumstances will Subscriber permit multiple users to share the same ID. Subscriber is responsible for all activities conducted within user accounts in use of the SaaS Services. Subscriber shall comply with all 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 Title.** As between Mark43 and Subscriber, Mark43 retains title to and ownership of the SaaS Services, including all copyrights and other Intellectual Property Rights relating thereto. Mark43's licensors and Vendors retain title to and ownership of the Third-Party Data and the Third-Party Components, including all copyrights and other intellectual property rights relating thereto. Subscriber will have no rights with respect to the SaaS Services, the Third-Party Data or the Third-Party Components other than those expressly granted under this Agreement. Any suggestions for changes or improvements to Services that Subscriber provides to Mark43, whether solicited by Mark43 or not, shall be owned by Mark43 and Subscriber hereby irrevocably assigns, and shall assign, to Mark43 all right, title, and interest in and to such suggestions. Mark43 shall have no obligation to incorporate such suggestion into its products or Services.
- 2.8 Subscriber Data.** As between Mark43 and Subscriber, Subscriber owns and shall retain all right, title, and interest, including, without limitation, all Intellectual Property Rights, in and to the Subscriber Data. Subscriber shall have the sole responsibility for the accuracy, quality, and legality of the Subscriber Data, including obtaining all rights and consents necessary to share the Subscriber Data with Mark43 as set forth in this Agreement. Notwithstanding anything to the contrary contained herein, Subscriber hereby grants to Mark43 an irrevocable, worldwide, royalty free, non-exclusive, transferable, sublicensable license to use the Subscriber Data in anonymized and/or aggregated form to: (a) provide the SaaS Services to Subscriber and/or other Mark43 customers, provided that Mark43 makes available to Subscriber functionality and services based on similar data obtained from other Mark43 customers that are similar to the functionality and services provided to such other customers based on such data and that Mark43 may not sell or offer for sale any Subscriber Data; (b) analyze the Subscriber Data in order to operate, maintain, manage, and improve the SaaS Services, create new products and services, and share and/or license this aggregate data to

Affiliates, agents, business partners, and other third parties; and (c) for Mark43's internal purposes to improve the Applications, Software, and related services, and any other uses disclosed in or related to performance under this Agreement or the Statement of Work.

- 2.9 Third-Party Applications.** If Subscriber installs or enables a Third-Party Application for use with the SaaS Services, Subscriber grants (and will cause the applicable third party to grant) Mark43 permission to access Subscriber Data stored on that Third-Party Application as required for the interoperation of that Third-Party Application with the SaaS Services. In no event will Mark43 be responsible for any Third-Party Application, or for any failure of a Third-Party Application to properly interoperate with the SaaS Services. If Mark43 receives information that a Third-Party Application may violate any Applicable Laws or third-party rights, Subscriber will, promptly upon receiving notice of the foregoing from Mark43, disable any connection between such Third-Party Application and the SaaS Services to resolve the potential violation (and if Subscriber fails to promptly disable such connection, Mark43 shall have the right to do so). In addition, in the event that Subscriber fails to properly obtain the grant of rights for Mark43 to access and use Subscriber Data stored on Third-Party Applications or for Third-Party Data as required for the interoperation of such Third-Party Applications, Subscriber shall defend, indemnify, and hold harmless Mark43 from any and all claims based on Mark43's use of such Third-Party Applications or Third-Party Data in connection with this Agreement and the Services being provided hereunder.
- 2.10 Third-Party Components.**
- (a) **Use of Third-Party Components.** Mark43 may use Vendors to subcontract the performance of its duties and obligations hereunder and to provide certain functions of the Services, including without limitation, hosting and data analysis. Certain Vendor policies and terms and conditions of service shall apply to the Services. Such terms, or URL locator addresses for such terms are provided on Schedule D, as may be amended in writing from time to time ("Additional Terms"). If any of the Vendors and/or licensors of the Third-Party Components require Mark43 to flow down any Additional Terms to Subscriber, Subscriber's use of such Third-Party Components, as incorporated into the SaaS Services, shall be subject to such Additional Terms. In the event of any inconsistency or conflict between the Additional Terms and the terms of this Agreement, such Additional Terms shall govern with respect to Subscriber's use of the applicable Third-Party Component.
 - (b) **DISCLAIMER REGARDING THIRD-PARTY COMPONENTS.** MARK43, NOT BEING THE PROVIDER OR MANUFACTURER OF THE THIRD-PARTY COMPONENTS, NOR THE PROVIDERS' OR MANUFACTURERS' AGENT, MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE THIRD-PARTY COMPONENTS AND DISCLAIMS ANY SUCH WARRANTIES THAT MIGHT OTHERWISE EXIST.
- 2.11 Third-Party Data.** Subscriber shall access and use the Third-Party Data in accordance with the terms and conditions of the agreement between the Subscriber and the provider of such Third-Party Data. MARK43, NOT BEING THE PROVIDER OR MANUFACTURER OF THE THIRD-PARTY DATA, NOR THE PROVIDERS' OR MANUFACTURERS' AGENT, MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE THIRD-PARTY DATA AND DISCLAIMS ANY SUCH WARRANTIES THAT MIGHT OTHERWISE EXIST.
- 2.12 Agreements with Third-Party Providers.** Subscriber, and not Mark43, is solely responsible for establishing any required agreement(s) and/or statement(s) of work with Third-Party Providers in connection with the interfaces, and for paying all fees, costs and expenses of Third-Party Providers.
- 2.13 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. The foregoing sentence does not in any way diminish Mark43's responsibility to deliver interfaces that are compatible with agreed-upon third-party software or equipment as set forth in this Agreement and the Statement of Work.
- 2.14 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. FEES AND PAYMENT TERMS.

- 3.1 Fees for Mark43 Services.** Subscriber will pay Mark43 fees as stated in Section 4 of **Schedule A** (the “**Fees**”) attached hereto in accordance with the payment schedule set forth in Section 5 of **Schedule A**. 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. Unless prohibited by local law, overdue payments will accrue interest at the lesser of one and one-half percent (1.5%) per month or the maximum allowable interest under Applicable Law, from due date until paid.
- 3.2 Third-Party Data and Third-Party Components.** Additional fees may apply to the use of certain Third-Party Data and Third-Party Components, which if provided by Mark43, such fee may be included within the Fees. Mark43 may pass through any increase in such fees for Third-Party Components or Third-Party Data, relating to any existing Services, by giving Subscriber thirty (30) days’ advance notice; provided however, in no case shall such increase exceed the lesser of three percent (3%) or the percentage increase in the trailing twelve (12) month average San Francisco Bay Area Consumer Price Index.
- 3.3 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.

4. TERM AND TERMINATION.

4.1 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 A**, unless and until terminated in accordance with Section 4.2 (the “**Initial Term**”).
- (b) Renewal Terms. This Agreement may be renewed by Subscriber as set forth on **Schedule A** by providing Mark43 with written notice of renewal at least thirty (30) days prior to the expiration of the then-current term (each, a “**Renewal Term**”).

4.2 Temporary Suspension and Termination.

- (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 Breach by Subscriber. If Mark43 reasonably determines that Subscriber’s use of the Services either: (i) fails to comply with the Restrictions on Use in Section 2.5; (ii) poses a security risk to the Services or any third party, (iii) creates or is likely to create an adverse impact on Mark43’s systems, the Services, or the systems or content of any other subscriber; or (iv) subjects Mark43 or its Affiliates to possible liability, then Mark43 may immediately upon notice temporarily suspend Subscriber’s and any Authorized User’s right to access any portion or all of the Services, pending remedial action by Subscriber, or after a period of 30 days, terminate the Services.
- (c) Termination for Convenience. Subscriber may terminate this Agreement at any time without cause upon sixty (60) days’ prior written notice to Mark43. Termination shall be effective on the date set forth in the City’s notice. Upon termination under this paragraph, Mark43 shall be entitled to compensation for all Services rendered prior to the effective date of termination.
- (d) 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 the 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 the Agreement, Subscriber may terminate the Agreement by giving Mark43 not

less than 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 beyond the Transition Assistance included herein.

4.3 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.

4.4 Survival. The following provisions will survive any termination or expiration of this Agreement: Section 2.8 ("Subscriber Data"), Section 2.10 ("Third-Party Components"), Section 2.11 ("Third-Party Data"), Section 4.3 ("Effect of Termination"), Section 5 ("Confidentiality"), Section 6.2 ("No Other Warranties"), Section 7 ("Limitation of Liability"), Section 8 ("Indemnification"), Section 10 ("Miscellaneous"), **Schedule B** ("Transition Assistance") and this Section 4.4 ("Survival").

5. CONFIDENTIALITY.

5.1 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. Notwithstanding anything to the contrary set forth herein, to the extent required to be disclosed pursuant to any Public Records Request (as defined in Section 5.6(a) below), the terms of this Agreement shall not be deemed to be "Confidential Information."

5.2 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 5.4 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.

5.3 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).

5.4 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.

5.5 Compelled Disclosure. A disclosure by one party of Confidential Information of the other party to the extent required by Applicable Laws 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.

5.6 Public Records.

- (a) For purposes of this Section 5 (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) Notwithstanding anything contained in this Section 5 (Confidentiality), in the event that Subscriber or any Affiliate receives a Public Records Request seeking the disclosure of Confidential Information of Mark43 or any other records relating to Mark43 or the Mark43 Service, Subscriber shall provide notice to Mark43 within at least two (2) business days of Subscriber's receipt of the request. Subscriber shall specifically identify any such records that Subscriber intends to disclose and, if such records exceed ten (10) individual documents, Subscriber shall also provide electronic copies of such records to Mark43, in each case no fewer than eight (8) business days prior to disclosure (and if eight (8) business days is not practicable, in no event fewer than five (5) business days), provided that nothing herein shall constitute a waiver of any right of Mark43 under applicable law to obtain additional time to review the records prior to disclosure. Nothing herein is intended to relieve Subscriber from complying, at its own expense, with any obligations to assert defenses to Public Records Request disclosures. Mark43 believes that disclosure of its Confidential Information would cause substantial competitive harm to Mark43.

5.7 Information Collected Through SaaS Services. Subscriber is solely responsible for compliance with applicable laws related to the manner in which Subscriber chooses to use the Services, including Subscriber's transfer and processing of Subscriber Data. Subscriber understands and agrees that when it uses certain features of the SaaS Services, certain information and data may be collected from Authorized Users, including monitoring and recording activity, and tracking physical location, which may include personal identifying information. Subscriber agrees that Mark43 may use such information to (i) provide more effective Services, (ii) to develop and test its Services, (iii) to aggregate such information and combine it with that of other Users, and (iv) to use anonymous aggregate data to improve the Services or for marketing, research or other business purposes. Provision of Services may involve the disclosure of such information to Vendors or Affiliates on the condition that they agree to treat such information in a manner substantially in accordance with this Agreement. Subscriber may revoke its consent to Mark43's collecting and using such data at any time by written notice to Mark43; provided, however, that Subscriber agrees that such revocation of consent may impair or render impossible the Subscriber's use of the SaaS Services.

5.8 CJIS Standards; Employee Background Checks.

- (a) Subscriber understands and agrees that Mark43 utilizes Vendors ("**Hosting Providers**") to host the SaaS Services. As of the Effective Date of this Agreement, Mark43 utilizes Amazon Web Services (AWS) as its Hosting Provider for 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, or if Subscriber is located in the State of California, Mark43's CLETS host agency, will have the opportunity to run background checks on Mark43 employees that will have direct access to Subscriber Data in the 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.

6. REPRESENTATIONS AND WARRANTIES.

6.1 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.

- 6.2 No Other Warranties.** Use of the SaaS Services is not intended to be a substitute for the professional judgment of dispatchers, law enforcement officers, or first responders. The SaaS Services do not provide legal advice. Subscriber shall be responsible for all its own actions or failure to act in connection with the SaaS Services. THE SERVICES, THE THIRD-PARTY COMPONENTS, AND THE THIRD-PARTY DATA ARE PROVIDED "AS IS." MARK43 ASSUMES NO RESPONSIBILITY OR RISK FOR SUBSCRIBER'S USE OR MISUSE OF, OR FAILURE TO USE, THE INFORMATION PROVIDED THROUGH THE SAAS SERVICES. DUE TO THE NATURE OF SOFTWARE AND THE INTERNET, MARK43 CANNOT GUARANTEE THAT EVERY ERROR IN THE SAAS SERVICES OR PROBLEM RAISED BY SUBSCRIBER WILL BE RESOLVED. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 6 NEITHER PARTY MAKES ANY WARRANTY IN CONNECTION WITH THE SERVICES, THE THIRD-PARTY COMPONENTS, THE THIRD-PARTY DATA OR THIS AGREEMENT AND HEREBY DISCLAIMS ANY AND ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING ALL IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, ERROR-FREE OR UNINTERRUPTED OPERATION OR THAT THE SERVICES, THIRD-PARTY COMPONENTS AND THIRD-PARTY DATA ARE UP TO DATE, ACCURATE OR COMPLETE, SECURE FROM LOSS OR DAMAGE, OR FREE OF HARMFUL COMPONENTS, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. To the extent that a party may not as a matter of Applicable Law disclaim any implied warranty, the scope and duration of such warranty will be the minimum permitted under such law.

7. LIMITATION OF LIABILITY.

- 7.1 Liability Exclusion.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR FOR ANY OTHER DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE FURNISHING, PERFORMANCE, OR USE, OR FAILURE OF THE SERVICES, THE THIRD-PARTY COMPONENTS OR THE THIRD-PARTY DATA PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, PERSONAL INJURY, DEATH, DAMAGE TO PROPERTY, ENVIRONMENTAL DAMAGE, LOSS OF PROFITS, REVENUES, ANTICIPATED SAVINGS, CUSTOMERS, OPPORTUNITIES, DAMAGE TO PRIVACY, REPUTATION OR GOODWILL OR UNAVAILABILITY OF THE SERVICES, REGARDLESS OF WHETHER THE PARTY LIABLE OR ALLEGEDLY LIABLE WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.
- 7.2 Limitation of Damages.** MARK43'S MAXIMUM LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER, REGARDLESS OF THE CAUSE OF ACTION (WHETHER IN CONTRACT, TORT, BREACH OF WARRANTY OR OTHERWISE), WILL NOT EXCEED THE AGGREGATE AMOUNT OF THE FEES PAID AND PAYABLE TO MARK43 BY SUBSCRIBER DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM ARISES; PROVIDED HOWEVER, THAT MARK43'S INDEMNITY OBLIGATIONS PURSUANT TO SECTION 8.1(iii) SHALL NOT EXCEED THE AGGREGATE AMOUNT OF THE FEES PAID AND PAYABLE TO MARK43 BY SUBSCRIBER DURING THE TWENTY-FOUR (24) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM ARISES. MARK43 SHALL HAVE NO LIABILITY ARISING OUT OF OR RELATING TO THE THIRD-PARTY COMPONENTS OR THE THIRD-PARTY DATA.
- 7.3 Exceptions.** NOTWITHSTANDING THE FOREGOING, THE EXCLUSIONS AND LIMITATIONS OF LIABILITY SET FORTH IN SECTION 7.1 AND SECTION 7.2 SHALL NOT APPLY TO DAMAGES ARISING FROM EITHER PARTY'S INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT (OTHER THAN MARK43'S OBLIGATIONS PURSUANT TO SECTION 8.1(iii)) OR EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

8. INDEMNIFICATION.

- 8.1 Indemnification by Mark43.** Mark43 will defend, indemnify and hold harmless Subscriber and its Authorized Users, and each of its elected and appointed officials, officers, agents, volunteers and employees from any and all claims, liabilities, costs and expenses (including reasonable attorney's fees and expert and consulting fees) in connection with any third-party claim arising after the Effective Date: (i) resulting from Mark43's gross negligence or willful misconduct; (ii) resulting from the actual or alleged violation of Applicable Law by Mark43 or any Affiliate, employee, agent or independent contractor of Mark43; (iii) resulting from Mark43's breach of this Agreement; or (iv) that the use of the

SaaS Services (excluding any open source software) in accordance with this Agreement infringes or misappropriates the United States intellectual property rights of a third party; provided, however, that the foregoing obligations shall be subject to Subscriber (a) promptly notifying Mark43 of the claim, (b) providing Mark43 with reasonable cooperation in the defense of the claim when Subscriber becomes aware and (c) providing Mark43 with sole control over the defense and negotiations for a settlement or compromise; provided, however, that Mark43 shall not enter into any such settlement without Subscriber's prior written consent, which consent will not be unreasonably withheld, and that Subscriber shall be permitted to participate in the defense of any such claim, at its own expense, with counsel of its choosing. Notwithstanding the foregoing, Mark43 shall have no obligation with respect to a third-party claim to the extent the third-party claim arises from: (s) claims arising out of acts or omissions of Subscriber or its users, employees or contractors; (t) claims brought by Subscriber or its Affiliates or Authorized Users; (u) claims arising from the use of old versions of software after receipt of modified or updated versions of software; (v) claims arising from the use of Third-Party Applications, Third-Party Components or Third-Party Data unless such claims are caused in whole or in part by the active negligence or willful misconduct of Mark43; (w) claims arising from any data, product specifications, information or materials provided by Subscriber hereunder, when used in connection with the SaaS Services or any customization or configuration made to the SaaS Service proposed by or provided by Subscriber under a Statement of Work; (x) use of the SaaS Services in combination with modules, apparatus, hardware, software, or services not authorized by Mark43 or specified in the Documentation for use with the SaaS Services; (y) use of the SaaS Services in a manner that is not in accordance with this Agreement or the Documentation; (z) the alteration or modification of the SaaS Services by a party other than Mark43, unless such alterations and modifications were authorized by Mark43 or specified in the Documentation for use with the SaaS Services.

- 8.2 Indemnification by Subscriber.** Except where prohibited by law, Subscriber will defend, indemnify and hold harmless Mark43 and its Affiliates, and each of their officers, directors, managers, shareholders, members and employees from any and all claims, liabilities, costs and expenses (including reasonable attorney's fees and expert and consulting fees) in connection with (I) any third-party claim arising from or relating to (i) any allegation that any data, product specifications, information or materials provided by Subscriber hereunder, including, without limitation, the Subscriber Data and Third-Party Applications, when used in connection with the SaaS Services or any customization or configuration made to the SaaS Service proposed by or provided by Subscriber under a Statement of Work: (a) infringes or misappropriates any Intellectual Property Rights of a third party, or (b) violates any Applicable Laws; (ii) the actual or alleged violation of Applicable Law by Subscriber, any Authorized User, or any Affiliate, employee, agent or independent contractor of Subscriber; or (iii) Subscriber's breach of this Agreement; provided, however, that the foregoing obligations shall be subject to Mark43 (x) promptly notifying Subscriber of the claim, (y) providing Subscriber with reasonable cooperation in the defense of the claim and (z) providing Subscriber with sole control over the defense and negotiations for a settlement or compromise; provided, however, that Subscriber shall not enter into any such settlement without Mark43's prior written consent, which consent will not be unreasonably withheld, and that Mark43 shall be permitted to participate in the defense of any such claim, at its own expense, with counsel of its choosing; (II) disabling a connection to a Third-Party Application at Subscriber's request; (III) Subscriber's actions or failure to act, resulting in any third-party claim for personal injury or death, damage to personal property or reputation, environmental damage, interference with contract or employment, or violation of privacy; (IV) any request pursuant to a judicial or governmental order or other similar process, including but not limited to a subpoena or FOIA request or discovery request, seeking the disclosure of any Subscriber Data or other information collected or maintained by Mark43 in connection with the SaaS Services. In no event shall Clause (IV) include any Public Records Act request as defined in Section 5.6(a). 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 in Clause (IV) of this subsection unless and until Subscriber reaffirms that it will honor its indemnification obligations as provided herein.

9. INSURANCE.

- 9.1** Without limiting Mark43's indemnification obligations in section 10, Mark43 will procure and maintain throughout the Term, the following policies of insurance and endorsements from insurers (if other than the State Compensation Fund) with a current A.M. Best rating of no less than A:VII or its equivalent against injury/death to persons or damage to property which may arise from or in connection with the activities hereunder of Mark43, its agents, employees or subcontractors:

- (a) General Liability Policy. Comprehensive or Commercial General Liability Insurance (“**CGL**”) at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), in an amount of \$1,000,000 per occurrence. If the Services involve explosive, underground or collapse risks, XCU will be included. If a general aggregate limit is used, either the general aggregate limit will apply separately to this Agreement or the general aggregate will be twice the required occurrence limit.
- (b) Automobile Liability Policy. Automobile liability insurance with coverage at least as broad as ISO Form numbers CA 0001 06 92, Code 1 (any auto), for owned vehicles used in the performance of this Agreement with minimum coverage of not less than \$1,000,000 per accident, combined single limit.
- (c) Workers’ Compensation. Workers’ Compensation insurance meeting statutory limits of the Labor Code. The workers’ compensation policy will contain or be endorsed to contain a waiver of subrogation against Subscriber, its officials, officers, agents, and employees.
- (d) Professional Liability. Professional liability insurance insuring against Mark43’s errors and omissions in performing the Services, with a policy limit of at least \$1,000,000. The professional liability insurance will include prior acts coverage sufficient to cover all Services provided by Mark43, and which will remain in effect for four years following expiration or termination of this Agreement.

9.2 Endorsements. The CGL and automotive liability policies will contain or be endorsed with the following provisions:

- (a) Subscriber, its officers, elected or appointed officials, employees, volunteers, and agents, are included as additional insureds for liability arising out of the operations performed by or on behalf of Mark43.
- (b) Mark43’s insurance is primary and no insurance held by Subscriber will be called upon to contribute to a loss.
- (c) The inclusion of more than one insured will not operate to impair or limit the rights of one insured against another, and the coverage will apply as though separate policies have been issued to each insured.

9.3 All Policies.

- (a) For all insurance policies required under this Agreement, following the execution of this Agreement and upon Subscriber’s request, Mark43 will furnish the City with certificates and original endorsements effecting the required coverage. Mark43 will provide notice to Subscriber of the cancellation of any of the policies required hereunder. Each required policy will include an endorsement providing that the insurer agrees to waive any right of subrogation it may have against the City. The endorsements will be on forms provided by Subscriber or as approved by Subscriber’s Risk Manager.

For all insurance policies required under this Agreement, prior to the execution of this Agreement, Mark43 will furnish the Subscriber with certificates and original endorsements effecting the required coverage. Each certificate of insurance (except for that of the Professional Liability policy) will state that the coverage afforded by the policy or policies will not be cancelled, or allowed to expire without at least 30 days’ written notice to Subscriber, unless due to non-payment of premiums, in which case at least 10 days written notice is required. Additionally, Mark43 will provide notice to Subscriber of the cancellation of any of the policies required hereunder or the reduction of any of the policies below the limits required by the Subscriber as soon as practicable. Each required policy will include an endorsement providing that the insurer agrees to waive any right of subrogation it may have against the Subscriber. The endorsements will be on forms provided by Subscriber or as approved by Subscriber’s Risk Manager.

- (b) Any deductible or self-insured retention of \$100,000 or more will be disclosed to Subscriber prior to Subscriber’s execution of this Agreement and is subject to approval by Subscriber.
- (c) If Mark43 does not keep all required insurance policies in full force and effect, Subscriber may, in addition to other remedies under this Agreement, terminate or suspend this Agreement.

10. MISCELLANEOUS.

- 10.1 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:

City of Napa
1539 First Street
Napa, CA 94559
Attn: Gus Ulloth
Email: GULLoth@cityofnapa.org

Copy to:

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

Copy to:

City of Napa
1539 First Street
Napa, CA 94559
Attn: Imelda Preciado
Email: ipreciado@cityofnapa.org

- 10.2 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.
- 10.3 Governing Law.** This Agreement will be governed by the internal laws of the State of California, and any disputes between the parties may be resolved in a state or federal court of competent jurisdiction within the State of California. 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.
- 10.4 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 10.4 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.
- 10.5 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.

- 10.6 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.
- 10.7 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.
- 10.8 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.
- 10.9 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.
- 10.10 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.
- 10.11 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.
- 10.12 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.
- 10.13 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.
- 10.14 Compliance with Laws.** Each party shall comply with all Applicable Laws relating or pertaining to the Services and the use thereof. 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 End User 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 the 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.

10.15 Certain Waivers Unenforceable. Subscriber agrees that it will not ask Mark43, or any Mark43 employee or contractor, to sign a document that waives liability for property damage, injury, or death that occurs on Subscriber's real property or property (such as vehicles) that is owned or controlled by Subscriber, or in the course of performing a ride-along or comparable activity with Subscriber's personnel. Subscriber further agrees that any waiver signed by a Mark43 employee or contractor is null, void, and unenforceable against Mark43 and its employees and contractors.

10.16 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.

10.17 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: Services Schedule
- Schedule B: Transition Assistance
- Schedule C: Technical Requirements
- Schedule D: Additional Terms
- Schedule E: Data Processing Addendum

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.

CITY OF NAPA, a California charter city

By: _____

By: _____

Steve Potter, City Manager

Name: _____

Title: _____

ATTEST:

Date: _____

Tiffany Carranza, City Clerk

Date: _____
("Effective Date")

COUNTERSIGNED:

Joy Riesenber, City Auditor

APPROVED AS TO FORM:

Michael W. Barrett, City Attorney

SCHEDULE A**Services Schedule**

1. **Services.** The Services covered by this Agreement consists of the following:

- a. **Professional Services:** Professional Services are detailed in the Statement of Work.
- b. **SaaS Services:**
 - i. The Applications to be provided are described as follows:
 - A. ANALYTICS (ANA) SKUs

ANA 1: ANALYTICS BI SUITE VIEWER

Mark43's Analytics BI Suite Viewer includes the following capabilities:

- Interactive dashboards that update visualizations based on filters and legends.
- Drill into data points on visualizations for additional details and analysis.
- Mark43 RMS clients will be able to link from the interactive dashboards directly to Mark43 RMS reports and cases.
- Segment (Pivot) and Filter by any available data explorer field to narrow down queries.
- Visualize lat/long coordinates with pin and heat mapping functionality.
- Visualize data with tables, column graphs, bar graphs, scatter plots, line graph, area graph, pie chart, single value, funnel, timeline and donut graphics.
- Save dashboards for future access.
- Share dashboards with other Analytics Viewer and Explorer users at the department.
- Export data into a variety of formats (Text, Excel, CSV, JSON, HTML, Markdown and PNG).
- Data from RMS/CAD modules is available in near-real-time
- Analytics Viewer licenses provide licensees the ability to view and export business intelligence (BI) dashboards that are either (a) provided in Mark43's default BI suite or (b) created and shared by an Analytics Explorer of Subscriber. The number of user licenses for Analytics Viewers will be specified below.

ANA 1 SPECIFICATIONS/FEATURES:

- View/export business intelligence dashboards provided by Mark43
- View/export business intelligence dashboards created and shared by a Subscriber Analytics Explorer user.

ANA 2: ANALYTICS BI SUITE EXPLORER

Mark43's Analytics BI Suite Explorer includes the following capabilities:

- Interactive dashboards that update visualizations based on filters and legends.
- Drill into data points on visualizations for additional details and analysis.
- Mark43 RMS clients will be able to link from the interactive dashboards directly to Mark43 RMS reports and cases.
- Segment (Pivot) and Filter by any available data explorer field to narrow down queries.
- Visualize lat/long coordinates with pin and heat mapping functionality.
- Visualize data with tables, column graphs, bar graphs, scatter plots, line graph, area graph, pie chart, single value, funnel, timeline and donut graphics.
- Save dashboards for future access.
- Share dashboards with other Analytics Viewer and Explorer users at the department.
- Export data into a variety of formats (Text, Excel, CSV, JSON, HTML, Markdown and PNG).
- Data from RMS/CAD modules is available in near-real-time
- Analytics Explorer licenses provide licensees the ability to perform all the actions of an Analytics View user plus the ability to create, modify and delete business intelligence dashboards. Analytics Explorer users can share their business intelligence dashboards with all of the Analytics Viewer and Analytics Explorer users of Subscriber. Analytics Explorer users can explore the data from any Data Explorer based Dashboard. The number of user licenses for Analytics Explorer Users will be specified below.

ANA 2 SPECIFICATIONS/FEATURES:

- Analytics Explorer users can perform all the actions of an Analytics View user plus the ability to create, modify and delete business intelligence dashboards.
- Analytics Explorer users can share their business intelligence dashboards with all of the Analytics Viewer and Analytics Explorer users of Subscriber.
- Analytics Explorer users can explore the data from any Data Explorer based Dashboard.

Subscriber understands and agrees that third party service providers may impose additional license, warranty and other terms on Subscriber. Subscriber agrees to enter into additional agreements as reasonably required by such third parties and Mark43, including, without limitation, a different warranty/SLA addressing uptime and maintenance.

B. COMPUTER AIDED DISPATCH (CAD) SKUs

N/A

C. DATA LAKE (DLK) SKUs**DLK 1: DATA LAKE - BASE**

Provision and support for Data Lake to be used for data backups and Mark43-developed integrations.

DLK 1 PRODUCT SPECIFICATIONS/FEATURES:

- Shared Read-Only Data Lake access
- 2 SQL user/svc accounts
- 2 active connections

Subscriber understands and agrees that third party service providers may impose additional license, warranty and other terms on Subscriber. Subscriber agrees to enter into additional agreements as reasonably required by such third parties and Mark43, including, without limitation, a different warranty/SLA addressing uptime and maintenance.

D. RECORDS MANAGEMENT SYSTEM (RMS) SKUs**RMS 1: RMS CORE**

Mark43 Core Platform supports advanced functionality around report writing; data sharing; locations, persons, and entity management; and field-based reporting. RMS Core includes Mark43 Records Compliance functionality, which enables records personnel to efficiently generate compliance-related information required by governing LE authorities. The Records Compliance module seamlessly generates the Federal NIBRS and SRS validations for officers, enabling workflows that ensure low error rates for submission, keep track of submissions, and generate the submission file from the data within the RMS.

RMS 1 PRODUCT SPECIFICATIONS/FEATURES:

- Arrest Reporting
- Case Management
- Case Supplemental Reporting
- Configurable Fields, Codes, and Validation Rules
- Field-Based Reporting
- Field Interviews / Racial profiling reporting
- File Attachments and Multimedia
- Gang Tracking
- Incident Reporting
- Location Verification / Resolution
- Master Entities / Name Index (Locations, Persons, Property, Organizations, and Vehicles)
- Missing Persons Reporting
- Multi-Agency Data Sharing
- Notifications and Agency-wide BOLO/Alerts

- PDF and CSV Exports
- Quick Search / Advanced Search
- Records Privacy (Sealing, Purging, and Expunging)
- Shapefile Management
- System Auditing
- Use of Force Reporting
- Tow / Impound Vehicle Reporting
- User Management
- Compliance code mapping for automated data capture
- View and create queue of reports needing records review
- Data validation during report submission to ensure compliant reporting
- Configurable fields and validation rules
- Ability for administrators to override automated SRS or NIBRS coding
- Automatically generate monthly SRS and NIBRS submissions
- NIBRS workspace features:
- View history of previous NIBRS submissions and re-download previous submissions
- Submission summary statistics to understand number of reports, number or reports with errors, and current error rates
- Interactive dashboard allowing users to directly access reports that contain submission errors and require updates
- Customized error message for improved usability and step-by-step instructions for resolving errors

RMS 2: RMS CASE MANAGEMENT MODULE

The Mark43 Case Management module that enables detectives to seamlessly use the RMS to manage their cases. Incidents that require further investigation or follow-up may be referred to an investigator before they are closed or submitted to the prosecutor for a charging decision. Depending on the department's size and policies, the assignment may be made to a patrol officer, generally the officer who responded to the original incident, or the department's investigative unit. Functionality of this module requires RMS 1: RMS Core.

RMS 2 PRODUCT SPECIFICATIONS/FEATURES:

- View and create case assignment and routing queues
- Assign lead investigator, supervisors, and assigned unit
- Configurable case due dates and reminders
- Create and assign tasks and set due dates
- Create case notes for internal activity tracking
- View and download case associated files and multimedia
- Export case information to PDF
- Search and sort cases by a number of criteria, including date, assignee, investigative unit, status, and more
- Configurable case type templates
- Configurable role-based Case Management permissions and abilities
- Robust audit logs and activity tracking
- View case history from initial assignment through final disposition
- Separate statuses for compliance reporting (UCR/NIBRS) and internal case status tracking
- Seamless integration between Case Management and RMS reporting and master entity profiles modules
- Availability of Case Management data in Analytics BI Suite for robust reporting capabilities
- Case review and approval workflows
- Automated triggered notifications and alerts
- Link related cases to one another

RMS 3: RMS PROPERTY AND EVIDENCE MANAGEMENT MODULE

Mark43 Property and Evidence Management Module and accompanying mobile application that supports the intake, management, auditing, and dispositioning of in-custody property and evidence. Includes: barcode and label generation; tracking chain-of-custody; configuration of storage

locations; configuration of chain-of-custody workflows; configuration of retention policies; ability to integrate with signature pads. Functionality of this module requires RMS 1: RMS Core.

RMS 3 PRODUCT SPECIFICATIONS/FEATURES:

- Seamless integration and data transfer between Property and Evidence Management Module with RMS reporting and master entity profiles
- Robust property and vehicle data collection including NIBRS and UCR mapped fields
- Cross-reference existing property and vehicles during data collection
- Item thermal label printing and barcode scanning for property and storage locations
- Chain-of-custody tracking and workflows
- Bulk evidence movement and processing
- Mobile evidence application for barcoding scanning, chain-of-custody updates, inventory/auditing, and more (Android supported)
- Signature pad hardware integration, as well as electronic signature capture through mobile evidence application
- Audit and inventory tools and reporting across storage locations and responsible personnel
- Configurable retention policies based on linked offense codes and reason for police custody of property
- Automated disposition requests upon retention policy expiration and release timers
- Automated triggered notifications and alerts
- Configurable notification routing for disposition requests and approvals
- Split items while maintaining integrity of chain-of-custody
- Property staff remarks
- Search and sort evidence across a variety of criteria
- Configurable storage location schema with up to ten layers of sub-locations
- Configurable role-based evidence permissions and abilities
- Support for unlimited property file and multimedia attachments
- Configurable evidence label export format
- CSV and PDF template exports available including receipts and pull-sheets

RMS 4: RMS WARRANTS MODULE

RMS module that enables warrant administrators to actively log and track warrants within the Mark43 RMS. Functionality of this module requires RMS 1: RMS Core.

RMS 4 PRODUCT SPECIFICATIONS/FEATURES:

- Track warrants within your jurisdiction
- Track internal records workflows
- Track and update warrant service activities
- Automated warrant status updates
- File and multimedia attachments
- Search and sort warrants across a variety of criteria
- Active warrant alerts on person profiles
- Configurable role-based warrant permissions and abilities
- Exporting abstracts, notices (letters), and warrant activities
- Entry and cancellation of warrants in external databases (State-run databases or NCIC) with purchase of DEX 2: RMS Data Exchange and PAR 3: Message Switch Integration)
- Seamless integration between Arrest/Booking modules, and the Warrants module
- Integrated and cross-referenced master entity profiles (Persons, Property, Organizations, and Vehicles)
- Automated warrant creation via integration, and capability to hand-enter warrant data
- Availability of Warrant data in Analytics BI Suite for robust reporting capabilities

RMS 5: RMS HANDHELD MOBILE COLLECTION

RMS module that enables warrant administrators to actively log and track warrants within the Mark43 RMS. Functionality of this module requires RMS 1: RMS Core.

RMS 5 PRODUCT SPECIFICATIONS/FEATURES:

- Touch ID and Face ID login
- Capture and view photos
- Create notes using speech-to-text
- Scan driver's licenses (select State support)
- Set current location on map using phone GPS
- Search and view integrated master entity profiles (Persons, Property, Organizations, and Vehicles)
- Search and view RMS reports
- Archive capability
- Seamless sync of data between mobile and web RMS applications
- Create and pre-fill RMS report using mobile collection data

2. **Initial Term.** The Initial Term is the six (6) year period commencing on the Effective Date.
3. **Renewal Terms.** Any Renewal Terms shall be for a period of five (5) years or such other period of time as is agreed upon by the parties.
4. **Fees:** For the Initial Term, the following Fees will apply. References to quantities below include County of Napa numbers to account for Services being delivered to Subscriber that it is passing through to the County of Napa.

Recurring Fees:

<i>Mark43 Product Subscription Recurring Fees</i>	<i>Qty (if applicable)</i>	<i>List Price</i>	<i>Price to Subscriber</i>
ANA 1: Analytics BI Suite Viewer	Not to exceed 196 licenses	\$23,520.00	\$10,584.00
ANA 2: Analytics BI Suite Explorer	Not to exceed 105 licenses	\$50,400.00	\$22,680.00
DLK 1: Data Lake Base	1	\$10,000.00	\$3,500.00
RMS 1: RMS Core	Not to exceed 186 sworn	\$223,200.00	\$86,450.40
RMS 2: RMS Case Management	Not to exceed 186 sworn	\$89,280.00	\$0
RMS 3: RMS Property and Evidence Management	Not to exceed 186 sworn	\$89,280.00	\$0
RMS 4: RMS Warrants	Not to exceed 186 sworn	\$89,280.00	\$0
RMS 5: Mobile Field Collection	Not to exceed 186 sworn	\$89,280.00	\$0
Subtotal - Mark43 Product Subscription		\$664,240.00	\$123,214.40
<i>Mark43 Professional Services Recurring Fees</i>	<i>Qty (if applicable)</i>	<i>List Price</i>	<i>Price to Subscriber</i>
Support & Maintenance - Interfaces	7	\$14,000.00	\$6,580.00
Subtotal - Mark43 Professional Services		\$14,000.00	\$6,580.00

<i>Partner Products or Services Recurring Fees</i>	<i>Qty (if applicable)</i>	<i>List Price</i>	<i>Price to Subscriber</i>
PAR 2: Third Party Terminal (via CLIPS Device licenses)	Not to exceed 25 device licenses	\$14,400.00	\$14,400.00
PAR 3: Third-Party Middleware Connector - Basic (via ConnectCIC)	Not to exceed 200 licenses	\$5,040.00	\$5,040.00
PAR 4: Third-Party Middleware Connector – Advanced (via ConnectCIC User License)	Not to exceed 25 licenses	\$2,829.60	\$2,829.60
PAR 5: State Proxy Emulator	Not to exceed 1	\$2,400.00	\$2,400.00
Subtotal - Partner Products or Services		\$24,669.60	\$24,669.60
Total Recurring Fees		\$702,909.60	\$154,464.00

*For the avoidance of doubt, this is the recurring fee that will serve as the baseline for the recurring fees to be charged during any Renewal Term. Additional increases may be applied at any time during the Initial Term if required quantities increase.

One-Time Fees:

<i>Mark43 Services – One-Time Fees</i>	<i>Qty (if applicable)</i>	<i>List Price</i>	<i>Price to Subscriber</i>
One-Time Subscription Prepayment	n/a	\$664,240.00	\$311,000.00
DCM 1: RMS Enterprise	One data source	\$150,000.00	\$150,000.00
DCM 4: Evidence Full	One data source	\$25,000.00	\$25,000.00
IMP 3: Implementation Services	n/a	\$200,000.00	\$198,080.00
Interface Development: Evidence.com (Axon)	n/a	\$15,000.00	\$11,750.00
Interface Development: I/CAD (Hexagon) - one way	n/a	\$75,000.00	\$35,250.00
Interface Development: BAIR Analytics (LexisNexis) - one way	n/a	\$15,000.00	\$11,750.00
Interface Development: Citations (most likely Brazos) - one way	n/a	\$15,000.00	\$11,750.00
Interface Development: Veripic (VieVu, now owned by Axon)	n/a	\$15,000.00	\$11,750.00
Interface Development: ArcGIS (Esri)	n/a	\$0.00	\$0.00
Interface Development: Coplogic (LexisNexis) - one way	n/a	\$0.00	\$0.00
Interface Development: Crossroads Traffic Collisions - one way	n/a	\$0.00	\$0.00
Interface Development: CJNET (Booking/Mugshots) - two way	n/a	\$15,000.00	\$11,750.00
Interface Development: CJNET (Warrants) - one way	n/a	\$75,000.00	\$0
Subtotal – Mark43 Services		\$1,264,240.00	\$778,080.00

<i>Partner Products or Services – One-Time Fees</i>	Scope	List Price	Price to Subscriber
Implementation Services for PAR 2: Third Party Terminal	4 days of onsite CommSys support	\$8,160.00	\$8,160.00
Implementation Services for PAR 3: Third Party Middleware Connector - Basic	Implementation for up to 200 licenses	\$1,920.00	\$1,920.00
Implementation Services for PAR 4: Third Party Middleware Connector - Advanced	Implementation for up to 25 licenses	\$1,920.00	\$1,920.00
Implementation Services for PAR 5: State Proxy Emulator	Implementation for 1 emulator	\$12,000.00	\$12,000.00
Subtotal - Partner Products or Services		\$24,000.00	\$24,000.00
Total One-Time Fees		\$1,288,240.00	\$802,080.00

Fees for Renewal Terms shall increase by the lesser of three percent (3%) or the percentage increase in the trailing twelve (12) month average San Francisco Bay Area Consumer Price Index.

5. Payment Schedule.

- a. Initial Term: Subscriber will pay the Fees detailed in Section 4 above according to the following schedule during the Initial Term.

Year	Details of Payments and Due Dates	Amount Due
1	Year 1 Payment, due according to the following schedule:	\$802,080.00
	- Upon Effective Date	\$320,832.00
	- Upon Approval of Project Plan	\$40,104.00
	- Upon Completion of Functional Testing	\$40,104.00
	- Upon Completion of Training	\$40,104.00
	- Upon Completion of Go-Live	\$160,416.00
	- Upon Final System Acceptance	\$200,520.00
2	Year 2 Payment, due at the first anniversary of the Effective Date or upon final system acceptance, whichever is later.	\$154,464.00
3	Year 3 Payment, due at the second anniversary of the Effective Date.	\$154,464.00
4	Year 4 Payment, due at the third anniversary of the Effective Date.	\$154,464.00
5	Year 5 Payment, due at the fourth anniversary of the Effective Date.	\$154,464.00
6	Year 6 Payment, due at the fifth anniversary of the Effective Date.	\$154,464.00
	6 YEAR TOTAL	\$1,574,400.00

- b. **Renewal Term:** Fees for any Renewal Term will be paid on an annual basis beginning on the first date of any such Renewal Term.
6. **Support Services.** As part of the SaaS Services, subject to Section 2.4, Mark43 shall establish, sufficiently staff and maintain the organization and processes necessary to provide telephone and/or email based technical support, troubleshooting, error identification, isolation and remediation, and other assistance directly to Subscriber and its Authorized Users to support Subscriber's use, deployment and validation of the SaaS Services on a 24x7 basis, and after normal business hours and on holidays, as necessary to support Mark43's obligations under this Agreement. The contact information for Mark43's technical support organization is Support@mark43.com and a telephone number to be provided by Mark43; Mark43 will notify Subscriber in writing of any changes to support contact information no less than 5 days in advance. Mark43 shall provide Subscriber with online access to its knowledge database and any other resource containing information that will aid in problem and error resolution and correction, as well as any other technical resources made electronically available to any of Mark43's other customers. The Mark43 account manager or primary point of contact for Subscriber with respect to this Agreement will be Matt Neal or such other individual as Mark43 appoints in his stead upon notice to Subscriber.
7. **Service Levels.** Mark43 shall provide the Applications in accordance with the following service levels.
- a. **Service Levels for the Records Management System and Evidence Management Applications (hereinafter, "RMS").**
- i. **RMS Availability.** During any calendar month of a Regular Usage Period, the RMS shall be available to users no less than 99.9% of the time on a 24x7 basis, excluding scheduled maintenance of the RMS ("**RMS Scheduled Downtime**"); provided, however, that Mark43 is not responsible for any downtime of the RMS caused by Third-Party Data services (e.g., Department of Motor Vehicles license plate database), or Third-Party Components, and such third-party downtime will not count against the service levels promised herein; provided, further, that Mark43 shall be responsible for any downtime of RMS caused by Integrated Third-Party Software (as defined below) solely to the extent specified in Section 7(c) below ("**Service Levels for Integrated Third-Party Software**"). Mark43 shall provide Subscriber with prompt notification as soon as it becomes aware of any actual or potential unscheduled downtime of the RMS, as well as continual periodic updates during the unscheduled downtime regarding Mark43's progress in remedying the unavailability and the estimated time at which the RMS shall be available.
- ii. **RMS Service Credits.** In the event that Mark43 fails to make the RMS available at least 99.9% of the time in any given month during the Regular Usage Period due to RMS Unavailability (as defined below), Mark43 will credit the Subscriber's account for the unavailable RMS as follows:

RMS Availability (Monthly)	Credit Percentage
Above 99.9%	0%
99.8 – 99.0%	10%
98.9 – 98.0%	20%
Below 97.9%	30%

"RMS Unavailability" is defined as the percentage of minutes per month in which the RMS is completely and generally unavailable for Subscriber's use (but not the use of any one Authorized User), provided that RMS Unavailability does not include any unavailability attributable to: (a) RMS Scheduled Downtime for maintenance (whether by Mark43, by a vendor, or by Subscriber); (b) acts or omissions of Subscriber or any Subscriber user of the RMS; (c) server downtime related to connectivity issues resulting from third-party-managed VPN access to hosted server or Subscriber internal network problems; (d) defects or bugs in the Applications or Software caused by Subscriber, any Authorized User, or any Affiliate, employee, agent or independent contractor of Subscriber; or (e) any other cause(s) beyond Mark43's reasonable control, including but not limited to those caused by Third-Party Data services (e.g., Department of Motor Vehicles license plate database), Third-Party Components, overall internet congestion or a force majeure. Subscriber will be responsible for immediately notifying Mark43 of all third-party-managed VPN access and internal or external (e.g., internet service provider) network problems that arise.

"Credit Percentage" means the applicable percentage of the portion of the Fees attributable to Services in the calendar month in which the RMS Unavailability occurs. For example, if Subscriber has paid Mark43 \$1,000 for one year of a Regular Usage Period, and the RMS Availability falls to 99.5% during

any calendar month in that year, then Mark43 will owe Subscriber a 10% credit on that month's portion of the Fee, or: $\$1,000/12 = \83.33 per month, and $10\% \text{ of } \$83.33 = \8.33 . In this example, Mark43 would owe Subscriber \$8.33 in credit for the month in which RMS Availability fell to 99.5%.

In order to receive this credit, Subscriber must notify Mark43 in writing within fifteen (15) days following the end of the month the RMS Unavailability occurred. All claims are subject to review and verification by Mark43 prior to any credits being granted. Mark43 will acknowledge credit requests within fifteen (15) business days of receipt and will inform Subscriber whether such claim request is approved or denied. Any approved RMS Service Credits will be applied to Subscriber's next invoice. During the final year of the Term, Mark43 will work with Subscriber to agree on a suitable credit. The issuance of RMS Service Credit by Mark43 hereunder is Subscriber's sole and exclusive remedy for any failure by Mark43 to satisfy the service levels set forth in this Section 7(a).

b. **[Intentionally Deleted]**

- c. **Service Levels for Integrated Third-Party Software.** Notwithstanding anything else to the contrary contained herein, Mark43 shall be responsible for any downtime of or related to the Applications or Integrated Third-Party Software (as defined below) that is caused by Integrated Third-Party Software solely to the extent specified in this Section 7(c). Credit Percentages Service Credits referenced elsewhere in this Agreement shall not apply to downtime caused by Integrated Third-Party Software or the integrations or connections to Integrated Third-Party Software.

- i. **Availability of Third-Party Applications.** Schedule A identifies specific Third-Party Application integrations (the "**Integrated Third-Party Software**") to be performed by Mark43 as part of the Professional Services, and the Subscriber's and Mark43's respective rights regarding acceptance of those Services. During the Regular Usage Period, the Integrated Third-Party Software shall be operational no less than 99.9% of the time on a 24x7 basis, excluding any scheduled maintenance of the Integrated Third-Party Software (whether scheduled by Mark43 or by the Third-Party Provider, the "**Integration Scheduled Downtime**"); provided, however, that Mark43 shall not be responsible for downtime caused by upgrades or updates to Integrated Third-Party Software of which Mark43 does not receive the requisite advance notice, and such downtime will not count against the service levels promised herein. Mark43 agrees that it shall schedule any Integration Scheduled Downtime on minimal traffic days whenever possible. The Parties further agree that Mark43 shall not schedule in excess of 90 minutes of Integration Scheduled Downtime in during any 30-day period. Mark43 shall provide Subscriber with immediate telephone notification to the point of contact set forth in this Agreement as soon as it becomes aware of any actual or potential unavailability of an Integration other than Integration Scheduled Downtime ("**Integration Unscheduled Downtime**"), as well as continual periodic updates during the Integration Unscheduled Downtime regarding Mark43's progress in remedying the unavailability and the estimated time at which the Integration shall be available.
- ii. **Responsibilities for Planned Updates.** Subscriber shall provide Mark43 with prompt notice, and in no case fewer than forty-five (45) days' advance notice, of any update by the Third-Party Provider of Integrated Third-Party Software. Mark43 shall undertake commercially reasonable efforts to patch, repair or update the Software in order to integrate it with the updated Integrated Third-Party Software.
- iii. **Responsibilities for Planned Upgrades.** Subscriber shall provide Mark43 with prompt notice, and in no case fewer than ninety (90) days' advance notice, of any planned upgrade by the Third-Party Provider of Integrated Third-Party Software. Mark43 shall evaluate the time and resources required to patch, repair or update the Software in order to integrate it with the upgraded Integrated Third-Party Software. The Parties shall engage in good faith negotiations to agree on the terms (including, without limitation, schedule and price) on which Mark43 would develop a patch, repair, update or Upgrade to integrate the Software with the Integrated Third-Party Software.

SCHEDULE B**Transition Assistance****1. Preparation**

- a. The Subscriber will provide the desired cutoff date of the SaaS Services (the “**Cutoff Date**”), at which time all existing user accounts will be terminated.
- b. Mark43 will provide one (1) account for the Subscriber to access a web-based storage platform to retrieve Subscriber documents and Records (the “**Transition Account**”). The Transition Account will be available to Subscriber for thirty (30) days prior to the Cutoff Date and remain active one (1) year.

2. Content

- a. Upon Subscriber’s request, Subscriber Data will be returned 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. All archive files will be accessible via the internet on the Cutoff Date. 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 Mark43 for up to 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 1 year 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 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.

Transition Assistance as outlined in this **Schedule B** is included in the Fees charged to Subscriber for the Services. Fees are due and payable up to the Cutoff Date. In the event that any Fees have not been paid as required in this Agreement, Mark43 may retain all Records and decline to provide the support outlined in Section 3 of **Schedule B** above until such Fees are paid in full.

SCHEDULE C**Technical Requirements**

This Schedule lists the minimum technical requirements required for Mark43's Applications. This also describes the requirements for Mark43 interface servers. Third-Party Providers and subcontractors may have additional requirements that are not listed here.

1. MARK43 RMS**1.1 RMS Workstation Requirements**

Item	Minimum	Recommended
Operating System	Windows 7+, Mac OS X 10.X	Windows 10, Mac OS 10.X
Processor	1x dual-core processor	1x quad-core processor or greater
Architecture	x64 / x86	x64
Memory	4 GB	6 GB+
Network Card	1x 2 Mbps+ NIC	1x 10 Mbps+ NIC
Display(s)	1x 1024x768	1x 1920x1080
Hard Drive	1 GB available space	5 GB available space
Graphics Card	N/A	N/A
Bandwidth	2 Mbps	5 Mbps+

1.2 RMS Workstation Site Internet Requirements

Mark43 RMS operates as a single-page application where most of the heavy download load is needed only on initial page load for each user. For RMS, Mark43 recommends an overall internet bandwidth connection of 1+ Mbps per concurrent user using that connection. Actual performance and usage may vary depending on user usage of other internet-connected applications and your ISP.

1.3 RMS Mobile Data Terminal Requirements

Item	Minimum	Recommended
Operating System	Windows 7+, Mac OS X 10.X	Windows 10, Mac OS 10.X
Processor	1x dual-core processor	1x dual-core processor or greater
Architecture	x64 / x86	x64
Memory	2 GB	4 GB+
Network Card	2 Mbps (4G LTE)	5 Mbps+ (4G LTE)
Display(s)	1x 1024x768	1x 1024x768+
Hard Drive	1 GB available space	5 GB available space
Graphics Card	N/A	N/A
Bandwidth	2 Mbps (4G LTE)	5 Mbps+ (4G LTE)

1.4 RMS Browser Requirements

Mark43 RMS is web-based and requires a modern web browser to access the system. Mark43 RMS supports the following browser versions that receive technical support and security updates from the browser vendor.

- Google Chrome (latest)
- Microsoft Edge (latest)
- Mozilla Firefox (latest)

As of 6/1/19, Mark43 RMS also supports Microsoft Internet Explorer 11, but IE11 support will be phased out in 2020.

1.5 RMS Smartphone Mobile Application Requirements

The Mark43 RMS Smartphone Mobile Application is available on iOS.

Item (iOS)	Supported	Recommended
Operating System	Apple iOS 10, 11, 12	Apple iOS 12
Device	iPhone 6, 6 Plus, 6S, 6S Plus iPhone SE iPhone 7, 7 Plus iPhone 8, 8 Plus iPhone X, XS, XS Max, XR iPad Air 2, 3rd gen iPad Mini 3, 4, 5th gen iPad Pro 1st gen, 2nd gen, 3rd gen iPad 5th gen, 6th gen	iPhone XS iPad gen 6

1.6 Evidence Smartphone Mobile Application Requirements

The Mark43 Evidence Smartphone Mobile Application is available on iOS and Android.

Item (iOS)	Supported	Recommended
Operating System	Apple iOS 10, 11, 12	Apple iOS 12
Device	iPhone 6, 6 Plus, 6S, 6S Plus iPhone SE iPhone 7, 7 Plus iPhone 8, 8 Plus iPhone X, XS, XS Max, XR iPad Air 2, 3rd gen iPad Mini 3, 4, 5th gen iPad Pro 1st gen, 2nd gen, 3rd gen iPad 5th gen, 6th gen	iPhone XS iPad gen 6

Item (Android)	Supported	Recommended
Operating System	Android 5+	Android 9
Device	Samsung Galaxy S7+	Samsung Galaxy S10

1.7 Evidence Barcode Printer Requirements

The Mark43 RMS Property and Evidence module requires a barcode printer to optimize the evidence management process. Mark43 integrates seamlessly with Zebra barcode printing hardware and requires the following printer:

- ZD420 model number ZD42043-C01E00EZ
- 2000T label
- 5095 Premium Resin ribbon (05095CT11007)
 - o Ribbon roll-only (05095GS11007)

Deviating from this hardware configuration will lead to smeared, stretched or otherwise incorrectly printed barcode labels. For departments with multiple printers, Mark43 recommends purchasing the same model for all locations.

1.8 Evidence Printer Server Requirements

In order for Mark43 RMS to communicate with the barcode printers, an intermediate server to route printing requests is required. This machine can be the same machine as the Interface Servers specified below or standalone in which case it will need the following specifications:

Item	Minimum	Recommended
Processor	2x 2.0+ GHz processors	2x 2.0+ GHz processors
Memory	2 GB	4 GB+
Hard Drive	32 GB HDD storage	64 GB HDD storage

2. [INTENTIONALLY DELETED]

3. MARK43 ANALYTICS

3.1 Data Lake Requirements

Mark43 Data Lake is a Microsoft SQL Server Database and requires a database client that receives technical support and security updates from the vendor. Mark43 recommends using Microsoft SQL Server Management Studio.

3.2 Business Intelligence Suite Requirements

Mark43 Business Intelligence Suite runs embedded within Mark43 RMS and therefore has the same browser requirements as Mark43 RMS.

4. MARK43 DATA EXCHANGE

The Mark43 Data exchange functionality is enabled through either the RMS or CAD applications. Additional interface servers may be required to support Mark43 Data Exchange data flows, depending on the department's size and complexity.

5. MARK43 INTERFACE SERVERS

5.1 Server Requirements

Interface servers are on-premise servers that Mark43 uses to run integrations developed by Mark43. These servers allow Mark43 integrations to access on-premise Subscriber systems. Mark43 supports these servers from the VM up and ensures that interfaces running on these servers are maintained and monitored. The table below outlines Mark43's minimum required and recommended server specs for an interface server setup.

Item	Minimum	Recommended
Number of servers	1	2+
Operating System	Ubuntu 16.04	Ubuntu 16.04
Processor	1x quad-core processor	2x quad-core processor
Architecture	x64	x64
Memory	8 GB	16 GB+
Network Card	1x 100 Mbps NIC	2x 1 Gbps+ NICs
Display(s)	N/A	N/A
Hard Drive	250 GB available space	500 GB available space
Graphics Card	N/A	N/A
Bandwidth	10 Mbps	100+ Mbps

5.2 Support

The preferred model is that Subscriber provision these servers and maintain them from hardware/vm up through the operating system. Mark43 will maintain the application software installed on this server, which consists of:

- Docker, which runs all the application software in an easily manageable way
- Rancher, which orchestrates and applies updates to the scripting logic that the Docker containers run

Subscriber may choose to install other software (e.g., monitoring software) on this server as long as it does not interfere with the operation of the Mark43 provided applications.

5.3 Releases

The Docker containers running on the interface server update themselves as part of the normal Mark43 release cycle. This is to ensure compatibility with any API changes made to the internal Mark43 API.

5.4 Maintenance

If Subscriber needs to apply patches to the interface server this can be done safely by rotating servers in and out. Mark43 does ask to be notified when this happens, to ensure the Docker service running the integration scripts restarts successfully when the server is restarted.

5.5 Networking/Firewall Setup

Inbound:

- SSH over client VPN
- HTTPS over client VPN
- All other IPs/ports inbound from public internet should be closed

Outbound:

- TCP 443,5000 to 0.0.0.0/0

VPN:

- Mark43 will SSH to this server over the Subscriber VPN to install Docker and do any maintenance tasks that can't be completed by the automatic script updates

User Accounts:

- Mark43 will need sudo access on this server to do the Docker installation.

Assigning Static IP Addresses:

- Subscriber will need to take the following steps:
 1. Log in to the server with the username and password.
 2. Enter the following command `sudo nano /etc/network/interfaces`
 3. Delete the line `iface eno1 inet dhcp`
 4. Add the following lines. Replace the text in <> with your network appropriate information. We recommend using 8.8.8.8 and 8.8.4.4 for your DNS server:

```
iface eno1 inet static
address <ip address>
netmask <subnet mask>
gateway <default gateway>
dns-search <DNS search domain>
dns-nameservers <dns server> <optional secondary dns server>
```
 5. Type `control+x` to exit
 6. Press `y` to save
 7. Press `enter` to confirm the name `/etc/network/interfaces`.
 8. Type `sudo reboot` to restart the server.

SCHEDULE D

Additional Terms

A. Vendors:

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

Amazon:

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

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

Auth0 (If Single Sign On is elected):

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

B. Subcontractors:

Subscriber consents to Mark43's use of the following subcontractors: CommSys, Inc. Terms to be provided separately to Subscriber.

SCHEDULE E**Data Processing Addendum**

1. **Definitions.** Terms not otherwise defined in this Data Processing Addendum (“**DPA**”) have the meaning set out in the Software License and Services Agreement (“**Agreement**”).
 - a. “**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 the Agreement or otherwise in writing by Subscriber.
2. **Subscriber Data.** The obligations in this Exhibit 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 a Third-Party Provider or transmitted or accessed on or through a Third-Party Application.
3. **Disclosure.** Mark43 will not disclose Subscriber Data to any third party except: (i) to Authorized Users; (ii) as permitted under the 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**”) (including, as of the Effective Date of the Agreement, Amazon Web Services for hosting and Google for mapping and geolocation services), (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 the 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, where technically feasible. 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 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 the 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 the 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. Mark43 currently uses AWS Govcloud region as Cloud Provider to host Subscriber Data. Information about AWS’ commitment to support customers’ CJIS compliance requirements is available here: <https://aws.amazon.com/compliance/cjis/>.