**TOWN OF ADDISON, TEXAS**

**RESOLUTION NO. _____**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A SOFTWARE LICENSE AND SERVICES AGREEMENT BETWEEN THE TOWN OF ADDISON AND MARK43, INC., FOR THE EVALUATION, CONSULTATION, IMPLEMENTATION, CUSTOMIZATION, DATA CONVERSION, AND CONFIGURATION OF THE SOFTWARE-AS-A-SERVICE IN AN AMOUNT NOT TO EXCEED $488,321.00, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, AND PROVIDING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:**

**Section 1.** The Software License and Services Agreement between the Town of Addison and Mark43, Inc. for the evaluation, consultation, implementation, customization and configuration of the software-as-a-service in an amount not to exceed $488,321.00, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute the agreement.

**Section 2.** This Resolution shall take effect from and after its date of adoption.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this the 8th day of January, 2019.

_____
Joe Chow, Mayor

ATTEST:

By: _____
Irma Parker, City Secretary

APPROVED AS TO FORM:

By: _____
Brenda N. McDonald, City Attorney

# EXHIBIT A

**SOFTWARE LICENSE AND SERVICES AGREEMENT**

This Software License and Services Agreement (this "**Agreement**") is effective as of **January \_\_, 2019** (the "**Effective Date**") by and between Mark43, Inc. ("**Mark43**"), with a place of business at 28 E. 28th 12th Floor, New York, NY 10016, and Town of Addison, Texas ("**Subscriber**"), with a place of business at 16801 Westgrove, Addison, Texas 75001.

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**" is defined in Section 9.12.

**1.4** "**Applications**" means the Records Management System and other applications as described in Schedule A.

**1.5** "**Authorized User**" means an Affiliate, employee, agent or independent contractor of Subscriber (solely to the extent such said user is providing services to Subscriber), 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** "**Integration 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 services offered by Mark43 in connection with the SaaS Services.

**1.11** "**Regular Usage Period**" for any Application commences 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 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, 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 a detailed plan of work to be agreed by the Parties in conjunction with and in compliance with the terms of this Agreement.

**1.16** "**Subcontractor**" means any third-party vendor, manufacturer, service provider or other entity that is or may be engaged by Mark43 for performance of the Services under this Agreement.

**1.17** "**Subscriber Data**" means all data, information, content and other materials stored or transmitted by Subscriber and any Authorized User through the SaaS Services (i) in their user accounts; and (ii) on any Third Party Application, excluding any Third Party Data and any Mark43 Data.

**1.18** "**Term**" means the Initial Term and any Renewal Term.

**1.19** "**Third Party Application**" means a third-party service approved by Mark43 to which Subscriber and any Authorized User facilitates Mark43's access to, and use, of the SaaS Services, via an application programming interface (API) or other means. Mark 43's approval of a Third Party Application shall not be unreasonably withheld, conditioned, delayed, or denied.

**1.20** "**Third Party Components**" means any components of the SaaS Service from time to time that are provided by third parties (e.g., Google Maps).

**1.21** "**Third Party Data**" means any data owned by a third party that Mark43 provides to Subscriber via the SaaS Service.

**1.22** "**Third Party Provider**" means third parties, including other vendors, state agencies and local agencies, that control products and/or databases with which Mark43 SaaS Services are to be interfaced.

**1.23** "**Updates**" means any and all new releases, new versions, patches and other updates, including major and minor upgrades, for the SaaS Services that Mark43 makes generally available without additional charge to its other subscribers of the SaaS Services.

**1.24** "**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).

**1.25** "**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 offers Professional Services in connection with the SaaS Services as further described in Schedule A. To the extent any Professional Services involve the development of any customization or configuration to the SaaS Services, all Intellectual Property Rights to such customization or configuration will be solely owned by Mark43 and will be deemed to be included in the definition of SaaS Services and licensed to Subscriber on the terms set forth herein.

**2.3** **Access to Documentation**. Mark43 will provide Subscriber via the Website or other means with access to the Documentation, as may be updated from time to time. Subscriber may print copies of, use, and permit its Authorized Users to use, the Documentation solely in connection with the use of the SaaS Services.

**2.4** **Support Services**. Mark43 will provide a telephone-based help desk through which it will respond to inquiries about the SaaS Services from Subscriber via telephone from 7 AM to 7 PM (Eastern Time), Mondays through Fridays (excluding U.S. Federal holidays). 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" (i.e. time sharing, subleasing, sublicensing or rental) 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 in direct competition with Mark 43, 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. Subscriber is permitted to utilize the Data Lake Application to store Subscriber Data as further described in Schedule A.

**2.6**    **Security Obligations.** Subscriber agrees it and its Authorized Users shall securely manage their respective password(s) for access to the SaaS Service. Subscriber agrees it shall notify Mark43 promptly in the event it becomes aware of any unauthorized access or use of the SaaS Service, or of any of its or its Authorized Users passwords or accounts. Unless expressly stated otherwise in this Agreement, a single username or password may not be used by more than one (1) Authorized User. [In addition, Authorized Users may log into the SaaS Service from only one location at any given time – concurrent usage (or sign in) under a single username is prohibited.] Subscriber is responsible for all activities conducted within User accounts in use of the SaaS Service. Subscriber shall comply with all applicable local, state, federal and regional or other laws and regulations applicable in connection with use of the SaaS Service, 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 Service, 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 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; provided that the foregoing does not restrict any rights in any Third Party Data that Subscriber may have access to pursuant to a separate third party 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, to the extent allowed by law, Subscriber hereby grants to Mark43 (i) a revocable, royalty free, non-exclusive, sublicensable (but only as permitted herein) license to use the Subscriber Data to provide the SaaS Services to Subscriber; (ii) a perpetual, royalty-free license to use the aggregated, anonymized information about the use of the SaaS and Services by the Subscriber, including information that may be derived from the Subscriber Data to operate, maintain, manage, analyze and improve the SaaS Services, and for Mark43's internal purposes to improve the Applications, Software, and related services, and any other uses disclosed under the Agreement or any statement of work. Subscriber may revoke its consent to Mark43's collecting and using such data pursuant to (i) above by written notice to Mark43; provided, however, that in such case or in the case of any of the foregoing licenses not being allowed by law, Subscriber understands and agrees that such revocation of consent may impair or render impossible the Subscriber's use of the SaaS Services, and Mark43 shall not be liable for any resulting impairment or disruption or other impact on service. Mark43 may not sell or offer for sale any Subscriber Data, whether in Subscriber identifiable, or

anonymized and aggregated form. Additional Mark43 practices with respect to Subscriber Data are further detailed in the Data Processing Addendum attached as Schedule F hereto.

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).

2.10 **Third Party Components.**

(a) **Use of Third-Party Components.** Mark43 may use Vendors to provide certain functions of the Services purchased under this Agreement, including without limitation, hosting and data analysis.

(b) **Additional Terms.** Certain Vendor policies and terms and conditions of service shall apply to the Services. Such terms, or URL locator addresses for such terms, will be provided on **Schedule D** or 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 Service, 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 only with respect to Subscriber's use of the applicable Third Party Component.

(c) **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. For any Third Party Component that is essential to Subscriber's use of the SaaS Services, to the extent any such Third Party Component no longer exists or is not usable on an ongoing basis, Mark43 shall endeavor to provide a replacement, substitute or workaround as soon as reasonably feasible. Nothing in this Section 2.10(c) excuses Mark43 from providing the Applications identified on Schedule A in accordance with the terms of this Agreement.

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. Third Party Providers do not have privity of contract with Subscriber or Mark43 pursuant to this Agreement.

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 thirty 30 days' written notice, terminate its support for, any software or equipment of Subscriber that Mark43 determines are incompatible with the operation of the Services. Mark43 shall produce and distribute release notes to Subscriber prior to scheduled releases to production.

2.14 **Subcontractors**. Mark43 shall obtain Subscriber's approval for any Subcontractor, which approval may not be unreasonably withheld. In the event that Subscriber withholds its approval of a particular Subcontractor, Mark43 shall promptly replace such Subcontractor. In instances for which Mark43 exercises its right to use a Subcontractor, Mark43 shall remain responsible for the duties imposed upon it herein.

**2.15** **No Third Party Beneficiaries.** No provision of this Agreement is intended to nor shall it in any way inure to the benefit of any third party.

**2.14** **SaaS Services Redundancy**. As of the Effective Date of this Agreement, Mark43 utilizes Amazon Web Services (AWS) as its Hosting Provider for the SaaS Services. Mark43 server environments rely on AWS availability zones to ensure high availability and redundancy; all Mark43 production servers are mirrored in a separate availability zone. Availability zones are geographically disparate data centers in the AWS GovCloud region and are active/active allowing for immediate failover. As of the Effective Date, AWS performs all backups of the Mark43 production environment.

## 3. FEES AND PAYMENT TERMS.

**3.1** <u>Fees for Mark43 Services</u>. Subscriber will pay Mark43 fees as stated on <u>Schedule A</u> (the "**Fees**") attached hereto in accordance with the payment schedule set forth on <u>Schedule A</u>. 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.

**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 one hundred and eighty (180) days' advance notice.

**3.3** **Taxes**. Subscriber is a tax-exempt entity and will provide such documentation on request to Mark43 in order to waive all taxes, including sales, use, excise, and other governmental fees, duties, and charges (and any penalties, interest, and other additions thereto) that are imposed 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.

**3.4** All obligations of Subscriber under this Agreement, which require the expenditure of funds, are conditional upon the availability of funds budgeted and appropriated for that purpose.

## 4. TERM AND TERMINATION.

**4.1** **Term.**

(a) <u>Initial Term</u>. The initial term of this Agreement begins on the Effective Date and will continue for the period set forth on <u>Schedule A</u>, unless and until terminated in accordance with <u>Section 4.2</u> (the "**Initial Term**").

(b) <u>Renewal Terms</u>. Upon expiration of the Initial Term or any Renewal Term, this Agreement will automatically renew for successive periods as set forth on <u>Schedule A</u> (each, a "**Renewal Term**") at the rates set forth on <u>Schedule A</u>, unless either party provides the other with written notice of non-renewal at least ninety (90) days prior to the expiration of the then-current term.

**4.2** **Temporary Suspension and Termination**.

(a) 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) 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 (e.g. degraded performance), 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 written notice to Subscriber 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) In the event of a failure or lack of availability of the SaaS Services for any reason resulting in a critical degradation of the SaaS Services for more than twenty-four (24) hours (other than a reason provided for in Section 9.4 of this Agreement), Subscriber shall have the right to immediately terminate this Agreement in addition to the right to seek any other remedies available in law or equity pursuant to this Agreement.

**4.3** **Professional Services.** If at any time during the term of this Agreement, and solely with respect to the Professional Services, Mark43 shall fail to commence the work in accordance with the provisions

of this Agreement or fail to diligently provide services in an efficient, timely and careful manner and in strict accordance with the provisions of this Agreement or fail to use an adequate quality of personnel to complete the work or fail to perform any of its obligations under this Agreement, then Subscriber shall have the right, if Mark43 shall not either take steps to begin to cure any such default within two (2) business days after written notice thereof, or cure such default within ten (10) business days after written notice thereof, to seek the remedies set forth below.  Any such act by Subscriber shall not be deemed a waiver of any other right or remedy of Subscriber.  If after exercising any such remedy due to Mark43's nonperformance of Professional Services under this Agreement, the cost to Subscriber to complete the work to be performed under this Agreement is in excess of that part of the fees under this Agreement which have not theretofore been paid to Mark43 hereunder, Mark43 shall be liable for and shall reimburse Subscriber for such excess.

Subscriber's remedies for Mark43's default or breach of this Section 4.3 shall be limited to one or more of the following remedies which may be exercised separately or in combination at Subscriber's sole exclusive choice:

  i.   Specific performance of the Professional Services;

  ii.  Re-performance of the Professional Services at no extra charge to Subscriber;

  iii. Monetary damages; or

  iv.  All other remedies available in law or equity pursuant to this Agreement.

**4.4**  **Termination for Convenience**.  Subscriber, by 90 days' written notice, may terminate this Agreement when it is in the Subscriber's interest; provided that prior to any such effective date of termination, Subscriber shall pay for all Services rendered for periods up to and including the effective date of termination, including the pro rata portion of any Professional Services.

**4.5**  **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 and, in the case of an early termination, Subscriber shall be refunded the prorated portion of any amounts prepaid for periods beyond the effective date of termination;

(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, as that term is defined in Section 5 of this Agreement, of Mark43 that are in Subscriber's possession or control.

**4.6**  **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 4.4 ("Effect of Termination"), Section 5 ("Confidentiality"), Section 6.2 ("No Other Warranties"), Section 7 ("Limitation of Liability"), Section 8 ("Indemnification and Insurance"), Section 9 ("Miscellaneous"), Schedule B ("Transition Assistance") and this Section 4.5 ("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 (for the avoidance of doubt, including Subscriber 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.

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.    Mark43 believes that disclosure of its Confidential Information would cause substantial competitive harm to Mark43.

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     **Required Disclosures.** If a party is requested to disclose any of the other party's Confidential Information pursuant to any judicial or governmental order issued by a court or other governmental agency in the United States having jurisdiction, that party will not disclose the Confidential Information without first giving the other party written notice of the request and sufficient opportunity to contest the order, to the extent such notice and opportunity to contest may be lawfully given.  If one party is nonetheless legally compelled to disclose Confidential Information, such party may, without liability hereunder, disclose to such tribunal only that portion of the Confidential Information which such counsel advises it is legally required to be disclosed, provided that such party shall use its best efforts to preserve the confidentiality of the Confidential Information, including, without limitation, by cooperating with the other party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be afforded the Confidential Information by such tribunal.

Subscriber is subject to the provisions of the Texas Public Information Act ("PIA").  If a request for disclosure of this Agreement or any information related to the goods or services provided under the Agreement or information provided to Subscriber under this Agreement that constitutes a record under the PIA is received by Subscriber, the information must qualify for an exception provided by the PIA in order to be withheld from public disclosure. Mark43 authorizes Subscriber to submit any information contained in the Agreement, provided under the Agreement, or otherwise requested to be disclosed, including information Mark43 has labeled as confidential proprietary information, to the Office of the Attorney General for a determination as to whether any such information may be excepted from public disclosure under the Act. If Subscriber does not have a good faith belief that information may be subject to an exception to disclosure, Subscriber is not obligating itself by this Agreement to submit the information to the Office of the Attorney General. However, Subscriber agrees to notify Mark43 within ten (10) days of receipt of a request for disclosure of any information labeled as confidential or proprietary, information that Subscriber believes to be confidential or proprietary or any information that is excepted from the requirements of Section 552.021 of the Texas Government Code.  It shall be the responsibility of Mark43 to make any legal argument to the Attorney General or appropriate court of law in compliance with the PIA regarding the exception of the information in question from disclosure, provided that (i) Subscriber shall afford Mark43 an opportunity to review copies of the records that Subscriber intends to disclose so that Mark43 may prepare and submit any legal arguments, as applicable, and (ii) nothing contained herein exempts Subscriber from asserting arguments against disclosure that Subscriber has the statutory obligation to present. Provided Subscriber has followed the process outlined in this provision, Mark43 waives any claim against and releases from liability Subscriber, its officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Agreement, or otherwise created, assembled, maintained, or held by Mark43 and determined by the Attorney General or a court of law to be subject to disclosure under the Texas Public Information Act.

5.6     **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. 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. Mark43 shall not use, in its external advertising, marketing programs, or other promotional efforts, any data, pictures, or other representation of Subscriber unless Mark43 receives specific written authorization in advance from Subscriber. Such publications will be provided to Subscriber in draft form for Subscriber's advance review. Subscriber will review such drafts promptly and will provide comments to Mark43. Subscriber may require deletion of proprietary data or confidential information from such publications. The cost of Mark43's activities pertaining to any such publication or advertisement shall be paid entirely by Mark43. Nothing in this clause shall preclude Mark43 from listing Subscriber on its routine subscriber list for matters of reference.

**5.7    CJIS Standards; Employee Background Checks.**

(a)    Subscriber understands and agrees that Mark43 utilizes third party 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. Subscriber may request reasonable records from Mark43 from time to time to assess Mark43's adherence to requirements of the applicable Criminal Justice Information System (CJIS) Security Policy promulgated by the Federal Bureau of Investigation (FBI) as well as any requirements specifically applicable to the Texas CJIS. For the avoidance of doubt, Subscriber may need the consent of Hosting Provider to obtain any records or information from Hosting Provider. Information about AWS's commitment to support customers' federal and state CJIS compliance requirements is available here: https://aws.amazon.com/compliance/cjis/ and Mark43 will use reasonable efforts to assess that AWS complies with its own data protection practices.

(b)    Subscriber 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. Subscriber reserves the right to prevent any Covered Employee from entering its physical premises at any time.

(c)    Mark43 shall comply with all applicable requirements of the most current Federal and Texas CJIS Security Addenda provided to Mark43 by Subscriber.

**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. Subscriber further represents that it has not received federal funding in connection with procurement under 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. Mark43 cannot guarantee that every error in the SaaS Services or problem raised by Subscriber will be resolved. 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. HOWEVER, MARK43 WARRANTS THAT THE SYSTEM IS FIT FOR THE PURPOSES FOR WHICH IT IS INTENDED AS DESCRIBED IN THE RFP AND AS DESCRIBED HEREIN.

**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 SUBSCRIPTION FEES PAID AND PAYABLE DURING THE INITIAL TERM.  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 OR EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

**8.    INDEMNIFICATION AND INSURANCE**.

**8.1    Indemnification by Mark43**.  MARK43 WILL DEFEND, INDEMNIFY AND HOLD HARMLESS SUBSCRIBER AND ITS AUTHORIZED USERS, 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 ANY THIRD PARTY CLAIM ARISING AFTER THE EFFECTIVE DATE THAT THE USE OF THE SAAS SERVICES (EXCLUDING ANY OPEN SOURCE COMPONENTS) IN ACCORDANCE WITH THIS AGREEMENT INFRINGES OR MISAPPROPRIATES THE UNITED STATES INTELLECTUAL PROPERTY RIGHTS OF 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 SOFTWARE AFTER NOTICE AND 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; (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.

IF THE SERVICES ARE (OR MARK43 BELIEVES ARE LIKELY TO BECOME) THE SUBJECT OF A CLAIM FOR WHICH MARK43 WOULD BE OBLIGATED TO DEFEND AND INDEMNIFY PURSUANT TO THIS SECTION, THEN MARK43 MAY, AT ITS SOLE OPTION:

OBTAIN FOR SUBSCRIBER THE RIGHT TO CONTINUE USE OF THE SERVICES; OR

PROVIDE SUBSTITUTE PRODUCTS TO SUBSCRIBER PROVIDED THERE IS NO MATERIAL LOSS OF FUNCTIONALITY.

IF NEITHER OF THE FOREGOING OPTIONS IS REASONABLY AVAILABLE TO MARK43, THEN SUBSCRIBER MAY ELECT TO TERMINATE THE AGREEMENT, IN WHICH CASE MARK43 WILL REFUND ANY PREPAID FEES FOR THE SERVICES APPLICABLE TO PERIODS AFTER THE DATE OF TERMINATION AND PAY TO SUBSCRIBER ALL REASONABLE EXPENSES RELATED TO THE INSTALLATION AND CONVERSION TO THE NEW PRODUCT(S) AND INTERFACE(S).

8.2 **Indemnification by Subscriber.** TO THE EXTENT AUTHORIZED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, 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; OR (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.

8.3 **Insurance**. Mark43 shall comply with all insurance requirements stated in Schedule E.

## 9. MISCELLANEOUS.

9.1 **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: | If to Subscriber: |
|---|---|
| Mark43, Inc.<br>28 E. 28th Street<br>12th Floor<br>New York, NY 10016<br>Attn: David Jochim<br>Email: dave@mark43.com | Town of Addison<br>16801 Westgrove Dr.<br>Addison, Texas 75001<br>Attn: Hamid Khaleghipour<br>Email: hkhaleghipour@addisontx.gov |

Copy to:
Mark43, Inc.
28 E. 28th Street
12th Floor
New York, NY 10016
Attn: General Counsel
Email: contractnotices@mark43.com

**9.2**     **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 an Affiliate or pursuant to a corporate reorganization, merger, acquisition or sale of all or substantially all of its assets.  Any attempted assignment or other transfer in violation of the foregoing is null and void.  The assignor must provide notice of a valid assignment no later than thirty (30) days following the assignment.  Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**9.3**     **Dispute Resolution**.  In the event of a dispute arising under or relating to this Agreement, the parties agree to endeavor to resolve the dispute without litigation.

**9.4**     **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. With respect to the SaaS applications, Subscriber will not incur additional costs if Mark43 is required to process data at another site in the event of a disaster that shuts down Subscriber's primary location or for testing, provided that Mark43 may charge for additional professional services related for such recovery (such as any new interface servers and software installation on those servers, or training of new personnel).   This Section 9.4 is not intended to affect the government's right to rescind appropriations and the obligations of Subscriber in connection therewith as set forth in Section 3.4.

**9.5**     **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.

**9.6**     **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 as an amendment unless expressly stated otherwise in a separate writing signed by Subscriber and Mark43.

**9.7**     **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.

**9.8**     **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.

**9.9**     **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.

**9.10**     **Counterparts**.  This Agreement may be executed 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 transmitted (including via facsimile transmission) documents have the full force and effect of original documents.

**9.11** **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.

**9.12** **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.

**9.13** **Compliance with Laws**. Each party shall comply with all Applicable Laws relating or pertaining to the use of the Services. Subscriber shall ensure that its use of all Subscriber Data complies with all Applicable Laws relating to the privacy of third parties or the protection of their personal data promulgated by any governmental, municipal, or legal authority having jurisdiction over Subscriber or the End User Data covered by this Agreement. "**Applicable Laws**" means all applicable provisions of all (x) constitutions, treaties, statutes, laws (including the common law), rules, directives, regulations, ordinances, codes or orders of any applicable governmental authority (for Mark43) and any governmental authority of the state of Texas or of the United States (for Subscriber) and (y) orders, decisions, injunctions, judgments, awards and decrees and consents of or agreements with any such entity. 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.

**9.14** **Reserved.**

**9.15** **Governing Law and Venue**. This Agreement shall be governed, interpreted and enforced in accordance with the laws of the State of Texas and the United States, as applicable. The venue for all litigation arising out of, or relating to this Agreement or the Services, shall be and remain in Dallas County, Texas. All parties hereto, including any subcontractors or assignees, irrevocably agree to submit to the jurisdiction of such courts in the State of Texas. No provision herein shall be deemed a waiver of any immunities from suit or of any defense available by law to either party.

**9.16** **Entire Agreement**. This Agreement, including the Contract Documents, 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.

**9.17** **Contract Documents**. The following documents are collectively referred to herein as the "Contract Documents" and are intended by the parties to be read as a whole, and it is further intended that all contract documents be interpreted so as to give meaning to their terms. The following order of precedence shall govern with the first listed document having precedence over any documents listed thereafter:

- This Agreement
- Schedule A: Services Schedule
- Schedule B: Transition Assistance
- Schedule C: Technical Requirements
- Schedule D: Additional License Terms

- Schedule E:  Insurance Requirements
- Schedule F:  Mark43 Data Processing Addendum
- Statement of Work
- The General Conditions and Specifications for RFP #18-014, dated February 8, 2018
- Mark43's proposal in response to Subscriber's RFP #18-014, dated March 6, 2018

The Contract Documents shall be construed to be mutually complementary and supplementary whenever possible and shall constitute the Entire Agreement.

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

**MARK43, INC.**                                        **TOWN OF ADDISON, TEXAS**

By: _____              By: _____

Name: _Steven Salbetta_____              Name: _____

Title: _Chief Financial Officer_____              Title: _____

Date: _12/18/2018_____              Date: _____

**Services Schedule**

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

    a. **Professional Services:**

        i. **Implementation Phase:**
            1. Project Management
                a. Mark43 RMS implementation
            2. RMS Interface Development (Subject to consent and cooperation of the relevant third parties, including those identified below)
                a. SunGuard CAD (Go-Live)
                b. Mark43 To Sallyport JMS (Go-Live)
                c. TDEX and N-DEX (Go-Live)
                d. Accurint (Go-Live)
                e. Brazos (Go-Live)
                f. CODY C.tac (Go-Live)
                g. CRIS Crash (Go-Live)
                h. Leads Online (Go-Live)
                i. ESRI (Go-Live)
            For all interface development, Subscriber must provide the relevant resources needed for development, testing, and ongoing maintenance of the interface as deemed necessary based on interface requirements agreed upon by Mark43 and Subscriber; required data elements for each interface must be provided in a format that is deemed compatible by Mark43; and relevant documentation (such as schema diagrams, API elements, and sample data) must be provided to Mark43.
            3. RMS Interface Control Documentation
            4. RMS Data Conversion
                a. Legacy RMS Reports PDF Migration: Subscriber must provide Mark43 with PDFs of all their reports/cases that should be migrated. These PDFs will be uploaded to the system as empty reports with PDF attached. The agency may choose to provide/make available meta-data with each PDF report (e.g. date, report #, author). These fields can be filled into the otherwise empty reports in the system. For text-pdfs (not scans/image pdfs) the contents of these PDFS can be made free-text searchable. Alternatively, Subscriber may wish to provide keywords/narratives with each PDF. These keywords/narratives will then be searchable via the RMS advanced search page.
                b. Evidence Data Conversion: Subscriber must provide SQL access along with documentation and a database SME or a set of spreadsheets containing the evidence data (M43 to provide formatting for spreadsheets). This data is then transformed and uploaded into the M43 evidence application for future use. Key data-elements transferred are currently a) in-custody property, 2) storage location and 3) chain of custody.
                c. Master Name Conversion: Subscriber must provide SQL access along with documentation and a database SME or a set of spreadsheets containing the evidence data (M43 to provide formatting for spreadsheets). This conversion expects that names have been cleaned up in the source system and will import the data as provided by Subscriber. This conversion does not include the criminal history/rap sheet of the person, however it sets Subscriber up with a clean MNI preventing duplicate entry by end-users at launch.
            5. RMS Configuration
            6. RMS Interface Testing
            7. RMS Functional Testing
            8. RMS User Training
            9. RMS Cutover Support

        ii. **Post-implementation Phase**
            1. Mark43 Customer Success Team Support
            2. Mark43 24/7 Help desk

        iii. **Optional Professional Services:**
            N/A

b. **SaaS Services:**
   i.   The Applications to be provided are described as follows:

   **1.   Mark43 Records Management (RMS)\***

   **Report Writing**
   - In-station and mobile field reporting
   - Incident, Offense and Arrest Reports
   - Field Contact Reports
   - Use of Force Reports
   - Report templates and editing
   - Active Error Validation
   - Smart Duplicate Data Entry Logic and Prevention
   - Unlimited Report Attachments
   - Auto-Validation of Fields, Locations and People
   - Word Processing Tools
   - Context Sensitive Report Export Formats
   - Fully Report Audit History
   - Email and In-App Notifications
   - User Specific Reports Dashboard

   **Case Management**
   - Seamless Report Import
   - Active Master Entity Sync
   - Unlimited Case Attachments
   - Dashboard for Case Tracking
   - Configurable Task Lists by Case Type
   - Dynamic Master Entity Profiles
   - Email and In-App Notifications
   - Context-Sensitive Case Export Formats

   **Property and Evidence**
   - Mobile Device Application for Barcode Scanning, Audits and ID Capture
   - Automatic Custodial Property Report Generation
   - Master Item Profile
   - Configurable Barcodes and Disposition Notifications
   - Bulk Item Filtering and Actioning
   - Dashboard for Inventory Management
   - Immutable Chain of Custody
   - Storage Location Setup and Customization
   - Email and In-App Notifications
   - Full Evidence Audit History
   - Chain of Custody Validations and Guardrails
   - Digitally capture signatures and photos ID's
   - Batch Label Printing
   - Support for Zebra Printing
   - Automated disposition approval process with customizable retention periods

   **Warrant Management**
   - Linked Incident/Arrest Reports, Warrants, and Entity Records
   - Dashboard for Warrant Tracking and Management
   - Configurable Warrant Number Format, Fields and Permissions
   - Context-Sensitive Warrant Export Formats

   **Stat Reporting and Crime Analysis**
   - Active Error Detection
   - Automatic NIBRS Code Mapping
   - Integrated NIBRS Workspace for Report Creation

- Advanced RMS and Entity Search
- Multi-Input and Fuzzy Match Search Filters
- Comprehensive Analysis Filters

**System Administration**
- Configurable Permissions& Roles for Individual Users& Records
- Configurable Fields, Statutes, Codes& Validation Rules
- Shapefile Import
- Configurable Street & Location Aliases
- Configurable Department Alerts & Notifications
- IP Address Whitelisting & Blacklisting for Enhanced Security
- Open API for Third- Party Connections
- Custom Units, Teams and User Roles
- Automatic UCR & NIBRS coding
- Permission- based Read/ Write Privileges

*Note that the RMS Application has no limits on storage size.

2. **Mark43 Data Exchange [optional Application]**

   a. Mark43 or a partner/subcontractor [CommSys] will connect the Mark43 Public Safety Platform to Federal, state and local criminal justice data sources. Mark43 utilizes a third party middleware component in the Mark43 Public Safety Platform and uses a third party to perform services to setup and maintain these connections and provides support during training, configuration and implementation phases of the project.  If Subscriber elects to purchase, the Parties agree to evaluate the requirements together and agree on a time frame for completion. Subscriber is responsible for determining which of these downstream data feeds will continue to receive information at cutover. Subscriber, with the consent of Mark43, is also responsible for determining the policies and procedures surrounding interfaces between Mark43 Applications and third-party databases.  Subscriber understands and agrees that third party service providers and Mark43 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, which may include a different warranty/SLA addressing uptime and maintenance of the Data Exchange Services.

3. **Mark43 Data Lake [optional Application]**

   a. The Mark43 Data Lake is a Microsoft SQL Server (MSSQL) database that can be provided to Subscriber to access Subscriber Data directly via SQL.  This database is a near-real time replica of the live Mark43 database and has no limits on storage size for data pulled from the RMS Application.  The Data Lake runs on shared hardware. but Subscriber Data is fully isolated.  With the basic tier, Subscriber would receive a standard, read-only replica, access for 10 users and access to the baked in views; no customization would be included.  Upgraded tiers can be purchased for additional fees.
   b. If Subscriber elects to purchase Mark43 Data Lake, the Parties agree to evaluate the requirements together and agree on a time frame for completion. 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, which may include a different warranty/SLA addressing uptime and maintenance.
   c. Mark43 shall provide access to Subscriber Data through an interface suitable to the needs of Subscriber and to allow Subscriber to develop additional applications using such data.  To allow for the functioning of any applications using data through the API, Mark43 will notify Subscriber in advance of any changes in the formatting of the API no later than seven (7) days prior to the change.  Nothing in the Agreement shall preclude Subscriber from retrieving Subscriber Data from the Mark43 Data Lake using the retrieval methods commercially available through AWS as provided by Mark43.

ii. Upon completion of the Professional Services (Implementation Phase), during the Regular Usage Period Mark43 will provide Subscriber with the SaaS Services for the Fees set forth in Section 4 below (the

"**Regular Usage Period**"). The parties anticipate that the Regular Usage Period will commence on or about **August 31, 2019**.

2. **Initial Term**. The Initial Term is the five (5) year period commencing on the Effective Date.

3. **Renewal Terms**. For the first Renewal Term, Subscriber shall have the option to renew for one additional five (5) year period (the "**Renewal Term Option Period**") upon notice to Mark43 prior to the expiration of the Initial Term. Any subsequent Renewal Terms shall be for a period of one (1) year.

4. **Fees:**

   a. Professional Services:
      Phase 1
      i.      SunGuard CAD ($0)
      ii.     Mark43 To Sallyport JMS ($0)
      iii.    TDEX and N-DEX ($0)
      iv.     Accurint ($21,560)
      v.      Brazos ($21,560)
      vi.     CODY C.tac ($21,560)
      vii.    CRIS Crash ($21,560)
      viii.   Leads Online ($21,560)
      ix.     ESRI ($21,560)
      x.      PDF Case Documents and Warrants Form ($21,560)
      xi.     RMS Data Conversion ($22,000)

   b. Subscription Fee:
      i. RMS: The Subscription Fee for the RMS Application for the Initial Term is $54,067.20 per year ($307,200/5 minus 12% discount). For the Renewal Term Option Period, the Subscription Fee for the RMS Application shall be $54,067.20 per year.

   c. Optional Services:
      i. Data Lake: The Subscription Fee for the basic tier of the Data Lake Application is $8,000 per year for the Initial Term and $10,000 per year for the Renewal Term Option Period.
      ii. Digital Evidence Management System: Pricing is not available for Mark43 DEMS (Digital Evidence Management System) – Subscriber will receive a 30% discount off the GSA Schedule as an RMS Early Adopter in Texas.

   d. Hardware (to be provided by Athena Advanced Networks, Inc. ("Athena"), subject to Purchase Order to be delivered by Athena)*:
      i. Three (3) ZebraGK42-202511-000GK420d Desktop Thermal Printers ($1,597, one-time fee) (to include the hardware, installation thereof and manufacturer support through Athena)
      * With respect to any such hardware, Mark43 makes no representations or warranties with respect to the hardware and specifically disclaims any implied warranties of merchantability and fitness for a particular purpose; any manufacturer warranties to be described on an order form from Athena; any desired maintenance to be handled via an agreement between Subscriber and Athena.

   Mark43 will notify Subscriber of any changes to the Fees for a Renewal Term at least forty-five (45) days prior to the start of the Renewal Term, provided that no such changes may be made prior to the Renewal Term Option Period.

5. **Payment Schedule**. Subscriber will pay the Fees on the following schedule:

   a. Initial Term: Fees will be paid on the following schedule:

| Milestone | Amount |
| --- | --- |
| Milestone 1: Contract Signing | $91,560.00 |
| Milestone 2: Delivery of Project Plan | $91,560.00 |

| | |
|---|---|
| Milestone 3: Completion of Software Configuration and Training | $91,560.00 |
| Milestone 4: System Acceptance | $91,561.00 |
| First Anniversary of Effective Date | $30,520.00 |
| Second Anniversary of Effective Date | $30,520.00 |
| Third Anniversary of Effective Date | $30,520.00 |
| Fourth Anniversary of Effective Date | $30,520.00 |
| TOTAL | $488,321.00 |

     b. Renewal Term: Fees for the Renewal Term Option Period will be paid in full in advance on the first day of each year of the Renewal Term Option Period. Fees for any other Renewal Term will be paid in full in advance on the first day of the 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 Mark43 will notify Subscriber in writing of any changes 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.

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(b) 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 (defined below) 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 substantively affecting all use 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. Mark43 shall endeavor to pursue a solution to any and all material issues, matters, and failures that cause RMS unavailability.

"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% 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 forty-five (45) 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. 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. **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(b). Credit Percentages Service Credits referenced elsewhere in this Contract 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 during the Professional Services Period, 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 the Contract 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

Upon termination of the Agreement for any reason, and subject to all Fees due being paid in full, 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 records management system by the Subscriber or its new vendor.

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.

2. **Content**

   a. Each Report in Mark43 will be recreated as a searchable PDF (or other mutually agreed to format as described above) using the standard Mark43 format then in use.

   b. All archive files will be accessible via the internet on the Cutoff Date.

3. **Support**

   a. Mark43 will maintain Subscriber Data in Mark43 for up to 1 year following the Cutoff Date.

   b. Mark43 will maintain Subscriber PDF archives for up to 2 years following the Cutoff Date.

   c. 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.

   d. 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.

   e. 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.

   f. 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.

**Technical Requirements**

This Schedule lists the minimum technical requirements required for Mark43's RMS, CAD, Evidence Management and Data Exchange applications, to the extent part of the Services. 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+, Apple 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 | 1x 2Mbps+ NIC | 1x 10Mbps+ NIC |
| Display(s) | 1x 1024x768 | 1 x 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

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

**1.3** RMS Browser Requirements

Mark43 RMS is web-based and requires a modern web browser to access the system. Mark43 RMS supports all versions of Microsoft Internet Explorer and Google Chrome that receive technical support and security updates from the browser vendor.

- Google Chrome (latest)
- Microsoft Internet Explorer: All versions of Microsoft Internet Explorer that receive technical support and browser updates. (As of 10/15/2017 this is IE 11+, Microsoft Edge)

**1.4** 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 |

**2.**     MARK43 CAD

**2.1**     CAD Call Taker / Dispatcher Workstations

Mark43 recommends solely using the Mark43 CAD installed windows application for CAD call takers and dispatchers. The installed application allows for multi-window functionality and a more seamless user experience for power-users of the CAD application.

| 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 | x64 |
| Memory | 4 GB | 8 GB+ |
| Network Card | 1x 2Mbps+ NIC | 1x 10 Mbps+ NIC |
| Display(s) | 1 x 1024x768 monitor | 2x+ 1920x1080 monitors |
| Hard Drive | 1 GB available space | 5 GB available space |
| Graphics Card | N/A | 2x 512MB NVIDIA Quadro NVS 310, 4 MON |
| Bandwidth | 2 Mbps | 10+ Mbps |

**2.2**     CAD Call Taker / Dispatcher Workstation Site Internet Requirements

The Mark43 platform operates as a single-page application where most of the heavy download load is needed only on initial page load for each user. Mark43 highly recommends for the CAD application an overall internet bandwidth connection of 2+ Mbps per concurrent user using that connection and a backup ISP connection with automatic failover. Actual performance and usage may vary greatly depending on user usage of other internet-connected applications and your ISP.

**2.3**     CAD First Responder 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 | x64 |
| Memory | 2 GB | 4 GB+ |
| Network Card | 2 Mbps+ (4G LTE) | 5 Mbps+ (4G LTE) |
| Display(s) | 1 x 1024x768 | 1 x 1024 x 768 |
| 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) |

**2.4**     Mark43 CAD Web Application (First Responder & Dispatch)

Mark43 CAD is also web-based and requires a modern web browser to access the system. Mark43 CAD is only supported for the latest version of Google Chrome. All other users are recommended to use the installed version of the application.

**2.5**     GPS Pinger

| Item | Minimum | Recommended |
|---|---|---|
| Operating System | Windows 7+ | Windows 10 |
| Architecture | x32 | x64 |
| Network Card | 2 Mbps+ (4G LTE) | 5 Mbps+ (4G LTE) |

Other requirements:
- Powershell that is installed with Windows 7+
- .Net Framework v.2.0.50727 or v.4.0
- Java jre 8u162
- To support legacy passthrough, com0com driver required and dedicated COM ports set up
- Admin access is required for installation
- Service account set up with "Log in as service" permissions
- Verified Hardware:
  * Getac machines with internal GPS (BAUD rate of 96k)
  * BU-353S4 receivers that plug in
  Supported:
  * GPS Receiver using NMEA standard (that is to say $GPxxx messages) with a dedicated COM port
- External Antenna strongly recommended

**3.** MARK43 EVIDENCE MANAGEMENT

### 3.1 Evidence Workstation Requirements

Evidence workstation requirements mirror the RMS workstation requirements. As evidence is loaded as a module of the RMS.

| 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 / x86 |
| Memory | 4 GB | 6 GB+ |
| Network Card | 1x 2Mbps+ NIC | 1x 10Mbps+ NIC |
| Screen Resolution | 1024x768 | 1920x1080 |
| Hard Drive | 1 GB available space | 5 GB available space |
| Display(s) | 1x 1024x768 monitor | 1x 1920x1060 |
| Graphics Card | N/A | N/A |
| Bandwidth | 2 Mbps | 5+ Mbps |

### 3.2 Evidence Smartphone Mobile Application

- **Platforms:**
  o Android version 5+
- **Recommended Device:**
  o Samsung Galaxy S7+

### 3.3 Evidence Barcode Printer Requirements

Mark43 Evidence product requires a barcode printer to optimize the evidence management process. Mark43 integrates seamlessly with Zebra barcode printing hardware and requires the following printer:
- GX430T model number GX43-102410-000
- 2000T labels
- 5100 Premium Resin Ribbon

### 3.4 Evidence Printer Server Requirements

The complexity with barcode printing stems from making our website communicate with physical hardware on premises with our clients. We cannot rely on Chrome/Internet Explorer's built in printing functionality because they do not support the Zebra printing language we use for labels. In order to communicate with the barcode printers we will need an intermediate server to route printing requests. The machine will need the following specifications:

- 2 GB RAM
- 32 GB HDD Storage
- 2 x 2.0+ GHz Processors

**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

If 3rd party integrations are required, interface server(s) may be installed on site. The requirements of an interface server are as follows. The recommended number of interface servers needed depends on the interface requirements of the agency as well as the number of users supported by the data exchange product.

| Item | Minimum | Recommended |
|---|---|---|
| Operating System | Ubuntu Linux (latest LTS) | Ubuntu Linux (latest LTS) |
| Processor speed & quantity | 4x CPUs | 8x+ CPUs |
| Architecture | x64 / x86 | x64 / x86 |
| Memory | 8 GB | 16+ GB |
| Network Card | 1x 100 Mbps NIC | 2x 1Gbps NICs |
| Display(s) | N/A | N/A |
| Hard Drive | 250 GB | 500 GB |
| Graphics Card | N/A | N/A |

**Additional Terms & Conditions**

*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/

*Subcontractors:*

Implementation Support: Visionary Integration Professionals, LLC or Praescient Analytics, LLC

**Insurance Requirements**

A.  Before commencing work, Mark43 shall, at its own expense, procure, pay for and maintain during the term of this Agreement the following insurance written by companies approved by the state of Texas with an A.M. Best rating of at least A and acceptable to the Subscriber.  Mark43 shall furnish to the Town of Addison Purchasing Department certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Certificates shall reference the project/contract number.  Subscriber has the right to a copy of the full policy.  The Town of Addison shall be included as an additional insured under all liability policies except for professional & automobile liability policies.

1.  Commercial General Liability insurance, including, but not limited to Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Continuing Operations, Independent Contractors and Contractual Liability, with minimum combined single limits of $1,000,000 per-occurrence, $1,000,000 Products/Completed Operations Aggregate and $1,000,000 general aggregate.  Coverage must be written on an occurrence form.  The General Aggregate shall apply on a per project basis.

2.  Workers' Compensation insurance with statutory limits; and Employers' Liability coverage with minimum limits for bodily injury:  a) by accident, $100,000 each accident, b) by disease, $100,000 per employee with a per policy aggregate of $500,000.

3.  Business Automobile Liability insurance covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of $1,000,000 per occurrence.

4.  Professional Liability (Errors and Omissions Liability) and Cyber Risk Insurance (including professional oversight liability and infringement liability limited to the following: copyright infringement, software copyright infringement, improper deep linking or framing, plagiarism, trade mark and trade dress infringement), covering acts, errors, and omissions arising out of Mark43's operations or services with minimum limits of $1,000,000 per occurrence, $2,000,000 annual aggregate.

    NOTE:  If the insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than thirty-six (36) months following completion of the contract and acceptance by the Town of Addison.

B.  With reference to the foregoing required insurance, the consultant shall endorse applicable insurance policies as follows:

1.  A waiver of subrogation should be included on Mark43's workers' compensation policies to eliminate the potential that the workers' compensation insurer will subrogate against the Subscriber, its officials, employees, and officers shall be contained in the Workers' Compensation insurance policy.

2.  The Town of Addison, its officials, employees and officers shall be included as additional insureds on the Commercial General Liability policy, by using endorsement CG2026 or broader.

3.  All insurance policies shall be endorsed to the effect that Town of Addison will receive at least thirty (30) days' notice prior to cancellation, non-renewal, termination or ten (10) day's non-payment of the policies. Notwithstanding the foregoing, this requirement shall not apply to the Professional Liability (Errors and Omissions Liability) and Cyber Risk Insurance (including professional oversight liability) policy.

4.  All insurance shall be purchased from an insurance company that meets a financial rating of at least A or better as assigned by A.M. Best Company.

**Schedule F**

**Mark43 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 must 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.

g.   Mark43 will use industry-standard practices to ensure that its software (including any interfaces developed by Mark43) does not include any malicious code prior to release. Mark43 will not design code to delete, disable, deactivate, interfere with or otherwise harm any software, program, data, device, system or service, including without limitation, any time bomb, virus, drop dead device, malicious logic, worm, Trojan horse or trap or back door.

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 /CJIS.  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 and shall not be transferred outside the United States except as expressly authorized by Subscriber.  As of the Effective Date, Mark43 uses AWS Govcloud region as Cloud Provider to host Subscriber Data. Mark43 shall provide at least twenty (20) days' advance written notice to Subscriber prior to a change to a new Cloud Provider for hosting.  Said notice shall identify the legal name and legal address of the new Cloud Provider.