MARK43

# SOFTWARE LICENSE AND SERVICES AGREEMENT

This Software License and Services Agreement (this "Agreement") sets forth the terms and conditions applicable to the Services purchased through an Order (as defined below) and constitutes the agreement by and between Mark43, Inc. ("Mark43"), and the Ordering Activity identified in the Order and accessing or using the Services ("Subscriber"). For the avoidance of doubt, this Agreement applies only to Services purchased through a GSA Schedule contract. By executing an Order, or by accessing or using, or subscribing to use the Services, Subscriber is accepting and agreeing to be bound by and to comply with all terms and conditions of this Agreement.

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

**1. DEFINITIONS**.

**1.1** "**Affiliate**" means, with respect to any entity, any other entity who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise.

**1.2** "**Affiliated Agency**" means any government agency to which Subscriber is legally or contractually permitted to share certain Subscriber Data and/or access to an Application.

**1.3** "**Applicable Law(s)**" means, with respect to any party, any foreign, federal, state or local law, including, without limitation, statutes, regulations, ordinances, and similar authorities, applicable to such party's performance hereunder.

**1.4** "**Applications**" means the object code versions of Mark43's software applications for which Subscriber is purchasing subscriptions under an Order, as described in such Order, and all Updates made available by Mark43 to Subscriber under this Agreement.

**1.5** "**Authorized Users**" means employees of Subscriber and any Affiliated Agency who are authorized to access and use the Applications on Subscriber's behalf in accordance with the applicable security designation(s), pursuant to which full or limited access to the applicable Applications may be granted.

**1.6** "**Documentation**" means the documentation regarding the functionality and use of the Applications made available to Subscriber by Mark43, including the technical requirements described at https://mark43.com/tech-requirements, which technical requirements may be updated from time to time upon reasonable advance written notice (email acceptable) to Subscriber.

**1.7** **"Go Live"** means the date of cutover to each respective Mark43 Application.

**1.8** **"Interface Software**" means the object code version of any interface software made available by Mark43 to Subscriber under this Agreement for download and installation in connection with Subscriber's use of the Applications with its own systems.

**1.9** "**Intellectual Property Rights**" means all intellectual and industrial property rights, whether now existing or existing in the future, including (a) all patent rights, including any rights in pending patent applications and any related rights; (b) all copyrights and other related rights throughout the world in works of authorship, including all registrations and applications therefor; (c) all trademarks, service marks, trade dress or other proprietary trade designations, including all registrations and applications thereof; (d) 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 (e) all other rights covering industrial or intellectual property recognized in any jurisdiction.

**1.10** "**Mark43 Integrated Application**" means a third-party product, service, database, or application, other than Subscriber Integrated Applications, that is incorporated in, integrated with, accessed through, or used to host the SaaS Services.

**1.11** "**Mark43 Integrated Application Data**" means all data, information, content and other materials provided or made available by a Mark43 Integrated Application.

**1.12** "**Mark43 Materials**" means, collectively, the Website, Applications, SaaS Services, Updates, Documentation, Interface Software, Work Product, Mark43 Integrated Applications, and Mark43 Integrated Application Data.

**1.13** "**Order**" means a purchase order, order form or similar document issued by Subscriber pursuant to the GSA Schedule contract identified therein.

**1.14** "**Professional Services**" means any implementation, training, project management, consulting and other services (outside the scope of the Support Services) that are described in a Statement of Work.

**1.15** "**SaaS Services**" means Mark43's provision of the Applications to Subscriber on a software-as-a-service basis for remote access use by Subscriber and its Authorized Users.

**1.16** **"Services**" means, collectively, the SaaS Services, Support Services, and any Professional Services.

**1.17** **"Statement of Work**" means a written description of the Professional Services ordered by Subscriber that is agreed to and executed by a duly authorized representative of each of Mark43 and Subscriber and that references this Agreement. Each Statement of Work is incorporated into and subject to the terms of this Agreement.

**1.18** "**Subscriber Data**" means (a) all data, information, content and other materials transmitted by Subscriber or any Authorized User to the Applications, (b) all Subscriber Integrated Application Data, and (c) all Subscriber-specific output resulting from Subscriber's and its Authorized Users' use of the Applications that is displayed to Subscriber on the Applications, excluding in all cases Third-Party Data, data owned, provided, or made available by Mark43, and data imported by Mark43 from third-party software at Subscriber's request for data migration purposes.

**1.19** "**Subscriber Integrated Application"** means a third-party product, service, database, or application set forth on an Order that will be installed, linked or enabled by or on behalf of Subscriber for use in connection with the SaaS Services (e.g. NCIC).

**1.20** "**Subscriber Integrated Application Data**" means all data, information, content and other materials provided or made available by a Subscriber Integrated Application.

**1.21** "**Subscriber Integrated Application Provider**" means the third party who provides or makes available the applicable Subscriber Integrated Application, which may include other vendors, Affiliated Agencies, state agencies and local agencies.

**1.22** "**Support Services**" means the support services provided by or on behalf of Mark43 with respect to Subscriber's use of the Applications and the service level agreement, as described in Exhibit B.

**1.23** **"Third-Party Data"** means any data, information, content and other materials made available by any third party, including Subscriber Integrated Application Data and Mark43 Integrated Application Data.

**1.24** "**Updates**" means any and all new releases, new versions, modifications, enhancements, patches and other updates for the Applications that Mark43 makes generally available without additional charge to its other subscribers to such Applications.

**1.25** "**Website**" means any internet website through which Mark43 provides the SaaS Services under this Agreement.

**1.26** "**Work Product**" means all materials, software, tools, data, inventions, works of authorship and other innovations of any kind that Mark43, or personnel working for or through Mark43, may make, conceive, develop or reduce to practice, alone or jointly with others, in the course of performing Professional Services or as a result of such Professional Services, whether or not eligible for patent, copyright, trademark, trade secret or other legal protection, including any customizations or configurations to the Applications or Interface Software.

## 2. PROVISION OF THE SERVICES AND SOFTWARE.

**2.1** **SaaS Services**. Subject to the terms of this Agreement, and during the Term, Mark43 hereby grants to Subscriber a non-exclusive, non-transferable (except as permitted by Section 11.2), non-sublicensable (a) right to access and use, and to permit Authorized Users to access and use solely for the benefit of Subscriber and its Affiliated Agencies, the Applications, and (b) license to download and install on Subscriber's servers, and use in connection with Subscriber's use of the Applications hereunder, any Interface Software, in each case of (a) and (b), solely in furtherance of Subscriber's

legitimate internal business purposes and in accordance with this Agreement and the Documentation. Mark43 will be responsible for hosting the Website and the Applications, and Subscriber and its Authorized Users will be responsible for obtaining internet connections and other third-party software, hardware and services necessary for them to access the Website through the internet, including as set forth in the Documentation. Subscriber will be responsible to Mark43 for each Authorized User's compliance with the restrictions on use and other terms and conditions of this Agreement and for each Authorized User's acts and omissions in connection with their use of the SaaS Services.

**2.2** **Professional Services**. Subject to the terms and conditions of this Agreement, Mark43 will provide to Subscriber the Professional Services agreed to by Subscriber and Mark43 and set forth in a Statement of Work. To the extent any Professional Services involve the development of any Work Product, all Intellectual Property Rights to such Work Product will be solely owned by Mark43, will be deemed to be included in the definition of SaaS Services and will be provided to Subscriber on the terms set forth herein.

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

**2.4** **Support Services**. Subject to the terms and conditions of this Agreement, Mark43 will provide to Subscriber the Support Services.

**2.5** **Restrictions on Use**. Except as expressly permitted in this Agreement or the Documentation, Subscriber and its Authorized Users will not, directly or indirectly, and will not permit any other party to: (a) share Subscriber's or any Authorized User's login credentials to the Applications, Support Services and Documentation; (b) reverse engineer, decompile, disassemble, or otherwise attempt to discern the source code, underlying ideas, algorithms, file formats, or interface protocols of any of the Mark43 Materials or of any files contained in or generated by any Mark43 Materials; (c) copy, modify, adapt or translate any of the Mark43 Materials, or otherwise make any use, resell, distribute or sublicense any of the Mark43 Materials; (d) make any of the Mark43 Materials available on a "service bureau" basis or otherwise provide to or allow any third parties to access or use any of the Mark43 Materials; (e) remove or modify any proprietary marking or restrictive legends of Mark43 or its suppliers in or on any of the Mark43 Materials; (f) use any of the Mark43 Materials in violation of any Applicable Law; (g) use any of the Mark43 Materials or any Mark43 Integrated Applications to create or augment any mapping or navigation related dataset, business listings database, mailing list, or telemarketing list, for use in connection with any products or services other than the SaaS Services; (h) introduce into any of the Mark43 Materials any viruses, worms, defects, Trojan horses, malware, or any items of a destructive nature; (i) use any of the Mark43 Materials to post advertising or listings; (j) use any of the Mark43 Materials to defame, abuse, harass, stalk, or threaten others; (k) if Subscriber's organization is based in the United States, permit access or use of any of the Mark43 Materials by any individual located outside the United States; (l) hide or obscure any Authorized User's location; (m) access or use or permit others to access or use, any of the Mark43 Materials (i) for any activities other than to enhance Subscriber's own services and professional judgment, or (ii) in any manner such that the Mark43 Materials are the only resources being utilized by Subscriber or any Authorized User to make a decision that could lead to death, personal injury, or property damages; (n) access or use any of the Mark43 Materials to create a competitive product or service; or (o) use or access any Mark43 Materials to develop, train, fine-tune, or otherwise improve any machine learning models, artificial intelligence systems, or similar technologies. In addition, Subscriber and its Authorized Users may not access or use any of the Mark43 Materials if in direct competition with Mark43, and will not allow access to or use of any of the Mark43 Materials by any party who is in direct competition with Mark43, except with Mark43's prior written consent. Subscriber shall comply with all additional restrictions relating to its use of any Mark43 Integrated Applications and Subscriber Integrated Applications.

**2.6** **Security Obligations**. Subscriber and its Authorized Users shall securely manage their respective password(s) for access to the Applications. Subscriber shall notify Mark43 as soon as practicable in the event it becomes aware of any unauthorized access or use of the Applications, or of any of its or its Authorized Users' passwords or accounts. Unless expressly stated otherwise in the applicable Order, a single username or password may not be used by more than one (1) Authorized User. In addition, Authorized Users may log into the Applications from only one location at any given time;

concurrent usage (or sign in) under a single username is prohibited, unless Subscriber has a business justification for concurrent usage, in which case Subscriber must obtain Mark43's prior written approval for such usage. Subscriber is responsible for all activities conducted using its and its Authorized Users' user accounts in use of the Applications. Subscriber shall comply with all Applicable Laws in connection with use of the Services and Applications, 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 Applications, and (b) maintain and promptly update the registration data to keep it true, accurate, current and complete.

**2.7** **Changes to SaaS Services**. Mark43 may make changes and Updates to the Applications and SaaS Services, provided that it does not materially derogate the overall quality of the Applications or SaaS Services. Mark43 does not guarantee that the Applications or SaaS Services are or will remain compatible with any particular third-party software or equipment, and may, upon written notice, terminate its support for any software or equipment of Subscriber that Mark43 determines are incompatible with the operation of the SaaS Services.

**2.8** **Data Sharing**. Mark43 will allow Subscriber to grant Affiliated Agencies specified levels of access to Subscriber Data pursuant to an executed data-sharing agreement between Subscriber and the applicable Affiliated Agency, and with permissions subject to the parameters laid out in such data-sharing agreement. Subscriber shall provide Mark43 with a copy of the executed data-sharing agreement prior to Mark43's allowing of any such data-sharing. As between Mark43 and Subscriber, Subscriber will be solely responsible for any damages, losses and liabilities that arise as a result of such data-sharing. For the avoidance of doubt, in the event Subscriber enables Affiliate Agencies to access Subscriber Data without providing proof of a data-sharing agreement, Subscriber shall be solely responsible for any damages, losses and liabilities that arise as a result of such data-sharing.

**2.9** **No Charge Access**. If any Applications or SaaS Services are provided or made available to Subscriber for pilot, evaluation, beta, pre-release, or otherwise for free, as identified by Mark43 (each, a "**Pilot Service**"), Mark43 hereby grants to Subscriber a limited, non-exclusive, non-transferable, non-sublicensable right to access and use such Pilot Service pursuant to the terms of this Agreement, solely for the purpose of internally evaluating the Pilot Service in consideration of a purchase of a full, non-evaluation subscription to such Pilot Service ("**Non-Pilot Subscription**"). Notwithstanding the foregoing or any other provision set forth herein, Subscriber acknowledges and agrees: (a) that such access and use right will terminate on the end date of the predetermined period set forth in the applicable Order or otherwise agreed in writing by the parties ("**Pilot Term**"), or may be terminated earlier upon written notice provided by either party to the other; (b) that such Pilot Service and any associated Documentation are provided to Subscriber "AS IS" and "AS AVAILABLE" without any Mark43 warranties, indemnification obligations, or support obligations of any kind, express or implied; and (c) that in no event will Mark43's or any of its suppliers' total and aggregate liability arising out of or related to such Pilot Service exceed $1,000. The parties may agree in the applicable Order or otherwise in writing for Subscriber's use of the Pilot Service to convert automatically into a Non-Pilot Subscription upon the expiration of the Pilot Term without having to enter into an additional Order. Except to the extent such terms conflict with this Section, all other terms of this Agreement will apply to each such Pilot Service.

## 3. PROPRIETARY RIGHTS.

**3.1** **Ownership of Subscriber Data.** As between Mark43 and Subscriber, Subscriber owns the Subscriber Data. Subscriber hereby grants to Mark43, a royalty-free, worldwide, non-transferable (except as permitted by Section 11.2), non-sublicensable (except to Mark43's contractors on a need-to-know basis to assist Mark43 in providing the Services), license to use the Subscriber Data to configure and provide the Services to Subscriber, to prevent or address service or technical problems, in accordance with this Agreement and the Documentation, and otherwise in accordance with Subscriber's requests or instructions. Mark43 may also use Subscriber Data in anonymized and/or aggregated form to develop analytics and improvements that may be used in connection with the Mark43 products and services, provided that Mark43 may not sell or offer for sale any Subscriber Data on a standalone basis, whether in Subscriber identifiable, or anonymized and aggregated form.

**3.2** **Ownership of and Reservation of Rights to Mark43 Materials.** As between Mark43 and Subscriber, Mark43, its Affiliates or its or their suppliers own all right, title and interest in and to the Mark43 Materials and all related technology and Intellectual Property Rights. Subject to the limited

rights expressly granted hereunder, Mark43, its Affiliates and its and their suppliers reserve all rights, title and interest in and to the Mark43 Materials and all related technology and Intellectual Property Rights. No rights or licenses are granted to Subscriber hereunder other than as expressly set forth in this Agreement.

**3.3** **Subscriber Feedback**. Subscriber and its Authorized Users may elect to provide Mark43 with suggestions, enhancement requests, recommendations and other feedback concerning the Mark43 Materials (the "**Subscriber Feedback**"). Subscriber hereby assigns and agrees to assign all Subscriber Feedback and all Intellectual Property Rights therein to Mark43 without lien or encumbrance and agrees that Subscriber Feedback will be the sole property of Mark43 and that Mark43 may use Subscriber Feedback in its discretion without obligation to Subscriber. Mark43 has no obligation to make Subscriber Feedback an improvement. For the avoidance of doubt, Subscriber Feedback does not constitute Confidential Information of Subscriber hereunder.

**3.4** **Usage Data**. Mark43 may collect certain information in connection with Subscriber's access to or use of the Services, such as access records, date and time stamps, transaction and activity records and system performance data ("**Usage Data**"). As between Mark43 and Subscriber, Mark43 owns all Usage Data. Mark43 will provide Subscriber with access to those subcategories of Usage Data to which Subscriber must be granted access in accordance with the Criminal Justice Information Services ("**CJIS**") Security Policy.

**3.5** **AI Usage**. (a) Mark43 shall maintain documentation consistent with industry standards and applicable governmental guidance describing the functionality, limitations, and known risks associated with the use of AI features included in the Services and shall provide such documentation upon reasonable request; (b) AI-generated outputs are probabilistic in nature and may be incomplete or inaccurate. Subscriber is responsible for reviewing and verifying such outputs and for exercising independent judgment in all decisions made in reliance on the Services; (c) Mark43 shall implement reasonable measures consistent with industry standards and applicable governmental guidance to identify and address risks related to bias, hallucinations, and inaccurate outputs; (d) Mark43 shall not use Subscriber Data to train or improve AI Models without Subscriber's written consent; and (e) The parties shall reasonably cooperate with respect to applicable federal and state laws and guidance relating to the use of AI.

**3.6** **Data Security**. Terms applicable to the privacy and security of Subscriber Data are set forth in Mark43's data processing addendum set forth in Exhibit C (the "**Data Processing Addendum**").

## 4. INTEGRATED APPLICATIONS.

**4.1** **Mark43 Integrated Applications**. Mark43 Integrated Applications may be included by Mark43 and provided or made available to Subscriber through the SaaS Services. In connection with the functionality provided by or through such Mark43 Integrated Applications, Subscriber hereby accepts and agrees to be bound by the terms and conditions applicable to such Mark43 Integrated Applications as set forth in Exhibit D (the "**Mark43 Integrated Application Terms**"). In the event of any inconsistency or conflict between the applicable Mark43 Integrated Application Terms and the terms of this Agreement, the Mark43 Integrated Application Terms shall govern with respect to Subscriber's access to and use of the applicable Mark43 Integrated Application.

**4.2** **Subscriber Integrated Applications; Third-Party Data**. To the extent Subscriber installs, links to or enables any Subscriber Integrated Application for use with the Applications or SaaS Services, Subscriber grants and agrees to grant (and will cause the applicable Subscriber Integrated Application Provider to grant) to Mark43 permission to access, retrieve, view, store, copy, modify and process Subscriber Integrated Application Data from Subscriber's existing account(s) on each such Subscriber Integrated Application to the extent necessary to facilitate the interoperation of such Subscriber Integrated Application with the Applications or SaaS Services. To the extent Subscriber requires a Subscriber Integrated Application Provider's assistance to install, link to or enable any Subscriber Integrated Application for use with the Applications or SaaS Services, Subscriber shall separately contract with each such Subscriber Integrated Application Provider for any such assistance. In no event will Mark43 be responsible or liable for any Subscriber Integrated Application or any Subscriber Integrated Application Data or other Third-Party Data, or for any failure of a Subscriber Integrated Application to properly interoperate with any Application or the SaaS Services; provided, however, to the extent that Mark43 creates, pursuant to a Statement of Work, an interface for a Subscriber Integrated Application, Mark43 shall be responsible for such interface only, subject to the terms and conditions of this Agreement and the applicable Statement of Work. Mark43 may

at any time, in its sole reasonable discretion, including upon the request of a Subscriber Integrated Application Provider or due to an actual or potential security threat, disable any connection between a Subscriber Integrated Application and the Applications or SaaS Services, and any access, retrieval and viewing of Subscriber Integrated Application Data via the Applications or SaaS Services. For the avoidance of doubt, Subscriber's access to and use of Subscriber Integrated Applications and Subscriber Integrated Application Data shall be at Subscriber's sole risk and subject to the terms and conditions of Subscriber's separate agreement(s) with the applicable Subscriber Integrated Application Providers.

**5. FEES AND PAYMENT TERMS**.

**5.1** **Fees for the Services**. Subscriber will pay the fees as set forth in the applicable Order (the "Fees"). All Fees due hereunder will be due and payable by Subscriber within thirty (30) days of the invoice receipt date. 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. Mark43 or the authorized reseller, as applicable, may modify the Fees for each Renewal Term (as defined below) by providing at least forty-five (45) days' written notice thereof prior to the expiration of the Initial Term (as defined below) or the then-current Renewal Term.

**5.2** **Overdue Payments**. Any payment not received from Subscriber by the due date shall accrue late charges at the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

**5.3** **Reserved.**

**6. TERM AND TERMINATION.**

**6.1** **Term.** The initial term of this Agreement begins on date Subscriber sets forth in the applicable Order (the "Effective Date") and will continue for the initial period set forth in such Order (the "Initial Term"), and, if indicated on such Order, shall renew in accordance with the terms set forth therein (each renewal term, a "Renewal Term"), unless earlier terminated in accordance with Section 6.2.

**6.2** **Termination; Suspension of Services**.

(a) Termination for Breach by Either Party. Either party may terminate this Agreement in accordance with the Contract Disputes Act and the General Services Acquisition Manual Section 552.238-114 if the other party breaches a material term of this Agreement and such breach remains uncured for thirty (30) days after the other party's receipt of such notice.

(b) Termination for Non-Appropriation. Subscriber's payment obligations under this Agreement extend only to funds appropriated annually by Subscriber or Subscriber's governing body for the purpose of this Agreement. For each succeeding fiscal period covered by this Agreement, Subscriber agrees or shall cause the applicable agency or department responsible for Subscriber's payment obligations under this Agreement to agree to include in its budget request appropriations sufficient to cover Subscriber's annual financial obligations under this Agreement. If, after making reasonable efforts to obtain relevant funding, Subscriber is appropriated insufficient funds to continue annual payments under a specific Order, Subscriber may terminate that Order by giving Mark43 not less than thirty (30) days' prior written notice. Upon termination under this paragraph, Subscriber shall compensate Mark43 or, where applicable, its reseller or distributor for all Services rendered prior to the effective date of termination the Fees for which remain outstanding.

(c) Suspension of Services. To the extent permitted by Applicable Law, in addition to any other rights or remedies it may have under this Agreement or Applicable Law, Mark43 may immediately suspend provision of the Services without liability to Subscriber: (a)reserved; (b) if Subscriber breaches Section 2.5 (Restrictions on Use) or Section 2.6 (Security Obligations); (c) to avoid harm or liability to Mark43, its Affiliates or its other customers, including in the case of denial of service attacks or other disruptions; or (d) if required by Applicable Law or a governmental authority. Mark43 will use commercially reasonable efforts to restore Subscriber's rights to use and access those portions of the Services or accounts that gave rise to the suspension promptly after Subscriber has resolved the problem giving rise to the suspension.

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

(a) Subscriber will pay all amounts payable hereunder as of the termination or expiration date;

(b) All rights, licenses and access 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 Mark43 Materials;

(c) Upon Subscriber's written request prior to the effective date of termination, Mark43 will provide Subscriber with a copy of the Subscriber Data within ninety (90) days of the effective date of termination; and

(d) Subscriber will either return to Mark43 or at Mark43's option, destroy, all documents, computer files and other materials containing any Confidential Information of Mark43 that are in Subscriber's possession or control. Upon the written request of Mark43, Subscriber will provide a written certification of its compliance with this paragraph.

**6.4 Survival.** This Section 6.4 and the following sections will survive any termination or expiration of this Agreement: Section 3 ("Proprietary Rights"), Section 4 ("Integrated Applications"), Section 5 ("Fees and Payment Terms"), Section 6.3 ("Effect of Termination"), Section 7 ("Confidentiality"), Section 8.3 ("Disclaimer"), Section 9 ("Limitation of Liability"), Section 10 ("Indemnification"), and Section 11 ("Miscellaneous").

## 7. CONFIDENTIALITY.

**7.1 Definition of Confidential Information.** For the purposes of this Agreement, "**Confidential Information**" means: (a) with respect to Mark43, the Mark43 Materials, and any and all source code relating thereto, as well as any non-public information or material regarding Mark43's legal or business affairs, products, technology, financing, pricing, customers, properties or data, and (b) with respect to Subscriber, the Subscriber Data and any non-public information or material regarding Subscriber's legal or business affairs, technology, properties or data. Notwithstanding any of the foregoing, Confidential Information does not include information which: (i) is generally publicly available at the time of disclosure or becomes generally publicly available after disclosure through no fault of the party to which the Confidential Information has been disclosed (the "**Receiving Party**"); (ii) is documented as being known to the Receiving Party free of any confidentiality obligations 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, free of any confidentiality obligations, from a third person who was rightly in possession of such information.

**7.2 Use and Disclosure of Confidential Information.** The Receiving Party will, with respect to all Confidential Information disclosed by the Disclosing Party before or after the Effective Date: (i) use such Confidential Information only to perform its obligations or exercise its rights under this Agreement; (ii) subject to Section 7.4 below, restrict disclosure of such Confidential Information within the Receiving Party's organization to only those of the Receiving Party's employees and independent contractors who have a need to know such Confidential Information in connection with the Receiving Party's performance of this Agreement and who are subject to confidentiality obligations with respect to such Confidential Information no less restrictive than those set forth herein; and (iii) except as expressly provided herein, not disclose such Confidential Information to any third party unless authorized in writing by the Disclosing Party to do so.

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

**7.4 Employee and Independent Contractor Compliance.** The Receiving Party will, prior to providing any employee or independent contractor access to any Confidential Information of the Disclosing Party in accordance with Section 7.2, inform such employee or independent contractor of the confidential nature of such Confidential Information and require such employee or independent contractor to comply with the Receiving Party's obligations hereunder with respect to such Confidential Information.

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

cost, if the other party wishes to contest the disclosure. Mark43 recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by Mark43.

**7.6 Public Records**.

(a) For purposes of this Section 7 (Confidentiality), the term "**Public Records Request**" shall mean any request for the disclosure of records pursuant to a state public records law or "sunshine" law, federal Freedom of Information Act or other comparable law.

(b) To the extent Subscriber is subject to a Public Records Request that seeks the disclosure of any information or materials provided by Mark43 to Subscriber prior to, during or after the Term, Subscriber shall, prior to any such disclosure, promptly notify Mark43 of such Public Records Request in writing (to the extent legally permitted to do so) and provide reasonable assistance, at Mark43's request and cost, if Subscriber plans to release specific information or materials that Mark43 believes are exempt from disclosure requirements. Subscriber shall also identify for Mark43 the information or materials it intends to disclose, and provide Mark43 at least ten (10) days to review prior to disclosure, or if such time is not available or permitted under Applicable Law, at least as much time as would be reasonable to allow Mark43 to meaningfully review and seek appropriate relief. For the avoidance of doubt, and without limiting the foregoing, Subscriber hereby acknowledges that Mark43 shall have no implicit or explicit obligation to challenge, oppose or defend against any request described herein.

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

(a) Subscriber understands and agrees that Mark43 utilizes Cloud Providers (as defined in the Data Processing Addendum) to host the Applications, SaaS Services and Subscriber Data.

(b) Subscriber may request reasonable records from Mark43 from time to time to assess Mark43's adherence to requirements of the applicable CJIS Security Policy promulgated by the FBI. For the avoidance of doubt, Subscriber may need the consent of Cloud Providers to obtain any records or information from Cloud Providers.

(c) Subscriber will have the opportunity to run, at Subscriber's expense, reasonable background checks on Mark43 employees who will have direct access to Subscriber Data in Subscriber's production environment (such employees, the "**Covered Employees**"), provided that:

(i) If Subscriber is in a State that operates a statewide CJIS vendor clearance program, and Mark43 is enrolled and in good standing with such program, Subscriber agrees to rely on the State's confirmation of clearance for Covered Employees. Subscriber will not require additional background checks at the local or agency level, unless otherwise required by applicable law.

(ii) Mark43's obligation in support of background checks conducted by Subscriber, if necessary, shall be limited to providing the following: a signed CJIS Security Addendum, a CJIS Security Awareness Training certificate, a copy of government-issued photo ID, one FD-258 fingerprint card, and only such additional documentation as is required by applicable state law or published state CJIS policy. Mark43 shall not be required to provide any other personnel or background documentation and shall not be required to make Covered Employees available for interviews, whether in person, by phone, or otherwise.

(iii) For any background check conducted under this Section 7.7(c), 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 submitting the documentation described in Section 7.7(c)(ii).

**8. REPRESENTATIONS AND WARRANTIES**.

**8.1 Power and Authority.** Each party represents and warrants that it has the full right, power and authority to enter into this Agreement and to discharge its obligations hereunder and that the person signing this Agreement on behalf of the party has the authority to bind that party. Subscriber represents and warrants that it has obtained, and shall have throughout the Term, all necessary approvals, consents, and authorizations necessary for procurement under this Agreement and that

its obligations under this Agreement do not, and shall not, exceed any budget authority limitations during the Term of this Agreement.

**8.2 Services Warranty**.

(a) Mark43 represents and warrants that the Applications and SaaS Services will be made available to Subscriber in accordance in all material respects with the Documentation. Subscriber's sole remedy and Mark43's sole obligation with respect to a breach of the foregoing warranty is for Mark43, through the Support Services, to use commercially reasonable efforts to remedy the breach within a commercially reasonable amount of time.

(b) Mark43 represents and warrants that the Professional Services will be provided in a professional manner and that for a period of thirty (30) days from Go Live (the "**Warranty Period**"), the Work Product will operate in material accordance with the specifications provided by Mark43 or otherwise agreed between the parties in writing (including in the applicable Statement of Work). Subscriber's sole remedy and Mark43's sole obligation with respect to a breach of the foregoing warranty is for Mark43 to use commercially reasonable efforts to work with Subscriber to resolve the issue causing such breach within a commercially reasonable amount of time. After the Warranty Period, if Subscriber experiences any issue with the Work Product, the parties must enter into a new Statement of Work to address such issues at Mark43's then-current Professional Services pricing. For clarity, Mark43's Support Services do not apply to or provide support for any Professional Services or Work Product.

**8.3 Disclaimer**. USE OF THE MARK43 MATERIALS IS NOT, AND IS NOT INTENDED TO BE, A SUBSTITUTE FOR THE PROFESSIONAL JUDGMENT OF AUTHORIZED PARTIES, INCLUDING DISPATCHERS, LAW ENFORCEMENT OFFICERS, INVESTIGATORS OR FIRST RESPONDERS. THE MARK43 MATERIALS ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY AND THE DATA PROVIDED OR MADE AVAILABLE BY MARK43 OR ITS SUPPLIERS IN CONNECTION WITH THE MARK43 MATERIALS SHOULD NOT REPLACE OTHER EMERGENCY INFORMATION AND SHOULD NOT BE EXCLUSIVELY RELIED-UPON IN AN EMERGENCY SCENARIO. SUBSCRIBER SHALL BE SOLELY RESPONSIBLE FOR ALL ITS OWN ACTIONS OR FAILURE TO ACT IN CONNECTION WITH ITS AND ITS AUTHORIZED USERS' USE OF THE MARK43 MATERIALS AND ANY THIRD-PARTY DATA, INCLUDING WITH RESPECT TO COMPLIANCE WITH APPLICABLE LAWS, AND MARK43 AND ITS SUPPLIERS ASSUME NO RESPONSIBILITY, LIABILITY OR RISK FOR SUBSCRIBER'S USE OR MISUSE OF, OR FAILURE TO USE, THE INFORMATION PROVIDED OR MADE AVAILABLE BY MARK43 OR ITS SUPPLIERS THROUGH THE MARK43 MATERIALS OR ANY THIRD-PARTY DATA. SUBSCRIBER AND THE APPLICABLE AUTHORIZED USERS ARE SOLELY RESPONSIBLE FOR, AND SUBSCRIBER WILL BE SOLELY LIABLE FOR, (a) VERIFYING THE ACCURACY, COMPLETENESS, AND SUITABILITY OF ANY DATA USED IN CONNECTION WITH THE SERVICES, AND (b) ANY CONSEQUENCES OF A "HARD DELETE" (i.e., WHEN DATA IS PERMANENTLY REMOVED FROM A DATABASE) OF ANY SUBSCRIBER DATA PERFORMED BY OR AT THE REQUEST OF SUBSCRIBER OR ANY OF ITS AUTHORIZED USERS. SUBSCRIBER ACKNOWLEDGES THAT THE MARK43 MATERIALS DO NOT CONTAIN OR PROVIDE LEGAL ADVICE. EXCEPT FOR THE LIMITED WARRANTIES PROVIDED BY MARK43 IN SECTION 8.1 AND SECTION 8.2, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MARK43 AND ITS SUPPLIERS MAKE NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE MARK43 MATERIALS. MARK43 AND ITS SUPPLIERS DO NOT WARRANT THAT THE MARK43 MATERIALS WILL BE ERROR FREE OR UNINTERRUPTED. MARK43 AND ITS SUPPLIERS SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE OF THEIR REASONABLE CONTROL. NEITHER MARK43 NOR ANY OF ITS SUPPLIERS MAKES ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER TO SUBSCRIBER OR ANY OTHER PARTIES WITH RESPECT TO ANY MARK43 INTEGRATED APPLICATIONS, MARK43 INTEGRATED APPLICATION DATA, SUBSCRIBER INTEGRATED APPLICATIONS, SUBSCRIBER INTEGRATED APPLICATION DATA, OR ANY THIRD-PARTY DATA.

SUBSCRIBER ACKNOWLEDGES AND AGREES THAT THE SERVICES AND APPLICATIONS MAY INCLUDE, INCORPORATE, AND/OR BE DERIVED FROM, AND THAT IN PROVIDING THE

SERVICES MARK43 MAY UTILIZE OR EMPLOY, SYSTEMS, APPLICATIONS, MODELS (INCLUDING LARGE LANGUAGE MODELS), ALGORITHMS, TOOLS, OR SERVICES THAT PERFORM TASKS COMMONLY ASSOCIATED WITH HUMAN INTELLIGENCE, SUCH AS LEARNING, REASONING, PREDICTIVE ANALYTICS, OR GENERATIVE CONTENT CREATION ("AI TECHNOLOGY"). SUBSCRIBER FURTHER ACKNOWLEDGES AND AGREES THAT AI TECHNOLOGY, AS WELL AS ANY DATA, RECOMMENDATIONS, PREDICTIONS, TEXT, OR OTHER MATERIAL PRODUCED, IN WHOLE OR IN PART, THROUGH THE USE OF AI TECHNOLOGY ("AI-GENERATED OUTPUT"), ARE PROBABILISTIC IN NATURE AND MAY GENERATE INCOMPLETE, INACCURATE, OR INAPPROPRIATE RESULTS. MARK43 WARRANTS THAT THE AI TECHNOLOGY AND AI-GENERATED OUTPUT WILL PERFORM SUBSTANTIALLY IN ACCORDANCE WITH SOFTWARE WRITTEN MATERIALS ACCOMPANYING IT. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, ACCORDINGLY, AI TECHNOLOGY AND AI-GENERATED OUTPUT ARE PROVIDED "AS IS". MARK43 MAKES NO WARRANTIES, REPRESENTATIONS, GUARANTEES, OR COVENANTS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO AI TECHNOLOGY OR AI-GENERATED OUTPUT, INCLUDING WITHOUT LIMITATION ANY WARRANTY OR REPRESENTATION THAT AI-GENERATED OUTPUT WILL BE ACCURATE, COMPLETE, ERROR-FREE, RELIABLE, CURRENT, FIT FOR A PARTICULAR PURPOSE, NON-INFRINGING, OR COMPLIANT WITH SUBSCRIBER'S INTERNAL POLICIES OR ANY APPLICABLE LAW OR REGULATION.

**9. LIMITATION OF LIABILITY**.

**9.1 Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL MARK43'S OR ANY OF ITS SUPPLIERS' TOTAL AND AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE AGGREGATE AMOUNT OF FEES PAID BY SUBSCRIBER FOR THE SERVICES PURSUANT TO THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST DATE ON WHICH SUCH LIABILITY ARISES. THE FOREGOING LIMITATION IS CUMULATIVE, WITH ALL PAYMENTS FOR CLAIMS OR DAMAGES BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT, AND THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THAT LIMIT. NEITHER MARK43 NOR ANY PROVIDER OF ANY MARK43 INTEGRATED APPLICATIONS, MARK43 INTEGRATED APPLICATION DATA, SUBSCRIBER INTEGRATED APPLICATIONS, OR SUBSCRIBER INTEGRATED APPLICATION DATA SHALL HAVE ANY LIABILITY TO SUBSCRIBER OR ANY OTHER PARTY UNDER THIS AGREEMENT ARISING OUT OF OR RELATING TO SUBSCRIBER'S USE OF SUCH INTEGRATED APPLICATIONS OR DATA, OR FOR ANY OTHER THIRD-PARTY DATA.

**9.2 Exclusion of Damages**. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL MARK43 OR ITS SUPPLIERS HAVE ANY LIABILITY TO SUBSCRIBER OR ANY OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, PERSONAL INJURY OR PROPERTY DAMAGES, HOWEVER CAUSED, OR FOR ANY LOST PROFITS, LOSS OF USE, LOSS OF DATA, COST OF DATA RECONSTRUCTION OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, WHETHER IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE MARK43 MATERIALS, SERVICES, OR THIRD-PARTY DATA, OR FOR ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION IN THE USE THEREOF, EVEN IF MARK43 OR ITS SUPPLIERS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

**9.3 Exceptions.** NOTWITHSTANDING THE FOREGOING, THE EXCLUSIONS AND LIMITATIONS OF LIABILITY SET FORTH IN SECTION 9.1 AND SECTION 9.2 SHALL NOT APPLY TO MARK43'S LIABILITY FOR ITS INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT, ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

**10. INDEMNIFICATION**.

**10.1 Indemnification by Mark43**. Mark43 shall defend and hold harmless Subscriber, and its employees, officers, and directors (the "**Subscriber Indemnified Parties**") against any third-party claim (each, a "**Third-Party Claim**") brought against them, and shall indemnify the applicable Subscriber Indemnified Parties for all losses, damages and expenses (including reasonable attorneys' fees)

("**Losses**") arising from such Third-Party Claim, to the extent such Third-Party Claim alleges that Subscriber's use of an Application as provided by Mark43 and when used in accordance with the Documentation and in compliance with this Agreement infringes that third party's U.S. copyright, U.S. patent issued as of the Effective Date, or U.S. trademark, Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.that third party's trade secret. Mark43 shall have no obligation or liability under this Section 10.1 (Indemnification by Mark43) to the extent the Third-Party Claim arises from: (a) Subscriber's or any Authorized User's failure to incorporate any Update made available by Mark43 that would have avoided the alleged infringement or misappropriation; (b) modification of the Applications by anyone other than Mark43; (c) specifications, instructions, features, functions or designs or other elements provided by or requested by Subscriber or any of its Authorized Users; (d) use of the Applications in combination with any other product, service, data, process or material not provided by Mark43 (including any Subscriber Integrated Applications or Subscriber Integrated Application Data or any other Third-Party Data); or (e) use of the Applications in a manner not contemplated by this Agreement or the Documentation. If any of the Applications are (or Mark43 reasonably 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 such Applications or replace or modify such Applications, as applicable, provided there is no material loss of functionality. If neither of the foregoing options is reasonably available to Mark43, in its reasonable judgment, then use of such Applications may be terminated at the option of Mark43 and Mark43 will refund any prepaid fees paid by Subscriber for such Applications applicable to the periods following the effective date of termination. The remedies provided in this Section 10.1 (Indemnification by Mark43) are Subscriber's sole and exclusive remedies for any third-party claims of infringement or misappropriation of Intellectual Property Rights by the Applications.

**10.2** **Indemnification by Subscriber**. To the extent consistent with the Federal law of the United States, Subscriber shall defend and hold harmless Mark43, its Affiliates, suppliers, and their respective employees, officers, and directors (the "**Mark43 Indemnified Parties**") against any Third-Party Claim brought against them, and shall indemnify the applicable Mark43 Indemnified Parties for all Losses arising from such Third-Party Claim, to the extent such Third-Party Claim arises out of or is related to (a) Subscriber's breach of Section 2.5 (Restrictions on Use), Section 2.6 (Security Obligations) or Section 3.2 (Ownership of and Reservation of Rights to Mark43 Materials); (b) Mark43's, Subscriber's or any Authorized User's use or processing of any Subscriber Data, Subscriber Integrated Applications, or Subscriber Integrated Application Data, including any Third-Party Claim alleging that any Subscriber Data, Subscriber Integrated Applications, or Subscriber Integrated Application Data infringes, misappropriates or violates the rights, including Intellectual Property Rights or privacy rights, of a third party or violates any Applicable Law; or (c) Mark43's disabling a connection to a Subscriber Integrated Application at Subscriber's request.

**10.3** **Procedures**. Each indemnified party shall give the indemnifying party prompt written notice of any Third-Party Claim to which an indemnification obligation under this Section 10 (Indemnification) may apply and shall reasonably cooperate with the indemnifying party, at its expense, in the defense or settlement of any such Third-Party Claim. An indemnifying party's obligations under this Section 10 (Indemnification) will be diminished to the extent that it is materially prejudiced by the indemnified party's non-compliance with the foregoing procedures.

## 11. MISCELLANEOUS.

**11.1** **Notices**. Unless otherwise specified herein, all notices and other communications between the parties required or permitted by this Agreement or by Applicable Law, will be deemed properly given, if given by (i) personal service, (ii) registered or certified mail, postage prepaid, return receipt requested, or (iii) nationally recognized private courier service, to the respective addresses of the parties set forth below, with, in each case, a copy to the email addresses provided below. Each party may designate a new address by like notice; each party may also designate a new address in an Order, provided that the new address is expressly noted as being for such purpose. Notices given hereunder 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. For notices relating to Security Incidents (as defined in the Data Processing Addendum), notice shall be sent exclusively to the email address(es) specified as the security contact below.

| If to Mark43: | If to Subscriber: |
|---|---|
| Mark43, Inc.<br>8 West 40th Street<br>2nd Floor<br>New York, NY 10018<br>Attn: CFO<br>Email: contractnotices@mark43.com | |
| Copy to: | Copy to: |
| Mark43, Inc.<br>8 West 40th Street<br>2nd Floor<br>New York, NY 10018<br>Attn: General Counsel<br>Email: legal@mark43.com | Subscriber Security Contact:<br><br>Name:<br>Email: |

**11.2** **Assignment.** Neither party may assign or otherwise transfer any of its rights or obligations under this Agreement without the prior, written consent of the other party; provided, however, that a party may assign or otherwise transfer this Agreement to any of its Affiliates or to an entity with or into which it is merged or consolidated or to which it sells its stock or other equity interests or all or substantially all of its assets in accordance with the provisions set forth at FAR 42.1204. Any assignment or other transfer in violation of this section will be null and void. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.

**11.3** **Governing Law**. This Agreement will be governed by the Federal laws of the United States. EACH PARTY HEREBY WAIVES ANY RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY ACTION OR LITIGATION IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT.

**11.4** **Dispute Resolution**. When Subscriber is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the Contract Disputes Act. During any dispute under the Contract Disputes Act or the General Services Acquisition Manual Section 552.238-114, as applicable, Mark43 shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under this Agreement, and each party shall comply with any decision of the Contracting Officer.

**11.5** **Force Majeure.** Excusable delays shall be governed by FAR 552.212-4(f).

**11.6** **No Waiver**. The failure of either party to enforce at any time for any period any provision hereof will not be construed to be a waiver of such provision or of the right of such party thereafter to enforce each such provision, nor shall any single or partial exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver of any rights is to be charged against any party unless such waiver is in writing signed by an authorized representative of the party so charged.

**11.7** **Amendment**. No modification, change or amendment to this Agreement shall be effective unless in writing signed by duly authorized representatives of each of Subscriber and Mark43. No term included in any invoice, estimate, confirmation, acceptance, purchase order or any other similar document (other than Orders or Statements of Work) in connection with this Agreement will be effective unless expressly stated otherwise in a separate writing signed by duly authorized representatives of each of Subscriber and Mark43.

**11.8** **Relationship of the Parties**. The relationship of the parties established by this Agreement is that of independent contractors and nothing contained herein will be construed to (a) give any party any right or authority to create or assume any obligation of any kind on behalf of any other party or (b) constitute the parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking.

**11.9** **Use of Vendors**. Subscriber agrees that Mark43 may provide information, data and materials that Mark43 receives in connection with this Agreement (including Subscriber Data) to draw on the resources of, and subcontract certain of its obligations hereunder to, its Affiliates and independent contractors engaged by Mark43 (each, a "**Mark43 Vendor**") for internal, administrative and compliance purposes or in connection with the hosting or provision of the SaaS Services and other products and services to be provided by Mark43 pursuant to this Agreement. Mark43 shall be responsible in accordance with the terms of this Agreement for each Mark43 Vendor's compliance with the terms of this Agreement and for its acts and omissions that cause Mark43 to breach its obligations under this Agreement.

**11.10** **Severability**. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction will, to the extent the economic benefits conferred thereby to the parties remain substantially unimpaired, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions or affecting the validity or enforceability of any of such terms or provisions in any other jurisdiction.

**11.11** **Headings; Construction**. 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. Use of the term "including" herein shall be deemed to be followed by "without limitation."

**11.12** **Counterparts**. This Agreement may be executed, including by electronic signature, in two or more counterparts, each of which shall be an original and all such counterparts together shall constitute one and the same instrument. Electronically executed or electronically transmitted (including via facsimile transmission) signatures have the full force and effect of original signatures.

**11.13** **Cumulative Remedies**. All remedies for breach of this Agreement are cumulative, and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

**11.14** **Export Compliance**. In connection with this Agreement, each party will comply with all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control. When applicable, Subscriber will provide Mark43 with information about Subscriber's export and distribution activities as may be required for Mark43 to meet its obligations under the United States export control laws and regulations.

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

**11.16** **Entire Agreement**. This Agreement supersedes all previous understandings, agreements and representations between the parties or any affiliates or agents thereof, written or oral, and constitutes the entire agreement and understanding between the parties with respect to the subject matter of

this Agreement, and incorporates all representations, warranties, covenants, commitments and understandings on which they have relied in entering into this Agreement, and, except as provided for herein, neither party makes any covenant or other commitment concerning its future action nor does either party make any promises, representations, conditions, provisions or terms related thereto.

**11.17 Supporting Documents**.

The following documents, attached hereto, along with all Orders, and Statements of Work, are expressly incorporated into this Agreement and are collectively referred to herein as the "**Supporting Documents**:"

- Exhibit A Technical Requirements
- Exhibit B Support Services
- Exhibit C Data Processing Addendum
- Exhibit D Mark43 Integrated Application Terms

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

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

| **MARK43, INC.** | **SUBSCRIBER** |
|---|---|
| By:_____ | By:_____ |
| Name:_____ | Name:_____ |
| Title:_____ | Title:_____ |
| Date:_____ | Date:_____ |

# Exhibit A
# Technical Requirements for Mark43 Applications

This page lists the minimum technical requirements for each of the Mark43 Applications. This page also describes the requirements for Mark43 interface servers. Integrated application providers and subcontractors may have additional requirements that are not listed here. These technical requirements are incorporated into the agreement(s) under which Mark43 has agreed to provide software and services to you (the "Subscriber").

## Mark43 RMS

### RMS Workstation Requirements

| Item | Minimum |
|---|---|
| Operating System | Windows 10+ |
| Processor | 2x 2.0+ GHz processors |
| Architecture | x64 |
| Memory | 8 GB+ |
| Network Card | 1x 10 Mbps+ NIC |
| Display(s) | 1x 1920x1080 |
| Hard Drive | 25 GB available space |
| Graphics Card | N/A |
| Bandwidth | 5 Mbps+ |

### RMS Workstation Site Internet Requirements

Mark43 RMS operates as a single-page application where most of the heavy download load is needed only on initial page load for each user. For RMS, Mark43 requires an overall internet bandwidth connection of 5+ Mbps per concurrent user using that connection with a minimum of a 100 Mbps connection per site. Actual performance and usage may vary depending on user usage of other internet-connected applications and your ISP. Department firewalls and other networking applications must have capacity to support a minimum of a 100 Mbps connection per site.

### RMS Mobile Data Terminal Requirements

| Item | Minimum |
|---|---|
| Operating System | Windows 10+ |
| Processor | 2x 2.0+ GHz processors |
| Architecture | x64 |
| Memory | 8 GB+ |
| Network Card | 5 Mbps+ (4G LTE) |
| Display(s) | 1x 1920x1080 |
| Hard Drive | 25 GB available space |
| Graphics Card | N/A |
| Bandwidth | 5 Mbps+ (4G LTE) |

### RMS Browser Requirements

Mark43 RMS is web-based and requires a modern web browser to access the system. Mark43 RMS

supports the following browser versions that receive technical support and security updates from the browser vendor.

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

### RMS Smartphone Mobile Application Requirements

The Mark43 RMS Smartphone Mobile Application is available on iOS.

| **Item (iOS)** | **Minimum** |
|---|---|
| Operating System | Apple iOS 13, 14 |
| Device | iPhone 11, 12, 13<br>iPad Gen 7 or 8<br>iPad Air Gen 3 or 4<br>iPad Pro Gen 4 or 5 |

### OnScene Smartphone Mobile Application Requirements

The Mark43 OnScene Mobile Application is on iOS and Android.

| **Item (iOS)** | **Minimum** |
|---|---|
| Operating System | Most Recent iOS Version and Previous Version |
| Device | iPhone X, 11, 11 Pro, 11 Pro Max, 12, 12 mini, 12 Pro, 12 pro Max, 13 mini, 13, 13 pro, 13 Pro Max, 14, 14 plus, 14 pro, 14 pro Max |
| **Item (Android)** | **Minimum** |
| Operating System | Android 11+ or Above |
| Device (Examples) | Google Pixel 7/8 Samsung<br>Xcover6 Pro<br>Samsung Galaxy S22 Ultra |

### Evidence Smartphone Mobile Application Requirements

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

| **Item (iOS)** | **Minimum** |
|---|---|
| Operating System | Apple iOS 13, 14 |
| Device | iPhone 11, 12, 13<br>iPad Gen 7 or 8<br>iPad Air Gen 3 or 4<br>iPad Pro Gen 4 or 5 |

Android

| Device | Operating System | Ram |
|---|---|---|
| Samsung Galaxy S21+ (& variants) | Android 11 | 8GB |
| Google Pixel 5 | Android 11 | 8GB |
| Samsung Galaxy S20+ 5G (& variants) | Android 11 | 8 or 12GB |
| Google Pixel 4, 4 XL | Android 10, Android 11 | 6GB |
| Google Pixel 4a 5G | Android 11 | 6GB |
| Google Pixel 4a | Android 11 | 6GB |
| Samsung Galaxy A52 | Android 11 | 6, or 8GB |
| Samsung Galaxy S20+ | Android 10 | 8GB |
| Samsung Galaxy Note 10+ | Android 10,11 | 12GB |

All of these devices are FIPS 104-2 Certified.

### Evidence Barcode Printer Requirements

The Mark43 RMS Property and Evidence module require a barcode printer to optimize the evidence management process. Mark43 currently supports the following hardware configurations for evidence barcode label printing.

- Any printer meeting the following specifications:
- Prints 4” x 2” labels horizontally
- 203 or 300 DPI resolution
- Zebra Programming Language (ZPL)
- Ethernet connectivity (for statically assigning IP address)
- To purchase a new printer meeting these specifications, we recommend a Zebra model.

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

***Mark43 does not offer technical support for printers. As such, we cannot respond to or diagnose any issues with printers.***

### Evidence Printer Server Requirements

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

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

### RMS Fillable PDF Software Requirements

In order for the Subscriber to utilize Mark43 RMS Fillable PDFs (SKU - RMS 7), the Subscriber must have

enough Adobe Professional licenses to support their department's needs.

### QuickCrash

QuickCrash is available as a progressive web app on iOS, Android, and desktop web.

| Item (iOS) | Minimum |
|---|---|
| Operating System | Apple iOS 13, 14 |
| Device | iPhone 11, 12<br>iPad Gen 7 or 8<br>iPad Air Gen 3 or 4<br>iPad Pro Gen 4 or 5 |

Android

| Device | Operating System | Ram |
|---|---|---|
| Samsung Galaxy S21+ (& variants) | Android 11 | 8GB |
| Google Pixel 5 | Android 11 | 8GB |
| Samsung Galaxy S20+ 5G (& variants) | Android 11 | 8 or 12GB |
| Google Pixel 4, 4 XL | Android 10, Android 11 | 6GB |
| Google Pixel 4a 5G | Android 11 | 6GB |
| Google Pixel 4a | Android 11 | 6GB |
| Samsung Galaxy A52 | Android 11 | 6, or 8GB |
| Samsung Galaxy S20+ | Android 10 | 8GB |
| Samsung Galaxy Note 10+ | Android 10,11 | 12GB |

All of these devices are FIPS 104-2 Certified.

Browser Requirements

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

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

## Mark43 CAD

### CAD Call Taker / Dispatcher Workstations

Mark43 only supports using the Mark43 CAD installed CAD Dispatch application call takers and dispatchers in a live environment. The CAD Dispatch desktop application allows for multi-window functionality and a more seamless user experience for call takers and dispatchers.

Mark43 recommends that subscribers have a dedicated workstation with the following specifications.

| Item | Minimum |
|---|---|
| Operating System | Windows 10+ |
| Processor | Intel Core i5 (11th generation or later)<br>Standalone GPU (Graphics Processing Unit) |

| | |
|---|---|
| Architecture | x64 |
| Memory | 16 GB+ |
| Network Card | 1x 10 Mbps+ NIC |
| Display(s) | 2x+ 1920x1080 monitors |
| Hard Drive | 25 GB available space |
| Graphics Card | 2x 512MB NVIDIA Quadro NVS 310, 4 MON |
| Bandwidth | 5 Mbps+ per concurrent dispatcher |

* Network latency should not exceed 50Mbps between the CAD station and the CAD application server.

### CAD Call Taker / Dispatcher Workstation Site Internet Requirements

For CAD, Mark43 recommends an overall internet bandwidth connection of 5+ Mbps per concurrent user using that connection with a minimum of a 100 Mbps connection per site and a backup ISP connection with automatic failover of equal bandwidth. Actual performance and usage may vary depending on user usage of other internet-connected applications and your ISP. Department firewalls and other networking applications must have capacity to support a minimum of a 100 Mbps connection per site.

### CAD First Responder Mobile Data Terminal Requirements

| **Item** | **Minimum** |
|---|---|
| Operating System | Windows 10+ |
| Processor | 2x 2.0+ GHz processors |
| Architecture | x64 |
| Memory | 16GB RAM |
| Network Card | 5 Mbps+ (4G LTE) |
| Display(s) | 1x 1920x1200 |
| Hard Drive | 25 GB available space |
| Graphics Card | 256MB+ video memory |
| Bandwidth | 5 Mbps+ (4G LTE) |

Mark43 CAD also requires installing a windows application (Desktop Integration Service) on First Responder MDTs to query message switches, track GPS, monitor performance, and more. This Windows Application requires:

- Windows 10+
- Optional Deployment tool (GPO, SCCM, etc.)
- Completion of all recommended Windows Updates from Microsoft

### GPS Tracking

Mark43 CAD First Responder MDTs support tracking GPS from the following hardware:

- Machines with internal GPS modules supporting a minimum BAUD rate of 4800
- External GPS devices that utilize serial driver
- BU-353S4 receivers that plug in
- Cradlepoint/Sierra Wireless routers

GPS Tracking also requires:

- GPS Receiver using NMEA standard (e.g. $GPxxx messages)
- Dedicated COM port on machines that use external USB GPS devices
- External Antenna (if applicable)
- DIS (a windows application that can capture GPS data in the following formats: a) Sent over a COM port in the NMEA 1 format or b) via UDP in the NMEA 1 format

## Mark43 Analytics

### Data Lake Requirements

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

### Business Intelligence Suite Requirements

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

## Mark43 Data Exchange

The Mark43 Data exchange (DEx) functionality is enabled through either the RMS or CAD applications. An additional Windows server will be required if a customer is using CommSys as their DEx provider.

## Mark43 Interface Servers

### Server Requirements

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

| **Item** | **Requirement** |
|---|---|
| Number of servers | 2+ |
| Operating System | Ubuntu 22.04 LTS or Red Hat Enterprise Linux 8 or higher |
| Processor | 2x quad-core processor |
| Architecture | x64 |
| Memory | 16 GB+ (May require additional resources based on interfaces) |
| Network Card | 1 x 1 Gbps NIC |
| Display(s) | N/A |
| Disk | 128+ GB available space |
| Graphics Card | N/A |
| Bandwidth | 100+ Mbps |

### Server Software Requirements

Subscriber will provision and maintain the Interface Server hardware/VM and the operating system. This includes performing any necessary hardware-level maintenance and applying any operating system security patches. Mark43 will maintain the application software installed on this server, which consists of:

- Kubernetes, a container orchestration technology, which allows Mark43 to deploy, update, and

monitor the containers running the application software

Subscribers are encouraged to put adequate alerts in place to ensure they are notified when Interface Servers lose internet connectivity or go offline for any reason (e.g. monitoring software). However, if the Subscriber-installed software interferes with the operation of the Mark43 Applications, the Subscriber will be required to uninstall the software.

Subscriber accepts sole responsibility for any compatibility problems between the Licensed Software and any other application software or non-current software programs not maintained or supported by Mark43.

### Networking/Firewall/Access Requirements

Inbound:

| | |
|---|---|
| HTTPS / Port 443 | Originating from within the Subscriber's VPN For Kubernetes API server communication and evidence labeling printing software (if applicable for Subscriber) |
| TCP Port 6443 | Originating from within the Subscriber's VPN For Kubernetes API server communication |
| TCP Port 10250 | Originating from within the Subscriber's VPN For Kubernetes node metrics |

* All IPs and ports inbound from the public internet should be closed.

Outbound:

| | |
|---|---|
| HTTPS / Port 443 | *.mark43.io<br>*.mark43.[com\|us\|uk] - depending on region<br>GitHub.com<br>git.rancher.io<br>ingest.us0.signalfx.com<br>api.us0.signalfx.com<br>ss.archive.ubuntu.com<br>security.ubuntu.com<br>k3s.io |
| TCP Port 6443 | Originating from within the Subscriber's VPN For Kubernetes API server communication |

Remote Access:
Subscriber must install AWS Systems Manager Agent (SSM Agent) on the servers, which will provide command line access for Mark43. Mark43 will use the SSM Agent CLI access to install Kubernetes and perform any troubleshooting actions or maintenance tasks that cannot be completed via the normal release process.

User Accounts:
Subscriber must provide Mark43 with a service account(s) with sudo access on the interface servers.

Static IP Addresses:
Subscriber must assign static IP addresses for the interface servers.

Third Party Connections to Mark43
All connections to Mark43 systems must be made using TLS 1.2 or greater.

# Exhibit B
# Mark43 Support Services

This description of the Support Services is incorporated into the agreement(s) under which Mark43 has agreed to provide Software and Services to Subscriber.

**1. <u>Customer Support Services.</u>**

- **Error Reporting**

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

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

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

- **Response Priority Determination**

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

- **First Response, Resolution, and Updates**

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

- **Subscriber's Obligations**

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

responses by Subscriber personnel or Subscriber's failure to otherwise comply with its obligations under this Schedule, timeframes will be extended.

**First Response Commitment**

| Red | Orange | Yellow |
|---|---|---|
| 1 hour<br>24/7 | 2 hours<br>8am – 8pm EST, 7 days | 8 hours<br>8am – 8pm EST M-F |

**Communication Commitment**

| | Red | Orange | Yellow |
|---|---|---|---|
| Status page updates | A status update will be posted as soon as Mark43 is notified and updated every 60 minutes thereafter until resolved. | n/a | n/a |
| Email/phone updates | After initial Mark43 response, within 1 hour of any additional Subscriber questions about the same issue until resolved. | After initial Mark43 response, within 1 business day of any additional Subscriber questions until issue is resolved.<br>Subscriber will receive notification via email once the issue has been fixed. | After initial Mark43 response, within 2 business days of any additional Subscriber questions until issue is resolved.<br>Subscriber will receive notification via email once the issue has been fixed. |

**Priority Definitions**

- *Red* – An Error due to Mark43's systems that results in the inoperability or substantial impairment of a core function for the majority of Subscriber's Authorized Users, provided there is no feasible workaround. Examples include: Authorized Users cannot access the Application; CAD units cannot be dispatched; reports cannot be created.

- *Orange* – An Error due to Mark43's systems that results in the inoperability or substantial impairment of a critical workflow for the majority of Subscriber's Authorized Users, . Examples include: significant lagging/slowness; inability to submit reports.

- *Yellow* – An Error due to Mark43's systems for which a reasonable workaround is available.

- *None* – There are a number of low-impact issues, how-to questions, and feature requests that do not fall into one of the categories above and are not subject to the outlined First Response or Communication Commitments.

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

- Providing Subscriber with a reasonable workaround

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

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

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

- **Monthly Uptime Commitment.**

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

  - *RMS Application*: Mark43 will use commercially reasonable efforts to achieve a Monthly Uptime Percentage for the Mark43 RMS Application of no less than 99.9% in any calendar month.
  - *CAD Application*: Mark43 will use commercially reasonable efforts to achieve a Monthly Uptime Percentage for the Mark43 CAD Application of no less than 99.95% in any calendar month.

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

Monthly Uptime Percentage = (100) – ((minutes of Downtime * 100) / (total minutes in month))

**Service Credit Calculation**.

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

- *RMS Application*: If Mark43 does not achieve the Uptime Commitment for the RMS Application, Subscriber will (to the extent legally permitted) be eligible pursuant to the terms of this SLA to receive a credit equal to ten (10) times the amount paid for the RMS Application in respect of the period in which the actual RMS Downtime for the month exceeded the RMS Downtime allowable within the Uptime Commitment, up to a maximum credit of 25% of one month's subscription fee paid in consideration for the RMS Application, as illustrated here: RMS Service Credit = (10) * ((1/12) * annual subscription fee) * ((% of Downtime) – (0.10%))
- *CAD Application*: If Mark43 does not achieve the Uptime Commitment for the CAD Application, Subscriber will (to the extent legally permitted) be eligible pursuant to the terms of this SLA to receive a credit equal to ten (10) times the amount paid for the CAD Application in respect of the period in which the actual CAD Downtime for the month exceeded the CAD Downtime allowable within the Uptime Commitment, up to a maximum credit of 25% of one month's

subscription fee paid in consideration for the CAD Application, as illustrated here:
CAD Service Credit = (10) * ((1/12) * annual subscription fee) * ((% of Downtime) – (0.05%))

**Requesting Service Credits**.

In order to receive a Service Credit, Subscriber must notify Mark43 in writing at 8 West 40th Street, 2nd Floor, New York, NY 10018, Attn: Accounting, with a copy to accounting@mark43.com, or such other address provided by Mark43 from time to time, within fifteen (15) days following the end of the month in which the Downtime occurred. Claims must include the words "SLA Credit Request" in the subject line; the dates and times of each Downtime incident that Subscriber is claiming occurred; and any documentation to corroborate Subscriber's claim of Downtime, ensuring removal or redaction of any confidential or sensitive information in these logs. All claims are subject to review and verification by Mark43 prior to any Service Credits being granted. Mark43 will acknowledge requests for Service Credits within fifteen (15) business days of receipt and will inform Subscriber whether such claim request is approved or denied.

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

**Additional Definitions.**

- "**Downtime**" with respect to any single In-Scope Application means time in which the Application is not accessible or available to Subscriber for reasons other than those resulting directly or indirectly from an SLA Exclusion. For the avoidance of doubt, slow performance does not constitute lack of accessibility or availability and shall not count as Downtime, unless there is a total loss of ability for the substantial majority of Authorized Users to perform any one of the In-Scope Application Features so as to constitute a total loss of service of that Application, in each case in Mark43's reasonable discretion. The concurrent loss of service of two or more In-Scope Application Features within the same Application will count as a single Downtime event. At the end of each month, Mark43 adds "Downtime" periods together to calculate the overall monthly "Downtime."

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

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

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

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

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

  - That is not an In-Scope Application;

  - That occurs prior to Go Live;

  - That results from Scheduled Maintenance;

  - That results from a suspension or remedial action, as described in this Agreement;

  - Caused by factors outside of Mark43's reasonable control, including any force majeure event, Internet access, or problems beyond the demarcation point of the Mark43 cloud environment;

  - That results from actions or inactions of Subscriber or any third party;

  - That is attributable to Subscriber's own computer equipment or devices, or failure of any software, hardware or service not supplied by Mark43 pursuant to this Agreement, including issues related to network connectivity, internet connectivity or network performance issues at any Subscriber locations, server downtime related to connectivity issues resulting from third-party-managed VPN access to a hosted server or Subscriber's internal network problems, or Software (including interfaces) that is not supplied or maintained by Mark43;

  - That results from any Integrated Application, Third-Party Data, or any Subscriber-provided application or program; or

  - That results from the failure by Subscriber, its Affiliates, or any Authorized User to incorporate a Software or Services update or upgrade made available by Mark43.

**3. Miscellaneous.** These terms may be updated from time to time, provided such updates do not materially degrade the Support Services and are subject to applicable federal procurement laws.

# Exhibit C
# Data Processing Addendum (US Customers)

**Last modified March 13, 2025**

This Data Processing Addendum ("**DPA**") is incorporated into the agreement(s) under which Mark43 has agreed to provide Software and Services to Subscriber (the "**Agreement**").

If the Customer is an Ordering Activity under GSA Schedule Contracts, it shall only be required to comply with the Federal law of the United States and expressly does not agree to comply with any provision of this Data Processing Agreement, EU Law, or law of an EU Member State that is inconsistent with the Federal law of the United States.

1. **Definitions.** For purposes of this DPA, "**Subprocessor**" means a Mark43 Affiliate or other third party engaged by Mark43 for the purpose of hosting, storing or otherwise processing Subscriber Data as authorized by the Agreement or otherwise in writing by Subscriber. "**Integrated Application**" shall have the meaning ascribed to it in the Agreement and if not therein defined, shall mean a third-party product, service, database, or application that will be installed, linked or enabled by Mark43 or Subscriber for use in connection with the SaaS Services. Terms not otherwise defined in this DPA have the meaning set out in the Agreement.

2. **Subscriber Data.** The obligations in this Schedule apply to Subscriber Data in the custody or control of Mark43 and its Subprocessors. They do not apply to Subscriber Data in the custody or control of any other party, including Subscriber Data under Subscriber's custody or control outside of the Services or Subscriber Data maintained by the provider of an Integrated Application or transmitted or accessed on or through an Integrated Application.

3. **Disclosure.** Mark43 will not disclose Subscriber Data to any third party except: (i) to Authorized Users; (ii) as permitted under the Agreement; (iii) to Mark43 Vendors and its Subprocessors, provided that each Mark43 Vendor and 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 or elsewhere in the Agreement to the contrary, Subscriber acknowledges and agrees that (a) Mark43 utilizes major providers of cloud-based services for processing certain Subscriber Data through the Services (each, a "**Cloud Provider**"), (b) each Cloud Provider has its own data protection practices that are applicable to its delivery of services to its customers, and (c) Cloud Providers will not agree to separate data protection practices on a customer-by-customer basis; therefore, Cloud Providers will not be required to comply with the obligations in this DPA to the extent that they are inconsistent with each Cloud Provider's own data protection practices, but Mark43 will use reasonable efforts to assess that each Cloud Provider complies with its own data protection practices, which may include periodic examination of SOC 2 reports or comparable reports made available by Cloud Provider.

4. **Information Security Program.** Mark43 will implement and maintain a written information security program that contains reasonable administrative, technical and physical safeguards intended to protect Subscriber Data from unauthorized access, disclosure, use, modification, loss or destruction.

5. **Access.** Mark43 will maintain appropriate access controls to Subscriber Data, including limiting access to Subscriber Data only to personnel who require such access in order for Mark43 to provide Services to Subscriber or to otherwise exercise Mark43's rights or perform Mark43's obligations under 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.**

1. 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.

2. 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.

3. Mark43 will encrypt, using industry-standard encryption tools, all Subscriber Data that Mark43: (i) transmits or sends wirelessly or across public networks; (ii) stores on laptops or removable storage media; and (iii) stores on portable devices. Mark43 will safeguard the confidentiality and availability of all encryption keys associated with encrypted Subscriber Data.

4. Mark43 installs and maintains endpoint security measures such as anti-virus and malware protection software intended to protect Subscriber Data from malicious code.

5. Mark43 undertakes appropriate logging and monitoring to enable recording of information security-related actions and identification of anomalous events.

6. Mark43 develops software used to deliver the Services in accordance with secure software development principles.

7. **Security Incident Management.** Unless otherwise prohibited by law, Mark43 will notify Subscriber promptly (and in any event within seventy-two (72) hours) in the event Mark43 reasonably believes that there has been any unauthorized access, acquisition, disclosure, use, modification, loss or destruction of Subscriber Data ("**Security Incident**"). Mark43 will promptly investigate the Security Incident, will take necessary steps to eliminate or contain the exposure of Subscriber Data, and will keep Subscriber informed of the status of the Security Incident. Mark43 will provide reasonable assistance and cooperation requested by Subscriber or Subscriber's designated representatives to correct, remediate, or investigate the Security Incident or to mitigate potential damage resulting from it, including any notification that Subscriber may determine appropriate to send to affected individuals, regulators or third parties.

8. **Business Continuity.** Mark43 implements appropriate disaster recovery and business continuity plans and reviews and updates such plans regularly. Back-up copies of critical business information and software are created regularly and tested to verify their integrity.

9. **Audits.** Upon Subscriber's request, Mark43 will make available to Subscriber up to once per year a copy of a third-party assessment, such as a SOC 2 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 complete within 30 days of receipt thereof. 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 permanently delete Subscriber Data within thirty (30) days of delivery of such data to Subscriber pursuant to the Agreement. If Mark43 has any legal obligation to retain any Subscriber Data, it will comply with relevant Applicable Laws and destroy such Subscriber Data in accordance with this DPA as soon as practicable after that legally required retention period has ended. If Mark43 disposes of any paper, electronic or other record containing Subscriber Data, Mark43 will take all reasonable steps to do so by: (a) shredding; (b) permanently erasing and deleting; (c) degaussing; or (d) otherwise modifying Subscriber Data in such records to make it unreadable, unreconstructable and indecipherable.

11. **Location of Subscriber Data.** Subscriber Data stored or transmitted through the SaaS Services in Subscriber's user accounts shall be hosted by a Cloud Provider in the United States.

# Exhibit D
# Integrated Application Terms

These terms and conditions apply to third-party applications provided with the Mark43 Software and Services to Subscriber.

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

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

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

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

**Esri**: Users (as defined below) are bound by the following Esri Terms of Service:

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

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

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

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

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

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

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

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

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

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

**Amazon**:

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

Acceptable Use: **https://aws.amazon.com/aup/**

**Auth0** (if elected):

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

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

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

**CommSys** (if elected):

CommSys End User License Terms and Conditions

CommSys, Incorporated, an Ohio corporation ("**CommSys**") is the owner of certain components of the SaaS Services licensed to Subscriber and your Authorized Users (collectively, "**you**") by Mark43, Inc. ("**Mark43**") under an agreement between you and Mark43 (the "**License Agreement**").

As a condition to the license to use the CommSys Products (as defined below), and in addition to the restrictions on the scope and use of the license grants contained in the License Agreement, CommSys requires that all users agree that the CommSys Products are subject to the restrictions, terms and conditions set forth herein (the "**CommSys Terms and Conditions**"). In the event of any inconsistency or conflict between these CommSys Terms and Conditions and the terms of the License Agreement, these CommSys Terms and Conditions shall govern with respect to your use of the CommSys Products.

"**CommSys Products**" shall mean all products and programs of CommSys and all documentation related thereto, whether referred to as "software", "firmware" or otherwise, wherever resident on any media, and whether separately licensed, furnished as a part of equipment, or provided as a result of software services, and further may include programs and related documentation that are owned by third parties and distributed by CommSys under license from the owner thereof.

Your use of the CommSys Products pursuant to the License Agreement is subject to the following CommSys Terms and Conditions, and by using the CommSys Products, you hereby acknowledge and agree as follows:

- All rights to use the CommSys Products are non-exclusive, non-transferable, and non-sublicensable, and shall terminate automatically without notice to you upon your failure to comply with any of the CommSys Terms and Conditions.

- All confidential, proprietary, or trade secret information associated with the CommSys Products, including, but not limited to, all software programs, object code, source code, products, research, technical knowledge, specifications, and other data, is the confidential and proprietary information of CommSys (collectively, "**Confidential Information**"), and you shall abide by and maintain, and not remove, deface, or destroy, any proprietary markings on any of the CommSys Products or Confidential Information.

- You may not make any copies of the CommSys Products or Confidential Information. You may use the CommSys Products only for the purposes of and strictly in accordance with the provisions of the License Agreement (as it pertains to the CommSys Products) and the CommSys Terms and Conditions, and you shall not otherwise use, disclose, convey, disseminate, transfer, or assign any of the CommSys Products or Confidential Information.

- You may not, directly or indirectly: (i) sell, resell, or distribute the CommSys Products on a stand-alone basis, or other than as integrated in the SaaS Services; (ii) allow the CommSys Products to be used in conjunction

with or launched from within any other product; (iii) re-brand, bundle, or re-label the CommSys Products, or use in any manner the CommSys Products with any other software or products; or (iv) use the CommSys Products for internal or third party production purposes or development of products or in violation of law.

- You shall promptly notify Mark43 of any actual or suspected use or disclosure of the CommSys Products or Confidential Information and shall provide reasonable assistance in the investigation and prosecution of such uses or disclosures.

- You shall destroy all CommSys Products and Confidential Information if: (i) you cease to use the CommSys Products; (ii) the License Agreement terminates; or (iii) your rights to use the CommSys Products is terminated.

- You (including all of your employees, contractors, and affiliated persons) shall not, directly or indirectly, nor cause or allow any other person to: (i) modify or translate into any other format or language any portion of the CommSys Products or Confidential Information; (ii) use any Confidential Information to create any item which is substantially similar to, competitive with, or performs the functions of any of the CommSys Products; (iii) reverse engineer, disassemble, decompile, or otherwise attempt to derive the source code for or other Confidential Information with respect to, any of the CommSys Products or Confidential Information; or (iv) modify, copy, reproduce, manufacture, adapt, create derivative works of, translate, localize, or port any of the CommSys Products or the Confidential Information, or allow any employee, representative, consultant, agent, or other third party to engage in such conduct.

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