



**RESOLUTION 2018-038**

**AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH MARK43 TO PROVIDE A  
NEW POLICE RECORDS MANAGEMENT SYSTEM AND RELATED SERVICES**

**WHEREAS**, during a public meeting on May 1, 2018, the City Council was presented with information about the need for improvement and enhanced public safety with regard to the Police Department's record management system; and

**WHEREAS**, it appears to the City Council that the proposed contract with Mark43 meets the needs of the Police Department and the public safety needs of the citizens of the City of Sherwood.

**NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:**

**Section 1.** The City Manager is authorized to sign a contract with Mark43, in a form substantially similar to that attached hereto as Exhibit 1.

**Section 2.** This Resolution shall be effective upon its approval and adoption

**Duly passed by the City Council this 1<sup>st</sup> day of May 2018.**

  
Keith Mays, Mayor

Attest:

  
Sylvia Murphy, MMC, City Recorder

## SOFTWARE LICENSE AND SERVICES AGREEMENT

This Software License and Services Agreement (this "**Agreement**") is effective as of **May 1, 2018** (the "**Effective Date**") by and between Mark43, Inc. ("**Mark43**"), with a place of business at 28 E. 28<sup>th</sup> 12<sup>th</sup> Floor, New York, NY 10016, and the City of Sherwood, Oregon ("**Subscriber**"), with a place of business at 22560 SW Pine St., Sherwood, OR 97140, jointly referred to as the "**Parties**").

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

### 1. DEFINITIONS.

- 1.1 **Defined Terms.** Defined terms have the meanings set forth in this Article 1 (Definitions) and elsewhere in this Agreement when capitalized, and may be read in singular, plural or an alternative tense as the context requires.
- 1.2 "**Affiliate**" means, with respect to any entity, any other entity who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise.
- 1.3 "**Applicable Law**" means, with respect to any party, any federal, state or local statute, law, ordinance, rule, administrative interpretation, regulation, order, writ, injunction, directive, judgment, decree or other requirement of any international, federal, state or local court, administrative agency or commission or other governmental or regulatory authority or instrumentality, domestic or foreign, applicable to such party or any of its properties, assets or business operations.
- 1.4 "**Applications**" means the Records Management System, Evidence and Data Exchange, as described in Schedule A.
- 1.5 "**Authorized User**" means an Affiliate, employee or independent contractor of Subscriber (solely to the extent such contractor is providing services to Subscriber), who has been authorized by Subscriber to use the SaaS Services.
- 1.6 "**Documentation**" means the user guides and user manuals for the SaaS Services that Mark43 provides to Subscriber.
- 1.7 "**Go Live**" means the date of cutover to each of the Mark43 Applications, respectively.
- 1.8 "**Integration Control Document**" means the agreement, if applicable, governing any integrations with Third Party Applications.
- 1.9 "**Intellectual Property Rights**" means all intellectual and industrial property rights, whether now existing or existing in the future, including without limitation, (i) all patent rights, including any rights in pending patent applications and any related rights; (ii) all copyrights and other related rights throughout the world in works of authorship, including all registrations and applications therefor; (iii) all trademarks, service marks, trade dress or other proprietary trade designations, including all registrations and applications therefor (iv) all rights throughout the world to proprietary know-how, trade secrets and other confidential information, whether arising by law or pursuant to any contractual obligation of non-disclosure; and (v) all other rights covering industrial or intellectual property recognized in any jurisdiction.
- 1.10 "**Professional Services**" means the evaluation, consultation, implementation, customization, configuration and other services offered by Mark43 in connection with the SaaS Services.
- 1.11 "**Regular Usage Period**" for any Application commences upon the occurrence of Go Live for that Application.
- 1.12 "**SaaS Services**" means the Applications, Software, and related software-as-a-service, hosting, maintenance and/or support services made available by Mark43 for remote access and use by Subscriber, including any Documentation thereto.
- 1.13 "**Services**" means the services provided or required to be provided by or through Mark43, including without limitation, SaaS Services and Professional Services.
- 1.14 "**Software**" means the object code version of Mark43's computer software and all Updates made available by Mark43 to Subscriber under this Agreement.

- 1.15 **"Statement of Work"** means a detailed plan of work to be agreed by the Parties in conjunction with this Agreement.
- 1.16 **"Subscriber Data"** means all data, information, content and other materials stored or transmitted by Subscriber and any Authorized User through the SaaS Services (i) in their user accounts; and (ii) on any Third Party Application, excluding any Third Party Data and any Mark43 Data.
- 1.17 **"Term"** means the Initial Term and any Renewal Term.
- 1.18 **"Third Party Application"** means a third-party service **approved by Mark43** to which Subscriber and any Authorized User facilitates Mark43's access to, and use, of the SaaS Services, via an application programming interface or other means.
- 1.19 **"Third Party Components"** means any components of the SaaS Service from time to time that are provided by third parties (e.g., Google Maps).
- 1.20 **"Third Party Data"** means any data owned by a third party that is delivered to Subscriber via the SaaS Service.
- 1.21 **"Third Party Provider"** means third parties, including other vendors, state agencies and local agencies, that control products and/or databases with which Mark43 SaaS Services are to be interfaced.
- 1.22 **"Updates"** means any and all new releases, new versions, patches and other updates for the SaaS Services that Mark43 makes generally available without additional charge to its other subscribers of the SaaS Services.
- 1.23 **"Vendors"** means third parties with whom Mark43 contracts to provide components of the SaaS Services, and includes without limitation, Amazon Web Services (for platform hosting) and Google (for Google Maps).
- 1.24 **"Website"** means any Internet website through which Mark43 provides the SaaS Services under this Agreement.

## 2. SERVICES.

- 2.1 **SaaS Services.** Subject to the terms of this Agreement, and during the Term, Mark43 hereby grants a non-exclusive, non-transferable, non-sublicensable license to Subscriber and its Authorized Users to access and use the SaaS Services through the Website for Subscriber's internal purposes and in accordance with the terms and conditions of this Agreement. Mark43 will be responsible for hosting the Website, and Subscriber and its Authorized Users will be responsible for obtaining internet connections and other third party software, hardware, and services necessary for it to access the Website through the Internet, including without limitation as set forth in **Schedule C, "Technical Requirements."** Subscriber will be responsible to Mark43 for compliance with the restrictions on use and other terms and conditions of this Agreement by any of its Authorized Users.
- 2.2 **Professional Services.** Mark43 offers Professional Services in connection with the SaaS Services as further described in **Schedule A.** To the extent any Professional Services involve the development of any customization or configuration to the SaaS Services, all Intellectual Property Rights to such customization or configuration will be solely owned by Mark43 and will be deemed to be included in the definition of SaaS Services and licensed to Subscriber on the terms set forth herein.
- 2.3 **Access to Documentation.** Mark43 will provide Subscriber via the Website or other means with access to the Documentation, as may be updated from time to time. Subscriber may print copies of, use, and permit its Authorized Users to use, the Documentation solely in connection with the use of the SaaS Services.
- 2.4 **Support Services.** Mark43 will provide a telephone-based help desk through which it will respond to inquiries about the SaaS Services from Subscriber via telephone from 7 AM to 8 PM (Eastern Time), Mondays through Fridays (excluding U.S. Federal holidays). Mark43 also provides a 24/7 email based help desk for the SaaS Services as set forth in **Schedule A.**
- 2.5 **Restrictions on Use.** Subscriber and its Authorized Users will not (and will not permit any third party to): (i) share Subscriber's or any Authorized User's login credentials; (ii) reverse engineer, decompile, disassemble, or otherwise attempt to discern the source code, underlying ideas, algorithms, file formats, or interface protocols of the SaaS Services or of any files contained in or generated by the SaaS Services; (iii) copy, modify, adapt or translate the SaaS Services or the Third Party Data, or otherwise make any use, resell, distribute or sublicense the SaaS Services or the Third Party Data

other than in connection with this Agreement; (iv) make the SaaS Services available on a "service bureau" basis or allow any third parties to use the SaaS Services; (v) disclose the SaaS Services or any of its components to third parties; (vi) remove or modify any proprietary marking or restrictive legends placed on the SaaS Services or the Third Party Data; (vii) use the SaaS Services or the Third Party Data in violation of any Applicable Law; (viii) create or augment any mapping-related dataset including a mapping or navigation dataset, business listings database, mailing list, or telemarketing list) for use in an implementation that is not connected to the Services; (ix) use the SaaS Services or the Third Party Data in violation of any Applicable Law; (x) introduce into the Services any viruses, worms, defects, Trojan horses, malware, or any items of a destructive nature; (xi) use the Services to post advertising or listings; (xii) use the Services to defame, abuse, harass, stalk, or threaten others; (xiii) permit access or use of the Services by any individual outside the United States; (xiv) hide or obscure any Authorized User's location; (xv) permit access or use of the Services, for any activities other than to enhance Subscriber's own services, where reliance solely on, or failure to use, the Services could lead to death, personal injury, or property damages. Subscriber and its Authorized Users will not access the SaaS Services if in direct competition with Mark 43, and will not allow access to the SaaS Services by any party who is in direct competition with Mark43, except with Mark43's prior written consent. Subscriber shall comply with additional restrictions on use of the Services in Additional Terms, as defined in Section 2.10 below.

- 2.6 Security Obligations.** Subscriber agrees it and its Authorized Users shall securely manage their respective password(s) for access to the SaaS Service. Subscriber agrees it shall notify Mark43 promptly in the event it becomes aware of any unauthorized access or use of the SaaS Service, or of any of its or its Authorized Users passwords or accounts. Unless expressly stated otherwise in this Agreement, a single username or password may not be used by more than one (1) Authorized User. Subscriber is responsible for all activities conducted within User accounts in use of the SaaS Service. Subscriber shall comply with all applicable local, state, federal and regional or other laws and regulations applicable in connection with use of the SaaS Service, including all those related to data privacy and the transmission of technical or personal data. Mark43 shall ensure all transmitted data is encrypted while in transmission using industry standard encryption technology. Subscriber agrees to (a) provide true, accurate, current and complete registration data for each account it creates via the SaaS Service, and (b) maintain and promptly update the registration data to keep it true, accurate, current and complete.
- 2.7 Title.** As between Mark43 and Subscriber, Mark43 retains title to and ownership of the SaaS Services, including all copyrights and other Intellectual Property Rights relating thereto. Mark43's licensors retain title to and ownership of the Third Party Data and the Third Party Components, including all copyrights and other intellectual property rights relating thereto. Subscriber will have no rights with respect to the SaaS Services, the Third Party Data or the Third Party Components other than those expressly granted under this Agreement. Any suggestions for changes or improvements to Services that Subscriber provides to Mark43, whether solicited by Mark43 or not, shall be owned by Mark43 and Subscriber hereby irrevocably assigns, and shall assign, to Mark43 all right, title, and interest in and to such suggestions. Mark43 shall have no obligation to incorporate such suggestion into its products or Services.
- 2.8 Subscriber Data.** As between Mark43 and Subscriber, Subscriber owns and shall retain all right, title, and interest, including, without limitation, all Intellectual Property Rights, in and to the Subscriber Data. Subscriber shall have the sole responsibility for the accuracy, quality, and legality of the Subscriber Data, including obtaining all rights and consents necessary to share the Subscriber Data with Mark43 as set forth in this Agreement. Notwithstanding anything to the contrary contained herein, Subscriber hereby grants to Mark43 an irrevocable, worldwide, royalty free, non-exclusive, transferable, sublicensable license to use the Subscriber Data to: provide the SaaS Services to Subscriber and other Mark43 subscribers; analyze the Subscriber Data in anonymized (i.e. non-personally identifiable) aggregate form in order to operate, maintain, manage, and improve the SaaS Services, create new products and services, and share and/or license this anonymized aggregate data to Affiliates, agents, business partners, and other third parties; for Mark43's internal purposes to improve the Applications, Software, and related services, and any other uses disclosed in or related to performance under the Agreement or any statement of work.
- 2.9 Third Party Applications.** If Subscriber installs or enables a Third Party Application for use with the SaaS Services, Subscriber grants (and will cause the applicable third party to grant) Mark43 permission to access Subscriber Data stored on that Third Party Application as required for the interoperation of that Third Party Application with the SaaS Services. In no event will Mark43 be responsible for any Third Party Application, or for any failure of a Third Party Application to properly interoperate with the SaaS Services. If Mark43 receives information that a Third Party Application

may violate any Applicable Laws or Third Party rights, Subscriber will, promptly upon receiving notice of the foregoing from Mark43, disable any connection between such Third Party Application and the SaaS Services to resolve the potential violation (and if Subscriber fails to promptly disable such connection, Mark43 shall have the right to do so). In addition, in the event that Subscriber fails to properly obtain the grant of rights to Mark43 to access and use Third-Party Data as required for the interoperation of that Third-Party Application, Subscriber shall defend, indemnify, and hold harmless Mark43 from any and all claims based on Mark43's use of such Third-Party Application, subject to the limitations of the Oregon Constitution and to the limits of the Oregon Tort Claims Act.

**2.10 Third Party Components.**

(a) **Use of Third-Party Components.** Mark43 may use Vendors to subcontract the performance of its duties and obligations hereunder and to provide certain functions of the Services, including without limitation, hosting and data analysis. Certain Vendor policies and terms and conditions of service shall apply to the Services. Such terms, or URL locator addresses for such terms, will be provided on **Schedule D** or in writing from time to time, "**Additional Terms.**" If any of the Vendors and/or licensors of the Third-Party Components require Mark43 to flow down any Additional Terms Subscriber, Subscriber's use of such Third-Party Components, as incorporated into the SaaS Service, shall be subject to such Additional Terms. In the event of any inconsistency or conflict between the Additional Terms and the terms of this Agreement, such Additional Terms shall govern with respect to Subscriber's use of the applicable Third Party Component.

(b) **DISCLAIMER REGARDING THIRD PARTY COMPONENTS.** MARK43, NOT BEING THE PROVIDER OR MANUFACTURER OF THE THIRD PARTY COMPONENTS, NOR THE PROVIDERS' OR MANUFACTURERS' AGENT, MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE THIRD PARTY COMPONENTS AND DISCLAIMS ANY SUCH WARRANTIES THAT MIGHT OTHERWISE EXIST.

**2.11 Third Party Data.** Subscriber shall access and use the Third Party Data in accordance with the terms and conditions of the agreement between the Subscriber and the provider of such Third Party Data. MARK43, NOT BEING THE PROVIDER OR MANUFACTURER OF THE THIRD PARTY DATA, NOR THE PROVIDERS' OR MANUFACTURERS' AGENT, MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE THIRD PARTY DATA AND DISCLAIMS ANY SUCH WARRANTIES THAT MIGHT OTHERWISE EXIST.

**2.12 Agreements with Third Party Providers.** Subscriber, and not Mark43, is solely responsible for establishing any required agreement(s) and/or statement(s) of work with Third Party Providers in connection with the interfaces, and for paying all fees, costs and expenses of Third Party Providers.

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

**3. FEES AND PAYMENT TERMS.**

**3.1 Fees for Mark43 Services.** Subscriber will pay Mark43 fees as stated on **Schedule A** (the "Fees") attached hereto in accordance with the payment schedule set forth on **Schedule A**. All payments of Fees are non-refundable. All amounts stated in this Agreement or on any invoice are in U.S. dollars, and all payments will be made in U.S. dollars. Overdue payments will accrue interest at the statutory .66% per month or 9% per year or the maximum allowable interest under Applicable Law, from due date until paid. Subscriber will pay any sales, use or other tax related to the license and services provided hereunder, exclusive of income taxes and payroll taxes relating to Mark43's employees. Subscriber agrees that its use of and payment for Services constitutes its inspection and acceptance of such Service.

**3.2 Third-Party Data and Third-Party Components.** Additional fees may apply to the use of certain Third-Party Data and Third-Party Components, which if provided by Mark43, such fee may be included within the Fees. Mark43 may pass through any increase in such fees for Third Party Components or Third Party Data, relating to any existing Services, by giving Subscriber thirty (30) days' advance notice.

- 3.3 Taxes.** Subscriber will be responsible, as required under applicable law, for identifying and paying all taxes, including sales, use, excise, and other governmental fees, duties, and charges (and any penalties, interest, and other additions thereto) that are imposed on Subscriber or Mark43 with respect to the transactions and payments under this Agreement (excluding taxes based on Mark43's income or employment) ("**Indirect Taxes**"). All Fees are exclusive of Indirect Taxes. If Subscriber is exempt from paying Indirect Taxes, it shall provide to Mark43 exemption certificates, or a direct payment permit certificate, or such information to Mark43 as reasonably required and requested to determine whether Mark43 is obligated to collect Indirect Taxes from Subscriber. If any such taxes are required to be withheld on any payment, Subscriber will pay such additional amounts as are necessary so that the net amount received by Mark43 is equal to the amount then due and payable under this Agreement.

#### **4. TERM AND TERMINATION.**

##### **4.1 Term.**

- (a) **Initial Term.** The initial term of this Agreement begins on the Effective Date and will continue for the period set forth on Schedule A, unless and until terminated in accordance with Section 4.2 (the "**Initial Term**").
- (b) **Renewal Terms.** Upon expiration of the Initial Term or any Renewal Term, this Agreement will automatically renew for successive periods as set forth on Schedule A (each, a "**Renewal Term**") at the rates set forth on Schedule A, unless either party provides the other with written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current term.

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

- (a) Either party may terminate this Agreement upon written notice to the other party, if the other party breaches a material term of this Agreement and such breach remains uncured for thirty (30) days after the other party's receipt of such notice.
- (b) If Mark43 reasonably determines that Subscriber's use of the Services either: (i) fails to comply with the Restrictions on Use in Section 2.5; (ii) poses a security risk to the Services or any third party, (iii) creates or is likely to create an adverse impact on Mark43's systems, the Services, or the systems or content of any other subscriber; or (iv) subjects Mark43 or its Affiliates to possible liability, then Mark43 may immediately upon notice temporarily suspend Subscriber's and any Authorized User's right to access any portion or all of the Services, pending remedial action by Subscriber, or after a period of 30 days, terminate the Services.

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

- (a) Subscriber will pay Mark43 all amounts payable hereunder as of the effective date of termination or expiration;
- (b) all rights and licenses granted hereunder to Subscriber (as well as all rights granted to any Authorized Users of Subscriber) will immediately cease, including but not limited to all use of the SaaS Services; and
- (c) Mark43 will provide records to Subscriber in accordance with its transition assistance services ("**Transition Assistance**") as set forth in Schedule B.
- (d) Subject to any applicable retention requirements, including Oregon Public Records Law, Subscriber will, upon written request of Mark43, either return to Mark43 or provide Mark43 with written certification of the destruction of, all documents, computer files and other materials containing any Confidential Information of Mark43 that are in Subscriber's possession or control.

##### **4.4 Survival.** The following provisions will survive any termination or expiration of this Agreement: Section 2.7 ("Subscriber Data"), Section 2.9 ("Third Party Components"), Section 2.10 ("Third Party Data"), Section 4.3 ("Effect of Termination"), Section 5 ("Confidentiality"), Section 6.2 ("Disclaimer"), Section 7 ("Limitation of Liability"), Section 8 ("Indemnification"), Section 9 ("Miscellaneous Provisions"), Schedule B ("Transition Assistance") and this Section 4.4 ("Survival").

#### **5. CONFIDENTIALITY.**

- 5.1 Definition of Confidential Information.** For the purposes of this Agreement, "**Confidential Information**" means: (a) with respect to Mark43, the SaaS Services, and any and all source code relating thereto, as well as Documentation and non-public information or material regarding Mark43's legal or business affairs, financing, customers, properties or data, and (b) with respect to Subscriber,

any non-public information or material regarding Subscriber's legal or business affairs, financing, customers, properties or data, and Subscriber Data that concerns criminal investigations, including, but not limited to incident reports, and information concerning victims, witnesses, or law enforcement personnel. Notwithstanding any of the foregoing, Confidential Information does not include information which: (i) is or becomes public knowledge without any action by, or involvement of, the party to which the Confidential Information is disclosed (the "**Receiving Party**"); (ii) is documented as being known to the Receiving Party prior to its disclosure by the other party (the "**Disclosing Party**"); (iii) is independently developed by the Receiving Party without reference or access to the Confidential Information of the Disclosing Party and is so documented; or (iv) is obtained by the Receiving Party without restrictions on use or disclosure from a third person who did not receive it, directly or indirectly, from the disclosing party. For the avoidance of doubt, Subscriber has complete control over Subscriber Data and may release Subscriber Data in its discretion and in a manner that complies with federal and state law.

- 5.2 Use and Disclosure of Confidential Information.** The Receiving Party will, with respect to any Confidential Information disclosed by the Disclosing Party before or after the Effective Date: (i) use such Confidential Information only in connection with the Receiving Party's performance of this Agreement; (ii) subject to [Section 5.4](#) below, restrict disclosure of such Confidential Information within the Receiving Party's organization to only those of the Receiving Party's employees and independent contractors who have a need to know such Confidential Information in connection with the Receiving Party's performance of this Agreement and (iii) except as provided herein, not disclose such Confidential Information to any third party unless authorized in writing by the Disclosing Party to do so.
- 5.3 Protection of Confidential Information.** The Receiving Party will protect the confidentiality of any Confidential Information disclosed by the Disclosing Party using at least the degree of care that it uses to protect its own confidential information (but no less than a reasonable degree of care).
- 5.4 Employee and Independent Contractor Compliance.** The Receiving Party will, prior to providing any employee or independent contractor access to any Confidential Information of the Disclosing Party, inform such employee or independent contractor of the confidential nature of such Confidential Information and require such employee or independent contractor to comply with the Receiving Party's obligations hereunder with respect to such Confidential Information.
- 5.5 Required Disclosures.** If a party is requested to disclose any of the other party's Confidential Information pursuant to any judicial or governmental order, that party will not disclose the Confidential Information without first giving the other party written notice of the request and sufficient opportunity to contest the order, to the extent such notice and opportunity to contest may be lawfully given. If one party is nonetheless legally compelled to disclose Confidential Information, such party may, without liability hereunder, consistent with the judicial or governmental order, disclose to such tribunal only that portion of the Confidential Information which the party's legal counsel advises it is legally required to be disclosed, provided that such party shall use its best efforts to preserve the confidentiality of the Confidential Information, including, without limitation, by cooperating with the other party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be afforded the Confidential Information by such tribunal. Without limiting the foregoing, and unless prohibited by law, Subscriber shall notify Mark43 of any requests for records relating to Mark43 within three business days of receipt of the request and prior to disclosing any records relating to Mark43. Subscriber shall, prior to disclosing records relating to Mark43, give Mark43 prior written notice sufficient to allow Mark43 to seek a protective order or other remedy (except to the extent that Subscriber's compliance would cause it to violate Oregon public records laws), and disclose only such information as is required under Oregon public records laws. If Mark43 receives a subpoena, or other judicial or governmental order, seeking Subscriber's Confidential Information, Mark43 shall notify Subscriber within three business days of receipt, and tender defense to Subscriber. Without limiting the foregoing and subject to the limitations of the Oregon Constitution and to the limits of the Oregon Tort Claims Act, Subscriber further agrees to indemnify and hold harmless Mark43, its Affiliates, and each of their officers, directors, managers, shareholders, members and employees from all claims, liabilities, costs and expenses (including without limitation, reasonable attorneys' fees and expert and consulting fees), incurred or expended by Mark43 in connection with a request for the disclosure of Subscriber's Confidential Information. For requests concerning the disclosure of Subscriber's Confidential Information, Subscriber's indemnification and hold harmless responsibility only applies in cases where Subscriber is found to have acted negligently or have otherwise violated federal or state law.

- 5.6 Information Collected Through SaaS Services.** Subscriber is solely responsible for compliance with applicable laws related to the manner in which Subscriber chooses to use the Services, including Subscriber's transfer and processing of Subscriber Data. Subscriber understands and agrees that when it uses certain features of the SaaS Services, certain information and data may be collected from Authorized Users, including monitoring and recording activity, and tracking physical location, which may include personal identifying information. Subscriber agrees that Mark43 may use such information to (i) provide more effective Services, (ii) to develop and test its Services, (iii) to aggregate such information and combine it with that of other Users, and (iv) to use anonymous aggregate data to improve the Services or for marketing, research or other business purposes. Provision of Services may involve the disclosure of such information to Vendors or Affiliates on the condition that they agree to treat such information in a manner substantially in accordance with this Agreement. Subscriber may revoke its consent to Mark43's collecting and using such data at any time by written notice to Mark43; provided, however, that Subscriber agrees that such revocation of consent may impair or render impossible the Subscriber's use of the SaaS Services.
- 5.7 Breach of Subscriber Data.** As used in this subsection, "Data Breach" means "the intentional or unintentional release of Subscriber Data or Subscriber's Confidential Information, by Mark43 to a third party that is not authorized by this Agreement, or otherwise expressly authorized in writing by Subscriber. Mark43 will comply with all applicable laws regarding notice to affected individuals and other requirements in the event of a Data Breach. In the event of a Data Breach, Mark43 shall: (a) immediately upon discovery of the Data Breach give notice to Subscriber that the Data Breach occurred, and stop the Data Breach; (b) within 30 calendar days of notice being given, inform Subscriber of the nature of the breach and what information was released. **Notwithstanding any other term of this Agreement or the Supporting Documents, Subscriber shall not defend, indemnify or hold harmless Mark43 and its Affiliates, and each of their officers, directors, managers, shareholders, members and employees from any claims, liabilities, costs and expenses for any Data Breach, nor except as provided in Section 7 do Subscriber or Authorized Users waive or release any claims they may have in law or equity against Mark43 for any Data Breach caused by Mark43's intentional or negligent act.**
- 5.8 CJIS standards.** Subscriber understands and agrees that Mark43 utilizes third party vendors ("Hosting Providers") to host the SaaS Services, provided that Mark43 may only utilize Hosting Providers that have signed CJIS agreements with the State of Oregon. As of the Effective Date of this Agreement, Mark43 utilizes Amazon Web Services (AWS) as its Hosting Provider for the SaaS Services. Subscriber may request reasonable records from Mark43 from time to time to assess Mark43's adherence to requirements of the applicable CJIS Security Policy promulgated by the FBI. Mark43 will produce records within a reasonable time frame. For the avoidance of doubt, Subscriber may need the consent of Hosting Provider to obtain any records or information from Hosting Provider. Subscriber will have the opportunity to run background checks on any Mark43 employees that will have access to Subscriber Data.

## **6. REPRESENTATIONS AND WARRANTIES.**

- 6.1 Power and Authority.** Each party represents and warrants that it has the full right, power and authority to enter into this Agreement and to discharge its obligations hereunder and that the person signing this Agreement on behalf of the party has the authority to bind that party. Subscriber represents and warrants that it has obtained, and shall have, all necessary approvals, consents, and authorizations necessary for procurement under this Agreement and that its obligations under this Agreement do not, and shall not, exceed any budget authority limitations, during the Term of this Agreement. Subscriber further represents that it has not received federal funding in connection with procurement under this Agreement.
- 6.2 No Other Warranties.** Use of the SaaS Services is not intended to be a substitute for the professional judgment of dispatchers, law enforcement officers, or first responders. The SaaS Services do not provide legal advice. Subscriber shall be responsible for all its own actions or failure to act in connection with the SaaS Services. Mark43 cannot guarantee that every error in the SaaS Services or problem raised by Subscriber will be resolved. THE SERVICES, THE THIRD PARTY COMPONENTS, AND THE THIRD PARTY DATA ARE PROVIDED "AS IS." MARK43 ASSUMES NO RESPONSIBILITY OR RISK FOR SUBSCRIBER'S USE OR MISUSE OF, OR FAILURE TO USE, THE INFORMATION PROVIDED THROUGH THE SAAS SERVICES. MARK43 MAKES NO WARRANTY THAT THE SERVICES WILL BE COMPLIANT WITH ANY REQUIREMENTS OF CJIS



(CRIMINAL JUSTICE INFORMATION SERVICES) OR CLETS (CALIFORNIA LAW ENFORCEMENT TELECOMMUNICATIONS SYSTEM) OR ANY EQUIVALENT. DUE TO THE NATURE OF SOFTWARE AND THE INTERNET, MARK43 CANNOT GUARANTEE THAT EVERY ERROR IN THE SAAS SERVICES OR PROBLEM RAISED BY SUBSCRIBER WILL BE RESOLVED. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 6 NEITHER PARTY MAKES ANY WARRANTY IN CONNECTION WITH THE SERVICES, THE THIRD PARTY COMPONENTS, THE THIRD PARTY DATA OR THIS AGREEMENT AND HEREBY DISCLAIMS ANY AND ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING ALL IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, ERROR-FREE OR UNINTERRUPTED OPERATION OR THAT THE SERVICES, THIRD-PARTY COMPONENTS AND THIRD-PARTY DATA ARE UP TO DATE, ACCURATE OR COMPLETE, SECURE FROM LOSS OR DAMAGE, OR FREE OF HARMFUL COMPONENTS, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. To the extent that a party may not as a matter of Applicable Law disclaim any implied warranty, the scope and duration of such warranty will be the minimum permitted under such law.

## 7. LIMITATION OF LIABILITY.

- 7.1 Liability Exclusion.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR FOR ANY OTHER DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE FURNISHING, PERFORMANCE, OR USE, OR FAILURE OF, OF THE SERVICES, THE THIRD PARTY COMPONENTS OR THE THIRD PARTY DATA PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, PERSONAL INJURY, DEATH, DAMAGE TO PROPERTY, ENVIRONMENTAL DAMAGE, LOSS OF PROFITS, REVENUES, ANTICIPATED SAVINGS, CUSTOMERS, OPPORTUNITIES, DAMAGE TO PRIVACY, REPUTATION OR GOODWILL OR UNAVAILABILITY OF THE SERVICES, REGARDLESS OF WHETHER THE PARTY LIABLE OR ALLEGEDLY LIABLE WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.
- 7.2 Limitation of Damages.** MARK43'S MAXIMUM LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER, REGARDLESS OF THE CAUSE OF ACTION (WHETHER IN CONTRACT, TORT, BREACH OF WARRANTY OR OTHERWISE), WILL NOT EXCEED THE AGGREGATE AMOUNT OF THE FEES PAID AND PAYABLE TO MARK43 BY SUBSCRIBER DURING THE SIX (6) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM ARISES. MARK43 SHALL HAVE NO LIABILITY ARISING OUT OF OR RELATING TO THE THIRD-PARTY COMPONENTS OR THE THIRD-PARTY DATA.
- 7.3 Exceptions.** NOTWITHSTANDING THE FOREGOING, THE EXCLUSIONS AND LIMITATIONS OF LIABILITY SET FORTH IN SECTION 7.1 AND SECTION 7.2 SHALL NOT APPLY TO DAMAGES ARISING FROM EITHER PARTY'S INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT OR EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

## 8. INDEMNIFICATION.

- 8.1 Indemnification by Mark43.** Mark43 will defend, indemnify and hold harmless Subscriber and its Authorized Users, and each of their officers, directors, managers, shareholders, members and employees from any and all claims, liabilities, costs and expenses (including reasonable attorney's fees and expert and consulting fees) in connection with any third party claim arising after the Effective Date that the use of the SaaS Services (excluding any open source software) in accordance with this Agreement infringes or misappropriates the United States intellectual property rights of third party; provided, however, that the foregoing obligations shall be subject to Subscriber (a) promptly notifying Mark43 of the claim, (b) providing Mark43 with reasonable cooperation in the defense of the claim when Subscriber becomes aware and (c) providing Mark43 with sole control over the defense and negotiations for a settlement or compromise; provided, however, that Mark43 shall not enter into any such settlement without Subscriber's prior written consent, which consent will not be unreasonably withheld, and that Subscriber shall be permitted to participate in the defense of any such claim, at its own expense, with counsel of its choosing. Notwithstanding the foregoing, Mark43 shall have no obligation with respect to a third party claim to the extent the third party claim arises from: (s) claims arising out of acts or omissions of Subscriber or its users, employees or contractors; (t) claims brought by Subscriber or its Affiliates or Authorized Users; (u) claims arising from the use of old versions software after receipt of modified or updated versions of software; (v) claims arising from the use of Third Party Applications, Third Party Components or Third Party Data; (w) claims arising from any data, product specifications, information or materials provided by Subscriber hereunder, when used in connection with the SaaS Services or any customization or configuration made to the

SaaS Service proposed by or provided by Subscriber under a Statement of Work; (x) use of the SaaS Services in combination with modules, apparatus, hardware, software, or services not authorized by Mark43 or specified in the Documentation for use with the SaaS Services; (y) use of the SaaS Services in a manner that is not in accordance with this Agreement or the Documentation; (z) the alteration or modification of the SaaS Services by a party other than Mark43, unless such alterations and modifications were authorized by Mark43 or specified in the Documentation for use with the SaaS Services.

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

## 9. MISCELLANEOUS.

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

If to Mark43:

Mark43, Inc.  
28 E. 28<sup>th</sup> Street  
12<sup>th</sup> Floor  
New York, NY 10016  
Attn: David Jochim

If to Subscriber:

City of Sherwood  
20495 Borchers Drive.  
Sherwood, OR 97140  
Attn: Police Chief

Copy to:

Mark43, Inc.  
28 E. 28<sup>th</sup> Street  
12<sup>th</sup> Floor  
New York, NY 10016  
Attn: General Counsel  
Email: contractnotices@mark43.com

Copy to:

City of Sherwood  
22560 SW Pine St.  
Sherwood, OR 97140  
Attn: City Attorney

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

**9.3 Dispute Resolution.** In the event of a dispute arising under or relating to this Agreement, the parties agree to finally and exclusively resolve the dispute by binding arbitration governed by the Federal Arbitration Act ("FAA"). All disputes will be resolved before a neutral arbitrator, whose decision will be final except for a limited right of appeal under the FAA. Any court with jurisdiction over the parties may enforce the arbitrator's award. The arbitration shall be commenced and conducted under the Commercial Arbitration Rules of the American Arbitration Association (AAA) then in effect, which is available at the AAA website [www.adr.org](http://www.adr.org). If those rules conflict with this provision, this provision shall control. The arbitration shall be conducted before a panel of one or more arbitrators. The arbitrator(s) shall be selected from the AAA's National Roster of Arbitrators pursuant to agreement between the parties or through selection procedures administered by the AAA. The arbitration may be conducted in person, through the submission of documents, by phone or online. If conducted in person, the arbitration shall take place in Washington County, Oregon. The arbitrator(s) shall determine the matters in dispute strictly in accordance with the terms of this Agreement and the substantive law of the State of Oregon, excluding its principles of conflicts of laws, except that the interpretation and enforcement of this arbitration provision shall be governed by the FAA.

The award of the arbitrator(s) shall be the sole and exclusive remedy between the parties regarding any claims, counterclaims, issues or accountings presented or pled to the arbitrators, provided that THE ARBITRATOR(S) SHALL HAVE NO AUTHORITY TO AWARD EITHER PARTY ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR LOST PROFITS), OR ATTORNEYS' FEES OR COSTS. The parties may litigate in court and shall submit to the personal jurisdiction of the State of Oregon Circuit Court in Washington County, Oregon, USA, unless exclusive jurisdiction is in federal court, in which case venue shall be in the federal district court for the District of Oregon in Portland, Oregon, for any action to do the following: (i) to compel arbitration; (ii) to stay proceeding pending arbitration; (iii) seek injunctive or other equitable relief to prevent the actual or threatened infringement, misappropriation or violation of a its copyrights, trademarks, trade secrets, patents, or other intellectual property or proprietary rights, including any provisional relief required to prevent irreparable harm; (iv) to protect or defend the ownership, validity or enforcement of any intellectual property rights; (v) or to confirm, modify, vacate or enter judgment on the award entered by the arbitrator.

The arbitration award and record, and any Confidential Information that is used at or in connection with the arbitration shall not be disclosed to third parties by the arbitrator(s) or the Parties without the prior written consent of both Parties. Neither the fact that the arbitration occurred nor the result of the arbitration shall be admissible in evidence in a subsequent proceeding brought on the same claims that were presented at the arbitration.

**9.4 Force Majeure.** Except with respect to failure to pay any amount due under this Agreement, nonperformance of either party will be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts that are not caused by or within the control of the nonperforming party, orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party.

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

**9.6 Amendment.** No modification, change or amendment to this Agreement shall be effective unless in writing signed by Subscriber and Mark43. No term included in any invoice, estimate, confirmation, acceptance, purchase order or any other similar document in connection with this Agreement will be effective unless expressly stated otherwise in a separate writing signed by Subscriber and Mark43.

- 9.7 Relationship of the Parties.** The relationship of the parties established by this Agreement is that of independent contractors and nothing contained herein will be construed to (a) give any party any right or authority to create or assume any obligation of any kind on behalf of any other party or (b) constitute the parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking.
- 9.8 Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction will, to the extent the economic benefits conferred thereby to the parties remain substantially unimpaired, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions or affecting the validity or enforceability of any of such terms or provisions in any other jurisdiction.
- 9.9 Headings.** The titles and headings contained in this Agreement are for reference purposes only and shall not in any manner limit the construction or interpretation of this Agreement.
- 9.10 Counterparts.** This Agreement may be executed, 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.
- 9.11 Cumulative Remedies.** All remedies for breach of this Agreement are cumulative, and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 9.12 Export Compliance.** In connection with this Agreement, each party will comply with all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control.
- 9.13 Compliance with Laws.** Each party shall comply with all Applicable Laws relating or pertaining to the use of the Services. Subscriber shall ensure that its use of all Subscriber Data complies with all Applicable Laws relating to the privacy of third parties or the protection of their personal data promulgated by any governmental, municipal, or legal authority having jurisdiction over Subscriber or the End User Data covered by this Agreement. "**Applicable Laws**" means all applicable provisions of all (x) constitutions, treaties, statutes, laws (including the common law), rules, directives, regulations, ordinances, codes or orders of any governmental authority and (y) orders, decisions, injunctions, judgments, awards and decrees and consents of or agreements with any such entity. Each party shall comply with local anti-bribery laws as well as the U.S. Foreign Corrupt Practices Act, as well as any other applicable laws and regulations. In connection with its performance under the Agreement, neither party shall directly or indirectly: (A) offer, pay, promise to pay, or authorize the payment of any money, gift or other thing of value to any person who is an official, agent, employee, or representative of any government or instrumentality thereof or to any candidate for political or political party office, or to any other person while knowing or having reason to believe that all or any portion of such money, gift or thing of value will be offered, given, or promised, directly or indirectly, to any such official, agent, employee, or representative of any government or political party, political party official or candidate; (B) offer, promise or give any person working for, or engaged by, the other party a financial or other advantage to (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; or (C) request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement. Each party represents and warrants that it shall be responsible for compliance with this provision by all third parties engaged by it to perform services related to this Agreement and shall require that such third parties agree to comply with all legal requirements required of such party under this Agreement.
- 9.14 Entire Agreement.** This Agreement supersedes all previous understandings, agreements and representations between the parties, written or oral and constitutes the entire agreement and understanding between the parties with respect to the subject matter thereof and incorporates all representations, warranties, covenants, commitments and understandings on which they have relied in entering into this Agreement, and, except as provided for herein, neither party makes any covenant or other commitment concerning its future action nor does either party make any promises, representations, conditions, provisions or terms related thereto.
- 9.15 Laws of the State of Oregon.** The following laws of the State of Oregon are hereby incorporated by reference into the Agreement: ORS 279B.220, 279B.230, and 279B.235.

- 9.16 Nondiscrimination.** Mark43 agrees that no person shall, on the grounds of race, color, religion, creed, sex, marital status, familial status or domestic partnership, national origin, age, mental or physical disability, sexual orientation, gender identity or source of income, suffer discrimination in the performance of this Agreement when employed by Mark43. Mark43 agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Further, Mark43 agrees not to discriminate against a disadvantaged business enterprise, minority-owned business, woman-owned business, a business that a service-disabled veteran owns or an emerging small business enterprise certified under ORS 200.055, in awarding subcontracts as required by ORS 279A.110.
- 9.17 Insurance.** Mark43 shall obtain and maintain during the term of this Agreement and until Subscriber's final acceptance of all Services and Software performed hereunder, a policy or policies of liability insurance including commercial general liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 (two million dollars) for each occurrence for Bodily Injury and Property Damage.
- The insurance required in this Article shall include the following coverages:
    - Comprehensive General or Commercial General Liability, including personal injury, contractual liability, and products/completed operations coverage;
    - Automobile Liability.
  - Each policy of such insurance shall be on an "occurrence" and not a "claims made" form, and shall:
    - Name as additional insured "the City of Sherwood, Oregon, its officers, agents and employees" with respect to claims arising out of Provider's Work under this Agreement;
    - Apply to each named and additional named insured as though a separate policy had been issued to each, provided that the policy limits shall not be increased thereby;
    - Apply as primary coverage for each additional named insured except to the extent that two or more such policies are intended to "layer" coverage and, taken together, they provide total coverage from the first dollar of liability;
    - Mark43 shall immediately notify the Subscriber of any change in insurance coverage
    - Mark45 shall supply an endorsement naming the City, its officers, employees and agents as additional insureds within sixty (60) days of the Effective Date of this Agreement; and
    - Be evidenced by a certificate or certificates of such insurance approved by the Subscriber.
  - All subject employers working under this Agreement are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
  - Mark43 shall carry Errors and Omissions (professional liability) coverage with combined single limits of not less than \$1,000,000 (one million dollars). Mark43 shall furnish evidence of such coverage through a certificate of insurance in form acceptable to the Subscriber.

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

**MARK43, INC.**

**CITY OF SHERWOOD, OREGON**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE A**  
**Services Schedule**

1. **Services.** The Services covered by this Agreement consists of the following:
  - a. **Professional Services:**
    - i. Project Management
    - ii. RMS Interface Control Documentation
    - iii. RMS Data Conversion Study
    - iv. RMS Configuration
    - v. RMS Interface Development (Subject to consent and cooperation of the third parties)
      1. APS Report Beam
      2. Tri-Tech CAD
      3. LEDS/NCIC/DMV
      4. ESRI Arc GIS
      5. Washington County Sheriff Jail Management System
    - vi. RMS Data Conversion (Legacy vendor will provide Sherwood Police Department RMS data to Mark43 in a SQL Server or MYSQL [relational database])
      1. RMS data migration
      2. Evidence data migration
    - vii. RMS Interface Testing
    - viii. RMS Functional Testing
    - ix. RMS Trainer Training
    - x. RMS Cutover Support
  - b. **SaaS Services:**
    - i. The Applications to be provided are described as follows:

**A. Records Management System (RMS)**

**Report Writing**

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

**Case Management**

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

**Warrant Management**

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

#### **Property and Evidence**

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

#### **Stat Reporting and Crime Analysis**

- Active Error Detection
- Automatic NIBRS Code Mapping
- Integrated NIBRS Workspace for Report Creation
- Advanced CAD, RMS and Entity Search
- Multi-Input and Fuzzy Match Search Filters
- Comprehensive Analysis Filters

#### **System Administration**

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

#### **B. Data Exchange.**

The Law Enforcement Data System (LEDS) is the statewide data system operated by Oregon State Police. It is currently used by Subscriber to input and query national and statewide criminal justice information, to include NCIC, NLETS, and the Oregon DMV. Interfaces to these systems are not in scope for the projected go-live. The Parties agree to evaluate the requirements together and agree on a time frame for completion. Subscriber is responsible for determining which of these downstream data feeds will continue to receive information at cutover. Subscriber, with the consent of Mark43, is also responsible for determining the policies and procedures surrounding interfaces between Mark43 Applications and third-party databases. Subscriber understands and agrees that third party service providers may impose additional license, warranty and other terms on Subscriber. Subscriber agrees to enter into additional agreements as reasonably required by such third parties and Mark43. Mark43 reserves the right to require a different warranty or SLA for maintenance of these interfaces.

- ii. Upon completion of the Professional Services, Mark43 will provide Subscriber with the SaaS Services for the Fees set forth in Section 4 below (the "**Regular Usage Period**"). The parties anticipate that the Regular Usage Period will commence on or about **January 1, 2019**.



2. **Initial Term.** The Initial Term is a period commencing on the Effective Date through the fifth (5<sup>th</sup>) anniversary after Go Live. By way of example, if Go Live occurs on January 1, 2019, the last day of the Initial Term will be December 31, 2023.
3. **Renewal Terms.** Any Renewal Terms shall be for a period of 1 year.
4. **Fees.** The Fee for the Initial Term is \$115,440.00.

**Mark43 Pricing is based on 26 sworn officers employed directly or indirectly by Subscriber. For each year after the Base Year, Subscriber will certify to Mark43 the number of sworn officers employed directly or indirectly by Subscriber as of the date that is sixty (60) days before the anniversary of the Go-Live. Subscription fees for the upcoming year will be based on that headcount. In the event that Subscriber increases its number of employed sworn officers during the Term by more than 3 officers, then the annual fee shall increase by the "Annual Rate Per Sworn Officer" in excess of 29 sworn officers. For the avoidance of doubt, pricing is based on a floor of 26 sworn officers, and will not decrease even if fewer than 26 sworn officers are employed. The "Annual Rate Per Sworn Officer" is as follows: Years 1-5: \$888.00.**

Mark43 will notify Subscriber of any changes to the Fees for a Renewal Term at least forty-five (45) days prior to the start of the Renewal Term.

5. **Payment Schedule.** Subscriber will pay the Fees on the following schedule:
  - a. Initial Term: **\$115,440.00.** Fees will be paid in accordance with the following schedule.

Payment Timeline	Amount Due
Base Year (due 1/1/2019)	\$23,088.00
Year 2 (due on first anniversary of Go-Live)	\$23,088.00
Year 3 (due on second anniversary of Go-Live)	\$23,088.00
Year 4 (due on third anniversary of Go-Live)	\$23,088.00
Year 5 (due on fourth anniversary of Go-Live)	\$23,088.00
Total Payments on Initial Term	\$115,440.00

- b. Renewal Term: Fees for any Renewal Term will be paid on the first day of the Renewal Term.
6. **Support Services.** As part of the SaaS Services, subject to Section 2.4, Mark43 shall establish, sufficiently staff and maintain the organization and processes necessary to provide telephone and/or email based technical support, troubleshooting, error identification, isolation and remediation, and other assistance directly to Subscriber and its Authorized Users to support Subscriber's use, deployment and validation of the SaaS Services on a 24x7 basis, and after normal business hours and on holidays, as necessary to support Mark43's obligations under this Agreement. The contact information for Mark43's technical support organization is Support@mark43.com and Mark43 will notify Subscriber in writing of any changes no less than 5 days in advance. Mark43 shall provide Subscriber with online access to its known-problem database and any other resource containing information that will aid in problem and error resolution and correction, as well as any other technical resources made electronically available to any of Mark43's other customers. The Mark43 account manager or primary point of contact for Subscriber with respect to this Agreement will be Matthew Neal matt.neal@mark43.com.

7. **Service Levels.** Mark43 shall provide the Applications in accordance with the following services levels.

a. **Service Levels for the Records Management System (hereinafter, "RMS").**

- i. **RMS Availability.** During any calendar month of a Regular Usage Period, the RMS shall be available to users no less than 99.9% of the time on a 24x7 basis, excluding scheduled maintenance of the RMS ("RMS Scheduled Downtime"); provided, however, that Mark43 is not responsible for any downtime of the RMS caused by Third Party Data services (e.g. Department of Motor Vehicles license plate database), or Third Party Components, and such Third Party downtime will not count against the service levels promised herein; provided, further, that Mark43 shall be responsible for any downtime of RMS caused by Integrated Third Party Software (as defined below) solely to the extent specified in Section 7(b) below ("Service Levels for Integrated Third Party Software"). Mark43 shall provide Subscriber with prompt notification as soon as it becomes aware of any actual or potential unscheduled downtime (defined below) of the RMS, as well as continual periodic updates during the unscheduled downtime regarding Mark43's progress in remedying the unavailability and the estimated time at which the RMS shall be available.
- ii. **RMS Service Credits.** In the event that Mark43 fails to make the RMS available at least 99.9% of the time in any given month during the Regular Usage Period due to RMS Unavailability (as defined below), Mark43 will credit the Subscriber's account for the unavailable RMS as follows:

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

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

"Credit Percentage" means the applicable percentage of the portion of the Fees attributable to Services in the calendar month in which the RMS Unavailability occurs. For example, if Subscriber has paid Mark43 \$1,000 for one year of a Regular Usage Period, and the RMS Availability falls to 99.5% during any calendar month in that year, then Mark43 will owe Subscriber a 10% credit on that month's portion of the Fee, or:  $\$1,000/12 = \$83.33$  per month, and 10% of  $\$83.33 = \$8.33$ . In this example, Mark43 would owe Subscriber \$8.33 in credit for the month in which RMS Availability fell to 99.5%.

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

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

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

**SCHEDULE B**  
**Transition Assistance**

Upon termination of the Agreement for any reason, and subject to all Fees due being paid in full, Mark43 will create exports of each record as a Mark43 SQL export, or, if mutually agreed by the Parties, as searchable PDFs or any other industry standard format mutually agreed by the Parties (each, a "**Record**") and provide them to the Subscriber for download. Subscriber may request, and Mark43 will consider, other formats in which to create the Records, but the provision of Records in any format other than as set forth herein will be determined in Mark43's sole discretion. Records can be uploaded to Subscriber's new records management system by the Subscriber or its new vendor.

**1. Preparation**

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

**2. Content**

- a. Each Report in Cobalt will be recreated as a searchable PDF (or other mutually agreed to format as described above) using the standard Cobalt format then in use.
- b. All archive files will be accessible via the internet on the Cutoff Date.

**3. Support**

- a. Mark43 will maintain Subscriber data in Cobalt for up to 1 year following the Cutoff Date.
- b. Mark43 will maintain Subscriber PDF archives for up to 2 years following the Cutoff Date.
- c. Mark43 will resolve any issues it deems to be the result of errors in the Cobalt platform or export process for a period of six (6) months after the Cutoff Date.
- d. Within 6 months from the date of deletion of Subscriber Data from all Mark43 online systems, all Subscriber Data will be erased from database backups.
- e. Notwithstanding the foregoing, Mark43 reserves the right to retain Subscriber Data on audit logs and server system logs and in support tickets, support requests and direct communications with Mark43.

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

**SCHEDULE C**  
**Technical Requirements**

This Schedule lists the minimum technical requirements required for Mark43's RMS, Data Exchange, and Evidence Management applications. This also describes the requirements for Mark43 interface servers. Third Party Providers and subcontractors may have additional requirements that are not listed here.

1. MARK43 RMS

1.1 RMS Workstation Requirements

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

RMS Workstation Site Internet Requirements

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

### 1.2 RMS Browser Requirements

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

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

### 1.3 RMS Mobile Data Terminal Requirements

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

## 2. MARK43 EVIDENCE (IF APPLICABLE)

### 2.1 Evidence Workstation Requirements

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

Item	Minimum	Recommended
Operating System	Windows 7+, Mac OS X 10.X	Windows 10, Mac OS 10.X
Processor	1x dual-core processor	1x dual-core processor or greater
Architecture	x64 / x86	x64 / x86
Memory	4 GB	6 GB+
Network Card	1x 2Mbps+ NIC	1x 10Mbps+ NIC
Screen Resolution	1024x768	1920x1080
Hard Drive	1 GB available space	5 GB available space
Display(s)	1x 1024x768 monitor	1x 1920x1060
Graphics Card	N/A	N/A
Bandwidth	2 Mbps	5+ Mbps

### 2.2 Evidence Smartphone Mobile Application

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

### 2.3 Evidence Barcode Printer Requirements

Mark43 Evidence product requires a barcode printer to optimize the evidence management process. Mark43 integrates seamlessly with Zebra barcode printing hardware and requires the following characteristics from its printers:

- Prints 4" x 2" labels horizontally
- At least 300 DPI resolution
- Thermal Transfer
- Zebra Programming Language (ZPL)
- USB or Ethernet connectivity

DEVICE TYPE	SUPPORTED MODELS
Smartphone	Android phone version 5.0+
Barcode printer	Brand: Zebra Desktop Printers GK420t, GX420t, GX430t, and ZD500 Industrial Printers 110Xi4, 140Xi4, 170Xi4, 220Xi4, ZT220, ZT230, ZT410, and ZT420

Below are listed specific models that have been tested to work with Mark43's evidence module.

- Zebra GX43-102410-000

#### Label Requirements

The Mark43 Evidence module can currently only print on horizontal 4x2 inch labels. We recommend Thermal Transfer labels, which need a separate ink ribbon

### 3. MARK43 DATA EXCHANGE (IF APPLICABLE)

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

### 4. MARK43 INTERFACE SERVERS (IF APPLICABLE)

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

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



## **SCHEDULE D**

### **Additional License Terms**

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

Google Maps Terms: [https://maps.google.com/help/terms\\_maps.html](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](https://enterprise.google.com/maps/terms/universal_aup.html)

### **Amazon:**

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