

ADDENDUM TO AGREEMENT FOR PUBLIC SAFETY SOFTWARE LICENSE AND SERVICES ("ADDENDUM")

Mark43 and Subscriber (County of Fresno) agree that the Agreement between the parties is hereby modified as follows:

1. **Section 3.1 Fees for Mark43 Services**, is deleted in its entirety and replaced with the following:

"Subscriber will pay Mark43 fees (the "**Fees**") as stated on Schedule A, attached hereto and incorporated by reference, 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. 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 Services."
2. The following subsection is added to **Section 4.2 Temporary Suspension and Termination**:

"(c) Non-Allocation of Funds - The terms of this Agreement, and the services to be provided thereunder, are contingent on the approval of funds by the appropriating government agency. Should sufficient funds not be allocated, the services provided may be modified, or this Agreement terminated by Subscriber during any contract year, by giving Mark43 not less than thirty (30) days advance written notice thereof prior to the start of the next one year period of this Agreement."
3. **Section 9.3 Dispute Resolution**, is deleted in its entirety and replaced with the following:

"Section 9.3 Venue/Governing Law.

Venue for any action arising out of or related to this Agreement shall only be in Fresno County, California. The rights and obligations of the Parties and all interpretation and performance of this Agreement shall be governed in all respects by the laws of the State of California."
4. The following language is added to **Section 9.7 Relationship of the Parties** after the word "undertaking" of the last sentence:

"In performance of the work, duties and obligations assumed by Mark43 under this Agreement, it is mutually understood and agreed that Mark43, including any and all of the Mark43 officers, agents, and employees will at all times be acting and performing as an independent contractor, and

1 shall act in an independent capacity and not as an officer, agent, servant, employee, joint venturer,
2 partner, or associate of the Subscriber. Furthermore, Subscriber shall have no right to control or
3 supervise or direct the manner or method by which Mark43 shall perform its work and function.
4 However, Subscriber shall retain the right to administer this Agreement so as to verify that Mark43
5 is performing its obligations in accordance with the terms and conditions thereof.

6 Because of its status as an independent contractor, Mark43 shall have absolutely no right to
7 employment rights and benefits available to Subscriber employees. Mark43 shall be solely liable
8 and responsible for providing to, or on behalf of, its employees all legally-required employee
9 benefits. In addition, Mark43 shall be solely responsible and save Subscriber harmless from all
10 matters relating to payment of Mark43's employees, including compliance with Social Security
11 withholding and all other regulations governing such matters. It is acknowledged that during the
12 term of this Agreement, Mark43 may be providing services to others unrelated to the Subscriber or
13 to this Agreement."

- 14 5. The following paragraph is added to **Section 9.14** Entire Agreement, after the word
15 "thereto" of the last sentence:

16 "In the event of any inconsistency in interpreting the documents which constitute this Agreement,
17 the inconsistency shall be resolved by giving precedence in the following order of priority: (1) the
18 text of this Agreement, including the Addendum and all Schedules (excluding Attachment 1 and
19 Attachment 2 to Schedule A (i.e., Subscribers Request for Proposal (RFP) No. 17-003, and
20 Mark43's Proposal in Response to RFP (Proposal), respectively); (2) Attachment 1, and (3)
21 Attachment 2.

- 22 6. The following additional clauses are added to and made a part of this Agreement:

23 A. "**Section 9.15** INSURANCE. Without limiting the Subscriber's right to obtain indemnification
24 from Mark43 or any third parties, Mark43, at its sole expense, shall maintain in full force and
25 effect, the following insurance policies or a program of self-insurance:

26 (1) Commercial General Liability

27 Commercial General Liability Insurance with limits of not less than One Million Dollars
28 (\$1,000,000) per occurrence and an annual aggregate of Two Million Dollars (\$2,000,000).

29 This policy shall be issued on a per occurrence basis. Subscriber may require specific

1 coverages including completed operations, products liability, contractual liability, Explosion-
2 Collapse-Underground, fire legal liability or any other liability insurance deemed necessary
3 because of the nature of this contract.

4 (2) Automobile Liability

5 Comprehensive Automobile Liability Insurance with limits for bodily injury of not less than
6 Two Hundred Fifty Thousand Dollars (\$250,000.00) per person, Five Hundred Thousand
7 Dollars (\$500,000.00) per accident and for property damages of not less than Fifty
8 Thousand Dollars (\$50,000.00), or such coverage with a combined single limit of Five
9 Hundred Thousand Dollars (\$500,000.00). Coverage should include owned and non-owned
10 vehicles used in connection with this Agreement, as applicable.

11 (3) Professional Liability

12 If Mark43 employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W., M.F.C.C.) in
13 providing services, Professional Liability Insurance with limits of not less than One Million
14 Dollars (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) annual
15 aggregate.

16 (4) Worker's Compensation

17 A policy of Worker's Compensation insurance as may be required by the California Labor
18 Code.

19 Mark43 shall obtain endorsements to the Commercial General Liability insurance
20 naming the County of Fresno, its officers, agents, and employees, individually and
21 collectively, as additional insured, but only insofar as the operations under this Agreement
22 are concerned. Such coverage for additional insured shall apply as primary insurance and
23 any other insurance, or self-insurance, maintained by Subscriber, its officers, agents and
24 employees shall be excess only and not contributing with insurance provided under
25 Mark43's policies herein. This insurance shall not be cancelled without thirty (30) days
26 written notice given to Subscriber.

27 Within Thirty (30) days from the date Mark43 signs and executes this Agreement,
28 Mark43 shall provide certificates of insurance and endorsement as stated above for all of
29 the foregoing policies, as required herein, to the County of Fresno, at the address set forth

1 in Section 9.1 Notices, stating that such insurance coverages have been obtained and are in
2 full force; that the County of Fresno, its officers, agents and employees will not be
3 responsible for any premiums on the policies; that such Commercial General Liability
4 insurance names the County of Fresno, its officers, agents and employees, individually and
5 collectively, as additional insured, but only insofar as the operations under this Agreement
6 are concerned; that such coverage for additional insured shall apply as primary insurance
7 and any other insurance, or self-insurance, maintained by Subscriber, its officers, agents
8 and employees, shall be excess only and not contributing with insurance provided under
9 Mark43's policies herein; and that this insurance shall not be cancelled without a minimum
10 of thirty (30) days written notice given to Subscriber.

11 In the event Mark43 fails to keep in effect at all times insurance coverage as herein
12 provided, the Subscriber may, in addition to other remedies it may have, suspend or
13 terminate this Agreement upon the occurrence of such event.

14 All policies shall be issued under policies that cover claims in the State of California, and
15 such insurance shall be purchased from companies possessing a current A.M. Best, Inc.
16 rating of A FSC VII or better."

17 B. "**Section 9.16 AUDITS AND INSPECTIONS**. Mark43 shall at any time during business hours,
18 and as often as the Subscriber may deem necessary, make available to the Subscriber for
19 examination records concerning invoicing and records related to the Service Levels described in
20 Mark43's Software License and Services Agreement.

21 If this Agreement exceeds ten thousand dollars (\$10,000.00), Mark 43 shall be subject to
22 the examination and audit of the Auditor General for a period of three (3) years after final
23 payment under contract (Government Code Section 8546.7)."

24 C. "**Section 9.17 INVOICING**. Mark43 shall submit invoices to the address specified in Section 9.1
25 Notices. Payment will be made by Subscriber within 45 days of receipt of an approved invoice."

26 //

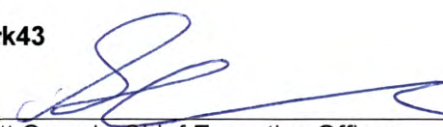
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1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day
2 and year first hereinabove written.

3
4 **Mark43**

5 By: 
6 Scott Crouch, Chief Executive Officer

7 Date

8 28 E. 28TH 12TH FLOOR, NEW YORK, NY 10016

9 Mailing Address

10
11 By: 
12 Caitlin O'Neil, VP Finance

13 Date

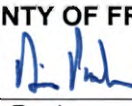
14
15 28 E. 28TH 12TH FLOOR, NEW YORK, NY 10016

16 Mailing Address

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18 FOR ACCOUNTING USE ONLY:

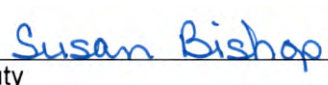
19 ORG No.: 31112425
20 Account No.: 7309
21 Requisition No.: 3111802197
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COUNTY OF FRESNO

By: 
Brian Pacheco
Chairman of the Board of Supervisors of the
County of Fresno

ATTEST:

Bernice E. Seidel
Clerk to the Board of Supervisors
County of Fresno, State of California

By: 
Deputy

SCHEDULE A
Services Schedule

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

A. Professional Services:

The services set forth in Mark43's Proposal dated October 20, 2016 in response to Subscribers Request for Proposal No. 17-003, the "Proposal." (Subscriber's Request for Proposal (RFP) No. 17-003 and the Proposal are attached hereto as Attachments 1 and 2, respectively and made a part of this Agreement)

B. SaaS Services:

- (1) The Applications to be provided are described as follows:

Mark43 CAD
Mark43 RMS
Mark43 Evidence
DataMaxx Omnixx Edge
DataMaxx Intelliticket
Public Safety Corp Medallion

- (2) Mark43 will provide Subscriber with the SaaS Services upon payment of Fees as set forth in Section 4 below. The first 12 month "Regular Usage Period" following Implementation is expected to commence on or about **September 1, 2018**.

2. **Initial Term.** The Initial Term shall commence on the Effective Date and end on August 31, 2023.
3. **Renewal Terms.** Any Renewal Term shall be for a period of **12 months** up to a maximum of three (3) such Renewal Terms.
4. **Fees.**

A. Base Fees. Implementation Fees and Annual Fees (for each Regular Usage Period) shall be as follows:

Year	Period	CAD	RMS	Total
1 (includes Implementation and first Regular Usage Period beginning 9/1/18)	11/14/17 - 8/31/19	\$742,024.75	\$457,975.25	\$1,200,000.00
2	9/1/19 - 8/31/20	\$742,024.75	\$457,975.25	\$1,200,000.00
3	9/1/20 - 8/31/21	\$742,024.75	\$457,975.25	\$1,200,000.00
4	9/1/21 - 9/31/22	\$742,024.75	\$457,975.25	\$1,200,000.00
5	9/1/22 - 8/31/23	\$742,024.75	\$457,975.25	\$1,200,000.00
6	9/1/23 - 8/31/24	\$779,125.99	\$480,874.01	\$1,260,000.00
7	9/1/24 - 8/31/25	\$818,082.29	\$504,917.71	\$1,323,000.00
8	9/1/25 - 8/31/26	\$858,986.41	\$530,163.59	\$1,389,150.00
Total Base Fees				\$9,972,150.00

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

- (1) **Implementation Fees** (including fees for the first Regular Usage Period) totaling **\$1,200,000.00** shall be paid upon mutually agreed milestone achievements as follows:
- i. \$300,000.00 upon execution of this Agreement
 - ii. \$300,000.00 upon completion of **Business Process Analysis** and FSO approval of **Mark43 RMS/CAD Implementation Plan**
 - iii. \$300,000.00 upon completion of **Workflow Validation**

iv. \$300,000.00 upon FSO acceptance of **Mark43 CAD launch**.

- (2) **Initial Term Fees.** The Annual Fee for the Year 2 Regular Usage Period is due in full in advance on the first day of such Regular Usage Period. For subsequent years, the annual fee is due in full on the anniversary of such date.
- (3) **Renewal Term Fees.** Annual Fees for any Renewal Term will be paid on the first day of the Renewal Term. The annual fee for each Renewal Term increases 5% from the previous year's fee.
- (4) **Optional Additional Fees.** Mark43 Pricing is based on the number of sworn officers employed directly or indirectly by Subscriber at the time this Agreement is signed (750 officers). In the event that Subscriber increases its number of employed sworn officers during the Term by more than ten percent (10%), then the annual fees shall increase by \$180 per sworn officer per month in excess of 750 officers.
- (5) **Contract Maximum.** In no event shall the Implementation Fees and Annual Regular Usage Period Fees based on the existing number of Subscriber's sworn officers exceed \$9,972,150.00 during the entire term of this Agreement, inclusive of Renewal Terms. In no event shall Optional Additional Fees exceed \$1,728,000.00 during the entire term of this Agreement. The maximum amount payable to Mark43 during the entire Term of this Agreement shall not exceed \$11,700,150.00.

5. **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 Allan Mackiewicz (allan@mark43.com). The Subscriber account manager or primary point of contact for Mark43 is Kal Chakravarthy (kal.chakravarthy@fresnosheriff.org).

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

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

- i. **RMS Availability.** During any calendar month of a Regular Usage Period, the RMS shall be available to users no less than 99.9% of the time on a 24x7 basis, excluding scheduled maintenance of the RMS ("RMS Scheduled Downtime"); provided, however, that Mark43 is not responsible for any downtime of the RMS caused by Third Party Data services (e.g. Department of Motor Vehicles license plate database), or Third Party Components, and such Third Party downtime will not count against the service levels promised herein; provided, further, that Mark43 shall be responsible for any downtime of RMS caused by Integrated Third Party Software (as defined below) solely to the extent specified in Section 71 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 the Computer Aided Dispatch Application (CAD).

- i. **CAD Availability.** During any calendar month of a Regular Usage Period, CAD shall be available to Subscriber no less than 99.95% of the time on a 24x7 basis, excluding scheduled maintenance of CAD ("CAD Scheduled Downtime"); provided, however, that Mark43 shall not be responsible for downtime of CAD under this section 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. Any CAD Scheduled Downtime shall be scheduled on minimal traffic days whenever possible. The parties agree that the total amount of CAD Scheduled Downtime shall not exceed 60 minutes during any 30-day period. Mark43 shall provide Subscriber with immediate telephone notification to the point of contact set forth in the Agreement as soon as it becomes aware of any actual or potential unavailability of CAD other than CAD Scheduled Downtime ("CAD Unscheduled Downtime"), as well as continual periodic updates during the CAD Unscheduled Downtime regarding Mark43's progress in remedying the unavailability and the estimated time at which the CAD shall be available.
- ii. **Error Response and Resolution.** When reporting a failure of the CAD to Mark43 (a "CAD Error"), Subscriber shall identify the CAD Error as a Severity Level 1, 2, or 3 (each defined below) based on Subscriber's initial evaluation. If Mark43 becomes aware of a Severity Level 1 or 2 CAD Error, Mark43 shall promptly, but in no event to exceed the Initial Response timeframe in the chart set forth below, notify Subscriber, and such notice shall identify the CAD Error as a Severity Level 1 or 2 CAD Error based on Mark43's initial evaluation. Mark43 and Subscriber shall cooperate in good faith to jointly determine whether a CAD Error is a Severity Level 1, 2, or 3 CAD Error; provided, however, that in the event that Mark43 and Subscriber cannot come to such joint determination despite such good faith cooperation, Mark43's determination shall control. Subscriber may report to Mark43 any Severity Level 1 or 2 CAD Error 24 hours per day, 7 days per week, and any Severity Level 3 CAD Error during Mark43's normal business hours. Upon notification by Subscriber of a CAD Error, Mark43 shall commence and diligently pursue correction of such CAD Error, at all times employing at least the level of effort ("Level of Effort") designated in the chart set forth below and in all instances providing an Initial Response, temporary resolution or fix (a "Work Around") and a permanent fix (a "Permanent Correction") to Subscriber within the timeframes in the chart set forth below, as measured from the earlier of the time that Subscriber notifies Mark43 or Mark43 first becomes aware of a CAD Error. Mark43 shall provide Subscriber with updates to the status of Mark43's efforts (the "Status Updates") by telephone, email or such other means

as may be reasonably designated by Subscriber from time to time, no less frequently than the timeframes identified in the chart set forth below. For the avoidance of doubt, a CAD Error does not include, and Mark43 will not be responsible for, any feature or functionality of the CAD that is not set forth in Section 1(b)(i)(2) of this Schedule A or in a project plan created for Subscriber by Mark43.

1. **"Severity Level 1 CAD Error"** means any CAD Error that, for fifty percent (50%) or more of Subscriber's dispatchers, renders the CAD or any material portion thereof inoperative, or materially impairs use of the CAD in a production environment. Examples of Severity Level 1 CAD Errors include, without limitation, situations in which the CAD are inoperative and causing dispatchers to experience a total loss of service, continuous or frequent instabilities, a loss of connectivity or inability to communicate as intended, or there is an inability to process transactions, the creation of a hazard or emergency, or the inability to use a primary feature or function of the CAD.
2. **"Severity Level 2 CAD Error"** means any CAD Error that, for fifty percent (50%) or more of Subscriber's dispatchers, substantially impairs use of one or more features or functions of the CAD, which constitute less than a material portion thereof, in a production environment, or any CAD Error occurring in a testing or other non-production environment that, if occurring in a production environment, would constitute a Severity Level 1 CAD Error. Examples of Severity Level 2 CAD Errors include, without limitation, situations in which a CAD Error is causing intermittent impact to dispatchers, loss of redundancy, loss of routine administrative or diagnostic capability, or inability to use a secondary feature or function of the CAD.
3. **"Severity Level 3 CAD Error"** means any CAD Error that, for fifty percent (50%) or more of Subscriber's dispatchers, has a minimal impact on the performance or operation of the CAD. Examples of Severity Level 3 CAD Errors include, without limitation, a CAD Error having only a minimal impact on dispatchers and CAD Errors seen in a test or other non-production environment that, if deployed in a production environment, would not constitute a Severity Level 1 CAD Error.

Severity Level	Level of Effort	Initial Response	Work Around	Permanent Correction	Status Updates
1	Continuous best efforts, 24 hours per day, 7 days per week	Immediate, but in no event to exceed 30 minutes	6 hours	3 calendar days	Every 3 hours prior to a Work Around and every calendar day thereafter
2	Commercially reasonable efforts, 24 hours per day, 7 days per week	1 hour	24 hours	5 calendar days	Every 6 hours prior to a Work Around and every calendar day thereafter
3	Commercially reasonable efforts, during normal business hours	1 Business Day	10 Business Days	20 Business Days	Every 2 Business Days prior to a Work Around and every 5 Business Days thereafter

CAD Service Credits. Mark43's failure to meet the CAD services levels set forth in Section 7(b) during any calendar month of a Regular Usage Period entitles Subscriber to Fee credits (the "**CAD Service Credit(s)**") calculated as set forth below. Any CAD Service Credits owed to Subscriber hereunder shall offset against any subsequent Fees owed by Subscriber and shall be Subscriber's sole and exclusive remedy with respect to Mark43's failure to provide the CAD. If Mark43 fails to meet the CAD service levels set forth in this Section 7(b) in any applicable calendar month during the Regular Usage Period, then Mark43 shall credit Subscriber five percent (5%) of the portion of the Fees attributable to CAD Services in the calendar month in which such CAD service level failure occurs. The applicable CAD Service Credits will be applied to the next invoice. Only one CAD Service Credit for failure to meet the applicable service level shall be granted for each Service in a calendar month of the Regular Usage Period.

- c. **Service Levels for Integrated Third Party Software.** Notwithstanding anything else to the contrary contained herein, Mark43 shall be responsible for any downtime of or related to the Applications or Integrated Third Party Software (as defined below) that is caused by Integrated Third Party Software solely to the extent specified in this Section 7(c). Credit Percentages Service Credits referenced elsewhere in this 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.