AUTHORIZED
MULTIPLE AWARD SCHEDULE (MAS) PRICELIST
GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY EQUIPMENT, SOFTWARE AND SERVICES

SPECIAL ITEM NUMBER 511210 - INFORMATION TECHNOLOGY (IT) SOFTWARE LICENSES - SUBJECT TO COOPERATIVE PURCHASING

FSC/PSC Class 7030 ADP SOFTWARE
FSC/PSC Class J070 MAINT/REPAIR/REBUILD OF EQUIPMENT- ADP EQUIPMENT/SOFTWARE/SUPPLIES/SUPPORT EQUIPMENT

SPECIAL ITEM NUMBER 54151S - INFORMATION TECHNOLOGY (IT) PROFESSIONAL SERVICES

FSC/PSC Class D399 IT AND TELECOM- OTHER AND TELECOMMUNICATIONS – OTHER INFORMATION TECHNOLOGY SERVICES, NOT ELSEWHERE CLASSIFIED.

Note 1: All non-professional labor categories must be incidental to and used solely to support hardware, software and/or professional services, and cannot be purchased separately.

Note 2: Offerors and Agencies are advised that the MAS is not to be used as a means to procure services which properly fall under the Brooks Act. These services include, but are not limited to, architectural, engineering, mapping, cartographic production, remote sensing, geographic information systems, and related services. FAR 36.6 distinguishes between mapping services of an A/E nature and mapping services which are not connected nor incidental to the traditionally accepted A/E Services.

Note 3: This solicitation is not intended to solicit for the reselling of IT Professional Services, except for the provision of implementation, maintenance, integration, or training services in direct support of a product. Under such circumstances the services must be performance by the publisher or manufacturer or one of their authorized agents.

TEMPUS NOVA, LLC
7800 E UNION AVE STE 850
DENVER, CO 80237
T: 877-379-7376
F: 303-379-1791
www.tempusnova.com

Contract Number: GS-35F-219AA
Period Covered by Contract: February 26, 2013 through February 25, 2023
General Services Administration
Federal Acquisition Service

Pricelist current through Modification A824, dated 8/25/2020.

Products and ordering information in this Authorized FSS MAS Pricelist are also available on the GSA Advantage! System. Agencies can browse GSA Advantage! by accessing the Federal Acquisition Service’s Home Page via the Internet at http://www.fss.gsa.gov/
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INFORMATION FOR ORDERING ACTIVITIES
APPLICABLE TO ALL SPECIAL ITEM NUMBERS

SPECIAL NOTICE TO AGENCIES: Small Business Participation

SBA strongly supports the participation of small business concerns in the Federal Acquisition Service. To enhance Small Business Participation SBA policy allows agencies to include in their procurement base and goals, the dollar value of orders expected to be placed against the Federal Supply Schedules, and to report accomplishments against these goals.

For orders exceeding the micropurchase threshold, FAR 8.404 requires agencies to consider the catalogs/pricelists of at least three MAS contractors or consider reasonably available information by using the GSA Advantage!™ on-line shopping service (www.gsaadvantage.gov). The catalogs/pricelists, GSA Advantage!™ and the Federal Acquisition Service Home Page (www.fss.gsa.gov) contain information on a broad array of products and services offered by small business concerns.

This information should be used as a tool to assist ordering activities in meeting or exceeding established small business goals. It should also be used as a tool to assist in including small, small disadvantaged, and women-owned small businesses among those considered when selecting pricelists for a best value determination.

For orders exceeding the micropurchase threshold, customers are to give preference to small business concerns when two or more items at the same delivered price will satisfy their requirement.

1. GEOGRAPHIC SCOPE OF CONTRACT:

Domestic delivery is delivery within the 48 contiguous states, Alaska, Hawaii, Puerto Rico, Washington, DC, and U.S. Territories. Domestic delivery also includes a port or consolidation point, within the aforementioned areas, for orders received from overseas activities.

Overseas delivery is delivery to points outside of the 48 contiguous states, Washington, DC, Alaska, Hawaii, Puerto Rico, and U.S. Territories.

Offerors are requested to check one of the following boxes:

[ ] The Geographic Scope of Contract will be domestic and overseas delivery.
[ ] The Geographic Scope of Contract will be overseas delivery only.
[X] The Geographic Scope of Contract will be domestic delivery only.

2. CONTRACTOR’S ORDERING ADDRESS AND PAYMENT INFORMATION:

TEMPUS NOVA, LLC
7800 E UNION AVENUE, STE. 850
DENVER, CO 80237

Contractor must accept the credit card for payments equal to or less than the micro-purchase for oral or written orders under this contract. The Contractor and the ordering agency may agree to use the credit card for dollar amounts over the micro-purchase threshold (See GSAR 552.232-79 Payment by Credit Card). In addition, bank account information for wire transfer payments will be shown on the invoice.

The following telephone number(s) can be used by ordering activities to obtain technical and/or ordering assistance:

T: 877-379-7376
F: 303-379-1791
3. **LIABILITY FOR INJURY OR DAMAGE**

The Contractor shall not be liable for any injury to ordering activity personnel or damage to ordering activity property arising from the use of equipment maintained by the Contractor, unless such injury or damage is due to the fault or negligence of the Contractor.

4. **STATISTICAL DATA FOR GOVERNMENT ORDERING OFFICE COMPLETION OF STANDARD FORM 279:**

   Block 9:  G. Order/Modification Under Federal Schedule
   Block 16: Data Universal Numbering System (DUNS) Number: 050417943
   Block 30: Type of Contractor – B
     A. Small Disadvantaged Business
     B. Other Small Business
     C. Large Business
     G. Other Nonprofit Organization
     L. Foreign Contractor

   Block 31: Woman-Owned Small Business - NO
   Block 36: Contractor's Taxpayer Identification Number (TIN): 84-1582930

4a. CAGE Code: 5NLC7
4b. Contractor has registered with the Central Contractor Registration Database.

5. **FOB DESTINATION**

6. **DELIVERY SCHEDULE**

a. **TIME OF DELIVERY:** The Contractor shall deliver to destination within the number of calendar days after receipt of order (ARO), as set forth below:

<table>
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<th>SPECIAL ITEM NUMBER</th>
<th>DELIVERY TIME (Days ARO)</th>
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<tr>
<td>511210</td>
<td>5 Days</td>
</tr>
<tr>
<td>54151S</td>
<td>TBD (TBD @ Task Order Level)</td>
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b. **URGENT REQUIREMENTS:** When the Federal Supply Schedule contract delivery period does not meet the bona fide urgent delivery requirements of an ordering activity, ordering activities are encouraged, if time permits, to contact the Contractor for the purpose of obtaining accelerated delivery. The Contractor shall reply to the inquiry within 3 workdays after receipt. (Telephonic replies shall be confirmed by the Contractor in writing.) If the Contractor offers an accelerated delivery time acceptable to the ordering activity, any order(s) placed pursuant to the agreed upon accelerated delivery time frame shall be delivered within this shorter delivery time and in accordance with all other terms and conditions of the contract.

7. **DISCOUNTS:** Prices shown are NET Prices; Basic Discounts have been deducted.

   a. Prompt Payment: Net 30 Days from receipt of invoice or date of acceptance, whichever is later.
   b. Quantity none
   c. Dollar Volume none
   d. Government Educational Institutions Same
   e. Other none
8. **TRADE AGREEMENTS ACT OF 1979, as amended:**

All items are U.S. made end products, designated country end products, Caribbean Basin country end products, Canadian end products, or Mexican end products as defined in the Trade Agreements Act of 1979, as amended.

9. **STATEMENT CONCERNING AVAILABILITY OF EXPORT PACKING:**

10. **Small Requirements:** The minimum dollar value of orders to be issued is $100.00.

11. **MAXIMUM ORDER (All dollar amounts are exclusive of any discount for prompt payment.)**

a. The Maximum Order value for the following Special Item Numbers (SINs) is $500,000:

   Special Item Number 511210 - Software Licenses

   Special Item Number 54151S - Information Technology Professional Services

12. **ORDERING PROCEDURES FOR FEDERAL SUPPLY SCHEDULE CONTRACTS**

Ordering activities shall use the ordering procedures of Federal Acquisition Regulation (FAR) 8.405 when placing an order or establishing a BPA for supplies or services. These procedures apply to all schedules.

a. FAR 8.405-1 Ordering procedures for supplies, and services not requiring a statement of work.

b. FAR 8.405-2 Ordering procedures for services requiring a statement of work.

13. **FEDERAL INFORMATION TECHNOLOGY/TELECOMMUNICATION STANDARDS REQUIREMENTS:** ordering activities acquiring products from this Schedule must comply with the provisions of the Federal Standards Program, as appropriate (reference: NIST Federal Standards Index). Inquiries to determine whether or not specific products listed herein comply with Federal Information Processing Standards (FIPS) or Federal Telecommunication Standards (FED-STDS), which are cited by ordering activities, shall be responded to promptly by the Contractor.

13.1 **FEDERAL INFORMATION PROCESSING STANDARDS PUBLICATIONS (FIPS PUBS):**

Information Technology products under this Schedule that do not conform to Federal Information Processing Standards (FIPS) should not be acquired unless a waiver has been granted in accordance with the applicable "FIPS Publication." Federal Information Processing Standards Publications (FIPS PUBS) are issued by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), pursuant to National Security Act. Information concerning their availability and applicability should be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161. FIPS PUBS include voluntary standards when these are adopted for Federal use. Individual orders for FIPS PUBS should be referred to the NTIS Sales Office, and orders for subscription service should be referred to the NTIS Subscription Officer, both at the above address, or telephone number (703) 487-4650.

13.2 **FEDERAL TELECOMMUNICATION STANDARDS (FED-STDS):** Telecommunication products under this Schedule that do not conform to Federal Telecommunication Standards (FED-STDS) should not be acquired unless a waiver has been granted in accordance with the applicable "FED-STD." Federal Telecommunication Standards are issued by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), pursuant to National Security Act. Ordering information and information concerning the availability of FED-STDS should be obtained from the GSA, Federal Acquisition Service, Specification Section,
CONTRACTOR TASKS / SPECIAL REQUIREMENTS (C-FSS-370) (NOV 2003)

(a) Security Clearances: The Contractor may be required to obtain/possess varying levels of security clearances in the performance of orders issued under this contract. All costs associated with obtaining/possessing such security clearances should be factored into the price offered under the Multiple Award Schedule.

(b) Travel: The Contractor may be required to travel in performance of orders issued under this contract. Allowable travel and per diem charges are governed by Pub. L. 99-234 and FAR Part 31, and are reimbursable by the ordering agency or can be priced as a fixed price item on orders placed under the Multiple Award Schedule. Travel in performance of a task order will only be reimbursable to the extent authorized by the ordering agency. The Industrial Funding Fee does NOT apply to travel and per diem charges.

(c) Certifications, Licenses and Accreditations: As a commercial practice, the Contractor may be required to obtain/possess any variety of certifications, licenses and accreditations for specific FSC/service code classifications offered. All costs associated with obtaining/possessing such certifications, licenses and accreditations should be factored into the price offered under the Multiple Award Schedule program.

(d) Insurance: As a commercial practice, the Contractor may be required to obtain/possess insurance coverage for specific FSC/service code classifications offered. All costs associated with obtaining/possessing such insurance should be factored into the price offered under the Multiple Award Schedule program.

(e) Personnel: The Contractor may be required to provide key personnel, resumes or skill category descriptions in the performance of orders issued under this contract. Ordering activities may require agency approval of additions or replacements to key personnel.

(f) Organizational Conflicts of Interest: Where there may be an organizational conflict of interest as determined by the ordering agency, the Contractor’s participation in such order may be restricted in accordance with FAR Part 9.5.

(g) Documentation/Standards: The Contractor may be requested to provide products or services in accordance with rules, regulations, OMB orders, standards and documentation as specified by the agency’s order.

(h) Data/Deliverable Requirements: Any required data/deliverables at the ordering level will be as specified or negotiated in the agency’s order.

(i) Government-Furnished Property: As specified by the agency’s order, the Government may provide property, equipment, materials or resources as necessary.

(j) Availability of Funds: Many Government agencies’ operating funds are appropriated for a specific fiscal year. Funds may not be presently available for any orders placed under the contract or any option year. The Government’s obligation on orders placed under this contract is contingent upon the availability of appropriated funds from which payment for ordering purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are available to the ordering Contracting Officer.
(k) Overtime: For professional services, the labor rates in the Schedule should not vary by virtue of the Contractor having worked overtime. For services applicable to the Service Contract Act (as identified in the Schedule), the labor rates in the Schedule will vary as governed by labor laws (usually assessed a time and a half of the labor rate).

15. CONTRACT ADMINISTRATION FOR ORDERING ACTIVITIES: Any ordering activity, with respect to any one or more delivery orders placed by it under this contract, may exercise the same rights of termination as might the GSA Contracting Officer under provisions of FAR 52.212-4, paragraphs (l) Termination for the ordering activity’s convenience, and (m) Termination for Cause (See 52.212-4)

16. GSA ADVANTAGE!

GSA Advantage! is an on-line, interactive electronic information and ordering system that provides on-line access to vendors' schedule prices with ordering information. GSA Advantage! will allow the user to perform various searches across all contracts including, but not limited to:

1. Manufacturer;
2. Manufacturer's Part Number; and
3. Product categories.

Agencies can browse GSA Advantage! by accessing the Internet World Wide Web utilizing a browser (ex.: NetScape). The Internet address is http://www.gsaadvantage.gov

17. PURCHASE OF OPEN MARKET ITEMS

NOTE: Open Market Items are also known as incidental items, noncontract items, non-Schedule items, and items not on a Federal Supply Schedule contract. ODCs (Other Direct Costs) are not part of this contract and should be treated as open market purchases. Ordering Activities procuring open market items must follow FAR 8.402(f).

For administrative convenience, an ordering activity contracting officer may add items not on the Federal Supply Multiple Award Schedule (MAS) -- referred to as open market items -- to a Federal Supply Schedule blanket purchase agreement (BPA) or an individual task or delivery order, only if-

1. All applicable acquisition regulations pertaining to the purchase of the items not on the Federal Supply Schedule have been followed (e.g., publicizing (Part 5), competition requirements (Part 6), acquisition of commercial items (Part 12), contracting methods (Parts 13, 14, and 15), and small business programs (Part 19));
2. The ordering activity contracting officer has determined the price for the items not on the Federal Supply Schedule is fair and reasonable;
3. The items are clearly labeled on the order as items not on the Federal Supply Schedule; and
4. All clauses applicable to items not on the Federal Supply Schedule are included in the order.

18. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS

a. For the purpose of this contract, commitments, warranties and representations include, in addition to those agreed to for the entire schedule contract:

1. Time of delivery/installation quotations for individual orders;
2. Technical representations and/or warranties of products concerning performance, total system performance and/or configuration, physical, design and/or functional characteristics and capabilities of a
product/equipment/service/software package submitted in response to requirements which result in orders under this schedule contract.

(3) Any representations and/or warranties concerning the products made in any literature, description, drawings and/or specifications furnished by the Contractor.

b. The above is not intended to encompass items not currently covered by the GSA Schedule contract.

19. OVERSEAS ACTIVITIES

The terms and conditions of this contract shall apply to all orders for installation, maintenance and repair of equipment in areas listed in the pricelist outside the 48 contiguous states and the District of Columbia, except as indicated below:

NOT OFFERED

Upon request of the Contractor, the ordering activity may provide the Contractor with logistics support, as available, in accordance with all applicable ordering activity regulations. Such ordering activity support will be provided on a reimbursable basis, and will only be provided to the Contractor's technical personnel whose services are exclusively required for the fulfillment of the terms and conditions of this contract.

20. BLANKET PURCHASE AGREEMENTS (BPAs)

The use of BPAs under any schedule contract to fill repetitive needs for supplies or services is allowable. BPAs may be established with one or more MAS contractors. The number of BPAs to be established is within the discretion of the ordering activity establishing the BPA and should be based on a strategy that is expected to maximize the effectiveness of the BPA(s). Ordering activities shall follow FAR 8.405-3 when creating and implementing BPA(s).

21. CONTRACTOR TEAM ARRANGEMENTS

Contractors participating in contractor team arrangements must abide by all terms and conditions of their respective contracts. This includes compliance with Clauses 552.238-74, Industrial Funding Fee and Sales Reporting, i.e., each contractor (team member) must report sales and remit the IFF for all products and services provided under its individual contract.

22. INSTALLATION, DEINSTALLATION, REINSTALLATION

The Davis-Bacon Act (40 U.S.C. 276a-276a-7) provides that contracts in excess of $2,000 to which the United States or the District of Columbia is a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works with the United States, shall contain a clause that no laborer or mechanic employed directly upon the site of the work shall received less than the prevailing wage rates as determined by the Secretary of Labor. The requirements of the Davis-Bacon Act do not apply if the construction work is incidental to the furnishing of supplies, equipment, or services. For example, the requirements do not apply to simple installation or alteration of a public building or public work that is incidental to furnishing supplies or equipment under a supply contract. However, if the construction, alteration or repair is segregable and exceeds $2,000, then the requirements of the Davis-Bacon Act applies.

The ordering activity issuing the task order against this contract will be responsible for proper administration and enforcement of the Federal labor standards covered by the Davis-Bacon Act. The proper Davis-Bacon wage determination will be issued by the ordering activity at the time a request for quotations is made for applicable construction classified installation, deinstallation, and reinstallation services under SIN 132-8 or 132-9.
23. **SECTION 508 COMPLIANCE.**

I certify that in accordance with 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), FAR 39.2, and the Architectural and Transportation Barriers Compliance Board Electronic and Information Technology (EIT) Accessibility Standards (36 CFR 1194) General Services Administration (GSA), that all IT hardware/software/services are 508 compliant:

Yes [X]  
No _____

The offeror is required to submit with its offer a designated area on its website that outlines the Voluntary Product Accessibility Template (VPAT) or equivalent qualification, which ultimately becomes the Government Product Accessibility Template (GPAT). Section 508 compliance information on the supplies and services in this contract are available at the following website address (URL): _______.

The EIT standard can be found at: [www.section508.gov](http://www.section508.gov).

24. **PRIME CONTRACTOR ORDERING FROM FEDERAL SUPPLY SCHEDULES.**

Prime Contractors (on cost reimbursement contracts) placing orders under Federal Supply Schedules, on behalf of an ordering activity, shall follow the terms of the applicable schedule and authorization and include with each order —

(a) A copy of the authorization from the ordering activity with whom the contractor has the prime contract (unless a copy was previously furnished to the Federal Supply Schedule contractor); and

(b) The following statement:

   This order is placed under written authorization from _______ dated _______. In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract, the latter will govern.

25. **INSURANCE—WORK ON A GOVERNMENT INSTALLATION (JAN 1997)(FAR 52.228-5)**

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.

(b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective—

   (1) For such period as the laws of the State in which this contract is to be performed prescribe; or

   (2) Until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

26. **SOFTWARE INTEROPERABILITY.**

Offerors are encouraged to identify within their software items any component interfaces that support open standard interoperability. An item’s interface may be identified as interoperable on the basis of participation in a Government
agency-sponsored program or in an independent organization program. Interfaces may be identified by reference to an interface registered in the component registry located at http://www.core.gov.

27. ADVANCE PAYMENTS

A payment under this contract to provide a service or deliver an article for the United States Government may not be more than the value of the service already provided or the article already delivered. Advance or pre-payment is not authorized or allowed under this contract. (31 U.S.C. 3324)

TERMS AND CONDITIONS APPLICABLE TO TERM SOFTWARE LICENSES (SPECIAL ITEM NUMBER 511210), SOFTWARE LICENSES OF GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE

1. INSPECTION/ACCEPTANCE

The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The ordering activity reserves the right to inspect or test any software that has been tendered for acceptance. The ordering activity may require repair or replacement of nonconforming software at no increase in contract price. The ordering activity must exercise its postacceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the software, unless the change is due to the defect in the software.

2. END USER LICENSE AGREEMENTS (EULA) / TERMS OF SERVICE (TOS) AGREEMENT REQUIREMENTS

The Contractor shall provide all Enterprise User License Agreements in an editable format.

3. GUARANTEE/WARRANTY

a. Unless specified otherwise in this contract, the Contractor’s standard commercial guarantee/warranty as stated in the contract’s commercial pricelist will apply to this contract.

G Suite (Online) Agreement

Go to the Additional Terms for services made available with the new accounts infrastructure

*The terms below are for monthly postpay billing. Please click here to see the terms for annual prepay customers.

This Google Apps for Business (Online) Agreement (the "Agreement") is entered into by and between Google Inc., a Delaware corporation, with offices at 1600 Amphitheatre Parkway, Mountain View, California 94043 ("Google") and the entity agreeing to these terms ("Customer"). This Agreement is effective as of the date you click the "I Accept" button below (the "Effective Date"). If you are accepting on behalf of your employer or another entity, you represent and warrant that: (i) you have full legal authority to bind your employer, or the applicable entity, to these terms and conditions; (ii) you have read and understand this Agreement; and (iii) you agree, on behalf of the party that you represent, to this Agreement. If you don’t have the legal authority to bind your employer or the applicable entity, please do not click the "I Accept" button below (or, if applicable, do not sign this Agreement). This Agreement governs Customer”s access to and use of the Services.

1. Services
   1.1 Facilities and Data Transfer.

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All facilities used to store and process Customer Data will adhere to reasonable security standards no less protective than the security standards at facilities where Google stores and processes its own information of a similar type. Google has implemented at least industry standard systems and procedures to ensure the security and confidentiality of Customer Data, protect against anticipated threats or hazards to the security or integrity of Customer Data and protect against unauthorized access to or use of Customer Data. As part of providing the Services Google may transfer store and process Customer Data in the United States or any other country in which Google or its agents maintain facilities. By using the Services Customer consents to this transfer, processing and storage of Customer Data.

1.2 Modifications

a.

To the Services.

Google may make commercially reasonable changes to the Services from time to time. If Google makes a material change to the Services Google will inform Customer, provided that customer has subscribed with Google to be informed about such change.

b. To URL Terms. Google may make commercially reasonable changes to the URL Terms from time to time. If Google makes a material change to the URL Terms, Google will inform Customer by either sending an email to the Notification Email Address or alerting Customer via the Admin Console. If the change has a material adverse impact on Customer, and Customer does not agree to the change, Customer must so notify Google via the Help Center within thirty days after receiving notice of the change. If Customer notifies Google as required, then Customer will remain governed by the terms in effect immediately prior to the change until the end of the then-current Services Term for the affected Services. If the affected Services are renewed, they will be renewed under Google's then current URL Terms.

1.3 Customer Domain Name Ownership.

Prior to providing the Services Google may verify that Customer owns or controls the Customer Domain Names. If Customer does not own or control the Customer Domain Names, then Google will have no obligation to provide Customer with the Services.

1.4 Ads.

The default setting for the Services is one that does not allow Google to serve Ads. Customer may change this setting in the Admin Console which constitutes Customer's authorization for Google to serve Ads. If Customer enables the serving of Ads it may revert to the default setting at any time and Google will cease serving Ads.

1.5 Google Apps Vault.

If Customer purchases Google Apps Vault, the following additional terms apply:

a.

Retention.

Google will have no obligation to retain any archived Customer Data beyond the retention period specified by Customer (other than for any legal holds). If Customer does not renew Google Apps Vault, Google will have no obligation to retain any archived Customer Data.

b. Additional Purchases. Unless Google allows otherwise, with each additional purchase of End User Accounts for the Services after Customer has purchased Google Apps Vault, Customer will receive access to, and will be invoiced for, Google Apps Vault for that same number of End User Accounts.

2. Customer Obligations.

2.1 Compliance.

Customer will use the Services in accordance with the Acceptable Use Policy. Google may make new applications features or functionality for the Services available from time to time the use of which may be contingent upon Customer's agreement to additional terms. In addition, Google will make other Non-Google Apps Products (beyond the Services) available to Customer and its End Users in accordance
with the Non-Google Apps Product Terms and the applicable product-specific Google terms of service. If Customer does not desire to enable any of the Non-Google Apps Products, Customer can enable or disable them at any time through the Admin Console.

2.2 Aliases.

Customer is solely responsible for monitoring responding to and otherwise processing emails sent to the “abuse” and “postmaster” aliases for Customer Domain Names but Google may monitor emails sent to these aliases for Customer Domain Names to allow Google to identify Services abuse.

2.3 Customer Administration of the Services.

Customer may specify one or more Administrators through the Admin Console who will have the rights to access Admin Account(s) and to administer the End User Accounts. Customer is responsible for: (a) maintaining the confidentiality of the password and Admin Account(s); (b) designating those individuals who are authorized to access the Admin Account(s); and (c) ensuring that all activities that occur in connection with the Admin Account(s) comply with the Agreement. Customer agrees that Google's responsibilities do not extend to the internal management or administration of the Services for Customer and that Google is merely a data-processor.

2.4 End User Consent.

Customer's Administrators may have the ability to access, monitor, use, or disclose data available to End Users within the End User Accounts. Customer will obtain and maintain all required consents from End Users to allow: (i) Customer's access, monitoring, use and disclosure of this data and Google providing Customer with the ability to do so and (ii) Google to provide the Services.

2.5 Unauthorized Use.

Customer will use commercially reasonable efforts to prevent unauthorized use of the Services' and to terminate any unauthorized use. Customer will promptly notify Google of any unauthorized use of, or access to, the Services of which it becomes aware.

2.6 Restrictions on Use.

Unless Google specifically agrees in writing' Customer will not, and will use commercially reasonable efforts to make sure a third party does not: (a) sell, resell, lease or the functional equivalent, the Services to a third party (unless expressly authorized in this Agreement); (b) attempt to reverse engineer the Services or any component; (c) attempt to create a substitute or similar service through use of, or access to, the Services; (d) use the Services for High Risk Activities; or (e) use the Services to store or transfer any Customer Data that is controlled for export under Export Control Laws. Customer is solely responsible for any applicable compliance with HIPAA.

2.7 Third Party Requests.

Customer is responsible for responding to Third Party Requests. Google will, to the extent allowed by law and by the terms of the Third Party Request: (a) promptly notify Customer of its receipt of a Third Party Request; (b) comply with Customer's reasonable requests regarding its efforts to oppose a Third Party Request; and (c) provide Customer with the information or tools required for Customer to respond to the Third Party Request. Customer will first seek to obtain the information required to respond to the Third Party Request on its own, and will contact Google only if it cannot reasonably obtain such information.


Customer may elect one of the following billing options when placing its order for the Services.

a. Flexible Plan.

If Customer selects this option, Customer will not be committed to purchase the Services for a pre-defined term, but will pay for the Services on a monthly basis. Google will bill Customer: (i) Fees based upon Customer’s daily usage of the Services during the preceding month; and (ii) monthly in arrears for its use
of the Services. Google will provide Customer with the monthly rate for the Services when Customer orders the Services, and will use this rate to calculate the Fees, on a prorated basis, for Customer’s daily usage during that month. Any partial day of Services usages will be rounded up to a full day of Services usage for the purposes of calculating Fees. Customer may pay for the Services using the payment options listed below.

▪ b.

Annual Plan
If Customer selects this option, Customer will be committed to purchasing the Services from Google for an annual term, and in exchange will receive a discount on the Services which will be reflected in Customer’s monthly payment. Google will still bill Customer monthly in arrears for its use of the Services when Customer has an annual commitment for the Services with Google. Customer may pay for the Services using the payment options listed below.

o 3.2 Payment. All payments due are in U.S. dollars unless otherwise indicated on the Order Page or invoice.
▪ a.

Credit Card or Debit Card.
Fees for orders where Customer is paying with a credit card, debit card or other non-invoice form of payment, are due at the end of the month during which Customer received the Services. For credit cards, or debit cards, as applicable: (i) Google will charge Customer for all applicable Fees when due and (ii) these Fees are considered delinquent thirty days after the end of the month during which Customer received the Services.
▪ b.

Invoices.
Payments for invoices are due thirty days after the invoice date, unless otherwise specified on the Order Page, and are considered delinquent after such date.
▪ c.

Other Forms of Payment.
Customer may change its payment method to those available within the Admin Console. Google may enable other forms of payment by making them available in the Admin Console. These other forms of payment may be subject to additional terms which Customer may have to accept prior using the additional forms of payment.

o 3.3 Delinquent Payments

Delinquent payments may bear interest at the rate of one-and-one-half percent per month (or the highest rate permitted by law, if less) from the payment due date until paid in full. Customer will be responsible for all reasonable expenses (including attorneys' fees) incurred by Google in collecting such delinquent amounts, except where such delinquent amounts are due to Google's billing inaccuracies.

o 3.4 Suspension for Non-Payment.
▪ a.

Automatic Suspension.
Customer will have thirty days to pay Google delinquent Fees. If Customer does not pay Google delinquent Fees within thirty days, Google will automatically suspend Customer’s use of the Services. The duration of this suspension will be until Customer pays Google all outstanding Fees.
▪ b.

During Suspension.
If Customer is on a monthly billing plan, and Customer is suspended for non-payment, Google will stop charging Customer monthly Fees during Customer’s suspension for non-payment. If Customer has an
annual commitment to Google for the Services, Google will continue to charge Customer monthly Fees during Customer's suspension for non-payment and Customer must pay all outstanding Fees in order to resume its use of the Services.

Termination After Suspension.
If Customer remains suspended for non-payment for more than sixty days, Google may terminate Customer for breach pursuant to Section 11.

3.5 Taxes.
Customer is responsible for any Taxes, and Customer will pay Google for the Services without any reduction for Taxes. If Google is obligated to collect or pay Taxes, the Taxes will be invoiced to Customer, unless Customer provides Google with a valid tax exemption certificate authorized by the appropriate taxing authority. If Customer is required by law to withhold any Taxes from its payments to Google, Customer must provide Google with an official tax receipt or other appropriate documentation to support such payments.

3.6 Purchase Orders.
If Customer requires a purchase order number on its invoice, Customer will inform Google and Google will include such purchase order number on invoices following receipt. If Customer does not provide a purchase order number, Customer waives any purchase order requirement and (a) Google will invoice Customer without a purchase order number; and (b) Customer agrees to pay invoices without a purchase order number referenced. Any terms and conditions on a purchase order do not apply to this Agreement and are null and void.

4.1 By Customer.
Customer will, at its own expense, respond to questions and complaints from End Users or third parties relating to Customer's or End Users' use of the Services. Customer will use commercially reasonable efforts to resolve support issues before escalating them to Google.

4.2 By Google.
If Customer cannot resolve a support issue consistent with the above, then Customer may escalate the issue to Google in accordance with the TSS Guidelines. Google will provide TSS to Customer in accordance with the TSS Guidelines.

5. Suspension
5.1 Of End User Accounts by Google.
If Google becomes aware of an End User's violation of the Agreement, then Google may specifically request that Customer Suspend the applicable End User Account. If Customer fails to comply with Google’s request to Suspend an End User Account, then Google may do so. The duration of any Suspension by Google will be until the applicable End User has cured the breach which caused the Suspension.

5.2 Emergency Security Issues.
Notwithstanding the foregoing, if there is an Emergency Security Issue, then Google may automatically Suspend the offending use. Suspension will be to the minimum extent and of the minimum duration required to prevent or terminate the Emergency Security Issue. If Google Suspends an End User Account for any reason without prior notice to Customer, at Customer's request, Google will provide Customer the reason for the Suspension as soon as is reasonably possible.
6. Confidential Information.
   a. 6.1 Obligations.

   Each party will: (a) protect the other party's Confidential Information with the same standard of care it uses to protect its own Confidential Information; and (b) not disclose the Confidential Information, except to Affiliates, employees and agents who need to know it and who have agreed in writing to keep it confidential. Each party (and any Affiliates' employees and agents to whom it has disclosed Confidential Information) may use Confidential Information only to exercise rights and fulfill its obligations under this Agreement, while using reasonable care to protect it. Each party is responsible for any actions of its Affiliates' employees and agents in violation of this Section.

   b. 6.2 Exceptions.

   Confidential Information does not include information that: (a) the recipient of the Confidential Information already knew; (b) becomes public through no fault of the recipient; (c) was independently developed by the recipient; or (d) was rightfully given to the recipient by another party.

   c. 6.3 Required Disclosure.

   Each party may disclose the other party's Confidential Information when required by law but only after it, if legally permissible: (a) uses commercially reasonable efforts to notify the other party; and (b) gives the other party the chance to challenge the disclosure.

   a. 7.1 Intellectual Property Rights.

   Except as expressly set forth herein, this Agreement does not grant either party any rights, implied or otherwise, to the other's content or any of the other's intellectual property. As between the parties, Customer owns all Intellectual Property Rights in Customer Data, and Google owns all Intellectual Property Rights in the Services.

   b. 7.2 Display of Brand Features.

   Google may display those Customer Brand Features authorized by Customer (such authorization is provided by Customer uploading its Brand Features into the Services) within designated areas of the Service Pages. Customer may specify the nature of this use using the Admin Console. Google may also display Google Brand Features on the Service Pages to indicate that the Services are provided by Google. Neither party may display or use the other party's Brand Features beyond what is allowed in this Agreement without the other party's prior written consent.

   c. 7.3 Brand Features Limitation.

   Any use of a party's Brand Features will inure to the benefit of the party holding Intellectual Property Rights in those Brand Features. A party may revoke the other party's right to use its Brand Features pursuant to this Agreement with written notice to the other and a reasonable period to stop the use.

8. Publicity. Customer agrees that Google may include Customer's name or Brand Features in a list of Google customers, online or in promotional materials. Customer also agrees that Google may verbally reference Customer as a customer of the Google products or services that are the subject of this Agreement. This section is subject to Section 7.3 (Brand Features Limitation).

   a. 9.1 Representations and Warranties.

   Each party represents that it has full power and authority to enter into the Agreement. Each party warrants that it will comply with all laws and regulations applicable to its provision, or use, of the Services, as applicable (including applicable security breach notification law). Google warrants that it will provide the Services in accordance with the applicable SLA.

   b. 9.2 Disclaimers.
TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, NEITHER PARTY MAKES ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT. GOOGLE MAKES NO REPRESENTATIONS ABOUT ANY CONTENT OR INFORMATION MADE ACCESSIBLE BY OR THROUGH THE SERVICES. CUSTOMER ACKNOWLEDGES THAT THE SERVICES ARE NOT A TELEPHONY SERVICE AND THAT THE SERVICES ARE NOT CAPABLE OF PLACING OR RECEIVING ANY CALLS, INCLUDING EMERGENCY SERVICES CALLS, OVER PUBLICLY SWITCHED TELEPHONE NETWORKS.

10. Term

10.1 Agreement Term.

This Agreement will remain in effect for the Term.

10.2 Services Term and Purchases During Services Term.

Google will provide the Services to Customer during the Services Term. Unless the parties agree otherwise in writing, End User Accounts purchased during any Services Term will have a prorated term ending on the last day of that Services Term.

10.3 Renewal.

a. With a Flexible Plan.

With a flexible plan Customer is not committed to purchase the Services for a pre-defined term, but pays for the Services on a monthly basis. As a result, there is no renewal event for the flexible plan. Rather, Google will simply continue billing Customer Fees based upon Customer’s daily usage of the Services during the preceding month, and Customer can cancel their service at any time.

b. With an Annual Plan.

At the end of each Services Term, the Services (and all End User Accounts previously purchased) will automatically renew for an additional monthly Services Term. In addition, after Customer’s initial annual commitment has concluded, Customer’s annual commitment will switch to the Flexible Plan. If Customer wants to renew the Annual Plan, then Customer must change the renewal settings in the Admin Console to reflect this change before their annual commitment has ended.

c. Generally.

Customer may alter the number of End User Accounts to be renewed by communicating the appropriate number of accounts to be renewed to Google via the Admin Console. Customer will continue to pay Google the then-current Fees for each renewed End User Account unless Customer and Google mutually agree otherwise. If Google does not want the Services to renew, then it will provide Customer written notice to this effect at least fifteen days prior to the end of the then current Services Term. This notice of non renewal will be effective upon the conclusion of the then current Services Term.

10.4 Requesting End User Accounts.

Customer may request End User Accounts by: (i) notifying its designated Google Account Manager; or (ii) ordering End User Accounts via the Admin Console.

10.5 Revising Rates.

Google may revise its rates for the following Services Term by providing Customer written notice (which may be by email) at least thirty days prior to the start of the following Services Term.
11. Termination.

11.1 Termination for Breach.

Either party may suspend performance or terminate this Agreement if: (i) the other party is in material breach of the Agreement and fails to cure that breach within thirty days after receipt of written notice; (ii) the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within ninety days; or (iii) the other party is in material breach of this Agreement more than two times notwithstanding any cure of such breaches.

11.2 Effects of Termination.

If this Agreement terminates, then: (i) the rights granted by one party to the other will cease immediately (except as set forth in this Section); (ii) Google will provide Customer access to, and the ability to export, the Customer Data for a commercially reasonable period of time at Google’s then-current rates for the applicable Services; (iii) after a commercially reasonable period of time, Google will delete Customer Data by removing pointers to it on Google’s active servers and overwriting it over time; and (iv) upon request each party will promptly use commercially reasonable efforts to return or destroy all other Confidential Information of the other party. If a Customer on an annual plan terminates the Agreement prior to the conclusion of its annual plan, Google will bill Customer, and Customer is responsible for paying Google, for the remaining unpaid amount of Customer’s annual commitment.

12. Indemnification.

12.1 By Customer.

Customer will indemnify, defend, and hold harmless Google from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys’ fees) arising out of a third party claim: (i) regarding Customer Data or Customer Domain Names; (ii) that Customer Brand Features infringe or misappropriate any patent, copyright, trade secret or trademark of a third party; or (iii) regarding Customer’s use of the Services in violation of the Acceptable Use Policy.

12.2 By Google.

Google will indemnify, defend, and hold harmless Customer from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys’ fees) arising out of a third party claim that Google’s technology used to provide the Services or any Google Brand Feature infringe or misappropriate any patent, copyright, trade secret or trademark of such third party. Notwithstanding the foregoing, in no event shall Google have any obligations or liability under this Section arising from: (i) use of any Services or Google Brand Features in a modified form or in combination with materials not furnished by Google, and (ii) any content, information or data provided by Customer, End Users or other third parties.

12.3 Possible Infringement.

a. Repair, Replace, or Modify.

If Google reasonably believes the Services infringe a third party’s Intellectual Property Rights, then Google will: (a) obtain the right for Customer, at Google’s expense, to continue using the Services; (b) provide a non-infringing functionally equivalent replacement; or (c) modify the Services so that they no longer infringe.

b. Suspension or Termination.

If Google does not believe the foregoing options are commercially reasonable, then Google may suspend or terminate Customer’s use of the impacted Services. If Google terminates the impacted Services, then Google will provide a pro-rata refund of the unearned Fees actually paid by Customer applicable to the period following termination of such Services.

12.4 General.
The party seeking indemnification will promptly notify the other party of the claim and cooperate with the other party in defending the claim. The indemnifying party has full control and authority over the defense, except that: (a) any settlement requiring the party seeking indemnification to admit liability or to pay any money will require that party's prior written consent, such consent not to be unreasonably withheld or delayed; and (b) the other party may join in the defense with its own counsel at its own expense. THE INDEMNITIES ABOVE ARE A PARTY'S ONLY REMEDY UNDER THIS AGREEMENT FOR VIOLATION BY THE OTHER PARTY OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

13. Limitation of Liability.
   o 13.1 Limitation on Indirect Liability.

NEITHER PARTY WILL BE LIABLE UNDER THIS AGREEMENT FOR LOST REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.
   o 13.2 Limitation on Amount of Liability.

NEITHER PARTY MAY BE HELD LIABLE UNDER THIS AGREEMENT FOR MORE THAN THE AMOUNT PAID BY CUSTOMER TO GOOGLE HEREUNDER DURING THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.
   o 13.3 Exceptions to Limitations.

These limitations of liability apply to the fullest extent permitted by applicable law but do not apply to breaches of confidentiality obligations, violations of a party's Intellectual Property Rights by the other party, or indemnification obligations.

   o 14.1 Notices.

Unless specified otherwise herein, (a) all notices must be in writing and addressed to the attention of the other party’s legal department and primary point of contact and (b) notice will be deemed given: (i) when verified by written receipt if sent by personal courier, overnight courier, or when received if sent by mail without verification of receipt; or (ii) when verified by automated receipt or electronic logs if sent by facsimile or email.
   o 14.2 Assignment.

Neither party may assign or transfer any part of this Agreement without the written consent of the other party, except to an Affiliate, but only if: (a) the assignee agrees in writing to be bound by the terms of this Agreement; and (b) the assigning party remains liable for obligations incurred under the Agreement prior to the assignment. Any other attempt to transfer or assign is void.
   o 14.3 Change of Control.

Upon a change of control (for example, through a stock purchase or sale, merger, or other form of corporate transaction): (a) the party experiencing the change of control will provide written notice to the other party within thirty days after the change of control; and (b) the other party may immediately terminate this Agreement any time between the change of control and thirty days after it receives the written notice in subsection (a).
   o 14.4 Force Majeure.

Neither party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action, and Internet disturbance) that was beyond the party's reasonable control.
   o 14.5 No Waiver.
Failure to enforce any provision of this Agreement will not constitute a waiver.

14.6 Severability.

If any provision of this Agreement is found unenforceable, the balance of the Agreement will remain in full force and effect.

14.7 No Agency.

The parties are independent contractors, and this Agreement does not create an agency, partnership or joint venture.

14.8 No Third-Party Beneficiaries.

There are no third-party beneficiaries to this Agreement.

14.9 Equitable Relief.

Nothing in this Agreement will limit either party’s ability to seek equitable relief.

14.10 Governing Law.

This Agreement is governed by California law, excluding that state’s choice of law rules. FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PARTIES CONSENT TO PERSONAL JURISDICTION IN, AND THE EXCLUSIVE VENUE OF, THE COURTS IN SANTA CLARA COUNTY, CALIFORNIA.

14.11 Amendments.

Any amendment must be in writing and expressly state that it is amending this Agreement.

14.12 Survival.

The following sections will survive expiration or termination of this Agreement: Section 3, 6, 7.1, 11.2, 12, 13, 14, and 15.

14.13 Entire Agreement.

This Agreement, and all documents referenced herein, is the parties’ entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject. The terms located at a URL and referenced in this Agreement are hereby incorporated by this reference.

14.14 Interpretation of Conflicting Terms.

If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: the Order Page, the Agreement, and the terms located at any URL. If Customer signs a physical agreement with Google to receive the Services, the physical agreement will override this online Agreement.

14.15 Counterparts.

The parties may enter into this Agreement in counterparts, including facsimile, PDF or other electronic copies, which taken together will constitute one instrument.

15. Definitions.

"Acceptable Use Policy" means the acceptable use policy for the Services available at http://www.google.com/a/help/intl/en/admins/use_policy.html or such other URL as Google may provide.

"Account Manager" means the Google business person working with Customer regarding Customer’s purchase of the Services.
o "Admin Account(s)"

means the administrative account(s) provided to Customer by Google for the purpose of administering the Services. The use of the Admin Account(s) requires a password, which Google will provide to Customer.

o "Admin Console"

means the online tool provided by Google to Customer for use in reporting and certain other administration functions.

o "Administrators"

mean the Customer-designated technical personnel who administer the Services to End Users on Customer's behalf.

o "Ads"

means online advertisements displayed by Google to End Users.

o "Affiliate"

means any entity that directly or indirectly controls, is controlled by, or is under common control with a party.

o "Brand Features"

means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each party, respectively, as secured by such party from time to time.

o "Confidential Information"

means information disclosed by a party to the other party under this Agreement that is marked as confidential or would normally be considered confidential under the circumstances. Customer Data is Customer's Confidential Information.

o "Customer Data"

means data, including email, provided, generated, transmitted or displayed via the Services by Customer or End Users.

o "Customer Domain Names"

mean the domain names owned or controlled by Customer, which will be used in connection with the Services and specified in the Order Page.

o "Emergency Security Issue"

means either: (a) Customer's use of the Services in violation of the Acceptable Use Policy, which could disrupt: (i) the Services; (ii) other customer's use of the Services; or (iii) the Google network or servers used to provide the Services; or (b) unauthorized third party access to the Services.

o "End Users"

means the individuals Customer permits to use the Services.

o "End User Account"

means a Google-hosted account established by Customer through the Services for an End User.

o "Export Control Laws"

means all applicable export and reexport control laws and regulations, including the Export Administration Regulations ("EAR") maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control, and the International Traffic in Arms Regulations ("ITAR") maintained by the Department of State.

o "Fees"
means the amounts invoiced to Customer by Google for the Services as described in an Order Page.
  o "Help Center"

means the Google help center accessible at http://www.google.com/support/, or other such URL as Google may provide.
  o "High Risk Activities"

means uses such as the operation of nuclear facilities, air traffic control, or life support systems, where the use or failure of the Services could lead to death, personal injury, or environmental damage.
  o "HIPAA"

means the Health Insurance Portability and Accountability Act of 1996, as may be amended from time to time, and any regulations issued thereunder.
  o "Initial Services Term"

means the term for the applicable Services beginning on the Service Commencement Date and continuing for the duration set forth on the Order Page.
  o "Intellectual Property Rights"

means current and future worldwide rights under patent law, copyright law, trade secret law, trademark law, moral rights law, and other similar rights.
  o "Non-Google Apps Products"

means Google products which are not part of the Services, but which may be accessed by End Users using their End User Account login and password. The Non-Google Apps Products are set forth at the following URL: http://www.google.com/support/a/bin/answer.py?hl=en&answer=181865, or such other URL as Google may provide.
  o "Non-Google Apps Product Terms" means the terms found at the following URL: http://www.google.com/apps/intl/en/terms/additional_services.html, or such other URL as Google may provide.
  o "Notification Email Address"

means the email address designated by Customer to receive email notifications from Google. Customer may change this email address through the Admin Console.
  o "Order Page"

means the online order page Customer completes in signing up for the Services or attached to this Agreement, and which contains: (i) the Services being ordered; (ii) Fees; (iii) number of, and Initial Services Term for, End User Accounts; (iv) the applicable form of payment; and (v) Customer Domain Names.
  o "Service Commencement Date"

is the date upon which Google makes the Services available to Customer, and will be within one week of Google’s receipt of the completed Order Page, unless otherwise agreed by the parties.
  o "Service Pages"

means the web pages displaying the Services to End Users.
  o "Services"

means the applicable Google Apps Core Services (e.g. Google Apps Premier Edition or Google Apps for Business and Google Apps Vault) provided by Google and used by Customer under this Agreement. The Services are as described here: http://www.google.com/a/help/intl/en/users/user_features.html, or such other URL as Google may provide.
o "Services Term"

means the Initial Services Term and all renewal terms for the applicable Services.

o "SLA"

means the Service Level Agreement located here: http://www.google.com/a/help/intl/en/admins/sla.html, or such other URL as Google may provide.

o "Suspend"

means the immediate disabling of access to the Services, or components of the Services, as applicable, to prevent further use of the Services.

o "Taxes"

means any duties, customs fees, or taxes (other than Google's income tax) associated with the sale of the Services, including any related penalties or interest.

o "Term"

means the term of the Agreement, which will begin on the Effective Date and continue until the earlier of (i) the end of the last Services Term or (ii) the Agreement is terminated as set forth herein.

o "Third Party Request"

means a request from a third party for records relating to an End User's use of the Services. Third Party Requests can be a lawful search warrant, court order, subpoena, other valid legal order, or written consent from the End User permitting the disclosure.

o "TSS"

means the technical support services provided by Google to the Administrators during the Term pursuant to the TSS Guidelines.

o "TSS Guidelines"

means Google's technical support services guidelines then in effect for the Services. TSS Guidelines are at the following URL: http://www.google.com/a/help/intl/en/admins/tssg.html or such other URL as Google may provide.

o "URL Terms"

means the "Acceptable Use Policy," the "SLA," and the "TSS Guidelines."

Version: March 28, 2012 b. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

c. Limitation of Liability. Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the ordering activity for consequential damages resulting from any defect or deficiencies in accepted items.
1. This is an agreement between Licensor and Licensee, who is being licensed to use the named Software.

2. Licensee acknowledges that this is only a limited nonexclusive license. Licensor is and remains the owner of all titles, rights, and interests in the Software.

3. This License permits Licensee to install the Software on more than one computer system, as long as the Software will not be used on more than one domain. Licensee will not make copies of the Software or allow copies of the Software to be made by others, unless authorized by this License Agreement. Licensee may make copies of the Software for backup purposes only.

4. This Software is subject to a limited warranty. Licensor warrants to Licensee that the physical medium on which this Software is distributed is free from defects in materials and workmanship under normal use, the Software will perform according to its printed documentation, and to the best of Licensor's knowledge Licensor's use of this Software according to the printed documentation is not an infringement of any third party's intellectual property rights. This limited warranty lasts for a period of 90 days after delivery. To the extent permitted by law, THE ABOVE STATED LIMITED WARRANTY REPLACES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND LICENSOR DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING ANY IMPLIED WARRANTY OF TITLE, MERCHANTABILITY, NONINFRINGEMENT, OR OF FITNESS FOR A PARTICULAR PURPOSE. No agent of Licensor is authorized to make any other warranties or to modify this limited warranty. Any action for breach of this limited warranty must be commenced within one year of the expiration of the warranty. Because some jurisdictions do not allow any limit on the length of an implied warranty, the above limitation may not apply to this Licensee. If the law does not allow disclaimer of implied warranties, then any implied warranty is limited to 90 days after delivery of the Software to Licensee. Licensee has specific legal rights pursuant to this warranty and, depending on Licensee's jurisdiction, may have additional rights.

5. In case of a breach of the Limited Warranty, Licensee's exclusive remedy is as follows: Licensee will return all copies of the Software to Licensor, at Licensee's cost, along with proof of purchase. (Licensee can obtain a step-by-step explanation of this procedure, including a return authorization code, by contacting Licensor at 1550 Laimer St. Suite 217, Denver, C) 80202.) At Licensor's option, Licensor will either send Licensee a replacement copy of the Software, at Licensor's expense, or issue a full refund.

6. Notwithstanding the foregoing, LICENSOR IS NOT LIABLE TO LICENSEE FOR ANY DAMAGES, INCLUDING COMPENSATORY, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, CONNECTED WITH OR RESULTING FROM THIS LICENSE AGREEMENT OR LICENSEE'S USE OF THIS SOFTWARE. Licensee's jurisdiction may not allow such a limitation of damages, so this limitation may not apply.

7. Licensee agrees to defend and indemnify Licensor and hold Licensor harmless from all claims, losses, damages, complaints, or expenses connected with or resulting from Licensee's business operations.

8. Licensor has the right to terminate this License Agreement and Licensee's right to use this Software upon any material breach by Licensee.

9. Licensee agrees to return to Licensor or to destroy all copies of the Software upon termination of the License.

10. This License Agreement is the entire and exclusive agreement between Licensor and Licensee regarding this Software. This License Agreement replaces and supersedes all prior negotiations, dealings, and
agreements between Licensor and Licensee regarding this Software. Tempus Nova, LLC does not charge a restocking fee.

11. This License Agreement is governed by the law of Colorado applicable to Colorado contracts.

12. This License Agreement is valid without Licensor's signature. It becomes effective upon the earlier of Licensee's signature or Licensee's use of the Software.

Mark43 GSA Approved EULA
SOFTWARE LICENSE AND SERVICES AGREEMENT

This Software License and Services Agreement (this “Agreement”) is effective as of [_____] (the “Effective Date”) by and between Mark43, Inc. (“Mark43”), with a place of business at 28 E. 28th 12th Floor, New York, NY 10016, and an Ordering Activity (an entity entitled to order under GSA Schedule contracts as defined in GSA Order ADM 4800.2I, as may be revised from time to time) (“Subscriber”).

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, Computer-Aided Dispatch and Evidence Management Applications, 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 “Integration Control Document” means the agreement, if applicable, governing any integrations with Third Party Applications.
1.8 “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.

1.9 “Professional Services” means the evaluation, consultation, implementation, customization, configuration and other services offered by Mark43 in connection with the SaaS Services.

1.10 “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.

1.11 “Services” means the services provided or required to be provided by or through Mark43, including without limitation, SaaS Services and Professional Services.

1.12 “Software” means the object code version of Mark43’s computer software and all Updates made available by Mark43 to Subscriber under this Agreement.

1.13 “Statement of Work” means a detailed plan of work to be agreed by the Parties in conjunction with this Agreement.

1.14 “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.

1.15 “Term” means the Initial Term and any Renewal Term.

1.16 “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.

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

1.18 “Third Party Data” means any data owned by a third party that Mark43 provides to Subscriber via the SaaS Service.

1.19 “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.

1.20 “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.

1.21 “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).

1.22 “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 and services necessary for it to access the Website through the Internet as set forth in Schedule C, "Technical Requirements." Subscriber will be responsible to Mark43 for compliance with the restrictions on use and other terms and conditions of this Agreement by any of its Authorized Users.

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

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

2.4 Support Services. Mark43 will provide a telephone-based help desk through which it will respond to inquiries about the SaaS Services from Subscriber via telephone from 7 AM to 7 PM (Eastern Time), Mondays through Fridays (excluding U.S. Federal holidays). Mark43 also provides a 24/7 email based help desk for the SaaS Services as set forth in Schedule A.

2.5 Restrictions on Use. Subscriber and its Authorized Users will not (and will not permit any third party to): (i) share Subscriber’s or any Authorized User’s login credentials; (ii) reverse engineer, decompile, disassemble, or otherwise attempt to discern the source code, underlying ideas, algorithms, file formats, or interface protocols of the SaaS Services or of any files contained in or generated by the SaaS Services; (iii) copy, modify, adapt or translate the SaaS Services or the Third Party Data, or otherwise make any use, resell, distribute or sublicense the SaaS Services or the Third Party Data other than in connection with this Agreement; (iv) make the SaaS Services available on a “service bureau” 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 an 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. [In addition, Authorized Users may log into the SaaS Service from only one location at any
given time – concurrent usage (or sign in) under a single username is prohibited.] Subscriber is
responsible for all activities conducted within User accounts in use of the SaaS Service. Subscriber
shall comply with all applicable local, state, federal and regional or other laws and regulations
applicable in connection with use of the SaaS Service, including all those related to data privacy
and the transmission of technical or personal data. Subscriber agrees to (a) provide true, accurate,
current and complete registration data for each account it creates via the SaaS Service, and (b)
maintain and promptly update the registration data to keep it true, accurate, current and complete.

2.7 Title. As between Mark43 and Subscriber, Mark43 retains title to and ownership of the SaaS
Services, including all copyrights and other Intellectual Property Rights relating thereto. Mark43’s
licensors retain title to and ownership of the Third Party Data and the Third Party Components,
including all copyrights and other intellectual property rights relating thereto. Subscriber will have
no rights with respect to the SaaS Services, the Third Party Data or the Third Party Components
other than those expressly granted under this Agreement. 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 and/or aggregate form in order to operate, maintain, manage, and improve the SaaS
Services, create new products and services, and share and/or license this aggregate data to
Affiliates, agents, business partners, and other third parties; 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).

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."

(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
IMPLIES 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, request termination of its support for, any software or equipment of Subscriber that Mark43 determines are incompatible with the operation of the Services.

3. RESERVED.

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 the GSA Schedule contract (the “Initial Term”).

(b) RESERVED

4.2 Temporary Suspension. 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 undisputed amounts payable hereunder as of the termination or expiration date;

(b) all rights and licenses granted hereunder to Subscriber (as well as all rights granted to any Authorized Users of Subscriber) will immediately cease, including but not limited to all use of the SaaS Services; and

(c) Mark43 will provide records to Subscriber in accordance with its transition assistance services (“Transition Assistance”) as set forth in Schedule B.

(d) Subscriber will, upon written request of Mark43, either return to Mark43 or provide Mark43 with written certification of the destruction of, all documents, computer files and other materials containing any Confidential Information of Mark43 that are in Subscriber’s possession or control.
4.4 Survival. The following provisions will survive any termination or expiration of this Agreement: Section 2.7 (“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 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. Notwithstanding any of the foregoing, Confidential Information does not include information which: (i) is or becomes public knowledge without any action by, or involvement of, the party to which the Confidential Information is disclosed (the “Receiving Party”); (ii) is documented as being known to the Receiving Party prior to its disclosure by the other party (the “Disclosing Party”); (iii) is independently developed by the Receiving Party without reference or access to the Confidential Information of the Disclosing Party and is so documented; or (iv) is obtained by the Receiving Party without restrictions on use or disclosure from a third person who did not receive it, directly or indirectly, from the disclosing party.

5.2 Use and Disclosure of Confidential Information. The Receiving Party will, with respect to any Confidential Information disclosed by the Disclosing Party before or after the Effective Date: (i) use such Confidential Information only in connection with the Receiving Party’s performance of this Agreement; (ii) subject to Section 5.4 below, restrict disclosure of such Confidential Information within the Receiving Party’s organization to only those of the Receiving Party’s employees and independent contractors who have a need to know such Confidential Information in connection with the Receiving Party’s performance of this Agreement and (iii) except as provided herein, not disclose such Confidential Information to any third party unless authorized in writing by the Disclosing Party to do so.

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, disclose to such tribunal only that portion of the Confidential Information which such counsel advises it is legally required to be disclosed, provided that such party shall use its best efforts to preserve the confidentiality of the Confidential Information, including, without limitation, by cooperating with the other party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be afforded the Confidential Information by such tribunal. Without limiting the foregoing, Subscriber shall notify Mark43 of any requests for records relating to Mark43 (including, without limitation, user guides or Documentation, or documents submitted by Mark43 in response to the RFP) within 24 hours of the receipt of such notice.
hours of receipt of the request and provide Mark43 with at least twenty-one (21) days’ notice before disclosing any such records. Without limiting the foregoing, and unless prohibited by law, Subscriber further agrees to indemnify and hold harmless Mark43, its Affiliates, and each of its 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 Confidential Information of Mark43 or Subscriber Data.

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.

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. This clause does not limit or
disclaim any of the warranties specified in the GSA Schedule 70 contract under FAR 52.212-4(o).
In the event of a breach of warranty, the U.S. Government reserves all rights and remedies under
the contract, the Federal Acquisition Regulations, and the Contract Disputes Act, 41 U.S.C.
7101-7109.

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.

7.4 This Agreement shall not impair the U.S. Government’s right to recover for fraud or crimes arising
out of or related to this Contract under any federal fraud statute, including the False Claims Act,
31 U.S.C. 3729-3733. Furthermore, this clause shall not impair nor prejudice the U.S.
Government’s right to express remedies provided in the GSA Schedule contract ( clause
52.212-4(h) – Patent Indemnification, and GSAR 552.215-72 – Price Adjustment – Failure to
Provide Accurate Information).

8. MISCELLANEOUS.

8.1 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. 28th Street  
12th Floor  
New York, NY 10016  
Attn: ________

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

Copy to: ________

8.2 Assignment. Neither party may assign or otherwise transfer any of its rights or obligations under this Agreement without the prior, written consent of the other party; provided, however, that a party may assign or otherwise transfer this Agreement in accordance with FAR Subpart 42.1204 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.

8.3 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.

8.4 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.

8.5 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 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.

8.6 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.
8.7 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.

8.8 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.

8.9 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.

8.10 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.

8.11 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.

8.12 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.

8.13 Certain Waivers Unenforceable. Subscriber agrees that it will not ask Mark43, or any Mark43 employee or contractor, to sign a document that waives liability for property damage, injury, or death that occurs on Subscriber's real property or property (such as vehicles) that is owned or controlled by Subscriber, or in the course of performing a ride-along or comparable activity with Subscriber’s personnel. Subscriber further agrees that any waiver signed by a Mark43 employee or contractor is null, void, and unenforceable against Mark43 and its employees and contractors.
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

MARK43, INC.                                       Warranted Contracting Officer

By: ___________________________________________   By: ___________________________________________

Title: __________________________________________  Title: __________________________________________

Date: ___________________________________________  Date: ___________________________________________

SCHEDULE A
Services Schedule

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

a. Professional Services:

   [TBD]

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

   [TBD]

   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 __________.]  

2. Initial Term. The Initial Term is the [number] [year/month] period commencing on the Effective Date.

3. Renewal Terms. Any Renewal Terms shall be for a period of [number] [year/month].

4. Fees: The Fee for the Initial Term is $____ per year.

   [Mark43 Pricing is based on the number of sworn officers employed directly or indirectly by Subscriber at the time the Order Form is signed. In the event that Subscriber increases its number of employed sworn officers during the Term by more than ____ percent (___%), then the annual fee shall increase by ___ per sworn officer in excess of ___.]  

   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:** $[_____]. Fees will be paid [describe schedule].

   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 ____________.

7. **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 7l 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:

<table>
<thead>
<tr>
<th>RMS Availability (Monthly)</th>
<th>Credit Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Above 99.9%</td>
<td>0%</td>
</tr>
<tr>
<td>99.8 – 99.0%</td>
<td>10%</td>
</tr>
<tr>
<td>98.9 – 98.0%</td>
<td>20%</td>
</tr>
<tr>
<td>Below 97.9%</td>
<td>30%</td>
</tr>
</tbody>
</table>

“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; or (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 inoperable 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.

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

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.

SCHEDULE B
Transition Assistance

Upon termination of the Agreement for any reason, and subject to all undisputed Fees due being paid in full, Mark43 will create searchable PDFs of each record (each, a “Record”) and provide them to the Subscriber for download. Subscriber may request, and Mark43 will consider, other formats in which to create the Records, but the final format of all Records will be determined in Mark43’s sole discretion. Records can be uploaded to Subscriber’s new records management system by the Subscriber or its new vendor.

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

2. Content
   a. Each Report in 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. No less than 1 year after the Cutoff Date, Mark43 will delete Subscriber Data from all Mark43 online systems (e.g. primary database, replica databases, search databases, application caches, etc.) other than database backups, audit logs and server system logs.
   e. Within 6 months from the date of deletion of Subscriber Data from all Mark43 online systems, all Subscriber Data will be erased from database backups.
   f. Notwithstanding the foregoing, Mark43 reserves the right to retain Subscriber Data on audit logs and server system logs and in support tickets, support requests and direct communications with Mark43.
Transition Assistance as outlined in this Schedule B is included in the Fees charged to Subscriber for the Services. Fees are due and payable up to the Cutoff Date.

**SCHEDULE C**

**Technical Requirements**

[To be inserted]

**CAD**

**RMS**

**Evidence**

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4. **TECHNICAL SERVICES**

The Contractor, without additional charge to the ordering activity, shall provide a hot line technical support number _877.379.7376_ for the purpose of providing user assistance and guidance in the implementation of the software. The technical support number is available 24/7.

5. **SOFTWARE MAINTENANCE**

a. Software maintenance as it is defined: (select software maintenance type):

   X 1. Software Maintenance as a Product (SIN 511210)

   Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that are included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for user’s self diagnostics.

   Software maintenance as a product does **NOT** include the creation, design, implementation, integration, etc. of a software package. These examples are considered software maintenance as a service.

   Software Maintenance as a product is billed at the time of purchase.
2. Software Maintenance as a Service (SIN 54151)

Software maintenance as a service creates, designs, implements, and/or integrates customized changes to software that solve one or more problems and is not included with the price of the software. Software maintenance as a service includes person-to-person communications regardless of the medium used to communicate: telephone support, on-line technical support, customized support, and/or technical expertise which are charged commercially. Software maintenance as a service is billed in arrears in accordance with 31 U.S.C. 3324.

Software maintenance as a service is billed in arrears in accordance with 31 U.S.C. 3324.

b. Invoices for maintenance service shall be submitted by the Contractor on a quarterly or monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

6. PERIODS OF TERM LICENSES (SIN 511210) AND MAINTENANCE (SIN 54151)

a. The Contractor shall honor orders for periods for the duration of the contract period or a lesser period of time.

b. Term licenses and/or maintenance may be discontinued by the ordering activity on thirty (30) calendar days written notice to the Contractor.

c. Annual Funding. When annually appropriated funds are cited on an order for term licenses and/or maintenance, the period of the term licenses and/or maintenance shall automatically expire on September 30 of the contract period, or at the end of the contract period, whichever occurs first. Renewal of the term licenses and/or maintenance orders citing the new appropriation shall be required, if the term licenses and/or maintenance is to be continued during any remainder of the contract period.

d. Cross-Year Funding Within Contract Period. Where an ordering activity’s specific appropriation authority provides for funds in excess of a 12 month (fiscal year) period, the ordering activity may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.

e. Ordering activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of an order, if the term licenses and/or maintenance is to be terminated at that time. Orders for the continuation of term licenses and/or maintenance will be required if the term licenses and/or maintenance is to be continued during the subsequent period.

7. CONVERSION FROM TERM LICENSE TO PERPETUAL LICENSE

a. The ordering activity may convert term licenses to perpetual licenses for any or all software at any time following acceptance of software. At the request of the ordering activity the Contractor shall furnish, within ten (10) calendar days, for each software product that is contemplated for conversion, the total amount of conversion credits which have accrued while the software was on a term license and the date of the last update or enhancement.

b. Conversion credits which are provided shall, within the limits specified, continue to accrue from one contract period to the next, provided the software remains on a term license within the ordering activity.

c. The term license for each software product shall be discontinued on the day immediately preceding the effective date of conversion from a term license to a perpetual license.

d. The price the ordering activity shall pay will be the perpetual license price that prevailed at the time such software was initially ordered under a term license, or the perpetual license price prevailing at the time of conversion from a term license to a perpetual license, whichever is the less, minus an amount equal to N/A % of all term license payments during the period that the software was under a term license within the ordering activity.
8. TERM LICENSE CESSATION
  
a. After a software product has been on a continuous term license for a period of __N/A__ months, a fully paid up, nonexclusive, perpetual license for the software product shall automatically accrue to the ordering activity. The period of continuous term license for automatic accrual of a fully paid up perpetual license does not have to be achieved during a particular fiscal year; it is a written Contractor commitment which continues to be available for software that is initially ordered under this contract, until a fully paid up perpetual license accrues to the ordering activity. However, should the term license of the software be discontinued before the specified period of the continuous term license has been satisfied, the perpetual license accrual shall be forfeited.
  
b. The Contractor agrees to provide updates and maintenance service for the software after a perpetual license has accrued, at the prices and terms of Special Item Number 54151, if the licensee elects to order such services. Title to the software shall remain with the Contractor.

9. UTILIZATION LIMITATIONS (SIN 511210, AND SIN 54151)
  
a. Software acquisition is limited to commercial computer software defined in FAR Part 2.101.
  
b. When acquired by the ordering activity, commercial computer software and related documentation so legend shall be subject to the following:
    
    (1) Title to and ownership of the software and documentation shall remain with the Contractor, unless otherwise specified.
    
    (2) Software licenses are by site and by ordering activity. An ordering activity is defined as a cabinet level or independent ordering activity. The software may be used by any subdivision of the ordering activity (service, bureau, division, command, etc.) that has access to the site where the software is placed at, even if the subdivision did not participate in the acquisition of the software. Further, the software may be used on a sharing basis where multiple agencies have joint projects that can be satisfied by the use of the software placed at one ordering activity's site. This would allow other agencies access to one ordering activity's database. For ordering activity public domain databases, user agencies and third parties may use the computer program to enter, retrieve, analyze and present data. The user ordering activity will take appropriate action by instruction, agreement, or otherwise, to protect the Contractor's proprietary property with any third parties that are permitted access to the computer programs and documentation in connection with the user ordering activity's permitted use of the computer programs and documentation. For purposes of this section, all such permitted third parties shall be deemed agents of the user ordering activity.
    
    (3) Except as is provided in paragraph 8.b(2) above, the ordering activity shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime Contractors, subcontractors and agents of the ordering activity who have the ordering activity's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the ordering activity to use software, documentation, or information therein, which the ordering activity may already have or obtains without restrictions.
    
    (4) The ordering activity shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred, or in cases of Disaster Recovery, the ordering activity has the right to transfer the software to another site if the ordering activity site for which it is acquired is deemed to be unsafe for ordering activity personnel; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; to transfer a copy of the software to another site for purposes of benchmarking new hardware and/or software; and to modify the software and documentation or combine it with other software, provided that the unmodified portions shall remain subject to these restrictions.
(5) "Commercial Computer Software" may be marked with the Contractor's standard commercial restricted rights legend, but the schedule contract and schedule pricelist, including this clause, "Utilization Limitations" are the only governing terms and conditions, and shall take precedence and supersede any different or additional terms and conditions included in the standard commercial legend.

10. SOFTWARE CONVERSIONS (SIN 511210)

Full monetary credit will be allowed to the ordering activity when conversion from one version of the software to another is made as the result of a change in operating system, or from one computer system to another. Under a perpetual license, the purchase price of the new software shall be reduced by the amount that was paid to purchase the earlier version. Under a term license, conversion credits which accrued while the earlier version was under a term license shall carry forward and remain available as conversion credits which may be applied towards the perpetual license price of the new version.

11. DESCRIPTIONS AND EQUIPMENT COMPATIBILITY

The Contractor shall include, in the schedule pricelist, a complete description of each software product and a list of equipment on which the software can be used. Also, included shall be a brief, introductory explanation of the modules and documentation which are offered.

12. RIGHTTOCOPY PRICING

The Contractor shall insert the discounted pricing for righttocopy licenses.

<table>
<thead>
<tr>
<th>SIN #</th>
<th>Manufacturer / Supplier</th>
<th>MFR Part #</th>
<th>Product Name/ Description</th>
<th>Proposed GSA Price (with IFF of .75%)</th>
<th>Country of Origin</th>
<th>Warranty</th>
</tr>
</thead>
<tbody>
<tr>
<td>511210</td>
<td>Google</td>
<td>GAPPS-PREM-1USER-12MO</td>
<td>G Suite Basic User License</td>
<td>$44</td>
<td>USA</td>
<td>Standard Commercial Warranty</td>
</tr>
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<td>511210</td>
<td>Google</td>
<td>GAPPS-UNLIM-1-USER-12MO</td>
<td>G Suite for Business (Unlimited) User License</td>
<td>$112</td>
<td>USA</td>
<td>Standard Commercial Warranty</td>
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</table>
1. **SCOPE**
   a. The prices, terms and conditions stated under Special Item Number 54151S Information Technology Professional Services apply exclusively to IT Professional Services within the scope of this Multiple Award Schedule (MAS).
   b. The Contractor shall provide services at the Contractor’s facility and/or at the ordering activity location, as agreed to by the Contractor and the ordering activity.

2. **PERFORMANCE INCENTIVES 1-FSS-60 Performance Incentives (April 2000)**
   a. Performance incentives may be agreed upon between the Contractor and the ordering activity on individual fixed price orders or Blanket Purchase Agreements under this contract.
   b. The ordering activity must establish a maximum performance incentive price for these services and/or total solutions on individual orders or Blanket Purchase Agreements.
   c. Incentives should be designed to relate results achieved by the contractor to specified targets. To the maximum extent practicable, ordering activities shall consider establishing incentives where performance is critical to the ordering activity’s mission and incentives are likely to motivate the contractor. Incentives shall be based on objectively measurable tasks.

3. **ORDER**
   a. Agencies may use written orders, EDI orders, blanket purchase agreements, individual purchase orders, or task orders for ordering services under this contract. Blanket Purchase Agreements shall not extend beyond the end of the contract period; all services and delivery shall be made and the contract terms and conditions shall continue in effect until the completion of the order. Orders for tasks which extend beyond the fiscal year for which funds are available shall include FAR 52.232-19 (Deviation – May 2003) Availability of Funds for the Next Fiscal Year. The purchase order shall specify the availability of funds and the period for which funds are available.
   b. All task orders are subject to the terms and conditions of the contract. In the event of conflict between a task order and the contract, the contract will take precedence.

4. **PERFORMANCE OF SERVICES**
   a. The Contractor shall commence performance of services on the date agreed to by the Contractor and the ordering activity.
   b. The Contractor agrees to render services only during normal working hours, unless otherwise agreed to by the Contractor and the ordering activity.
   c. The ordering activity should include the criteria for satisfactory completion for each task in the Statement of Work or Delivery Order. Services shall be completed in a good and workmanlike manner.
   d. Any Contractor travel required in the performance of IT Services must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all Contractor travel. Contractors cannot use GSA city pair contracts.
5. **STOP-WORK ORDER (FAR 52.242-15) (AUG 1989)**

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either-

1. Cancel the stop-work order; or

2. Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-

1. The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

2. The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

6. **INSPECTION OF SERVICES**

The Inspection of Services–Fixed Price (AUG 1996) (Deviation 1 – May 2003) clause at FAR 52.246-4 applies to firm-fixed price orders placed under this contract. The Inspection–TimeandMaterials and Labor-Hour (May 2001) (Deviation 1 – May 2003) clause at FAR 52.246-6 applies to timeandmaterials and laborhour orders placed under this contract.

7. **RESPONSIBILITIES OF THE CONTRACTOR**

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character. If the end product of a task order is software, then FAR 52.227-14 (Deviation – Dec 2007) Rights in Data – General, may apply.

8. **RESPONSIBILITIES OF THE ORDERING ACTIVITY**

Subject to security regulations, the ordering activity shall permit Contractor access to all facilities necessary to perform the requisite IT Professional Services.
9. INDEPENDENT CONTRACTOR

All IT Professional Services performed by the Contractor under the terms of this contract shall be as an independent Contractor, and not as an agent or employee of the ordering activity.

10. ORGANIZATIONAL CONFLICTS OF INTEREST

a. Definitions.

“Contractor” means the person, firm, unincorporated association, joint venture, partnership, or corporation that is a party to this contract.

“Contractor and its affiliates” and “Contractor or its affiliates” refers to the Contractor, its chief executives, directors, officers, subsidiaries, affiliates, subcontractors at any tier, and consultants and any joint venture involving the Contractor, any entity into or with which the Contractor subsequently merges or affiliates, or any other successor or assignee of the Contractor.

An “Organizational conflict of interest” exists when the nature of the work to be performed under a proposed ordering activity contract, without some restriction on ordering activities by the Contractor and its affiliates, may either (i) result in an unfair competitive advantage to the Contractor or its affiliates or (ii) impair the Contractor’s or its affiliates’ objectivity in performing contract work.

b. To avoid an organizational or financial conflict of interest and to avoid prejudicing the best interests of the ordering activity, ordering activities may place restrictions on the Contractors, its affiliates, chief executives, directors, subsidiaries and subcontractors at any tier when placing orders against schedule contracts. Such restrictions shall be consistent with FAR 9.505 and shall be designed to avoid, neutralize, or mitigate organizational conflicts of interest that might otherwise exist in situations related to individual orders placed against the schedule contract. Examples of situations, which may require restrictions, are provided at FAR 9.508.

11. INVOICES

The Contractor, upon completion of the work ordered, shall submit invoices for IT Professional services. Progress payments may be authorized by the ordering activity on individual orders if appropriate. Progress payments shall be based upon completion of defined milestones or interim products. Invoices shall be submitted monthly for recurring services performed during the preceding month.

12. PAYMENTS

For firm-fixed price orders the ordering activity shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for service rendered and accepted. Progress payments shall be made only when authorized by the order. For timeandmaterials orders, the Payments under TimeandMaterials and LaborHour Contracts at FAR 52.212-4 (OCT 2008) (ALTERNATE I – OCT 2008) (DEVIATION I – FEB 2007) applies to timeandmaterials orders placed under this contract. For laborhour orders, the Payment under TimeandMaterials and LaborHour Contracts at FAR 52.212-4 (OCT 2008) (ALTERNATE I – OCT 2008) (DEVIATION I – FEB 2007) applies to laborhour orders placed under this contract. 52.216-31(Feb 2007) Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Item Acquisition As prescribed in 16.601(e)(3), insert the following provision:

(a) The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.

(b) The offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit. The offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by—
(1) The offeror;
(2) Subcontractors; and/or
(3) Divisions, subsidiaries, or affiliates of the offeror under a common control.

13. **RESUMES**

Resumes shall be provided to the GSA Contracting Officer or the user ordering activity upon request.

14. **INCIDENTAL SUPPORT COSTS**

Incidental support costs are available outside the scope of this contract. The costs will be negotiated separately with the ordering activity in accordance with the guidelines set forth in the FAR.

15. **APPROVAL OF SUBCONTRACTS**

The ordering activity may require that the Contractor receive, from the ordering activity's Contracting Officer, written consent before placing any subcontract for furnishing any of the work called for in a task order.

16. **DESCRIPTION OF IT PROFESSIONAL SERVICES AND PRICING**

a. The Contractor shall provide a description of each type of IT Service offered under Special Item Numbers 54151S. IT Professional Services should be presented in the same manner as the Contractor sells to its commercial and other ordering activity customers. If the Contractor is proposing hourly rates, a description of all corresponding commercial job titles (labor categories) for those individuals who will perform the service should be provided.

b. Pricing for all IT Professional Services shall be in accordance with the Contractor’s customary commercial practices; e.g., hourly rates, monthly rates, term rates, and/or fixed prices.

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<th>Prices offered to GSA (including IFF)</th>
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<td>54151S</td>
<td>Mark43 Technical Services Senior Engineer</td>
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<tr>
<td>54151S</td>
<td>Mark43 Technical Services Junior Engineer</td>
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<tr>
<td>54151S</td>
<td>Application Architect (Senior)</td>
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<tr>
<td>54151S</td>
<td>Applications Programmer</td>
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<td>54151S</td>
<td>Computer Programmer (Junior)</td>
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<td>54151S</td>
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<tr>
<td>54151S</td>
<td>Computer Systems Analyst (Junior)</td>
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<td>Data Security Specialist</td>
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<td>Network Engineer (Junior)</td>
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<td>54151S</td>
<td>Network Security Engineer</td>
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<tr>
<td>54151S</td>
<td>Security Data Specialist</td>
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<tr>
<td>54151S</td>
<td>Senior Information Technology Architect</td>
<td></td>
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<tr>
<td>54151S</td>
<td>Software Engineer</td>
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<tr>
<td>54151S</td>
<td>Systems Architect (Senior)</td>
<td></td>
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<tr>
<td>54151S</td>
<td>Systems Security Specialist</td>
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<tr>
<td>Job Title</td>
<td>Detailed Position Description and functional responsibilities</td>
<td>Min Years of Experience</td>
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</tr>
<tr>
<td>Google Apps Implementation Specialist</td>
<td>Responsible for Architecting, Configuring and deploying the Google Apps solution. Including migration from multiple platforms and in-depth knowledge of interoperability tools.</td>
<td>6</td>
</tr>
<tr>
<td>Google Apps Trainer</td>
<td>Responsible for developing and delivering Google Apps Training. Including Gmail, Gcal, Google Docs and Google Administration training classes.</td>
<td>8</td>
</tr>
<tr>
<td>Google Apps Project Manager</td>
<td>Responsible for the management of all facets of the Google Apps project, including resource management, technical oversight and financial aspects.</td>
<td>10</td>
</tr>
<tr>
<td>Google Apps Developer</td>
<td>Responsible for requirements gathering, code development and testing of applications within the Google App Engine environment.</td>
<td>10</td>
</tr>
<tr>
<td>Google Apps Organizational Change Management Specialist</td>
<td>Responsible for the development and delivery of all communications and information flow to end-users throughout the Google Apps project</td>
<td>10</td>
</tr>
<tr>
<td>Mark43 Technical Account Manager (TAM)</td>
<td>Operates on-site or off-site independently of the implementation team and is responsible for system administration, configuration, and troubleshooting for a specific client.</td>
<td>5</td>
</tr>
<tr>
<td>Mark43 Implementation Manager</td>
<td>Responsible for ensuring a successful implementation for multiple clients and manages a team of associates who develop and execute the implementation by analyzing policy and process gaps and synthesizing recommendations for appropriate configuring and deployment of the product(s).</td>
<td>7</td>
</tr>
<tr>
<td>Mark43 Implementation Senior Associate</td>
<td>Leads multiple work streams required for a successful client deployment and is responsible for creating the project schedule, maintaining internal/external relationships, and serving as the lead during product launch.</td>
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<tr>
<td>Position</td>
<td>Responsibilities</td>
<td>Experience</td>
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<tr>
<td>Mark43 Implementation Mid-Level Associate</td>
<td>Responsible for developing client specific workflows, as well as preparing client deliverables and meeting agendas and creating release notes that are disseminated internally/externally throughout the deployment.</td>
<td>2</td>
</tr>
<tr>
<td>Mark43 Implementation Junior Associate</td>
<td>Responsible for documenting client meetings and preparing material for all stakeholders and is able to demonstrate basic products.</td>
<td>1</td>
</tr>
<tr>
<td>Mark43 Technical Services Manager</td>
<td>Responsible for ensuring successful integrations and data migrations and manages a team of engineers as well as the external relations with the client and third party vendors.</td>
<td>5</td>
</tr>
<tr>
<td>Mark43 Technical Services Senior Engineer</td>
<td>Responsible for the full project lifecycle of building unique integrations and migrates data from legacy systems into Mark43 products for a seamless transition after the Mark43 products are launched.</td>
<td>3</td>
</tr>
<tr>
<td>Mark43 Technical Services Junior Engineer</td>
<td>Works with team members to build necessary integrations and data migrations and is responsible for documenting and interfacing with other relevant teams such as the implementation team for a successful launch.</td>
<td>1</td>
</tr>
<tr>
<td>Mark43 Trainer</td>
<td>Responsible for leading training classes, creates and maintains all training materials, and performs direct training to different user groups within a department.</td>
<td>N/A</td>
</tr>
<tr>
<td>Application Architect (Senior)</td>
<td>Manages projects that involve professional support services and/or the integration, implementation and transition of large, complex systems. Provides design and development of e-government solutions, and is responsible for technical design and implementation of the architecture. Designs, develops and maintains infrastructure and backend applications. Provides expertise with web servers, gateways, and application servers and content management systems. Provides experience in web application technologies and middleware solutions.</td>
<td>10</td>
</tr>
<tr>
<td>Applications Programmer</td>
<td>Analyzes functional business applications and design specifications for functional areas such as finance, accounting, personnel, manpower, logistics, and contracts. Develops block diagrams and</td>
<td>5</td>
</tr>
</tbody>
</table>
logic flowcharts. Translates detailed design into computer software. Tests, debugs, and refines the computer software to produce the required product. Prepares required documentation, including both program-level and user-level documentation. Enhances software to reduce operating time or improve efficiency. Provides technical direction to programmers as required to ensure program deadlines are met.

<table>
<thead>
<tr>
<th>Position</th>
<th>Duties</th>
<th>Education</th>
<th>Experience</th>
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</thead>
<tbody>
<tr>
<td><strong>Computer Programmer (Junior)</strong></td>
<td>Translates detail program flowcharts into program-coded instructions used by third- and fourth-generation, or current state-of-the-art computers. Writes programs in a variety of computer languages (i.e., C++ and Java). Updates and expands existing programs.</td>
<td>AAS Degree</td>
<td>3</td>
</tr>
<tr>
<td><strong>Computer Programmer (Senior)</strong></td>
<td>Utilizes third- and fourth-generation or current state-of-the-art IT equipment and languages to develop and prepare diagrammatic plans for solution of business, management, communications, and strategic problems. Designs detailed programs, flowcharts, and diagrams showing mathematical computations and sequence of machine operations necessary to copy and process data and print results. Verifies the accuracy and completeness of programs and systems by preparing sample representative data and perform testing by means of cycle and system processing.</td>
<td>Bachelor's Degree</td>
<td>5</td>
</tr>
<tr>
<td><strong>Computer Systems Analyst (Junior)</strong></td>
<td>Develops requirements for information systems from a project’s inception to conclusion. Develops required specifications for simple to moderately complex systems. Assists senior computer systems analyst in preparing input and test data for the proposed system.</td>
<td>AAS Degree</td>
<td>3</td>
</tr>
<tr>
<td><strong>Computer Systems Analyst (Senior)</strong></td>
<td>Provides technical and administrative direction for personnel performing software development tasks, including the review of work products for correctness, adherence to the design concept and to user standards and for progress in accordance with schedules. Must be able to coordinate with the Program Manager to ensure problem solution and user satisfaction. Makes recommendations, if needed, for approval of major systems installations. Prepares milestone status reports and</td>
<td>Bachelor’s Degree</td>
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<tr>
<td>Position</td>
<td>Responsibilities</td>
<td>Level</td>
<td>Required Education</td>
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<tr>
<td>Data Security Specialist</td>
<td>Instructs computer users on security. Ensures networks are free of breaches. Sets up a security focused logging and performs analysis on logs collected. Sets up and configures and runs security scans.</td>
<td>7</td>
<td>Bachelor’s Degree</td>
</tr>
<tr>
<td>Database Management Specialist (Junior)</td>
<td>Provides technical expertise and support in the use of DBMS. Evaluates and recommends available DBMS products to support validated user requirements. Defines file organization, indexing methods, and security procedures for specific user applications. Develops, implements, and maintains database back-up and recovery procedures for the processing environments, and ensures that data integrity, security, and recoverability are built into the DBMS applications.</td>
<td>3</td>
<td>AAS Degree</td>
</tr>
<tr>
<td>Database Management Specialist (Senior)</td>
<td>Provides technical expertise and support in the use of DBMS. Evaluates and recommends available DBMS products to support validated user requirements. Defines file organization, indexing methods, and security procedures for specific user applications. Develops, implements, and maintains database back-up and recovery procedures for the processing environments, and ensures that data integrity, security, and recoverability are built into the DBMS applications.</td>
<td>5</td>
<td>Bachelor’s Degree</td>
</tr>
<tr>
<td>Database Manager</td>
<td>Manages the development of database projects. Plans and budgets staff and data resources. Supports application developers in planning preparation, load analysis, and backup and recovery of data. When necessary, reallocates resources to maximize benefits. Prepares and delivers presentations on DBMS concepts. Provides daily supervision and direction to support staff. Monitors performance and evaluates areas to improve efficiency.</td>
<td>5</td>
<td>Bachelor’s Degree</td>
</tr>
<tr>
<td>Information Engineer</td>
<td>Plans, analyzes, designs, constructs and maintains information systems on a business-wide basis or across a major sector of the business. Performs business strategic systems planning, information planning, and analysis. Performs process and data modeling in support of the planning and</td>
<td>5</td>
<td>Bachelor’s Degree</td>
</tr>
<tr>
<td>Job Title</td>
<td>Responsibilities</td>
<td>Year of Experience</td>
<td>Degree</td>
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<tr>
<td>Information Engineer (Senior)</td>
<td>Develops analytical and computational techniques and methodology for problem solutions. Performs process and data modeling in support of the planning and analysis efforts using manual and automated tools. Applies reverse engineering and reengineering disciplines to develop migration strategic and planning documents. Provides technical guidance in software engineering techniques and automated support tools. Assists in establishing standards for information systems procedures. Develops and applies organization wide information models for use in designing and building integrated, shared software and DBMS.</td>
<td>8</td>
<td>Bachelor’s Degree</td>
</tr>
<tr>
<td>Information Security Engineer</td>
<td>Analyzes and defines security requirements for information protection. Defines and develops security policies. Analyzes the sensitivity of information, performs vulnerability and risk assessments on the basis of defined sensitivity and information flow.</td>
<td>8</td>
<td>Bachelor’s Degree</td>
</tr>
<tr>
<td>Information Technology Architect (Senior)</td>
<td>Provides expertise in the most current principles and practices of architecture data management systems and experience in large system designs, and with data modeling in the information management arena. Provides expertise in modeling and organizing information to facilitate support of projects or information architectures. Provides guidance on how and what to data and process model. Primarily deals with transition planning from legacy to modern systems by concentrating on information flows, data exchange, and data translation standardization services.</td>
<td>10</td>
<td>Bachelor’s Degree</td>
</tr>
<tr>
<td>Internet / Intranet Site Developer (Junior)</td>
<td>Translates applications requirements into the design of complex web sites, including integrating web pages and applications. Applies new and emerging technologies to the development process.</td>
<td>3</td>
<td>AAS Degree</td>
</tr>
<tr>
<td>Position</td>
<td>Description</td>
<td>Experience</td>
<td>Education</td>
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<td>5</td>
<td>Bachelor’s Degree</td>
</tr>
<tr>
<td>Network Administrator</td>
<td>Performs data communications engineering, data communications hardware or software analysis, network administration or management, data communications equipment installation and maintenance, or computer systems administration and management.</td>
<td>2</td>
<td>AAS Degree</td>
</tr>
<tr>
<td>Network Engineer (Junior)</td>
<td>Responsible for the design and implementation of large data communications or telecommunications networks. Plans and monitors the installation of communications circuits. Manage and monitor local area networks and associated equipment (e.g., bridges, routers, modem pools, and gateways).</td>
<td>5</td>
<td>Bachelor’s Degree</td>
</tr>
<tr>
<td>Network Engineer (Senior)</td>
<td>Responsible for the design and implementation of LANs/WANs using hub switching and router technology. Performs hardware/software analyses to provide comparative data of performance characteristics and suitability within the existing systems environment. Generates network monitoring/performance report, for LAN/WAN utilization studies. Recommends network design changes/enhancements for improved system availability and performance.</td>
<td>9</td>
<td>Bachelor’s Degree</td>
</tr>
<tr>
<td>Network Security Engineer</td>
<td>Designs, develops, engineers, and implements solutions for projects such as biometrics, smart cards, Secures remote access, VPN, Intrusion detection, port scanning, web security and vulnerability assessments and remediation.</td>
<td>8</td>
<td>Bachelor’s Degree</td>
</tr>
<tr>
<td>Security Data Specialist</td>
<td>Responsible for the planning, design, implementation and monitoring of security measures, policies, methods and procedures which safeguard the integrity of and access to enterprise systems, files and data elements. Responsible for acting on security violations. Maintains knowledge of changing technologies, and provides recommendations for adaptation of new technologies or policies. Recognizes and identifies potential areas where existing data security policies and procedures require change, or where new ones need to</td>
<td>4</td>
<td>Bachelor’s Degree</td>
</tr>
</tbody>
</table>
be developed, especially regarding future business expansion. Provides management with risk assessments and security briefings to advise them of critical issues that may affect customer, or corporate security objectives.

<table>
<thead>
<tr>
<th>Role</th>
<th>Responsibilities</th>
<th>Experience</th>
<th>Education</th>
<th>Other</th>
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</thead>
<tbody>
<tr>
<td>Senior IT Architect</td>
<td>Provides expertise in the most current principles and practices of architecture data management systems and experience in large system designs, and with data modeling in the information management arena. Provides expertise in modeling and organizing information to facilitate support of projects or information architectures. Provides guidance on how and what to data and process model. Primarily deals with transition planning from legacy to modern systems by concentrating on information flows, data exchange, and data translation standardization services.</td>
<td>10</td>
<td>Bachelor's Degree</td>
<td>N/A</td>
</tr>
<tr>
<td>Software Engineer</td>
<td>Reviews and analyzes system specifications. Prepares programming specifications. Analyzes existing systems/subsystems for reusability benefits and needed changes. Prepares design plans and written analyses. Prepares unit and test scripts. Prepares documentation.</td>
<td>3</td>
<td>Bachelor's Degree</td>
<td>N/A</td>
</tr>
<tr>
<td>Systems Architect (Senior)</td>
<td>Responsible for developing business, data, systems, and infrastructure models to develop enterprise architectures. Develops plans for migrating architectures. Develops technical reference models to include hardware/software standards.</td>
<td>5</td>
<td>Bachelor's Degree</td>
<td>N/A</td>
</tr>
<tr>
<td>Systems Security Specialist</td>
<td>Provides expert-level advice, analysis, and functional expertise to tasks. Demonstrates exceptional oral and written communication skills. Reviews requirements and task documentation for accuracy and applicability.</td>
<td>8</td>
<td>Bachelor's Degree</td>
<td>N/A</td>
</tr>
</tbody>
</table>
USA COMMITMENT TO PROMOTE
SMALL BUSINESS PARTICIPATION
PROCUREMENT PROGRAMS

PREAMBLE

Tempus Nova, LLC provides commercial products and services to ordering activities. We are committed to promoting participation of small, small disadvantaged and women-owned small businesses in our contracts. We pledge to provide opportunities to the small business community through reselling opportunities, mentor-protégé programs, joint ventures, teaming arrangements, and subcontracting.

COMMITMENT

To actively seek and partner with small businesses.

To identify, qualify, mentor and develop small, small disadvantaged and women-owned small businesses by purchasing from these businesses whenever practical.

To develop and promote company policy initiatives that demonstrate our support for awarding contracts and subcontracts to small business concerns.

To undertake significant efforts to determine the potential of small, small disadvantaged and women-owned small business to supply products and services to our company.

To insure procurement opportunities are designed to permit the maximum possible participation of small, small disadvantaged, and women-owned small businesses.

To attend business opportunity workshops, minority business enterprise seminars, trade fairs, procurement conferences, etc., to identify and increase small businesses with whom to partner.

To publicize in our marketing publications our interest in meeting small businesses that may be interested in subcontracting opportunities.

We signify our commitment to work in partnership with small, small disadvantaged and women-owned small businesses to promote and increase their participation in ordering activity contracts. To accelerate potential opportunities please contact

Didi Dellanno, President & CEO, didi@tempusnova.com, P: (877) 379-7376, F: (877) 379-7376
(Insert Customer Name)

In the spirit of the Federal Acquisition Streamlining Act (ordering activity) and (Contractor) enter into a cooperative agreement to further reduce the administrative costs of acquiring commercial items from the General Services Administration (GSA) Federal Supply Schedule Contract(s) ____________________.

Federal Supply Schedule contract BPAs eliminate contracting and open market costs such as: search for sources; the development of technical documents, solicitations and the evaluation of offers. Teaming Arrangements are permitted with Federal Supply Schedule Contractors in accordance with Federal Acquisition Regulation (FAR) 9.6.

This BPA will further decrease costs, reduce paperwork, and save time by eliminating the need for repetitive, individual purchases from the schedule contract. The end result is to create a purchasing mechanism for the ordering activity that works better and costs less.

Signatures

<table>
<thead>
<tr>
<th>Ordering Activity</th>
<th>Date</th>
<th>Contractor</th>
<th>Date</th>
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</thead>
</table>

BLANKET PURCHASE AGREEMENT

Pursuant to GSA Federal Supply Schedule Contract Number(s)____________, Blanket Purchase Agreements, the Contractor agrees to the following terms of a Blanket Purchase Agreement (BPA) EXCLUSIVELY WITH (ordering activity):

(1) The following contract items can be ordered under this BPA. All orders placed against this BPA are subject to the terms and conditions of the contract, except as noted below:

<table>
<thead>
<tr>
<th>MODEL NUMBER/PART NUMBER</th>
<th>*SPECIAL BPA DISCOUNT/PRICE</th>
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(2) Delivery:

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<tr>
<th>DESTINATION</th>
<th>DELIVERY SCHEDULES / DATES</th>
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(3) The ordering activity estimates, but does not guarantee, that the volume of purchases through this agreement will be ________________.

(4) This BPA does not obligate any funds.

(5) This BPA expires on _______________ or at the end of the contract period, whichever is earlier.

(6) The following office(s) is hereby authorized to place orders under this BPA:

<table>
<thead>
<tr>
<th>OFFICE</th>
<th>POINT OF CONTACT</th>
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</table>

(7) Orders will be placed against this BPA via Electronic Data Interchange (EDI), FAX, or paper.

(8) Unless otherwise agreed to, all deliveries under this BPA must be accompanied by delivery tickets or sales slips that must contain the following information as a minimum:

(a) Name of Contractor;
(b) Contract Number;
(c) BPA Number;
(d) Model Number or National Stock Number (NSN);
(e) Purchase Order Number;
(f) Date of Purchase;

(g) Quantity, Unit Price, and Extension of Each Item (unit prices and extensions need not be shown when incompatible with the use of automated systems; provided, that the invoice is itemized to show the information); and

(h) Date of Shipment.

(9) The requirements of a proper invoice are specified in the Federal Supply Schedule contract. Invoices will be submitted to the address specified within the purchase order transmission issued against this BPA.

(10) The terms and conditions included in this BPA apply to all purchases made pursuant to it. In the event of an inconsistency between the provisions of this BPA and the Contractor’s invoice, the provisions of this BPA will take precedence.

*******************************************************************************************
BASIC GUIDELINES FOR USING
“CONTRACTOR TEAM ARRANGEMENTS”

Federal Supply Schedule Contractors may use “Contractor Team Arrangements” (see FAR 9.6) to provide solutions when responding to a ordering activity requirements.

These Team Arrangements can be included under a Blanket Purchase Agreement (BPA). BPAs are permitted under all Federal Supply Schedule contracts.

Orders under a Team Arrangement are subject to terms and conditions or the Federal Supply Schedule Contract.

Participation in a Team Arrangement is limited to Federal Supply Schedule Contractors.

Customers should refer to FAR 9.6 for specific details on Team Arrangements.

Here is a general outline on how it works:

● The customer identifies their requirements.
● Federal Supply Schedule Contractors may individually meet the customers needs, or -
● Federal Supply Schedule Contractors may individually submit a Schedules “Team Solution” to meet the customer’s requirement.
● Customers make a best value selection.