

SaaS Software Agreement

This SaaS Software Agreement (“**Agreement**”) is being entered into as of _____ (“**Effective Date**”) by and between Kensington Fire Protection District (“**Customer**”), a Government Entity with a principle place of business at 217 Arlington Ave. Kensington, CA 94707, and Zonehaven Inc. (“**Supplier**”), a Delaware corporation with a principle place of business at 2034 Great Highway, San Francisco, CA 94116.

In consideration of the mutual promises and agreements set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed by the parties, the parties agree as follows:

1. DEFINITIONS.

1.1 “**Data**” means information and data submitted by or on behalf of Customer to Supplier for incorporation into the SaaS Service.

1.2 “**Documentation**” means the online user instructions, help files and training materials made available by Supplier to Customer for use with the SaaS Service, as may be updated from time to time by Supplier.

1.3 “**SaaS Service**” means Internet access to Supplier’s evacuation planning software platform.

1.4 “**Services**” means the SaaS Service and any Setup Services.

1.5 “**Setup Services**” means the implementation, consulting, development and other professional services that Supplier may perform as described in **Exhibit A**.

1.6 “**Third Party Offerings**” means applications, services, platforms, software and products provided by third parties that interoperate with the SaaS Service.

1.7 “**Users**” means Customer’s employees and consultants (a) who are authorized by Customer to access and use the SaaS Service and (b) who have been supplied user identifications and passwords for such purpose by Customer (or by Supplier at Customer’s request).

2. LICENSES AND RESTRICTIONS.

2.1 **Access and Use License.** Subject to Customer’s compliance with the terms and conditions contained in this Agreement, Supplier hereby grants to Customer, during the term of this Agreement, a limited, non-exclusive, non-transferable right for its Users to access and use the SaaS Service in accordance with the Documentation in each case solely for Customer’s internal business purposes. Customer agrees that its purchase of the Services is neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Supplier regarding any future functionality or features.

2.2 **Restrictions.** Customer shall not, directly or indirectly, and Customer shall not permit any User or third party to: (a) reverse engineer, decompile, disassemble or otherwise attempt to discover the object code, source code or underlying ideas or algorithms of the SaaS Service; (b) modify, translate, or create derivative works based on any element of the SaaS Service or any related Documentation; (c) rent, lease, distribute, sell, resell, assign, or otherwise transfer its rights to use the SaaS Service; (d) use the SaaS Service for timesharing purposes or otherwise for the benefit of any person or entity other than for the benefit of Customer; (e) remove any proprietary notices from the Documentation; (f) publish or disclose to third parties, except as required by law, any evaluation of the SaaS Service without Supplier’s prior written consent; (g) use the SaaS Service for any purpose other than its intended purpose; (h) interfere with or disrupt the integrity or performance

of the SaaS Service; or (i) attempt to gain unauthorized access to the SaaS Service or their related systems or networks.

2.3 **Reservation of Rights.** Except as expressly granted in this Agreement, there are no other licenses granted to Customer, express, implied or by way of estoppel. All rights not granted in this Agreement are reserved by Supplier.

3. **THIRD PARTY OFFERINGS.**

3.1 **Third Party Offerings.** The SaaS Service may contain features designed to interoperate with Third Party Offerings. To use such features, Customer may be required to obtain access to such Third Party Offering from their providers. If the provider of any Third Party Offering ceases to make the Third Party Offering available for interoperation with the corresponding SaaS Service features on reasonable terms, Supplier may cease providing such features without entitling Customer to any refund, credit, or other compensation. Any use by Customer of any such Third Party Offerings, and any exchange of data between Customer and any provider of a Third Party Offering, is solely between Customer and the applicable provider of the Third Party Offering. Supplier does not warrant or support any Third Party Offering.

3.2 **Supplier Access Codes.** To the extent that Supplier requires that Customer grant Supplier authorizations, passwords or other user credentials to a Third Party Offering ("**Supplier Access Codes**") to enable interoperability with the SaaS Service, Customer shall promptly provide such Supplier Access Codes. Supplier shall not share, reassign, divulge or disclose any Supplier Access Codes except to Supplier employees or contractors specifically engaged in the performance of the Services. Supplier Access Codes shall constitute Customer's Confidential Information under this Agreement.

4. **PASSWORDS; SECURITY.**

4.1 **Passwords.** Supplier will issue to Customer user logins and passwords for each of its Users authorized to access and use the SaaS Service. Customer shall be, and shall ensure that each of its Users are, responsible for maintaining the confidentiality of all user logins and passwords and for ensuring that each user login and password is used only by the User to which it was issued. Customer is solely responsible for any and all access and use of the SaaS Service that occurs using logins and passwords Supplier issues to Users. Customer shall restrict its Users from sharing passwords. Customer agrees to immediately notify Supplier of any unauthorized use of any account or login and password issued to Customer's Users, or any other breach of security known to Customer. Customer is responsible for all use of Customer's User accounts, and Customer is responsible for compliance by each User with the terms of this Agreement. Supplier shall have no liability for any loss or damage arising from Customer's failure to comply with the terms set forth in this Section.

4.2 **No Circumvention of Security.** Neither Customer nor any User may circumvent or otherwise interfere with any user authentication or security of the SaaS Service. Customer will immediately notify Supplier of any breach, or attempted breach, of security known to Customer.

5. **CUSTOMER OBLIGATIONS.**

5.1 **Data.** Customer shall deliver Data to Supplier as reasonably requested by Supplier. Customer hereby grants to Supplier a non-exclusive, royalty-free, transferable, perpetual, irrevocable, worldwide, fully paid-up license (with rights to sublicense, including, without limitation, through multiple tiers of sublicensees) to use, reproduce, prepare derivative works, distribute, perform, display, and otherwise exploit the Data in connection with the SaaS Service and Supplier's (and its successors' and affiliates') business, including, without limitation, for the purpose of promoting and redistributing part or all of the SaaS Service. For the avoidance of doubt, this license survives any termination or expiration of this Agreement.

5.2 **Acceptable Uses.** Customer shall be solely responsible for its actions and the actions of its Users while using the SaaS Service. Customer acknowledges and agrees: (a) to abide by all local, state, national,

and international laws and regulations applicable to Customer's use of the SaaS Service, including, without limitation, the provision and storage of Data; (b) not to use, send or store data on or to the SaaS Service which violates the rights of any individual or entity established in any jurisdiction; (c) not to upload in any way any data regarding an individual's financial or economic identity, sexual orientation, religious beliefs, medical or physical identity; (d) not to interfere or disrupt networks connected to the SaaS Service or interfere with other ability to access or use the SaaS Service; and (e) to use the SaaS Service only in accordance with the Documentation. Customer acknowledges and agrees that Supplier neither endorses the contents of any Customer communications or Data, nor assumes any responsibility for any offensive material contained therein, any infringement of third party intellectual property rights arising therefrom or any crime facilitated thereby. Supplier, in its discretion, may remove, in its reasonable belief, any violating content posted or stored using the SaaS Service or transmitted through the SaaS Service, without notice to Customer. Notwithstanding the foregoing, Supplier does not guarantee, and does not and is not obligated to verify, authenticate, monitor or edit the Data or any other information or data input into or stored in the SaaS Service for completeness, integrity, quality, accuracy or otherwise. Customer shall be responsible and liable for the completeness, integrity, quality, accuracy, legality, reliability, and appropriateness of Data.

5.3 **Accuracy of Customer's Contact Information; Email Notices.** Customer agrees to provide accurate, current and complete information as necessary for Supplier to communicate with Customer from time to time regarding the Services, issue invoices or accept payment, or contact Customer for other account-related purposes. Customer agrees to keep any online account information current and inform Supplier of any changes in Customer's legal business name, address, email address and phone number. Customer agrees to accept emails from Supplier at the e-mail addresses specified by its Users for login purposes. In addition, Customer agrees that Supplier may rely and act on all information and instructions provided to Supplier by Users from the above-specified e-mail address.

5.4 **Temporary Suspension.** Supplier may temporarily suspend Customer's or its Users' access to the SaaS Service in the event that either Customer or any of their Users is engaged in, or Supplier in good faith suspects Customer or any of their Users is engaged in, any unauthorized conduct (including, but not limited to any violation of this Agreement). Supplier will attempt to contact Customer prior to or contemporaneously with such suspension; provided, however, that Supplier's exercise of the suspension rights herein shall not be conditioned upon Customer's receipt of any notification. A suspension may take effect for Customer's entire account and Customer understands that such suspension would therefore include User sub-accounts. Customer agrees that Supplier shall not be liable to Customer, any of its Users, or any other third party if Supplier exercises its suspension rights as permitted by this Section. Upon determining that Customer has ceased the unauthorized conduct leading to the temporary suspension to Supplier's reasonable satisfaction, Supplier shall reinstate Customer's and its Users' access and use of the SaaS Service. Notwithstanding anything in this Section to the contrary, Supplier's suspension of SaaS Service is in addition to any other remedies that Supplier may have under this Agreement or otherwise, including but not limited to termination of this Agreement for cause. Additionally, if there are repeated incidences of suspension, regardless of the same or different cause and even if the cause or conduct is ultimately cured or corrected, Supplier may, in its reasonable discretion, determine that such circumstances, taken together, constitute a material breach.

6. AVAILABILITY; SUPPORT.

6.1 **Availability.** Subject to the terms and conditions of this Agreement, Supplier will use commercially reasonable efforts to make the SaaS Service available with minimal downtime 24 hours a day, 7 days a week; provided, however, that the following are excepted from availability commitments: (a) planned downtime (with regard to which Supplier will use commercially reasonable efforts to provide at least 24 hours advance notice, and (b) routine maintenance times as reasonably specified by Supplier, and (c) any unavailability caused by circumstances of Force Majeure described in **Section 15.10**. Certain enhancements to the SaaS Service made generally available at no cost to all subscribing customers during the term of this Agreement will be made available to Customer at no additional charge, subject to any conditions that may be required by Supplier. However, the availability of some new enhancements or modules to the SaaS Service may require the payment of additional fees, and Supplier will determine at its sole discretion whether access to any other such new enhancements will

require an additional fee. This Agreement will apply to, and the SaaS Service includes, any bug fixes, error corrections, new builds, enhancements, updates, upgrades and new modules to the SaaS Service subsequently provided by Supplier to Customer hereunder.

6.2 **Support.** Supplier will provide technical support to Customer via both telephone and electronic mail on weekdays during the hours of 9:00 am through 5:00 pm Pacific time, with the exclusion of US federal holidays (“**Support Hours**”). Customer may initiate a helpdesk ticket during Support Hours by calling the Supplier or by emailing support@zonehaven.com.

7. **SETUP SERVICES.** Supplier shall use commercially reasonable efforts to perform the Setup Services as set forth in **Exhibit A**. Supplier and Customer shall cooperate to enable Supplier to perform the Setup Services according to the dates of performance and delivery terms set forth in **Exhibit A**. In addition, Customer shall perform any Customer obligations specified in **Exhibit A**. In the event the Setup Services are not performed in material accordance with the terms of **Exhibit A**, Customer shall notify Supplier in writing no later than thirty (30) calendar days after performance of the affected Setup Services by Supplier. Customer’s notice shall specify the basis for non-compliance with **Exhibit A**, and if Supplier agrees with the basis for non-compliance, then at Supplier sole option, Supplier shall re-perform the Setup Services at no additional charge to Customer or refund to Customer the applicable fees for the affected Setup Service. THE FOREGOING CONSTITUTES CUSTOMER’S SOLE AND EXCLUSIVE REMEDY AND SUPPLIER’S SOLE AND EXCLUSIVE LIABILITY WITH RESPECT TO PERFORMANCE OR NON-PERFORMANCE OF THE SETUP SERVICES.

8. **FEES AND PAYMENT.**

8.1 **Fees.** Customer agrees to pay all fees specified in **Exhibit B** using one of the payment methods Supplier supports. Except as otherwise specified in this Agreement or in **Exhibit B**, (a) fees are quoted and payable in United States dollars, (b) fees are based on Services purchased, regardless of actual usage, and (c) payment obligations are non-cancelable and fees paid are non-refundable. Fees are based on yearly periods that begin on the Effective Date and each yearly anniversary thereof. All amounts payable under this Agreement will be made without setoff or counterclaim, and without any deduction or withholding, except as may be required by law.

8.2 **Invoices and Payment.** Except as otherwise specified in this Agreement or in **Exhibit B**, all fees will be invoiced in advance. Except as otherwise set forth in the applicable exhibit, Customer agrees to pay all invoiced amounts within thirty (30) calendar days of the invoice date. Customer is responsible for providing complete and accurate billing and contact information to Supplier and notifying Supplier of any changes to such information.

8.3 **Overdue Charges.** If Supplier does not receive fees by the due date, then at Supplier’s discretion, such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

8.4 **Suspension of Service.** If any amounts owed by Customer for the Services are ten (10) or more days overdue, Supplier may, without limiting Supplier’s other rights and remedies, suspend Customer’s and its Users’ access to the Services until such amounts are paid in full.

8.5 **Taxes.** “**Taxes**” means all taxes, levies, imposts, duties, fines or similar governmental assessments imposed by any jurisdiction, country or any subdivision or authority thereof including, but not limited to federal, state or local sales, use, property, excise, service, transaction, privilege, occupation, gross receipts or similar taxes, in any way connected with this Agreement or any instrument, or agreement required hereunder, and all interest, penalties or similar liabilities with respect thereto, except such taxes imposed on or measured by a party’s net income. Notwithstanding the foregoing, Taxes shall not include payroll taxes attributable to the compensation paid to workers or employees and each party shall be responsible for its own federal and state payroll tax collection, remittance, reporting and filing obligations. Fees and charges imposed under this Agreement or under any document ancillary to or referenced by this Agreement shall not include Taxes except as

otherwise provided herein. Customer shall be responsible for all of such Taxes. If, however, Supplier has the legal obligation to pay Taxes and is required or permitted to collect such Taxes for which Customer is responsible under this section, Customer shall promptly pay the Taxes invoiced by Supplier unless Customer has furnished Supplier with valid tax exemption documentation regarding such Taxes at the execution of this Agreement or at the execution of any subsequent instrument or agreement ancillary to or referenced by this Agreement. Customer shall comply with all applicable tax laws and regulations. Customer hereby agrees to indemnify Supplier for any Taxes and related costs paid or payable by Supplier attributable to Taxes that would have been Customer's responsibility under this **Section 8.5** if invoiced to Customer. Customer shall promptly pay or reimburse Supplier for all costs and damages related to any liability incurred by Supplier as a result of Customer's non-compliance or delay with its responsibilities herein. Customer's obligation under this **Section 8.5** shall survive the termination or expiration of this Agreement.

9. **REPRESENTATIONS AND WARRANTIES; DISCLAIMER.**

9.1 **Mutual Representations and Warranties.** Each party represents, warrants and covenants that: (a) it has the full power and authority to enter into this Agreement and to perform its obligations hereunder, without the need for any consents, approvals or immunities not yet obtained; (b) it has the right to grant the licenses it grants hereunder; and (c) its acceptance of and performance under this Agreement shall not breach any oral or written agreement with any third party or any obligation owed by it to any third party to keep any information or materials in confidence or in trust.

9.2 **Disclaimer.** EXCEPT FOR THE WARRANTIES SET FORTH IN THIS **SECTION 9**, THE SERVICES ARE PROVIDED ON AN AS-IS BASIS. CUSTOMER'S USE OF THE SAAS SERVICE AND THE SETUP SERVICES IS AT ITS OWN RISK. SUPPLIER DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS, STATUTORY AND IMPLIED REPRESENTATIONS AND WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, QUALITY, SUITABILITY, OPERABILITY, CONDITION, SYSTEM INTEGRATION, NON-INTERFERENCE, WORKMANSHIP, TRUTH, ACCURACY (OF DATA OR ANY OTHER INFORMATION OR CONTENT), ABSENCE OF DEFECTS, WHETHER LATENT OR PATENT, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. THE EXPRESS WARRANTIES MADE BY SUPPLIER IN **SECTION 9** ARE FOR THE BENEFIT OF THE CUSTOMER ONLY AND NOT FOR THE BENEFIT OF ANY THIRD PARTY. ANY SOFTWARE PROVIDED THROUGH THE SAAS SERVICE IS LICENSED AND NOT SOLD.

NO AGENT OF SUPPLIER IS AUTHORIZED TO ALTER OR EXPAND THE WARRANTIES OF SUPPLIER AS SET FORTH HEREIN. SUPPLIER DOES NOT WARRANT THAT: (A) THE USE OF THE SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA; (B) THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS; (C) ANY DATA OR INFORMATION WILL BE ACCURATE OR RELIABLE; (D) THE QUALITY OF ANY INFORMATION OR OTHER MATERIAL OBTAINED BY CUSTOMER THROUGH THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS; (E) THE SERVICES WILL BE ERROR-FREE OR THAT ERRORS OR DEFECTS IN THE SERVICES WILL BE CORRECTED; OR (F) THE SERVER(S) THAT MAKE THE SERVICES AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. SUPPLIER IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS.

AS BETWEEN THE PARTIES, CUSTOMER IS SOLELY RESPONSIBLE FOR ALL DECISIONS THAT IT MAKES IN RELIANCE ON INFORMATION PRESENTED THROUGH THE SERVICES. SUPPLIER SHALL NOT BE LIABLE FOR ANY RESULTING BODILY INJURY, DEATH OF ANY PERSON OR DAMAGE TO REAL OR TANGIBLE, PERSONAL PROPERTY.

10. **INDEMNIFICATION.**

10.1 **Supplier Indemnity.**

(a) **General.** During term of this Agreement, Supplier, at its expense, shall defend Customer and its officers, directors and employees (the “**Customer Indemnified Parties**”) from and against all actions, proceedings, claims and demands by a third party (a “**Third-Party Claim**”) alleging that the SaaS Service infringes any copyright or misappropriates any trade secret and shall pay all damages, costs and expenses, including attorneys’ fees and costs (whether by settlement or award of by a final judicial judgment) paid to the third party bringing any such Third-Party Claim. Supplier’s obligations under this Section are conditioned upon (i) Supplier being promptly notified in writing of any claim under this Section, (ii) Supplier having the sole and exclusive right to control the defense and settlement of the claim, and (iii) Customer providing all reasonable assistance (at Supplier’s expense and reasonable request) in the defense of such claim. In no event shall Customer settle any claim without Supplier’s prior written approval. Customer may, at its own expense, engage separate counsel to advise Customer regarding a Claim and to participate in the defense of the claim, subject to Supplier’s right to control the defense and settlement.

(b) **Mitigation.** If any claim which Supplier is obligated to defend has occurred, or in Supplier’s determination is likely to occur, Supplier may, in its sole discretion and at its option and expense (a) obtain for Customer the right to use the SaaS Service, (b) substitute a functionality equivalent, non-infringing replacement for such the SaaS Service, (c) modify SaaS Service to make it non-infringing and functionally equivalent, or (d) terminate this Agreement and refund to Customer any prepaid amounts attributable to the period of time after the date Customer becomes unable to use the SaaS Service, as reasonably determined by Supplier.

(c) **Exclusions.** Notwithstanding anything to the contrary in this Agreement, the foregoing obligations shall not apply with respect to a claim of infringement if such claim arises out of (i) Customer’s use of infringing or misappropriated Data, (ii) use of the SaaS Service in combination with any software, hardware, network or system not supplied by Supplier where the alleged infringement relates to such combination, (iii) any modification or alteration of the SaaS Service other than by Supplier, (iv) Customer’s continued use of the SaaS Service after Supplier notifies Customer to discontinue use because of an infringement claim, (v) Customer’s violation of applicable law, or (vi) Third Party Offerings.

(d) **Sole Remedy.** THE FOREGOING STATES THE ENTIRE LIABILITY OF SUPPLIER WITH RESPECT TO THE INFRINGEMENT OF ANY INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS BY THE SAAS SERVICE OR OTHERWISE, AND CUSTOMER HEREBY EXPRESSLY WAIVES ANY OTHER LIABILITIES OR OBLIGATIONS OF SUPPLIER WITH RESPECT THERETO.

10.2 **Customer Indemnity.** Customer shall defend Supplier and its licensors and their respective officers, directors and employees (“**Supplier Indemnified Parties**”) from and against any and all Third-Party Claims which arise out of or relate to: (a) a claim or threat that the Data (and the exercise by Supplier of the rights granted herein with respect thereto) infringes, misappropriates or violates any third party’s intellectual property rights, privacy rights or other rights; (b) Customer’s use or alleged use of the SaaS Service other than as permitted under this Agreement; (c) arising from the occurrence of any of the exclusions set forth in **Section 10.1(c)**; or (d) bodily injury, death of any person or damage to real or tangible, personal property resulting from Customer’s use or alleged use of the SaaS Service. Customer shall pay all damages, costs and expenses, including attorneys’ fees and costs (whether by settlement or award of by a final judicial judgment) paid to the third party bringing any such Third-Party Claim. Customer’s obligations under this Section are conditioned upon (x) Customer being promptly notified in writing of any claim under this Section, (y) Customer having the sole and exclusive right to control the defense and settlement of the claim, and (z) Supplier providing all reasonable assistance (at Customer’s expense and reasonable request) in the defense of such claim. In no event shall Supplier settle any claim without Customer’s prior written approval. Supplier may, at its own expense, engage separate counsel to advise Supplier regarding a Third-Party Claim and to participate in the defense of the claim, subject to Customer’s right to control the defense and settlement.

11. CONFIDENTIALITY.

11.1 **Confidential Information.** “**Confidential Information**” means any and all non-public technical and non-technical information disclosed by one party (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”) in any form or medium, whether oral, written, graphical or electronic, pursuant to this Agreement, that is marked confidential and proprietary, or that the Disclosing Party identifies as confidential and proprietary, or that by the nature of the circumstances surrounding the disclosure or receipt ought to be treated as confidential and proprietary information, including but not limited to: (a) techniques, sketches, drawings, models, inventions (whether or not patented or patentable), know-how, processes, apparatus, formulae, equipment, algorithms, software programs, software source documents, APIs, and other creative works (whether or not copyrighted or copyrightable); (b) information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, business forecasts, sales and merchandising and marketing plans and information; and (c) proprietary or confidential information of any third party who may disclose such information to Disclosing Party or Receiving Party in the course of Disclosing Party’s business. Confidential Information of Supplier shall include the SaaS Service, the Documentation, and pricing and other terms and conditions of this Agreement. Confidential Information also includes all summaries and abstracts of Confidential Information. For the avoidance of doubt, Customer agrees that Data is not Confidential Information of Customer.

11.2 **Non-Disclosure.** Each party acknowledges that in the course of the performance of this Agreement, it may obtain the Confidential Information of the other party. Subject to **Section 12.2 (Anonymized Usage Statistics)**, the Receiving Party shall, at all times, both during the term of this Agreement and thereafter, keep in confidence and trust all of the Disclosing Party’s Confidential Information received by it, and the Receiving Party shall not use the Confidential Information of the Disclosing Party other than as necessary to fulfill the Receiving Party’s obligations or to exercise the Receiving Party’s rights under this Agreement. Each party agrees to secure and protect the other party’s Confidential Information with the same degree of care and in a manner consistent with the maintenance of such party’s own Confidential Information (but in no event less than reasonable care), and to take appropriate action by instruction or agreement with its employees or other agents who are permitted access to the other party’s Confidential Information to satisfy its obligations under this Section. Subject to **Section 12.2 (Anonymized Usage Statistics)**, the Receiving Party shall not disclose Confidential Information of the Disclosing Party to any person or entity other than its officers, employees and agents who need access to such Confidential Information in order to effect the intent of this Agreement and who are subject to confidentiality obligations at least as stringent as the obligations set forth in this Agreement.

11.3 **Exceptions to Confidential Information.** The obligations set forth in **Section 11.2 (Non-Disclosure)** shall not apply to the extent that Confidential Information includes information which: (a) was known by the Receiving Party prior to receipt from the Disclosing Party either itself or through receipt directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (b) was developed by the Receiving Party without use of the Disclosing Party’s Confidential Information; or (c) becomes publicly known or otherwise ceases to be secret or confidential, except as a result of a breach of this Agreement or any obligation of confidentiality by the Receiving Party. Nothing in this Agreement shall prevent the Receiving Party from disclosing Confidential Information to the extent the Receiving Party is legally compelled to do so by any governmental investigative or judicial agency pursuant to proceedings over which such agency has jurisdiction; provided, however, that prior to any such disclosure, the Receiving Party shall (x) assert the confidential nature of the Confidential Information to the agency; (y) immediately notify the Disclosing Party in writing of the agency’s order or request to disclose; and (z) cooperate fully with the Disclosing Party in protecting against any such disclosure and in obtaining a protective order narrowing the scope of the compelled disclosure and protecting its confidentiality.

11.4 **Injunctive Relief.** The Parties agree that any unauthorized disclosure of Confidential Information may cause immediate and irreparable injury to the Disclosing Party and that, in the event of such breach, the Receiving Party will be entitled, in addition to any other available remedies, to seek immediate

injunctive and other equitable relief, without bond and without the necessity of showing actual monetary damages.

12. PROPRIETARY RIGHTS.

12.1 **SaaS Service.** As between Supplier and Customer, all right, title and interest in the SaaS Service and any other Supplier materials furnished or made available hereunder, and all modifications and enhancements thereof, and all suggestions, ideas and feedback proposed by Customer regarding the SaaS Service, including all copyright rights, patent rights and other intellectual property rights in each of the foregoing, belong to and are retained solely by Supplier or Supplier's licensors and providers, as applicable. Additionally, Customer shall promptly respond to any questions that Supplier may have regarding such Feedback or to any other questions Supplier may have regarding Customer's use of the SaaS Service. Customer hereby does and will irrevocably assign to Supplier all evaluations, ideas, feedback and suggestions made by Customer to Supplier regarding the SaaS Service (collectively, "**Feedback**") and all intellectual property rights in the Feedback.

12.2 **Anonymized Usage Statistics.** Notwithstanding anything in this Agreement to the contrary, during and after the term of this Agreement, Supplier is free to use and disclose data and information relating to Customer's use of the Services in any aggregated or de-identified form ("**Anonymized Usage Statistics**"). As between Supplier and Customer, all right, title and interest in the Anonymized Usage Statistics and all intellectual property rights therein, belong to and are retained solely by Supplier. Without limiting the foregoing, Customer agrees that Supplier may (a) make Anonymized Usage Statistics publicly available, (b) disclose Anonymized Usage Statistics to third parties, and (c) use Anonymized Usage Statistics for any purpose, including any analysis, service enhancement or marketing.

12.3 **Supplier Developments.** All inventions, works of authorship and developments conceived, created, written, or generated by or on behalf of Supplier, whether solely or jointly, including without limitation, in connection with Supplier's performance of the Setup Services hereunder, all resulting work product and deliverables ("**Supplier Developments**") and all intellectual property rights therein, shall remain the sole and exclusive property of Supplier.

13. LIMITATION OF LIABILITY.

13.1 **No Consequential Damages.** NEITHER SUPPLIER NOR ITS LICENSORS OR SUPPLIERS SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY DAMAGES FOR LOST DATA, BUSINESS INTERRUPTION, LOST PROFITS, LOST REVENUE OR LOST BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF SUPPLIER OR ITS LICENSORS OR SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION, ANY SUCH DAMAGES ARISING OUT OF THE LICENSING, PROVISION OR USE OF THE SAAS SERVICE, SETUP SERVICES, OR THE RESULTS THEREOF. SUPPLIER WILL NOT BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES.

13.2 **Limits on Liability.** NEITHER SUPPLIER NOR ITS LICENSORS OR SUPPLIERS SHALL BE LIABLE FOR CUMULATIVE, AGGREGATE DAMAGES GREATER THAN AN AMOUNT EQUAL TO THE AMOUNTS PAID BY CUSTOMER TO SUPPLIER UNDER THIS AGREEMENT DURING THE PERIOD OF 12 MONTHS PRECEDING THE DATE ON WHICH THE CLAIM FIRST ACCRUED.

13.3 **Essential Purpose.** CUSTOMER ACKNOWLEDGES THAT THE TERMS IN THIS **SECTION 13** (LIMITATION OF LIABILITY) SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND SHALL APPLY EVEN IF AN EXCLUSIVE OR LIMITED REMEDY STATED HEREIN FAILS OF ITS ESSENTIAL PURPOSE WITHOUT REGARD TO WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE.

14. **TERM AND TERMINATION.**

14.1 **Term.** This Agreement shall commence on the Effective Date and, unless terminated sooner in accordance with the terms of this Agreement, shall continue for an initial term of three years. After the initial term, this Agreement will automatically renew for additional one-year periods, unless either party gives the other party notice of its intent not to renew at least 30 days prior to the end of the initial term or then current renewal term. Termination will be effective at the end of the applicable term in which such notice is received.

14.2 **Termination for Cause.** A party may terminate this Agreement upon written notice to the other party in the event the other party (a) files a petition for bankruptcy or has a petition for bankruptcy filed against it that is not dismissed within sixty (60) days after filing or admits its inability to pay its debts as they mature, makes an assignment for the benefit of its creditors or ceases to function as a going concern or to conduct its operations in the normal course of business and such termination shall occur immediately upon notice; or (b) commits a material breach of this Agreement and does not remedy such breach within thirty (30) days after receipt of written notice of such breach. Upon any termination for cause by Customer, Supplier shall refund to Customer any prepaid amounts attributable to the period of time after the termination date, as reasonably determined by Supplier. Upon any termination for cause by Supplier, Customer shall pay any unpaid fees covering the remainder of the term of this Agreement after the effective date of termination. In no event shall any termination relieve Customer of the obligation to pay any fees payable to Supplier for the period prior to the effective date of termination.

14.3 **Effects of Termination.** Upon expiration or termination of this Agreement, (a) Customer's use of and access to the SaaS Service and Supplier's performance of all Setup Services shall cease, and (b) all fees and other amounts owed to Supplier shall be immediately due and payable by Customer.

14.4 **Survival.** The termination or expiration of this Agreement for any reason shall not affect a party's rights or obligations that expressly or by their nature continue and survive (including, without limitation, the payment terms and the provisions concerning ownership, confidentiality, limitation of liability, indemnity, warranty disclaimers, and the Data license from Customer to Supplier).

15. **MISCELLANEOUS.**

15.1 **Notices.** Supplier may give notice to Customer by means of a general notice through the SaaS Service interface, electronic mail to Customer's e-mail address on record with Supplier, or by written communication sent by first class postage prepaid mail or nationally recognized overnight delivery service to Customer's address on record with Supplier. Customer may give notice to Supplier by written communication sent by first class postage prepaid mail or nationally recognized overnight delivery service addressed to Supplier, 2034 Great Highway, San Francisco, CA 94116, Attention: Legal. Notice shall be deemed to have been given upon receipt or, if earlier, two (2) business days after mailing, as applicable. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

15.2 **Governing Law.** This Agreement and the rights and obligations of the parties to and under this agreement shall be governed by and construed under the laws of the United States and the State of California as applied to agreements entered into and to be performed in such State without giving effect to conflicts of laws rules or principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. The parties further agree to waive and opt-out of any application of the Uniform Computer Information Transactions Act (UCITA), or any version thereof, adopted by any state of the United States in any form. Any disputes arising out of or in connection with this Agreement, including but not limited to any question regarding its existence, interpretation, validity, performance or termination, or any dispute between the parties arising from the parties' relationship created by this Agreement, shall be heard in the state and federal courts located in San Francisco County in the State of California and the parties hereby consent to exclusive jurisdiction and venue in such courts.

15.3 **Publicity.** Supplier has the right to reference and use Customer's name and trademarks and disclose the nature of the Services provided hereunder in each case in Supplier business development and marketing efforts, including without limitation Supplier's website.

15.4 **U.S. Government Customers.** If Customer is a federal government entity, Supplier provides the SaaS Service, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the SaaS Service include only those rights customarily provided to the public as defined in these Terms. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If greater rights are needed, a mutually acceptable written addendum specifically conveying such rights must be included in these Terms.

15.5 **Waiver.** No term or provision of this Agreement shall be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed on behalf of the party against whom the waiver is asserted. No consent by either party to, or waiver of, a breach by either party, whether express or implied, shall constitute consent to, waiver of, or excuse of any other, different, or subsequent breach by either party.

15.6 **Severability.** If any provision of this Agreement is held invalid or unenforceable for any reason, the remainder of the provision shall be amended to achieve as closely as possible the economic effect of the original term and all other provisions shall continue in full force and effect.

15.7 **Assignment.** Customer may not assign its rights or delegate its obligations under this Agreement to any third party, whether voluntarily or by operation of law or otherwise (including in connection with any merger or acquisition involving Customer), without the prior written consent of Supplier, such consent not to be unreasonably withheld, and subject to Customer paying any applicable transfer or set-up fees. Any purported assignment or transfer in violation of this section shall be void. Subject to the foregoing restrictions, this Agreement will bind and benefit the parties and their successors and permitted assigns.

15.8 **Relationship of the Parties.** Supplier is an independent contractor to Customer. There is no relationship of agency, partnership, joint venture, employment, or franchise between the parties. Neither party has the authority to bind the other or to incur any obligation on its behalf.

15.9 **Attorneys' Fees.** In any action to enforce this Agreement, the prevailing party shall be awarded all court costs and reasonable attorneys' fees incurred, including such costs and attorneys' fees incurred in enforcing and collecting any judgment.

15.10 **Force Majeure.** Neither party shall be liable for any failure or delay in performance under this Agreement due to fire, explosion, earthquake, storm, flood or other weather; unavailability of necessary utilities or raw materials; Internet service provider failures or delays, or denial of service attacks; war, civil unrest, acts of terror, insurrection, riot, acts of God or the public enemy; strikes or other labor problems; any law, act, order, proclamation, decree, regulation, ordinance, or instructions of government or other public authorities, or judgment or decree of a court of competent jurisdiction (not arising out of breach by such party of this Agreement); or any other event beyond the reasonable control of the party whose performance is to be excused.

15.11 **Entire Agreement.** This Agreement, including all exhibits and all documents referenced herein, constitute the entire agreement between the parties relating to this subject matter and supersedes all prior or simultaneous understandings, representations, discussions, negotiations, and agreements, whether written or oral.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the Effective Date hereof.

ZONEHAVEN INC.

By: _____

Name: Charlie Crocker

Title: CEO

Kensington Fire Protection District

By: _____

Name: _____

Title: _____

EXHIBIT A

ONGOING SUBSCRIPTION

Zonehaven is working with Contra Costa County on potentially using a UASI grant to fund a countywide Evacuation Management Platform (EMP) and Community Evacuation Interface (CEI). This grant and contract are not likely to be executed until early next year. So, this subscription can be thought of as a bridge, allowing the City to get out in front of this and be ready for the current fire season.

The Zonehaven Evacuation Management Platform (EMP) and Community Evacuation Interface (CEI) are priced by population tier (Exhibit B: Zonehaven Price Sheet). Zonehaven provides a standard 15% discount for multi-year contracts (minimum 3 years) for counties. However, as the City of Kensington was an early Zonehaven supporter, we applied a 30% multi-year discount.

Pricing Tier	Product	List Cost/Yr	Discount	Cost/Yr	# Years	Total
City 1: up to 20K Population	Annual EMP Subscription: Standard Wildfire Module	\$10,000	30%	\$7,000	3	\$21,000

Pricing Tier	Product	List Cost/Yr	Discount	Cost/Yr	# Years	Total
City 1: up to 20K Population	Annual CEI: Community Evacuation Interface	TBD		\$0	3	\$0

Supplier shall invoice the City for payment as follows

1. \$7,000 upon execution of the contract. This date becomes the official annual subscription start date.
2. \$7,000 one year after subscription start date
3. \$7,000 two years after subscription start date

EXHIBIT B

ZONEHAVEN PRICE SHEET

Evacuation Management Platform: Standard Wildfire Module

The Evacuation Management Platform is priced by population tier. In addition, it assumes delivery of an entire city or county in a single effort. The “Total Start Up” price includes all set up activities, 1 year subscription to the EMP: Standard Wildfire Module, and Zonehaven Standard Support.

Evacuation Management Platform: Community Evacuation Interface

The Zonehaven EMP: Community Evacuation Interface (CEI) provides a countywide website (and in the future a mobile app) for the public to understand and plan for evacuations. The CEI is priced by population tier. Currently there is no pricing available for this application. Current customers are able to use the CEI with their EMP subscription.

Multi-Year Subscription Discount: Full County customers who sign up for 3 years of subscription and pay the full three years up front receive a 15% discount and lock in their subscription price for the entire term.

Tier	Max Pop.	EMP Set Up	1 Yr Subs	Total Start Up	Multi-Year Subs Discount	
					1 Yr Subs	Total Yr 1
City 1	20,000	\$5,000	\$10,000	\$15,000	-	-
City 2	40,000	\$10,000	\$20,000	\$30,000	-	-
City 3	60,000	\$15,000	\$30,000	\$45,000	-	-
City 4	80,000	\$20,000	\$40,000	\$60,000	-	-
City 5	100,000	\$25,000	\$50,000	\$75,000	-	-
County 1	200,000	\$50,000	\$50,000	\$100,000	\$42,500	\$92,500
County 2	400,000	\$65,000	\$70,000	\$135,000	\$59,500	\$124,500
County 3	600,000	\$100,000	\$105,000	\$205,000	\$89,250	\$189,250
County 4	800,000	\$125,000	\$140,000	\$265,000	\$119,000	\$244,000
County 5	1,000,000	\$150,000	\$175,000	\$325,000	\$148,750	\$298,750
County 6	1,200,000	\$160,000	\$150,000	\$310,000	\$127,500	\$287,500
County 7	1,400,000	\$170,000	\$175,000	\$345,000	\$148,750	\$318,750
County 8	1,600,000	\$180,000	\$200,000	\$380,000	\$170,000	\$350,000
County 9	1,800,000	\$190,000	\$225,000	\$415,000	\$191,250	\$381,250
County 10	2,000,000	\$200,000	\$250,000	\$450,000	\$212,500	\$412,500

Tier City 1 is the minimum pricing for a city. For cities with populations >100K see county
Tier County 1 is the minimum pricing for a full county. Assumes delivery of a single county in one effort.

Price List Disclaimer: Possession of our price list or literature does not constitute an offer to sell. Prices shown are list prices and are subject to trade discount and to change without notice. Prices may also be changed without notice due to unforeseen cost increases of services, data, or currency fluctuations.