MWPA EXECUTIVE COMMITTEE MEETING AGENDA
Thursday, January 7, 2021
10:00 a.m.

https://zoom.us/j/99385985130
Or Telephone:
669-900-6833
Meeting ID: 993 385 5130
For those joining by phone use: *9 to “raise your hand” and *6 to mute/unmute

ATTENTION: This will be a virtual meeting of the Executive Committee of the Marin Wildfire Prevention Authority pursuant to Executive Order N-29-20 issued by the Governor of the State of California. There will not be a public location for participating in this meeting, but any interested member of the public can participate telephonically by utilizing the dial-in information printed on this agenda.

1. Call to order.

2. Roll Call.
   Bruce Goines
   Dennis Rodoni
   Sashi McEntee
   Julie McMillan
   Barbara Coler

3. Agenda Adjustments.

AGENDAS & STAFF REPORTS ON-LINE www.marinwildfire.org
4. **Open time for public expression.** The public is welcome to address the Executive Committee at this time on matters not on the agenda that are within the jurisdiction of the Committee. Please be advised that pursuant to Government Code Section 54954.2, the Committee is not permitted to discuss or take action on any matter not on the agenda. Comments may be no longer than three minutes and should be respectful to the community. *Please silence your cell phones during the meeting / mute your microphone when not reporting out.*

5. **Update on Environmental Compliance Process and Discuss Next Steps.**
   Recommendation: That the Executive Committee receive a verbal report related to the Board ad hoc subcommittee’s work on developing a request for proposals for an environmental consultant

6. **Zonehaven Evacuation Management Platform Proposal.**
   Recommendation: that the Executive Committee review the Zonehaven Evacuation Management Platform proposal in support of evacuation planning and the Evacuation Study request for proposals and provide input to the Executive Officer.
   
   6a - [Zonehaven Proposal - Staff Report](#)
   6b - [MWPA Zonehaven Proposal 1004.01](#)
   6c - [Zonehaven SaaS Software Agreement - MWPA 1015.01 v1 12 27 20](#)

7. **MWPA Board Retreat Planning.**
   Recommendation: that the Executive Committee review the Board Retreat Agenda and approve the proposed budget for the remote retreat with the authority granted by the Board of Directors on December 17, 2020.
   
   7a - [MWPA Board Retreat Budget EC Staff Report](#)
   7b - [Total Retreat Costs](#)

8. **MWPA Regular Board Meeting Agenda Planning for January 21, 2021.**
   Recommendation: that the Executive Committee review and provide direction regarding the draft agenda for the MWPA Regular Board Meeting of Thursday January 21, 2021.
   
   8 - [Draft MWPA Board Agenda 1.21.2021](#)

9. **Information Items.**

10. **Committee Member Request Future Agenda Items.**

11. **Adjourn.**

*In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the MWPA at 415-539-MWPA (6972) or contact Mark Brown at mbrown@marinwildfire.org. Notification at least 48 hours prior to the meeting will enable the MWPA to make reasonable accommodation to help insure accessibility to this meeting.*

**AGENDAS & STAFF REPORTS ON-LINE** [www.marinwildfire.org](http://www.marinwildfire.org)
Any writings or documents provided to a majority of the Executive Committee regarding any item on this agenda after the distribution of the original packet will be made available for public inspection at 28 Liberty Ship Way, Suite 2800, Sausalito CA 94965. *Note as of 4/30/20 offices are closed to the public. Therefore, documents will be made available upon request and will be available online at [www.marinwildfire.org](http://www.marinwildfire.org)

Notice is hereby given that the Executive Committee may discuss and/or take action on any or all of the items listed on this agenda. If any of these matters above are challenged in Court, you may be limited to raising only those issues you or someone else raised at any public hearing described on this agenda, or in written correspondence delivered at, or prior to, this Council meeting. Judicial review of an administrative decision of the Executive Committee must be filed with the Court not later than the 90th day following the date of the Executive Committee meeting decision (Code of Civil Procedure Section 1094.6)

I certify that this agenda was posted on the Public Notice Bulletin Board on or before Monday, January 4, 2021 at 10:00 a.m.

Mark Brown, Executive Officer

AGENDAS & STAFF REPORTS ON-LINE [www.marinwildfire.org](http://www.marinwildfire.org)
To: Marin Wildfire Prevention Authority Executive Committee
From: Mark Brown, Executive Officer
Subject: Zonehaven Evacuation Management Platform Proposal

RECOMMENDATION

That the Executive Committee review the Zonehaven Evacuation Management Platform proposal in support of evacuation planning and the Evacuation Study request for proposals (RFP) and provide input to the Executive Officer.

BACKGROUND

Evacuation preparedness has long been a primary concern for MWPA member agencies. In 2005, the Mt. Tamalpais Mutual Threat Zone (MTZ) Plan was created for wildland urban interface fires on and around Mt. Tamalpais. The goal of the MTZ Plan was to define roles, responsibilities, authorities and a framework for organization. Included in the MTZ Plan were maps for each defined area that included Structure Protection Zones and evacuation routes. In 2008 the MTZ Plan was expanded to include all of the wildland urban interface areas in the County of Marin with the creation of additional maps. The Structure Protection Zones were designated as Evacuation Zones in 2016 and have been pre-entered into Marin County’s notification system for rapid evacuation notification of people in potential evacuation zones.

Zone maps are available to the public and a common understanding of the boundaries of each zone has already facilitated communication between law enforcement and fire agencies. However, this system remains static and without traffic or other simulation capabilities. Zones were drawn using valuable firefighters’ field experience and knowledge, but at present, the MTZ Plan remains first and foremost a fire response and alerting tool.
ANALYSIS

Zonehaven’s Evacuation Management Platform (EMP) is a cloud-based application that uses critical data and modeling capabilities to deliver simple, usable insights to emergency responders and the community in the event of an emergency situation. The team engages directly with local fire and law enforcement to develop intelligent evacuation zones that are traffic and threat aware. Network analysis algorithms identify key intersections and choke points. Based on this and other data, intelligent zones are defined to reduce gridlock and enable fire and law enforcement to more easily support evacuations. Zonehaven uses the best available data from fire agencies, law enforcement, Office of Emergency Services (OES) and the community, such as:

- Geographic features; Vegetation type and density
- Weather conditions; Threat direction
- Structure / address count; Population estimates
- Traffic loads and road type; Access to egress points; Clearance times

In the event of an evacuation, models can be generated to enable fire and law enforcement to look ahead at what may come. Rapid simulations provide one-, three- and five-hour models, and related recommendations for evacuation zone sequencing. These simulations can be used for training purposes also.

Zonehaven is aware of Marin County’s existing MTZ Plan. With the Board’s approval, the team will work directly with agencies to capture critical information and data to incorporate into its platform. MWPA will approve the final set-up of the County’s Intelligent zones in the Evacuation Management Platform, with the collaboration of its member agencies and all pertinent stakeholders, to ensure success in the event of an evacuation.

Per the Board’s previous direction, MWPA will release a Request for Proposals for an Evacuation Risk Assessment Study in early 2021. This Study will identify and quantify Risk Factors that can be addressed to improve the success of an evacuation, and will complement Zonehaven’s Evacuation Management Platform, which is designed for real-time emergency management. This separation in scope between the Evacuation Risk Assessment and the Evacuation Management Platform allows member agencies to obtain a management platform in time for next fire season.

A near-final draft version of the proposed contract with Zonehaven is attached for the Executive Committee’s reference. This version has been reviewed by MWPA General Counsel and her proposed revisions are under consideration by Zonehaven. A final version of the contract will be presented to the Board for approval at its January 21, 2021 meeting.

FISCAL IMPACT

Current year funding for the Zonehaven contract is included in one-time expenditure of $108,750 in appropriations for the Evacuation Study (Budget item 6150 - $1,000,000) approved by the
MWPA Board. With Board approval, staff will include expenditures of $71,250 as part of the Budget Preparation Process for FY2021 and FY2022, as items of the Core budget, respectively.

ENVIRONMENTAL REVIEW:

The Executive Committee’s consideration of the Zonehaven Evacuation Platform Proposal is not a “project” under the California Environmental Quality Act, because it does not involve an activity which has the potential to cause a direct or reasonably foreseeable indirect physical change in the environment. (Cal. Pub. Res. Code § 21065).

Respectfully submitted,

Mark Brown, Executive Officer

Attachments: Zonehaven Proposal and Draft Software as a Service Agreement
Reviewed by: Megan Acevedo, Legal Counsel
Evacuation Management Platform Proposal

MARIN WILDFIRE PREVENTION AUTHORITY

Prepared for: Marin Wildfire Prevention Authority | 12-18-20

Stephen Sickler
steve@zonehaven.com | (541) 241-6211
Zonehaven is a cloud-based application that uses critical data and modeling capabilities to deliver simple, usable insights to help emergency responders and communities understand, minimize and respond to an emergency situation.

- MWPA wide Public Safety Zones
- Cross-agency planning and training
- Dynamic, up-to-date maps and plans
- Custom fire/evacuation scenarios
- Intelligent mutual aid
- Evacuation recommendations
- Multi-channel notifications
- Common evacuation picture
Executive Summary

The Zonehaven Evacuation Management Platform (EMP) provides a comprehensive set of evacuation tools that make it easy for fire, law, and OES to build and maintain evacuation plans and train using accurate evacuation simulations and scenarios. During an actual emergency, the EMP enables responsible agencies to react swiftly, make good evacuation decisions and notify other agencies and the public in real-time of evacuation status. For the Marin Wildfire Prevention Authority (MWPA), Zonehaven’s EMP will prove to be a critical tool during any wildfire incident within the Authority’s jurisdiction.

By bringing local knowledge together with regional data and sophisticated simulations, dynamic and up-to-date evacuation plans are always available to put into action. By preparing your evacuation plans and teams before an actual emergency, the MWPA will reduce the “reflex” time during an actual incident. The Zonehaven application provides the tools needed to train your local teams and quickly ramp-up regional help through intelligent mutual aid during a live evacuation event.

In addition, the Zonehaven Community Evacuation Interface (CEI) provides the public with one place for residents to go for evacuation preparation and real-time evacuation information.

Next Steps:

- Execute Zonehaven Standard SaaS Software Agreement
- Schedule Initial Zonehaven Kick-Off Meeting (Virtual)
- Review Description of Zonehaven Application Modules provided to the MWPA
- Review Zonehaven Application Setup Process in this Proposal
EMP: Standard Wildfire Module

Subscription to the Zonehaven EMP: Standard Wildfire Module provides the following:

**PREPARE - Build and maintain consistent, hyper-local plans for each Smart Public Safety Zone**

1. View or run fire spread models to understand local behavior
2. Assign Traffic Control Points (TCPs) or Intersections of Interest using traffic data
3. Easily update critical facilities, refuge areas, and other Smart Public Safety Zone details
4. Include input from fire, law and OES for multi-agency Smart Public Safety Zones
5. Unlimited updates to Smart Public Safety Zone data and zone configurations
6. Automatic updates to individual Smart Public Safety Zone plans/maps (always up-to-date)
7. Publish the most up-to-date data to the Community Evacuation Interface
8. View Smart Public Safety Zones and plans from neighboring counties (if using Zonehaven)

**TRAIN - Create evacuation simulations and scenarios for a variety of incident types across cities and counties**

1. Initiate a new incident from anywhere in your region
2. Evaluate results and impacts based on time, volume (people and cars), and weather
3. Run real-time fire spread models using current or historical weather conditions
4. Generate sequenced evacuation recommendations based on the simulations
5. Adjust recommendation by adding/removing Smart Evacuation Zones from the list
6. Schedule and notify evacuation stakeholders on the changing status of each zone
7. To the extent possible, integrate Public Safety Zones with community warning system
LIVE - Support a live evacuation, through identifying zones and sending notifications to predefined distribution lists and social media accounts.
1. Same workflow as TRAIN except notifications are live across platforms
2. Schedule and notify evacuation status to agencies and the public via several channels
3. Send status change alert to Social Media, Stakeholder list, WAZE and other systems
4. Provide WEA compatible Smart Public Safety Zones for notification
5. Change Smart Public Safety Zone status and color on the Community Evacuation Interface
6. Provide a log of all actions and notifications sent for review later

CEI: Community Evacuation Interface

The Zonehaven Community Evacuation Interface (CEI) provides a regional website for the public to understand and plan for evacuations. Every resident within an area that has deployed Zonehaven EMP has an assigned home and/or work Smart Public Safety Zone. The CEI makes it easy for agencies to prepare and coordinate evacuations with residents and workers. If requested, Zonehaven will support the MWPA roll-out of the CEI to the public and market the CEI to your residents under a separate contract.

Subscription to the CEI provides the community with the ability to:
1. Access the Smart Public Safety Zones through a single MWPA website
2. “Find my…” Public Safety Zone, routes and refuge areas
3. View and monitor “My Zone” status and receive alerts
4. Download residence guide (provided by MWPA or Cities)
5. Always access the latest data from Zonehaven EMP
Application Set-Up

The Zonehaven Evacuation Management Platform (EMP) and Community Evacuation Interface (CEI) requires initial set-up to prepare data, work with multi-agency teams, and deploy notification channels.

1. DATA SET UP

The EMP and CEI use the best available data from both private and public sources. If the MWPA has higher quality, up-to-date GIS data, it can be incorporated into the applications in place of other sources. The data types include, but are not limited to, building outlines, address points, agency boundaries, and fuel and hazard models. In addition, Smart Public Safety Zones are the core data required by the Zonehaven EMP and CEI. Zonehaven’s unique methodology provides Smart Public Safety Zones across the MWPA and regional consistency for cross-agency coordination and communication with the public. Zonehaven Smart Public Safety Zones are designed using automation and manual methods from a variety of data and models:

- Agency/City boundaries
- Public lands
- Geographic features
- Vegetation type/density
- Threat direction
- Structure/address counts
- Population estimates
- Traffic loads and road type
- Access to egress points
- Clearance times

Zonehaven has already run our preliminary zone creation algorithms across MWPA coverage boundaries. Once the agreement has been finalized, our team will work with MWPA team leads to finalize the zone boundaries, incorporate hyper-local knowledge and deliver final agency approved zones.

2. INCORPORATION OF EXISTING MWPA ZONES

Zonehaven is cognizant of the zones that have already been created as part of the Marin County Fire response strategy and will work with those agencies to capture critical information and data from zones and incorporate that into the final agency approved evacuation zones that will be delivered as part of the Zonehaven platform.

3. NOTIFICATION SET UP

Evacuation status notification is a key feature of the Zonehaven EMP and delivers alerts to agencies and the public through a variety of channels. Zonehaven will work with the MWPA to determine who has the privileges to change and publish the status for a zone. For example, local Law Enforcement may be the only agency that can actually trigger an actual EVACUATION ORDER. In addition, Zonehaven will provide various notification channels with the data and services needed to trigger a notification. At a minimum this will
include email lists, WAZE, and MWPA Social Media sites. Additional channels may be added or integrated as needed by the MWPA.

4. MULTI-AGENCY ENGAGEMENT

For application setup, Zonehaven will meet with MWPA’s GIS team to assess and acquire the necessary data. For Smart Public Safety Zone setup, Zonehaven will work with local Law, Fire and OES in a series of informational and working meetings to fine tune the Smart Public Safety Zones. It is key that Law and Fire participate in both the Smart Public Safety Zone configuration and plan development. Following deployment of the EMP, Zonehaven will train local Law, Fire and OES on the application and will support the development of the first several local evacuation plans. The goal is to get the multi-agency teams familiar with the application so they can continuously add local knowledge and understanding to conduct effective evacuations as needed.
Zonehaven SaaS Software Agreement

This Software-as-a-Service (SaaS) Software Agreement ("Agreement") is being entered into as of __________ ("Effective Date") by and between Marin Wildfire Prevention Authority ("Customer"), a Joint Powers Authority established under California Government Code sections 6500 et seq. with a principal place of business at 28 Liberty Ship Way, Suite 2800, Sausalito, CA 94965, and Zonehaven Inc. ("Supplier"), a Delaware corporation with a principal 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; however, changes to Documentation shall not alter the terms and conditions of this Agreement.

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, with the exception of use...
Draft

by individuals in Marin County for evacuation purposes; (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, other than property addresses and ownership records to the extent necessary to use the SaaS Service; (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 its Users is engaged in, or Supplier in good faith suspects Customer or any of its Users unauthorized conduct that violates 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. Supplier shall not temporarily suspend Customer’s or its User’s access to the SaaS Service during a declared local emergency. 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, 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 Supplier shall not allow any downtime during a declared local emergency. 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. Supplier will make available to Customer an emergency contact for after-hours service.

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’s 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 supported by Supplier. 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. Supplier shall not suspend Customer’s or its User’s access to the SaaS Service during a declared local emergency.

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, NONINFRINGEMENT AND TITLE, QUALITY, SUITABILITY, OPERABILITY, CONDITION, SYSTEM INTEGRATION, NON-INFRINGEMENT, 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 to the fullest extent permitted by law indemnify, release, hold harmless, and defend Customer and its officers, agents, 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 right to control the defense, except as required by law, 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. During the term of this Agreement, Customer shall defend Supplier and its 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
Draft

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, to the greatest extent allowable under the law, 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. Supplier acknowledges that Customer is subject to the California Public Records Act ("PRA", Cal. Gov. Code §§ 6250 et seq.) and is obligated to disclose all public records that are not specifically exempt from disclosure. Customer will provide Supplier with notice of any PRA request related to Supplier’s confidential information so that Supplier, not Customer, may seek a protective order to prevent disclosure of its materials.

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. 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 one year. 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 no 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 Termination for Convenience. This Agreement may be terminated by the Customer in accordance with this clause in whole, or in part, whenever the Customer shall determine that such termination is in the best interest of the Customer. The Customer will pay all reasonable costs associated with this Agreement that the Supplier has incurred up to the date of termination, and all reasonable costs associated with termination of the Agreement. In the event of a termination for convenience, Customer shall not be entitled to any refund of fees.

14.4 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.

14.5 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.

County of Marin 1015.01
15.9 No Recourse Against Members of Customer. Customer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Customer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Supplier shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Customer’s constituent members in connection with this Agreement.

15.10 Disentanglement. Supplier shall cooperate with Customer and Customer’s contractors to ensure a smooth transition at the time of termination of this Agreement, regardless of the nature or timing of the termination. Supplier shall cooperate with Customer’s efforts to ensure that there is no interruption of work required under the Agreement and no adverse impact on the provision of services or the Customer’s activities. Supplier shall return to Customer all Customer assets and Confidential Information in Supplier’s possession. Supplier shall promptly remove from Customer’s premises, or the site of the work being performed by Supplier for Customer, any Supplier assets. Supplier shall deliver to Customer or its designee, at Customer’s request, all Confidential Information of Customer, and after return of same, Supplier shall destroy all copies thereof not turned over to Customer, all at no charge to Customer.

15.11 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.

15.12 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

Marin Wildfire Prevention Authority
By: __________________________
Name: __________________________
Title: __________________________
EXHIBIT A
DESCRIPTION OF SETUP SERVICES

Zonehaven pre-built preliminary Public Safety Zones for the County in order to help meet the goal of implementing the Evacuation Management Platform for the coming fire season. Based on the level of agency participation, the project is expected to take 8-10 weeks to implement. As part of the preparation your organization compiled:

- Multi-agency team assignments
- Dates for detailed project plan
- List of agency leads/points of contact

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The EMP is priced by population tier based on 2020 estimates and Zonehaven’s 2020-2021 Price Sheet. The Marin Wildfire Prevention Authority has an approximate population of 258,000.

(To be inserted after additional discussion)
To: Marin Wildfire Prevention Authority Executive Committee

From: Mark Brown, Executive Officer

Subject: MWPA Board Retreat Planning

RECOMMENDATION:

Recommend that the Executive Committee review the Board Retreat Agenda and approve the proposed budget for the remote retreat with the authority granted by the Board of Directors on December 17, 2020.

BACKGROUND:

The MWPA Board of Directors permitted the President of the Board to appoint an ad hoc subcommittee to plan and implement a remote retreat for the MWPA Board of Directors in order to create vision and mission statements, identify the MWPA’s core values, create Board cohesion, establish roles and responsibilities and create a strategic focus for the 21/22 Work Plan.

ANALYSIS:

The ad hoc subcommittee consists of Directors Goines, Poulson, McEntee and Kimball and it has met twice with staff and two of our facilitators (Jean Bonander and Bill Keene). The topics required to meet the objectives of the retreat exceeded the time that can realistically be spent in one remote meeting and it is suggested to have an initial three-hour retreat followed by two subsequent and shorter meetings attached to regularly scheduled Board meetings. The decision was also made to bring the Consensus Building Institute (CBI) into the facilitation as CBI is adept at facilitating retreats in a remote environment. The ad hoc subcommittee recommends participation from all Board members and the chairs/vice chairs of the Operations
Committee and Advisory/Technical Committee to ensure the inclusion of the full depth of the MWPA.

**Agenda for January 21, 2021:**

Time: 10:00 a.m to 2:00 p.m.

Board Chair calls meeting to order
Roll Call
Agenda Adjustments
Executive Officer Report
Open Time for Public Expression
Consent Calendar
Board Strategic Planning Work Session (see outline below)
Public Comment on Board Strategic Planning Work Session
Information Items
Board Member Requests for Future Agenda Items
Adjourn

**Board Strategic Planning Work Session Outline**

I. Board member Introductions/Initial Exercise (30 minutes)
   
   a. Each Board member introduces themselves and answers the following two questions (1 minute each Board member; Information shared by Board members in this exercise will be used by the Executive Officer and consultant team to develop the visioning item for the 2nd and 3rd Strategic Planning Work Sessions)
   
   i. Looking first 2 years out, and then 10 years out, as we look back on our work and our legacy, what would we have achieved if we were amazingly successful in our work?
   
   ii. What unique skills do I bring to this organization that will help us be successful?

II. Wildfire Science Education (30 minutes including 15-20 mins of presentation and 10 minutes Q&A)
   
   a. Focused presentation outlining the basics of wildfire science
   b. Presentation will cover how wildfire science will be integrated into MWPA’s work
   c. Question/answer session for Boardmembers

III. Break (10 minutes)
IV. Breakout Session I with Facilitation – Core Values/Board-Committee-Staff Roles (60 Minutes)

a. What are the principles/values that we hold as an organization that will guide all of our work?

b. What are the roles of the Board of Directors/Board Committees/MWPA Staff

V. Lunch (60 minutes)

VI. Breakout Session II with Facilitation – Mission Brainstorming (60 minutes)

Subsequent sessions will include the development of strategic priorities and finalizing vision/mission statements and values.

Each remote retreat participant will receive pre-retreat packets to better prepare for the retreat through reading and viewing of videos. The public will also have access to this information and will be given the opportunity to comment during the retreat.

Conducting the retreat in the remote environment is presenting additional challenges not usually present during in-person retreats such as breakout rooms, white boards for note taking and the need for additional facilitators to manage the technological environment.

FISCAL IMPACT:

The recommended budget for the remote retreat is $20,226.00 which is inclusive of a 20% contingency. Some costs have been estimated on the high end until further refinement can be made which may result in lower costs. The expenditures will be drawn from Budget Center 6650 – Start Up Costs.

ENVIRONMENTAL REVIEW:

The Executive Committee’s consideration of plans for a Board retreat is not a “project” under the California Environmental Quality Act, because it does not involve an activity which has the potential to cause a direct or reasonably foreseeable indirect physical change in the environment. (Cal. Pub. Res. Code § 21065).

Respectfully submitted,

Mark Brown, Executive Officer

Attachment: Total Retreat Costs
### Retreat Cost Estimate

(CBI costs to be refined/confirmed with Gina Bartlett on January 4, 2021)

<table>
<thead>
<tr>
<th>Task</th>
<th>Hours/Pay Rate</th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Principal - Gina</td>
<td>Senior</td>
<td>Senior Associate</td>
<td>Associate</td>
<td>Technician</td>
<td>Jean Bonander</td>
<td>Bill Keene</td>
<td></td>
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<tr>
<td>Preparation with Board Retreat Steering Committee</td>
<td>235.00</td>
<td>$195</td>
<td>$145</td>
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<tr>
<td>Pre-Retreat Preparation</td>
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<tr>
<td>Retreat 9 a.m. - 3 p.m. (includes setup/closedown/AAR)</td>
<td>6.00</td>
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<tr>
<td>Post-Retreat Report with Outcomes</td>
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<tr>
<td>Total Hours</td>
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<td>10</td>
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<td>22</td>
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</table>

**Subtotal Labor Cost by Individual**

| Principal - Gina | $1,170 | $1,450 | $880 | $765 | $3,850 | $4,950 |

**Subtotal all labor**

7,555.00

**Materials/Software Usage**

500.00

**Estimate of CBI Labor Cost; Jean/Bill Labor**

8,055.00

8,800.00

**Subtotal Labor**

16,855.00

**Contingency (20%)**

3,371.00

**Total Retreat Cost:**

20,226.00
MWPA BOARD OF DIRECTORS AGENDA
Thursday, January 21, 2021
3:00 pm

https://zoom.us/j/93068198420

Or Telephone:
669-900-6833
Meeting ID: 930 6819 8420

For those joining by phone use: *9 to “raise your hand” and *6 to mute/unmute

ATTENTION: This will be a virtual meeting of the Board of Directors of the Marin Wildfire Prevention Authority pursuant to Executive Order N-29-20 issued by the Governor of the State of California. There will not be a public location for participating in this meeting, but any interested member of the public can participate telephonically by utilizing the dial-in information printed on this agenda. If any member of the public has a request for a reasonable modification or accommodation for accessing this meeting due to a disability, she/he/they should contact Mark Brown at mbrown@marinwildfire.org

1. Call to order.

2. Roll Call.
   David Kimball  Barry Evergettis  Mark White
   Sashi McEntee   Bill Shea     Bob Ravasio
   Rachael Kertz  Leighton Hills  Barbara Coler
   Gabe Paulson   Bruce Goines   Julie McMillan
   Dennis Rodoni  Tom Finn      Steve Burdo
   Kathryn Donohue  Cathryn Hilliard

AGENDAS & STAFF REPORTS ON-LINE www.marinwildfire.org
3. Agenda Adjustments.

4. Open time for public expression. The public is welcome to address the Board of Directors at this time on matters not on the agenda that are within the jurisdiction of the Board. Please be advised that pursuant to Government Code Section 54954.2, the Board is not permitted to discuss or take action on any matter not on the agenda. Comments may be no longer than three minutes and should be respectful to the community. Please silence your cell phones during the meeting / mute your microphone when not reporting out.

   Information Only, such as information about Executive, Finance and Citizens’ Oversight Committee Updates and Board notification of MWPA meetings.

6. Consent Calendar.
   The opportunity for public comment on consent agenda items will occur prior to the Board’s discussion of the consent agenda. The Committee may approve the entire consent agenda with one action. In the alternative, items on the consent agenda may be removed by any Committee or staff member, for separate discussion and vote.
   a. Acknowledge December 1, 2020 MWPA Citizens’ Oversight Committee minutes.
   b. Acknowledge December 3, 2020 MWPA Executive Committee minutes.
   c. Acknowledge December 3, 2020 MWPA Operations Committee minutes.
   d. Acknowledge December 8, 2020 MWPA Finance Committee minutes.
   e. Acknowledge December 9, 2020 MWPA Advisory/Technical Committee minutes.
   f. Approve December 17, 2020 MWPA Board of Directors Meeting minutes.
   g. Acknowledge December 22, 2020 MWPA Advisory/Technical Committee minutes.
   h. Acknowledge December 29, 2020 MWPA Citizens’ Oversight Committee minutes.
   i. Acknowledge January 7, 2021 MWPA Executive Committee minutes.
   k. Approve appointments to the Executive and Advisory/Technical Committees – Staff Report attached.

7. MWPA Board of Directors Remote Retreat.
   Recommendation: that the Board Members participate in the Remote Retreat.

8. Information Items.

9. Board Members Request Future Agenda Items.

10. Adjourn.
In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the MWPA at 415-539-MWPA (6972). Notification at least 48 hours prior to the meeting will enable the Agency to make reasonable accommodation to help insure accessibility to this meeting.

Any writings or documents provided to a majority of the Board of Directors regarding any item on this agenda after the distribution of the original packet will be made available for public inspection at 28 Liberty Ship Way, Suite 2800, Sausalito CA 94965. *Note as of 4/30/20 offices are closed to the public. Therefore, documents will be made available upon request and will be available online at www.marinwildfire.org

Notice is hereby given that the Board of Directors may discuss and/or take action on any or all of the items listed on this agenda. If any of these matters above are challenged in Court, you may be limited to raising only those issues you or someone else raised at any public hearing described on this agenda, or in written correspondence delivered at, or prior to, this Council meeting. Judicial review of an administrative decision of the Board of Directors must be filed with the Court not later than the 90th day following the date of the Board meeting decision (Code of Civil Procedure Section 1094.6)

I certify that this agenda was posted on the Public Notice Bulletin Board on or before Monday, December 14, 2020 at 3:00 pm.

Mark Brown, Executive Officer

AGENDAS & STAFF REPORTS ON-LINE www.marinwildfire.org