

GEOPLIANT LLC LICENSE AND SERVICE AGREEMENT

THIS LICENSE AND SERVICE AGREEMENT (“AGREEMENT”) BETWEEN GEOPLIANT LLC AND **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT** GOVERNS YOUR PURCHASE AND USE OF OUR SERVICES. PLEASE READ THIS AGREEMENT CAREFULLY. BY SIGNING THIS AGREEMENT, YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS.

This Agreement is effective as of the date the Agreement is signed by both parties (the “Effective Date”).

1. DEFINITIONS

- a) **“Account”** refers to the Service plans and features selected by You at the time of enrollment and accepted by Us, as such plans and features may change by mutual consent of the parties.
- b) **“Erase”** and **“Erasure”** refer to the destruction of data so that no copy of the data remains or can be accessed or restored in any way.
- c) **“Licensed Software”** is the cloud-based, Geopliant-hosted software, accessible from the Website by Customer for access and use only in accordance with this Agreement.
- d) **“Materials”** refers to written and graphical content provided by or through the Service, including, without limitation, text, photographs, illustrations, and designs, whether provided by Us, another customer of the Service, or any other third party.
- e) **“Project Data”** refers to data in electronic form collected through the Services from Your customers or other third parties, or collected or accessible directly from You.
- f) **“Service”** refers to Our Crisis Track service. The Service includes such features as are set forth in the quotation provided by Geopliant, LLC, attached as Exhibit A to this Agreement (the “Quote”).
- g) **“Territory”** shall be as defined in the Quote.
- h) **“User”** refers to a person accessing the Service on your behalf including, without limitation, any employee, sub-jurisdiction employee, or volunteer assigned by You to use the Service.
- i) **“We,” “Us,” “Our,”** or **“Geopliant”** refers to Geopliant, LLC.
- j) **“Website”** refers to the content located at www.crisistrack.com
- k) **“You,” “Your,”** or **“Customer”** means the legal entity identified above.
- l) **“Your Data”** refers to data in electronic form uploaded by You, or input or collected through the Service by or from You.
- m) **“User Guide”** refers to the content located at www.crisistrack.com/ctc2/docs/ConsoleGuide.html

2. LICENSE GRANT.

Geopliant hereby grants to the Customer a non-exclusive, non-transferable, limited license to use the Licensed Software in the Territory during the Term solely in accordance with the terms and conditions of this Agreement.

3. SCOPE OF USE

- a) **Access.** The Customer shall be permitted to access and use the Licensed Software for an unlimited number of Users. Users may remotely access and use the Licensed Software from any desktop computer. The Licensed Software may also be accessed through installation and use of Geopliant’s mobile application, which is subject to additional terms of service.
- b) **Permitted Use.** The Customer shall use the Licensed Software and Services solely for the purpose of hosting data and in order to conduct damage assessments, disaster recovery management, and Search and Rescue operations management (the “Permitted Use”), except as otherwise expressly provided in this Agreement. Geopliant may deny any individual access to the Licensed Software on written notice to the Customer if Geopliant, in its reasonable discretion, possesses credible information to substantiate that the person’s use of the Licensed Software would violate any provision of this Agreement, regardless of whether Customer designated that person as an Authorized User.

- c) **Responsibilities of Use by Customer.** Customer shall:
 - (i) be responsible for Users' compliance with this Agreement;
 - (ii) solely be responsible for the accuracy, quality and legality of Your Data and of the means by which You acquired Your Data;
 - (iii) use reasonable efforts to prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use; and
 - (iv) use the Services only in accordance with the User Guide, applicable laws, and federal and state government regulations.

4. **USE RESTRICTIONS**

The Customer shall not, and shall not permit any Users, representatives or third parties to, in any manner to:

- a) modify, alter, amend, fix, translate, enhance or otherwise create derivative works of the Licensed Software;
- b) reverse engineer, disassemble, decompile, decode or adapt the Licensed Software, or otherwise attempt to derive or gain access to the source code of the Licensed Software, in whole or in part, except as and only to the extent this restriction is prohibited by law;
- c) remove, disable, or otherwise create or implement any workaround to, any security features contained in the Licensed Software;
- d) remove, delete or alter any trademarks, copyright notices or other Intellectual Property Rights notices of Geopliant or its Licensors, if any, from the Licensed Software;
- e) copy the Licensed Software, in whole or in part;
- f) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make the Licensed Software available to any third party for any reason;
- g) use the Licensed Software in, or in association with, the design, construction, maintenance or operation of any hazardous environments or systems, including:
 - (i) power generation systems;
 - (ii) aircraft navigation or communication systems, air traffic control systems or any other transport management systems;
 - (iii) safety-critical applications, including medical or life-support systems, vehicle operation applications, and any police, fire or other safety response systems; and
 - (iv) military or aerospace applications, weapons systems or environments;
- h) use the Licensed Software in violation of any federal, state or local law, regulation or rule, including but not limited to use of the Services to store or transmit harassing, threatening, or defaming Material to any person or entity material, or to store or transmit Material in violation of a person's privacy rights;
- i) use the Licensed Software for purposes of competitive analysis of the Licensed Software, the development of a competing software product or service or any other purpose that is to Geopliant's commercial disadvantage;
- j) make the Services available to anyone other than Users;
- k) intentionally distribute a computer virus, launch a denial of service attack; or
- l) in any other way attempt to interfere with the functioning of any computer, communications system, or website.

5. **DELIVERY**

Geopliant shall make access to the Licensed Software available electronically via the Website, as a downloadable application or by other means as identified in the Quote, to the Customer within fifteen (15) business days after the Effective Date.

6. **FEES**

- a) *License Fees.* In consideration of the rights granted to the Customer under this Agreement, the Customer shall pay to Geopliant the fees set forth in the Fee Schedule attached hereto as **Exhibit A** in accordance with the terms of this Section 6, and **Exhibit A**. If the Term is renewed for any Renewal Term(s) pursuant to **Section 13**, the Customer shall pay the then-current license fees that Geopliant charges for the

Licensed Software during the applicable Renewal Term, which may be changed in Geoplant's sole discretion.

- b) *Service Fees.* In consideration of the services to be performed under this Agreement, Customer shall pay to Geoplant the fees set forth in **Exhibit A**, in accordance with the terms of this **Section 6** and **Exhibit A**. If the Term is renewed for any Renewal Term(s) pursuant to **Section 13**, the Customer shall pay the then-current Service fees that the Customer charges for the Licensed Software during the applicable Renewal Term, which may be changed in Geoplant's sole discretion.
- c) *Payment Terms.* The Customer shall pay 100% of the license fees due and owing under this Agreement within thirty (30) days after the Effective Date. All payments hereunder shall be in US dollars and made by check or wire transfer and payable to GEOPLIANT, LLC, 2831 Summerfield Rd, Falls Church, VA 22042.
- d) Geoplant shall provide Customer a new Fee Schedule for each new Term, not later than March 1st prior to the expiration of the then current Term.

7. SERVICES

Geoplant shall:

- a) provide Our reasonable support for the purchased Services to You at no additional charge,
- b) use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for:
 - (i) planned downtime (of which We shall give at least eight (8) hours' notice via the Services), or
 - (ii) any unavailability caused by any Force Majeure Event as set forth in **Section 14(d)**, and
- c) provide the Services only in accordance with applicable laws and government regulations.

8. DATA MANAGEMENT

- a) *Access, Use, & Legal Compulsion.* Unless We receive Your prior written consent, We: (i) will not access or use Project Data other than as necessary to facilitate the Services; and (ii) will not give any third party access to Project Data. Notwithstanding the foregoing, We may disclose Project Data as required by applicable law or by proper legal or governmental authority. We will give You prompt notice of any such legal or governmental demand and reasonably cooperate with You in any effort to seek a protective order or otherwise to contest such required disclosure, at Your expense.
- b) *Your Rights.* You possess and retain all right, title, and interest in and to Project Data, and Our use and possession thereof is solely as Your custodian. You may access and copy any Project Data in Our possession at any time, through the Service. We will facilitate such access and copying promptly after Your request.
- c) *Retention & Deletion.* We will retain any Project Data in our possession until Erased (as defined below) pursuant to this **Subsection 8(c)**. We will Erase: (i) any or all copies of Project Data promptly after Your written request; and (ii) all copies of Project Data no sooner than 30 business days after termination of this Agreement and no later than 180 business days after such termination. Notwithstanding the foregoing, You may at any time instruct Us to retain and not to Erase or otherwise delete Project Data, provided You may not require retention of Project Data for more than 180 business days after termination of this Agreement. Promptly after Erasure pursuant to this Subsection 8(c), We will certify such Erasure in writing to You.
- d) *Individuals' Access.* We will not allow any of our employees to access Project Data, except to the extent that an employee needs access in order to facilitate the Services and executes a written agreement with Geoplant agreeing to comply with Our obligations set forth in this Section 8.
- e) *Compliance with Law & Policy.* We will comply with all applicable federal and state laws and regulations in provision of the Services.
- f) *Leaks.* We will promptly notify You of any actual or potential exposure or misappropriation of Project Data (any "**Leak**") that comes to Our attention. We will cooperate with You and with law enforcement authorities in investigating any such Leak. We will likewise cooperate with You and with law enforcement agencies in any effort to notify injured or potentially injured parties.

9. GEOPLIANT PROPRIETARY RIGHTS

- a) *Ownership.* The Customer acknowledges and agrees that the Licensed Software is being licensed, not sold, to the Customer by Geoplant. The Customer further acknowledges and agrees that it shall not acquire any ownership interest in the Licensed Software under this Agreement, and that Geoplant reserves and shall retain its entire right, title and interest in and to the Licensed Software and all intellectual property rights arising out of or relating to the Licensed Software except as expressly granted to the Customer in this Agreement. The Customer shall promptly notify Geoplant if the Customer becomes aware of any possible third-party infringement of Geoplant's intellectual property rights arising out of or relating to the Licensed Software and fully cooperate with Geoplant in any legal action taken by Geoplant against third parties to enforce its Intellectual Property Rights. The Customer shall use reasonable efforts to safeguard the Licensed Software from infringement, misappropriation, theft, misuse or unauthorized access.
- b) *IP in General.* We retain all right, title, and interest in and to the Service, including without limitation all intellectual property used to provide the Service and all logos and trademarks reproduced through the Service, and this Agreement does not grant You any intellectual property rights in or to the Service or any of its components other than the limited license to use the Licensed Software.

10. REPRESENTATIONS AND WARRANTIES

- a) *Mutual Representations.* Each Party represents to the other Party that it:
- (i) is an entity duly organized and validly existing under the laws of its jurisdiction of organization;
 - (ii) is qualified and licensed to do business and in good standing in every jurisdiction where such qualification and licensing is required for purposes of this Agreement;
 - (iii) has all necessary power and authority to negotiate, execute, deliver and perform its obligations under this Agreement; and
 - (iv) has no pending or threatened claim or litigation known to You that would have a material adverse impact on Your ability to perform as required by this Agreement
- b) *Disclaimers.* THE LICENSED SOFTWARE IS PROVIDED "AS IS" AND GEOPLIANT EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE LICENSED SOFTWARE, MEDIA AND ANY OTHER SERVICES AND MATERIALS PROVIDED TO THE CUSTOMER UNDER THIS AGREEMENT, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, GEOPLIANT PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, THAT THE LICENSED SOFTWARE WILL MEET THE CUSTOMER'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS OR SERVICES (EXCEPT AS EXPRESSLY SET FORTH IN THE MATERIALS), OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, (I) WE HAVE NO OBLIGATION TO INDEMNIFY OR DEFEND YOU AGAINST CLAIMS RELATED TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS; AND (II) WE DO NOT WARRANT THAT THE SERVICE WILL PERFORM WITHOUT ERROR OR IMMATERIAL INTERRUPTION. YOU AGREE THAT GEOPLIANT HAS NO LIABILITY WITH RESPECT TO YOUR USE OF THE SOFTWARE OR YOUR RELIANCE THEREON AND IN NO EVENT SHALL GEOPLIANT BE LIABLE FOR INCOMPLETE OR INACCURATE DATA CONTAINED IN THE SOFTWARE. YOU FURTHER AGREE TO HOLD GEOPLIANT HARMLESS FOR INCIDENTAL OR CONSEQUENTIAL OCCURENCES RESULTING FROM YOUR IMPROPER RELIANCE ON THE DATA CONTAINED IN THE SOFTWARE.
- c) *Usage Limitations.* Services may be subject to other limitations, such as, for example, limits on disk

storage space, on the number of calls You are permitted to make against Our application programming interface. You must obtain prior authorization by Us if you use Services in public websites. You may be restricted on the number of page views by visitors to those websites.

11. RESPONSIBILITY OF THE PARTIES

Geopliant agrees that it shall be responsible for its agents' and employees' acts and omissions within the scope of their duties under this Agreement which cause injury to persons or property, subject to the limitations of this Agreement. Customer shall be responsible for its agents' and employees' acts and omissions within the scope of their duties which cause injury to persons or property. Nothing herein shall be deemed as a waiver of sovereign immunity or other defense available to the Customer or Geopliant.

12. LIMITATION OF LIABILITY

TO THE EXTENT PERMITTED BY LAW AND WITHOUT WAIVER OF SOVEREIGN IMMUNITY, IN NO EVENT: a) WILL OUR LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED ONE YEAR OF FEES ACTUALLY PAID BY YOU AND (b) WILL WE BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING ANY DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF USE, DATA, REVENUE OR PROFIT, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT GEOPLIANT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IF APPLICABLE LAW LIMITS THE APPLICATION OF THE PROVISIONS OF THIS **SECTION 12**, OUR LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMISSIBLE.

13. TERM AND TERMINATION

- a) *Term.* This Agreement shall commence on the Effective Date and, unless otherwise agreed to in the Quote and shall continue thereafter for a period of 12 months (the "**Term**"), unless terminated earlier pursuant to any of the provisions of this Agreement. Upon expiration of the Initial Term, this Agreement shall automatically renew for additional successive 12 month terms, or for such shorter period as may result from termination pursuant to an express provision hereof, unless either Party provides written notice of nonrenewal at least 30 days prior to the end of the then-current term (each a "**Renewal Term**" and together with the Initial Term, the "**Term**"). If the Term is renewed for any Renewal Term(s) pursuant to this **Section 13**, the terms and conditions of this Agreement during each such Renewal Term shall be the same as the terms in effect immediately prior to such renewal, subject to any change in the amount of license fees payable hereunder by the Customer during the applicable Renewal Term as set forth in **Section 6**. In the event either Party provides timely notice of its intent not to renew this Agreement, then, unless otherwise terminated in accordance with its terms, this Agreement shall terminate on the expiration of the then-current Term.
- b) *Termination.* This Agreement may be terminated prior to the expiration of the Term on written notice:
 - (i) by Geopliant, if the Customer fails to pay any amount when due hereunder and such failure continues for five (5) business days after the Customer's receipt of written notice of nonpayment;
 - (ii) by either party, if the other party commits a material breach of any provision of this Agreement and either the breach cannot be cured or, if the breach can be cured, it is not cured by the breaching party within fifteen (15) days after the receipt of written notice of such breach.
- c) *Effect of Termination.* The expiration or termination of this Agreement, for any reason, shall not release either Party from any liability to the other Party, including any payment obligation, that has already accrued hereunder. On the expiration or termination of this Agreement, for any reason, the Customer shall immediately discontinue use of the Licensed Software.

Customer, in its sole discretion, may also terminate this Agreement for any reason by providing no less than 30 days advance notice, and in such cases, all fees that have already paid by Customer shall not be refunded and any fees then-due to Geopliant shall be paid by Customer.

- d) *Survival*. The provisions of Sections 4, 10, 11, 12, 13, and 14(f) shall survive the expiration or earlier termination of this Agreement for any reason.

14. MISCELLANEOUS

- a) *Notices*. We may send notices pursuant to this Agreement to the Customer Representative identified in Exhibit A. All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the Quote in Exhibit A (or to such other address that may be designated by the receiving party from time to time in accordance with this section). All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.
- b) *Amendment*. No amendment to this Agreement is effective unless it is in writing and signed by an authorized representative of each party to this Agreement. Notwithstanding the foregoing, We may amend the Privacy Policy at any time by posting a new version at the Website.
- c) *No Waiver*. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any prior or subsequent breach of this Agreement.
- d) *Force Majeure*. Excepting only Customer's payment obligations under this Agreement, neither Party shall be in default hereunder by reason of any failure or delay in the performance of its obligations hereunder where such failure or delay is due to any cause beyond its reasonable control, including strikes, labor disputes, civil disturbances, riot, rebellion, invasion, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, fire, sabotage, fluctuations or non-availability of electrical power, heat, light, air conditioning or Customer equipment, loss and destruction of property or any other circumstances or causes beyond such Party's reasonable control (each, a "Force Majeure Event").
- e) *Assignment & Successors*. Neither party may assign this Agreement or any of its rights or obligations hereunder without the other's express written consent, except that either party may assign this Agreement to the surviving party in a merger of that party into another entity. Except to the extent forbidden in the previous sentence, this Agreement will be binding upon and inure to the benefit of the respective successors and permitted assigns of the parties.
- f) *Choice of Law & Jurisdiction*. This Agreement will be governed solely by the internal laws of the Commonwealth of Kentucky, without reference to such its principles of conflicts of law. The parties consent to the personal and exclusive jurisdiction of the federal and state courts having jurisdiction over Fayette County Kentucky.
- g) *Severability*. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- h) *Conflicts among Attachments*. In the event of any conflict between this Agreement and any of Our policies posted online, including without limitation the Website Terms of Use and Privacy Policy, the terms of this Agreement will govern.
- i) *Entire Agreement*. This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to the subject matter hereof. Neither party has relied upon any such prior or contemporaneous communications.
- j) *Exhibits List*. The following exhibits are hereby incorporated in this Agreement by reference and made a part hereof:
- (i) **Exhibit A: Customer's Quote**

IN WITNESS WHEREOF, the undersigned Parties have signed this Agreement as of the day and year below written.

AGREED AND ACCEPTED:
CUSTOMER:

AGREED AND ACCEPTED
GEOPLIANT, LLC:



By: _____
(Signature)

By: _____
(Signature)

By: _____
(Printed Name)

By: John Maylie
(Printed Name)

Title: _____

Title: President

Date: _____

Date: June 3, 202



Exhibit A: QUOTE

Lexington-Fayette Urban County Government
200 E Main St
LEXINGTON KY 40507
USA

Date
Jun 3, 2020

Expiry
Jul 3, 2020

Quote Number
QU-161280

Tax ID
461732464

Geopliant, LLC
2831 Summerfield Rd
FALLS CHURCH VA 22042
UNITED STATES

Item	Description	Quantity	Unit Price	Tax	Amount USD
CTDA14	Crisis Track Damage Assessment provides software functionality to conduct damage assessments on infrastructure using the Customer's GIS or tax data. Crisis Track is a subscription service that provides the Customer with an unlimited number of users to collect and view disaster management data within the Territory's boundary. The subscription includes technical support via email Monday through Friday 8:00am – 5:00pm.	1.00	5,040.00	Tax Exempt	5,040.00
CTRAIN02	Crisis Track System Setup and Onsite Training will initialize the Crisis Track system and provide up to six hours of training. Initializing the Crisis Track System includes one upload of your jurisdictions GIS and/or tax data, employee lists, and equipment lists. The Onsite Training will consist of three two-hour training sessions at your facilities: one for Road/Debris Assessments, one for Building Assessments, and one for administrators on setting up the Crisis Track system.	1.00	3,200.00	Tax Exempt	3,200.00
Discount	Discount	1.00	(2,040.00)		(2,040.00)
				Subtotal	6,200.00
				TOTAL USD	6,200.00

Terms

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Territory is Fayette County KY

Term is 07/01/2020 - 6/30/2021