

Agreement for provision of the Qi software and website design

Parties in this agreement

Keepthinking Ltd of 38-40 Southwark Street, United Kingdom (hereby identified as “Keepthinking” or “Provider”)

Texas General Land Office of 1700 Congress Ave, Austin, TX 78701, USA (hereby identified as “The Client” or “Customer”)

Date and revision of this agreement

27 August 2021, Revision A

1. Definitions

- 1.1. In this Agreement the following terms shall have the following meanings (unless the context otherwise requires):
- 1.1.1. **Services** means the services to be carried out by Keepthinking for The Client, in accordance with Schedule 1 of this agreement;
 - 1.1.2. **Deliverables** means the deliverables to be provided by Keepthinking as part of the Services, as set out in Schedule 1 of this agreement;
 - 1.1.3. **Proposal** means Keepthinking's sales proposal dated July 26, 2021, submitted in response to the Solicitation (as defined below) and incorporated herein by reference for all purposes, upon which this agreement is based;
 - 1.1.4. **Fees** means the sum to be paid by The Client to Keepthinking in consideration of the The Services and for The Deliverables specified in Schedule 1, exclusive of VAT, payable in accordance with Clause 4 and 5 below;
 - 1.1.5. **Timetable** means the time scale for performance of the Services as set out in in Schedule 2 of this agreement;
 - 1.1.6. **Qi**, "Content Management System" or "CMS" means the Qi, the Keepthinking Content Management System;
 - 1.1.7. **Content** means the work and material to be provided to Keepthinking by The Client for incorporation into the CMS;
 - 1.1.8. **Confidential Information** means any information provided by either Party (whether before, on or after the date of this Agreement, and whether provided in writing, orally, or otherwise) to the other Party and which is marked as "confidential", stated to be confidential, or reasonably understood in the circumstances of disclosure to be confidential;
 - 1.1.9. **Effective Date** means the date this document is signed by the Client;
 - 1.1.10. **GLO Terms** means the Texas General Land Office Terms and Conditions for Vendor-Supplied Contracts attached hereto and incorporated herein for all purposes;
 - 1.1.11. **Solicitation** means Texas General Land Office Request for Offers No. X0024067-SB, which is incorporated herein by reference for all purposes.
 - 1.1.12. **Travel Regulations** means all applicable statutes, regulations, laws, and Comptroller guidance related to reimbursement for travel expenses, including: Title 34, Section 5.22, of the Texas Administrative Code; Chapter 660 of the Texas Government Code; the applicable General Appropriations Act enacted by the Texas Legislature; and Textravel, the Texas Comptroller of Public Accounts' travel regulation guidance available on the its website.

2. Obligations of Keepthinking

- 2.1. Keepthinking will:
- 2.1.1. Provide the Services to The Client in accordance with the terms of this Agreement, the GLO Terms, the Solicitation, and Proposal and in an expert and diligent manner;
 - 2.1.2. Deliver the Services in accordance with the Timetable or as otherwise agreed in writing with The Client (subject to the timely provision by The Client of the Content);
 - 2.1.3. Comply with all reasonable requests of The Client relating to the provision of the Services;
 - 2.1.4. Comply with all applicable laws and regulations relating to the provision of the Services.
 - 2.1.5. Keep detailed records of the work done in relation to the provision of the Services and at the Client's request shall make them available for inspection and/or provide copies.

3. Obligations of The Client

- 3.1. The Client will:
- 3.1.1. Provide such co-operation to Keepthinking as Keepthinking may reasonably require in order to provide the Services; and
 - 3.1.2. Use all reasonable endeavours to provide Keepthinking the Content in accordance with the Timetable.

4. Fees

- 4.1. In consideration of The Services, The Client will pay Keepthinking the Fees of **USD 145,640** plus VAT (if applicable). The Fees include:
- 4.1.1. Project initiation: USD 6,750 (Deliverable 1);
 - 4.1.2. Collections management system (CMS): USD 47,250 (Deliverable 2);
 - 4.1.3. Website design and development: USD 72,900 (Deliverable 3);
 - 4.1.4. Expenses: USD 18,740, based on actual receipts;
- 4.2. Variations in scope from Schedule 1 may incur a change in the Fees; such change must be agreed in writing and will require an amendment of this agreement duly executed by the authorized representatives of the parties.
- 4.3. The cost for hosting, support and maintenance is excluded and is part of a separate contract.

- 4.4. The Client will not reimburse Keepthinking for travel expenses of any kind without prior written Client approval. The Client will only reimburse travel expenses directly attributable to Keepthinking's performance of this Contract at the rates established or adopted by the Comptroller of the State of Texas, as outlined in the Travel Regulations. Subject to the maximum Contract amount authorized herein and upon specific, prior, written approval by the Client, lodging, travel, and other incidental direct expenses may be reimbursed under this Contract for professional or technical personnel who are working away from the cities in which they are permanently assigned and performing services specifically authorized in this Agreement. The limits for reimbursements are the rates established or adopted by the Texas Comptroller of Public Accounts, as outlined in the Travel Regulations. Keepthinking understands and acknowledges that any travel-expense reimbursement by the Client is not a per diem. The Client will only reimburse actual, allowable expenses in accordance with the Travel Regulations. Keepthinking must submit itemized receipts to support any request for travel-expense reimbursement.

5. Payment terms

- 5.1. In consideration of the Services in Schedule 1, The Client shall pay the Fees to Keepthinking following completion and acceptance of each item, according to the following schedule:

Item	Total amount
1 – Business Requirements	\$6,750.00
2 – Solution Configuration and Customization	\$97,470.00
3 – Data Migration and Validation	\$17,280.00
4 – User Acceptance Testing	Included
5 – Training Delivery	\$5,400.00
6 – Custom User Guide	Included
7 – Technical Documentation	Included
8 – Completed Solution Production Rollout	Included
9 – 90 Days Post-Implementation Support	Included
Expenses	Not to exceed \$18,740.00
Total Implementation Cost:	Not to exceed \$145,640.00

- 5.2. Documented expenses will be added to the relevant invoices.
- 5.3. All invoices are payable in accordance with Texas Government Code Chapter 2251.

6. Warranties

- 6.1. Each party warrants that it has the right and authority to enter into this Agreement.
- 6.2. The Client warrants that it owns or is licensed to use all intellectual property rights in any Content and that such Content does not and shall not infringe any third party's intellectual property rights.

- 6.3. Keepthinking warrants that all of the Deliverables:
- 6.3.1. Shall not contain any work or material which is owned by any third party;
 - 6.3.2. Shall not infringe any third party's intellectual property rights;
 - 6.3.3. Shall be free of computer viruses and other harmful or disruptive components
 - 6.3.4. Shall be reasonably free of defects, errors or bugs likely to have an adverse effect on the appearance, functionality or operation of The Deliverables;
- 6.4. Keepthinking further warrants that the The Deliverables:
- 6.4.1. Shall enable The Client easily to comply with all legal requirements relating to accessibility to disabled users;
 - 6.4.2. Shall enable The Client easily to comply with all legal requirements relating to data protection;
 - 6.4.3. Shall (unless otherwise agreed with The Client) conform to the Proposal;
- 6.5. Keepthinking will grant The Client a 60-day warranty following the final delivery of the Services.
- 6.6. Keepthinking shall perform all services hereunder in accordance with this Agreement, the GLO Terms, the Solicitation, and the Proposal.

7. Intellectual property and ownership

- 7.1. Upon full and complete payment of the Fees, the Client shall own all copyright and other intellectual property rights in the underlying Qi database and of the public website.
- 7.1.1. Until full payment of the Fees have been made by the Client and received by Keepthinking, Keepthinking will retain ownership, copyright, and intellectual property rights in intellectual property created by Keepthinking and incorporated into the database and the public website. Notwithstanding the foregoing Client shall, at all times and regardless of its payment or non-payment of the Fees, retain ownership of the Content and all other data, records, and information created or acquired by Client.
- 7.2. The ownership and copyright of the code of the Qi CMS will belong to Keepthinking.
- 7.2.1. Upon full payment of the Fees, Keepthinking will grant The Client an unlimited, non-exclusive and perpetual licence for use of the Qi CMS.
 - 7.2.2. The license will allow The Client to use Qi for the purpose of the project that is the object of the current agreement. The Client cannot use Qi for any other project other than what specified in this agreement.
 - 7.2.3. The Client may not distribute (freely or for a fee), nor resell Qi, without the written consent of Keepthinking.

7.2.4. The Client may change and modify the Qi, with the understanding that any modification will invalidate the warranty and/or the maintenance contract.

8. Confidentiality

- 8.1. Except as required to comply with a court order or applicable law or regulations, including without limitation, Texas Government Code Chapter 552, each Party agrees to use the other Party's Confidential Information solely for the purposes of this Agreement and not, at any time during the term of this Agreement or at any time thereafter, to disclose the same whether directly or indirectly, to any third party without the disclosing Party's prior written consent.
- 8.2. This restriction will not apply to Confidential Information which was public knowledge or already known to the receiving Party at the time of disclosure, or which subsequently becomes public knowledge other than by a breach of a duty owed to the disclosing Party, or which subsequently comes lawfully into the possession of the receiving Party from a third Party, or which the receiving Party is required to disclose by law.
- 8.3. All notes, memorandum, records, lists of Clients, suppliers, sponsors and employees, correspondence, documents, computer and other discs and tapes, data listings, codes, designs and drawings and other documents and material whatsoever (whether made or created by Keepthinking otherwise) relating to the business of the Client (and any copies of the same):
 - 8.3.1. Shall be and remain the property of the Client; and
 - 8.3.2. Shall be handed over by Keepthinking to the Client on demand and in any event on the termination of this Agreement.
- 8.4. Keepthinking shall return to the Client on demand or on or before the date of termination in good repair and condition all other property belonging to the Client including Confidential Information in Keepthinking's possession or control.
- 8.5. The provisions of this Clause shall survive termination of this Agreement.

9. Terms and termination

- 9.1. This Agreement is effective beginning on the Effective Date and shall, subject to earlier termination in accordance with this Clause or the GLO Terms, continue in force until the earlier of the satisfactory completion of the Services, in Client's sole determination, or August 31, 2026. Client and Keepthinking may extend this Agreement for up to five additional years, upon mutual written agreement.
- 9.2. Either Party may, by notice in writing to the other, terminate this Agreement immediately if the other Party:
 - 9.2.1. Is in material breach of any term of this Agreement and fails to remedy such breach (if capable of remedy) within thirty (30) days of having received written notice of

such breach from the complaining Party (but a breach is not capable of remedy if time is stated to be of the essence in respect of the obligation in question); or

- 9.2.2. Shall present a petition or have a petition presented by a creditor for its winding up, or convene a meeting to pass a resolution for voluntary winding up, or shall enter into any liquidation (other than for the purposes of a bona fide reconstruction or amalgamation), or shall call a meeting of its creditors, or shall have a receiver of all or any of its undertakings or assets appointed, or shall be deemed by the relevant statutory provisions under the applicable laws to be unable to pay its debts, or ceases (or threatens to cease) trading, or takes or suffers any similar or analogous action in consequence of debt.
- 9.3.
- 9.3.1. If the Agreement is terminated by The Client prior to completion of the Web Site, The Client shall pay Keepthinking for work completed and accepted by Client up to the notification of such termination.
- 9.3.2. Conversely if this Agreement is terminated by Keepthinking, Keepthinking will refund all the moneys received in excess of the work already completed.
- 9.3.3. In either case, should either party terminate the agreement, all work paid for will be delivered to The Client.
- 9.4. Termination of this Agreement however caused shall be without prejudice to any rights, duties or liabilities accrued at the date of termination. The provisions in this Agreement which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.
- 9.5. This Agreement may be terminated in accordance with the GLO Terms.

10. Exclusions

- 10.1. The price excludes: third party software licenses; anything not specifically included in Schedule 1. Variations in cost and expenses must be approved by The Client in advance, in writing.

11. Independent contractor

- 11.1. The Client shall engage Keepthinking and Keepthinking shall provide services for the Client as a self-employed Contractor.
- 11.2. Nothing in this Agreement shall render Keepthinking an employee of the Client. Keepthinking hereby agrees that Keepthinking will not hold itself or any of its staff out as an employee. This Agreement shall not be construed as authority for Keepthinking to act as the Client's agent or representative in any similar capacity, or to make commitments of any kind for the account of or on behalf of the Client, and Keepthinking shall not take any action suggesting otherwise.

- 11.3. This is not an employment offer and does not confer any employment rights on Keepthinking. By accepting the terms above, Keepthinking confirms that it understands that Keepthinking will not be able to bring any claims for certain legal rights conferred on employees including, but not limited to, unfair dismissal.
- 11.4. Keepthinking hereby acknowledges that it has responsibility for complying with all statutory and legal requirements regarding Keepthinking's status as a self-employed Contractor.

12. Additional services

- 12.1. The terms and conditions set forth in this document, the GLO Terms, the Solicitation, and the Proposal constitute the sole agreement between Keepthinking and The Client regarding the Services. Any additional work not specified in this Agreement must be discussed before it commences and authorised in writing.
- 12.2. During the course of this project, for any additional work to be agreed in writing (including email), Keepthinking will apply following rates:
- 12.2.1. USD 1,500/day + VAT for services by a director
- 12.2.2. USD 1,080/day + VAT for services by any other member of staff.
- 12.3. The rates will be applied as follows:
- 12.3.1. For clearly specifiable work, Keepthinking will provide the Client with a fixed price quotation, based on the above rates
- 12.3.2. For work that needs R&D or is not clearly definable, the rates will be applied on the time effectively spent (measured using the Keepthinking's timesheet system)
- 12.4. The rates exclude expenses.
- 12.5. The rates are valid until 31/12/2022.

13. Hosting, support and maintenance services

- 13.1. Hosting, support and maintenance services following the warranty period will form part of a separate agreement.

14. General

- 14.1. Any notice to be given under this Agreement shall be in writing and shall be delivered by hand or sent by first class post, or sent via email to the other Party at its registered office or such other address as may at the relevant time have been notified pursuant to this provision to the Party giving notice.

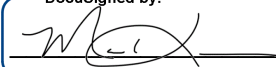
- 14.2. This Agreement, including the Schedule, the GLO Terms, the Solicitation, and the Proposal, contains the entire agreement of the Parties with regard to its subject matter and supersedes and replaces any and all prior discussions, correspondence, proposals or agreements between them with respect thereto. All amendments and modifications to this Agreement shall be in writing and signed by the Parties hereto.
- 14.3. Keepthinking shall not without the prior written consent of The Client assign, transfer, charge or deal in any other manner with this Agreement or its rights under it or part of it, or purport to do any of the same.
- 14.4. No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of any breach of the Agreement by the other shall be considered a waiver of any subsequent breach of the same or any other provision.
- 14.5. The Parties do not intend any term of this Agreement to be enforceable by anyone who is not a party to it.
- 14.6. This Agreement shall be governed by and construed in accordance with the law of the State of Texas, without regard to the conflict of law provisions. The venue of any suit arising under the contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the Client.
- 14.7. Keepthinking agrees to and shall comply with Appendix F to the Solicitation, titled "GLO Information Security."
- 14.8. If the provisions of this Agreement, the GLO Terms, the Solicitation, or the Proposal conflict, such conflict shall be resolved by giving precedence to these documents in the following order: first the GLO Terms, then the Solicitation, then the Proposal, then this Agreement.

15. Liability

- 15.1. This contract will be subject to the agreement of the Fees.
- 15.2. Except with regard to Keepthinking's obligations to indemnify, defend, or hold harmless the Client, the mutual liability in respect of this Agreement is limited to the amount of the Project Fees, as defined in Clause 4 of this agreement.

In witness whereof, the Parties have executed this Agreement on the dates set forth below:

For and on behalf of The Client

DocuSigned by:

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Signature

Name: Mark A. Havens

Title: Chief Clerk / Deputy Land Commissioner

Date: 8/31/2021

OGC 

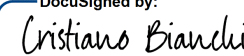
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For and on behalf of Keepthinking Ltd

DocuSigned by:

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Name: Cristiano Bianchi

Title: Managing Director

Date: 8/31/2021

Schedule 1 - The Services

1. Implementation of a the Qi collections management system, including:
 - 1.1. Management of collection records, including museum objects, archival records and library records
 - 1.2. Management of related digital assets, including images, documents and multimedia
 - 1.3. Management of the following procedures and workflows:
 - 1.3.1. Object entry
 - 1.3.2. Acquisitions
 - 1.3.3. Deaccessioning
 - 1.3.4. Cataloguing
 - 1.3.5. Condition checking
 - 1.3.6. Conservation planning and management
 - 1.3.7. Transports, locations and movement control
 - 1.3.8. Loans in and loans out
 - 1.3.9. Exhibitions
 - 1.4. Management of lists and authorities
 - 1.4.1. People and organisations
 - 1.4.2. Thesauri (Events, Places, Terms, Subjects, Object names, etc)
 - 1.4.3. Link to external authorities - with a choice to be discussed
2. Data conversion from **MS SQL and MS Access** into Qi
3. Design and development of an online collections public portal, including
 - 3.1. Faceted and specific search
 - 3.2. Show search results as lists and as images
 - 3.3. Each record to have a unique, persistent URL
 - 3.4. e-commerce functionality to allow visitors to purchase digital as well as printed maps

Schedule 2 - Deliverables

1. Overall (Deliverable 1)
 - 1.1. Project initiation document with team, responsibilities and project planning
2. Collections management system (Deliverable 2)
 - 2.1. Functional and Technical Specifications
 - 2.2. One instance of Qi installed on our or your servers
 - 2.3. Data and digital assets migrated onto Qi
 - 2.4. Documentation and training
3. Website (Deliverable 3)
 - 3.1. Information architecture
 - 3.2. Wireframe design
 - 3.3. Template design
 - 3.4. Fully developed website, integrated with Qi
 - 3.5. Documentation and training

The Texas General Land Office (“the GLO”) and Keepthinking Ltd. (“Provider”) agree the terms and conditions herein are incorporated into the contract supplied by Provider (assigned GLO Contract No. 21-191-000-C945) (“Contract”) for all purposes. Provider certifies the statements and affirmations herein are true and correct. If any term, condition, statement, or affirmation herein conflicts with any part of the Contract, the term, condition, statement, or affirmation herein shall control.

1. **Abandonment or Default.** If Provider defaults on the Contract, the GLO may cancel the Contract without notice and either re-solicit or re-award the Contract to the next best responsive and responsible provider. The defaulting Provider will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by the GLO based on the seriousness of the default.
2. **Prohibited Benefits to Public Servants.** Pursuant to Section 2155.003 of the Texas Government Code, Provider represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract.
3. **Texas Resident Bidder.** Provider certifies that if its business address shown on the Contract is a Texas address, that address is the legal business address of Provider and Provider qualifies as a Texas Resident Bidder under Texas Administrative Code, Title 34, Part 1, Chapter 20.
4. **Prohibited Financial Participation.** Pursuant to Section 2155.004(a) of the Texas Government Code, Provider certifies that neither Provider nor any person or entity represented by Provider has received compensation from the GLO to participate in the preparation of the specifications or solicitation on which this Contract is based. Under Section 2155.004(b) of the Texas Government Code, Provider certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate. This Section does not prohibit Provider or a contract participant from providing free technical assistance.
5. **Delinquent Child Support.** Under Section 231.006 of the Family Code, the vendor or applicant [Provider] certifies that the individual or business entity named in this Contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
6. **Owner Information.** A bid or an application for a contract, grant, or loan paid from state funds must include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application. Provider certifies it has submitted this information to the GLO.
7. **Executive Head of State Agency.** In accordance with Section 669.003 of the Texas Government Code relating to contracting with the executive head of a state agency, Provider certifies that it (1) is not the executive head of the GLO; (2) was not, at any time during the four years before the effective date of the Contract, the executive head of the GLO; and (3) does not employ a current or former executive head of the GLO.
8. **Debt Owed to the State of Texas.** Provider agrees that any payments due under the Contract shall be directly applied towards eliminating any debt or delinquency it has to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.
9. **Excluded Parties.** Provider certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, “Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism”, published by the United States Department of the Treasury, Office of Foreign Assets Control.
10. **Suspension and Debarment.** Provider certifies that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in the Contract by any state or federal agency.
11. **Convictions or Penalties in Connection with Hurricanes Rita and Katrina.** Sections 2155.006 and 2261.053 of the Texas Government Code, prohibit state agencies from accepting a Response or awarding a contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Government Code, Provider certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
12. **State’s Right to Audit Provider.** The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. Acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Provider shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Provider and the requirement to

cooperate is included in any subcontract it awards. The Contract may be amended unilaterally by the GLO to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code.

13. **Antitrust.** Provider represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Provider nor the firm, corporation, partnership, or institution represented by Provider, nor anyone acting for such a firm, corporation, partnership, or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Contract or any solicitation response upon which this Contract is based to any competitor or any other person engaged in the same line of business as Provider.
14. **Applicable Law; Venue; Sovereign Immunity.** This Contract shall be governed by and construed in accordance with the laws of the State of Texas. Except as provided by applicable statute, Venue for any suit arising under this Contract is fixed in any court of competent jurisdiction of Travis County, Texas. Neither the Contract, nor any conduct of any GLO representative, shall be construed to waive sovereign immunity on behalf of the GLO or the State of Texas.
15. **Preference for Texas Products and Materials.** In accordance with Section 2155.4441 of the Texas Government Code, Provider agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside Texas.
16. **Public Information.** The GLO shall post this Contract to the GLO's website. Provider understands that the GLO will comply with the Texas Public Information Act (Texas Government Code Chapter 552, the "PIA"), as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas (the "Attorney General"). Information, documentation, and other material in connection with this Contract may be subject to public disclosure pursuant to the PIA. In accordance with Section 2252.907 of the Texas Government Code, Provider is required to make any information created or exchanged with the GLO or the State of Texas pursuant to the Contract, and not otherwise excepted from disclosure under the PIA, available to the GLO in portable document file (".pdf") format or any other format agreed upon between the Parties that is accessible by the public at no additional charge to the GLO or the State of Texas. By failing to mark any information that Provider believes to be excepted from disclosure as "confidential" or a "trade secret," Provider waives any and all claims it may make against the GLO for releasing such information without prior notice to Provider. The Attorney General will ultimately determine whether any information may be withheld from release under the PIA. Provider shall notify the GLO's Office of General Counsel within twenty-four (24) hours of receipt of any third-party written requests for information and forward a copy of

said written requests to PIALegal@glo.texas.gov. If a request for information was not written, Provider shall forward the third party's contact information to the above-designated e-mail address.

17. **Dispute Resolution.** Except as otherwise provided by statute, rule, or regulation, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by Provider to attempt to resolve any dispute arising under the Contract. NOTHING IN THIS SECTION SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE GLO.
18. **Force Majeure.** Neither Provider nor the GLO shall be liable to the other for any delay in, or failure of performance, of any requirement included in the Contract caused by force majeure. Such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed, provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failures of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.
19. **Funding Out Clause.** This Contract is contingent upon the continued availability of lawful appropriations by the Texas Legislature. Provider understands that all obligations of the GLO under the Contract are subject to the availability of state funds. If such funds are not appropriated or become unavailable, the GLO may terminate the Contract. The Contract shall not be construed as creating a debt on behalf of the GLO in violation of Article III, Section 49a of the Texas Constitution.
20. **Taxes, Workers Compensation, Unemployment Insurance – Including Indemnity.** (a) Provider shall be solely liable and responsible for payment of Provider's and Provider's employees' taxes of whatever kind, arising out of the execution or performance of the Contract. Provider shall comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and workers' compensation. The GLO and the State of Texas shall not be liable to Provider or its officers, agents, employees, representatives, contractors, assignees, designees, or others for the payment of taxes, or the provision of unemployment insurance, workers' compensation, or any benefit available to a state employee or employee of another governmental entity.
 (b) Provider shall indemnify, defend, and hold harmless the State of Texas, the GLO, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from and against any and all liability, actions, claims, demands, damages, proceedings, or suits, and all related costs, attorney fees, and expenses arising out of, connected with, or resulting from tax liability, unemployment insurance, or

workers' compensation in the execution or performance of the Contract and any Purchase Orders issued under the Contract. Provider and the GLO shall furnish timely written notice to each other of any such claim. Provider shall be liable to pay all costs of defense including attorneys' fees. Provider shall coordinate its defense with the Office of the Attorney General when Texas state agencies are named defendants in any lawsuit and Provider may not agree to any settlement without first obtaining the written consent of the Office of the Attorney General.

(c) The GLO is exempt from federal, state, and local taxes. Provider shall not charge any taxes to the GLO.

21. Indemnity – Acts/Omissions. Provider shall indemnify, defend, and hold harmless the State of Texas, the GLO, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from and against any and all liability, actions, claims, demands, damages, proceedings, or suits, and all related costs, attorney fees, and expenses arising out of, connected with, or resulting from any acts or omissions of Provider or its officers, agents, employees, representatives, suppliers, contractors, subcontractors, assignees, designees, order fulfillers, or suppliers of contractors or subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. Provider and the GLO shall furnish timely written notice to each other of any such claim. Provider shall be liable to pay all costs of defense including attorneys' fees. Provider shall coordinate its defense with the Office of the Attorney General when Texas state agencies are named defendants in any lawsuit and Provider may not agree to any settlement without first obtaining the written consent of the Office of the Attorney General.

22. Infringement Including Indemnity. a) Provider shall indemnify, defend, and hold harmless the State of Texas, the GLO, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from and against any and all liability, actions, claims, demands, damages, proceedings, or suits, and all related costs, attorney fees, and expenses arising out of, connected with, or resulting from infringement of any United States patent, copyright, trade or service mark, or any other intellectual or intangible property right that occurs in the execution or performance of the Contract and any Purchase Orders issued under the Contract. Provider and the GLO shall furnish timely written notice to each other of any such claim. Provider shall be liable to pay all costs of defense including attorneys' fees. Provider shall coordinate its defense with the Office of the Attorney General when Texas state agencies are named defendants in any lawsuit and Provider may not agree to any settlement without first obtaining the written consent of the Office of the Attorney General.

b) Provider shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Provider's written approval, (iii) any modifications made to the product by the Provider pursuant

to Customer's specific instructions, or (iv) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

c) If Provider becomes aware of an actual or potential claim, or the GLO provides Provider with notice of an actual or potential claim, Provider may (or in the case of an injunction against the GLO, shall), at Provider's sole option and expense; (i) procure for the GLO the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with a functionally equivalent or superior product or service so that the GLO's use is non-infringing.

23. Independent Contractor; Assignment. Provider and its employees, representatives, agents, and subcontractors shall serve as an independent contractor in the performance of the Contract. Provider and its employees, representatives, agents, and subcontractors shall not be employees of the GLO by virtue of the Contract. Should Provider subcontract any of the services required under the Contract, Provider agrees the GLO is not liable to any subcontractor(s) of Provider and that Provider is not relieved of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with the Contract. Provider shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from the GLO. Any attempted assignment in violation of this provision is void and without effect. The Contract binds Provider's heirs, assigns, and other successors in interest.

24. Records Retention. Provider shall maintain all records that may demonstrate payments under the Contract were expended in accordance with the laws and regulations of the State of Texas. Each Party shall retain in its records this Contract and all documents related to this Contract. Unless a longer retention period is specified by applicable federal law or regulation, the Parties may destroy the Contract and related documents only after the seventh anniversary of the date: the Contract is completed or expires; or all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the Contract or related documents are resolved. Provider shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the Contract. Provider and any subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Provider must retain all work and other supporting documents pertaining to the Contract, for purposes of inspections, monitoring, audits, or evaluations by the GLO and any authorized agency of the State of Texas.

25. Payment. Before authorizing payment to Provider, the GLO shall evaluate Provider's performance using the performance standards set forth in the Contract or in GLO Request for Offers No. X0023821-KM. Provider shall submit invoices to the GLO for delivered goods or completed services not later than the 15th day of the month after delivery or completion. The GLO shall make no payments without Provider's prior

submission of detailed, correct invoices. The GLO shall make payments in accordance with Texas Government Code Chapter 2251. Payments under this Contract are subject to the availability of appropriated funds. Provider acknowledges and agrees that payments for services provided under this Contract are contingent upon the GLO's receipt of funds appropriated by the Texas Legislature. **ALL Provider invoices shall: 1) be submitted via email to VendorInvoices@GLO.TEXAS.GOV; 2) be supported by documentation that, in the judgment of the GLO, allows for full substantiation of the costs incurred; and 3) prominently display "GLO Contract No. 21-191-000-C945."** If Provider does not submit invoices in strict accordance with the instructions in this section, payment of invoices may be significantly delayed. Provider agrees that the GLO shall not pay interest, fees, or other penalties for late payments resulting from Provider's failure to submit invoices in strict accordance with the instructions in this section.

26. Severability. If a court of competent jurisdiction determines any term or condition herein or any provision of the Contract is invalid, void, or unenforceable, the remaining terms, provisions, covenants, and conditions shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

27. Termination. The GLO may, in its sole discretion, terminate the Contract upon thirty (30) days' written notice to Provider by email, facsimile, or certified mail return receipt requested and is effective upon Provider's receipt. In the event of such termination, Provider shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. The GLO shall only be liable for payments for any goods or services delivered by Provider before the termination date. If Provider fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any terms or conditions of the Contract, the GLO may, upon written notice of default to Provider, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies as provided in equity, by law or under the Contract. The GLO may exercise any other right, remedy, or privilege which may be available to it under applicable law or may proceed by appropriate court action to enforce the provisions of the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless the GLO notifies Provider in writing prior to the exercise of such remedy. Provider shall be liable for all costs and expenses, including court costs, incurred by the GLO with respect to the enforcement of any of the remedies listed herein. In the event that the Contract is terminated for any reason, or upon its expiration, the GLO shall retain ownership of all associated work product and documentation obtained from Provider under the Contract.

28. Fraud. The GLO does not tolerate any type of fraud. GLO policy promotes consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Any violations of law, agency policies, or

standards of ethical conduct will be investigated, and appropriate actions will be taken. Provider shall report any possible fraud, waste, or abuse that occurs in connection with the Contract to GLO as directed by the GLO's website, <http://glo.texas.gov>.

29. Assignment of Claims. Provider hereby assigns to the GLO any and all claims for overcharges associated with this Contract arising under the laws of the United States or the State of Texas.

30. Israel Boycott. Provider represents and warrants that (1) it does not, and shall not for the duration of the Contract, boycott Israel or (2) the verification required by Section 2271.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Provider shall promptly notify the GLO.

31. Prohibited Business Engagements. Provider represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

32. Computer Equipment Recycling. If the Contract is for the purchase or lease of computer equipment, then Provider certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.

33. Continuity and Disaster Recovery Plans. Upon request of the GLO, Provider shall provide copies of its most recent business continuity and disaster recovery plans.

34. False Statements or Material Misrepresentations. Provider represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a false statement or making a material misrepresentation during the performance of a contract is a material breach of contract and may void the Contract or constitute grounds for its termination.

35. Conflicts of Interest. Provider has disclosed in writing to the GLO all existing or potential conflicts of interest related to the performance of the Contract.

36. Signature Authority. The person signing the Contract on behalf of Provider certifies they are 1) duly authorized to execute the Contract on their own behalf or on behalf of Provider and 2) legally empowered to contractually bind Provider to the Contract and related documents.

37. Television Equipment Recycling. If the Contract is for the purchase or lease of covered television equipment, Provider certifies its compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code, related to the Television Equipment Recycling Program.

38. Survival of Terms and Conditions. The terms and conditions herein and in the Contract shall survive the termination or expiration of the Contract.

39. Contracting Information. Provider represents and warrants that it will comply with the requirements of Section 552.372(a)

of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552 of the Government Code, may apply to the Contract and the Provider agrees that the Contract can be terminated if the Provider knowingly or intentionally fails to comply with a requirement of that subchapter..

venue controlled by Provider for the event. Failure to comply with this obligation constitutes a default of this Contract, and immediately subjects Provider to the penalties for default, such as repayment of money received or ineligibility for additional money. In addition, Provider may be debarred from contracting with the State. The GLO or the Attorney General may strictly enforce this provision.

40. **Cybersecurity Training.** If Provider, in its performance of the Contract, has access to a state computer system or database, Provider must complete a cybersecurity training program certified under Texas Government Code Section 2054.519, as selected by the GLO. Provider must complete the cybersecurity training program during the initial term of the Contract and during any renewal period. Provider must verify in writing to the GLO its completion of the cybersecurity training program.
41. **Human Trafficking Prohibition.** Under Section 2155.0061, Texas Government Code, Provider certifies that the entity named in this Contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
42. Provider certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Provider's business. Provider acknowledges that such a vaccine or recovery requirement would make Provider ineligible for a state-funded contract.
43. Pursuant to Government Code Section 2274.0102, Provider certifies that neither it nor its parent company, nor any affiliate of Provider or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code Section 2274.0103, or (2) headquartered in any of those countries.
44. If Provider is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Provider verifies that Provider does not boycott energy companies and will not boycott energy companies during the term of the Contract. If Provider does not make that verification, Provider must notify the GLO and state why the verification is not required.
45. If Provider is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Provider verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a "firearm entity" or "firearm trade association" as those terms are defined in Texas Government Code section 2274.001 and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. If Provider does not make that verification, Provider must notify the GLO and state why the verification is not required.
46. If Provider is a "professional sports team" as defined by Texas Occupations Code Section 2004.002, Provider will play the United States national anthem at the beginning of each team sporting event held at the Provider's home venue or other

Software as a Service Agreement - with Support

Parties in this agreement

Keepthinking Ltd of 38-40 Southwark Street, London SE1 1UN, United Kingdom (hereby identified as “Keepthinking” or “Provider”)

Texas General Land Office of 1700 Congress Ave, Austin, TX 78701, USA (hereby identified as “The Client” or “Customer”)

Date and revision of this agreement

28 August 2021, Revision A

1. Definitions

1.1. In this Agreement the following terms shall have the following meanings (unless the context otherwise requires):

- 1.1.1. **Account** means an account enabling a person to access and use the Hosted Services, including both administrator accounts and user accounts;
- 1.1.2. **Agreement** means this agreement including any Schedules, and any amendments to this Agreement from time to time;
- 1.1.3. **Business Day** means any weekday other than a bank or public holiday in England and between the 25th December and the 2nd January;
- 1.1.4. **Business Hours** means the hours of 08:00 to 17:00 Central Standard Time/Central Daylight Time on a Business Day;
- 1.1.5. **Charges** means the monies payable by The Client in consideration of the Services;
- 1.1.6. **Customer Confidential Information** means any information disclosed by or on behalf of The Client to Keepthinking at any time before the termination of this Agreement, whether disclosed in writing, orally or otherwise, that at the time of disclosure was marked or described as confidential, should have been reasonably understood by Keepthinking to be confidential;
- 1.1.7. **Customer Data** means all data uploaded to or stored on the Platform by The Client; transmitted by the Platform at the instigation of The Client; supplied by The Client to Keepthinking for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by The Client (but excluding analytics data relating to the use of the Platform and server log files);
- 1.1.8. **Customer Personal Data** means any Personal Data that is processed by Keepthinking on behalf of The Client in relation to this Agreement;
- 1.1.9. **Data Protection Laws** means all applicable laws relating to the processing of Personal Data which may include, while it is in force and to the extent applicable to Customer Personal Data, the General Data Protection Regulation (Regulation (EU) 2016/679);
- 1.1.10. **Documentation** means the documentation for the Hosted Services produced by Keepthinking and delivered or made available by Keepthinking to The Client;
- 1.1.11. **Effective date** means the date this document is signed by the Client;
- 1.1.12. **GLO Terms** means the Texas General Land Office Terms and Conditions for Vendor-Supplied Contracts attached hereto and incorporated herein for all purposes;
- 1.1.13. **Hosted Services** means Qi and/or the website, as specified in Schedule 1, which will be made available by Keepthinking to The Client as a service via the Internet in accordance with this Agreement;

- 1.1.14. **Hosted Services Defect** means a defect, error or bug in the Platform having an adverse effect on the appearance, operation, functionality or performance of the Hosted Services, but excluding any defect, error or bug caused by or arising as a result of:
- (a) any act or omission of The Client or any person authorised by The Client to use the Platform or Hosted Services;
 - (b) any use of the Platform or Hosted Services contrary to the Documentation, whether by The Client or by any person authorised by The Client;
 - (c) a failure of The Client to perform or observe any of its obligations in this Agreement; and/or
 - (d) an incompatibility between the Platform or Hosted Services and any other system, network, application, program, hardware or software not specified as compatible in the Hosted Services Specification;
- 1.1.15. **Hosted Services Specification** means the specification for the Platform and Hosted Services set out in Schedule 1;
- 1.1.16. **Intellectual Property Rights** means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);
- 1.1.17. **Maintenance Services** means the general maintenance of the Platform and Hosted Services, and the application of Updates and Upgrades;
- 1.1.18. **Platform** means the Qi Content Management System, the website (if available) including the application and database software for the Hosted Services, the system and server software used to provide the Hosted Services, and the computer hardware on which that application, database, system and server software is installed;
- 1.1.19. **Service** means any services that Keepthinking provides to The Client, or has an obligation to provide to The Client, under this Agreement;
- 1.1.20. **Solicitation** means Texas General Land Office Request for Offers No. X0024067-SB, which is incorporated herein by reference for all purposes.
- 1.1.21. **Solicitation Response** means Keepthinking's offer dated July 26, 2021, submitted in response to the Solicitation, which is incorporated herein by reference for all purposes.
- 1.1.22. **Support Services** means any changes to the system or the services, which is not included in Maintenance Services or the result of a Hosted Services Defect;
- 1.1.23. **Supported Web Browser** means the current release and the two major releases prior to that of Microsoft Edge, Mozilla Firefox, Google Chrome or Apple Safari;

- 1.1.24. **Term** means the term of this Agreement;
- 1.1.25. **Update** means a hotfix, patch or minor version update to any Platform software;
- 1.1.26. **Upgrade** means a major version upgrade of any Platform software.

2. Term

- 2.1. This Agreement shall come into force upon the Effective Date.
- 2.2. This Agreement shall continue in force until August 31, 2026, subject to termination in accordance with Clause 16 or any other provision of this Agreement. Client and Keepthinking may extend this Agreement for up to five additional years, upon mutual written agreement.

3. Hosted Services

- 3.1. Keepthinking hereby grants to The Client a worldwide, non-exclusive licence to use the Hosted Services by means of a Supported Web Browser for, in accordance with the Documentation, during the Term.
- 3.2. The licence granted by Keepthinking to The Client under Clause 3.1 is subject to the following limitations:
 - 3.2.1. the Hosted Services may only be used by the officers, employees, agents and subcontractors of The Client;
 - 3.2.2. the Hosted Services may only be used by named users, providing that The Client may change, add or remove any number of designated named user;
- 3.3. Except to the extent expressly permitted in this Agreement or required by law on a non-excludable basis, the licence granted by Keepthinking to The Client under Clause 3.2 is subject to the following prohibitions:
 - 3.3.1. The Client must not sub-license its right to access and use the Hosted Services;
 - 3.3.2. The Client must not permit any unauthorised person to access or use the Hosted Services;
 - 3.3.3. The Client must not make any alteration to the Platform, except as permitted by the Documentation; and
 - 3.3.4. Except as otherwise specified in the Solicitation, the Client must not conduct or request that any other person conduct any load testing or penetration testing on the Platform or Hosted Services, without the prior written consent of Keepthinking.
- 3.4. Keepthinking and The Client shall use reasonable endeavours, including reasonable security measures relating to administrator Account access details, to ensure that no unauthorised person may gain access to the Hosted Services.

- 3.5. Keepthinking shall use commercially reasonable endeavours to maintain the availability of the Hosted Services to The Client at the gateway between the public internet and the network of the hosting services provider for the Hosted Services, but does not guarantee 100% availability.
- 3.6. For the avoidance of doubt, downtime caused directly or indirectly by any of the following shall not be considered a breach of this Agreement:
 - 3.6.1. a Force Majeure Event;
 - 3.6.2. a fault or failure of the internet or any public telecommunications network;
 - 3.6.3. a fault or failure of The Client's computer systems or networks;
 - 3.6.4. any breach by The Client of this Agreement; or
 - 3.6.5. scheduled maintenance carried out in accordance with this Agreement.
- 3.7. The Client must not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services.
- 3.8. Keepthinking may suspend the provision of the Hosted Services for the Client's non-payment in accordance with Texas Government Code Chapter 2251.

4. Maintenance Services

- 4.1. Keepthinking shall provide the Maintenance Services to The Client during the Term.
- 4.2. Keepthinking shall where practicable give to The Client at least 10 (ten) Business Days' prior written notice of scheduled Maintenance Services that are likely to affect the availability of the Hosted Services or are likely to have a material negative impact upon the Hosted Services, without prejudice to Keepthinking's other notice obligations under this main body of this Agreement. Where practicable service will occur outside of Customer's standard business hours.
- 4.3. Keepthinking shall give to The Client at least 10 (ten) Business Days' prior written notice of the application of an Upgrade to the Platform. The Upgrade will be initially performed in a test environment, to give The Client time to be trained and subsequently carried out to the live server.
- 4.4. Keepthinking shall give to The Client written notice of the application of any security Update to the Platform and at least 10 (ten) Business Days' prior written notice of the application of any non-security Update to the Platform.
- 4.5. Keepthinking shall provide the Maintenance Services with reasonable skill and care.
- 4.6. Keepthinking may suspend the provision of the Maintenance Services if any amount due to be paid by The Client to Keepthinking under this Agreement is overdue, and Keepthinking has given to The Client at least 30 (thirty) days' written notice, following the amount becoming overdue, of its intention to suspend the Maintenance Services on this basis.

5. Customer Data

- 5.1. The Client hereby grants Keepthinking a non-exclusive licence to store The Client Data to the extent reasonably required for the performance of Keepthinking's obligations and the exercise of Keepthinking's rights under this Agreement.
- 5.2. The Client warrants to Keepthinking that The Client Data will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.
- 5.3. Keepthinking shall create a backup copy of The Client Data at least daily, shall ensure that each such copy is sufficient to enable Keepthinking to restore the Hosted Services to the state they were in at the time the backup was taken, and shall retain and securely store each such copy for a minimum period of 3 (three) days.
- 5.4. Within the period of one Business Day following receipt of a written request from The Client, Keepthinking shall use all reasonable endeavours to restore to the Platform The Client Data stored in any backup copy created and stored by Keepthinking in accordance with Clause 5.3. The Client acknowledges that this process will overwrite The Client Data stored on the Platform prior to the restoration.

6. No assignment of Intellectual Property Rights

- 6.1. Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from Keepthinking to The Client, or from The Client to Keepthinking.

7. Charges

- 7.1. The Client shall pay the Charges to Keepthinking in accordance with this Agreement and Texas Government Code Chapter 2251.

8. Payments

- 8.1. Keepthinking shall issue invoices for the Charges to The Client in advance of the period to which they relate.
- 8.2. The Client must pay the Charges to Keepthinking in accordance with Texas Government Code Chapter 2251, following the receipt of an invoice.
- 8.3. The Client must pay the Charges by bank transfer (using such payment details as are notified by Keepthinking to The Client on each invoice) or by other commercially reasonable means if bank transfer is unavailable.
- 8.4. Reimbursement of travel expenses is not authorized under this Agreement.

9. Provider's confidentiality obligations

9.1. Keepthinking must:

- 9.1.1. keep The Client Confidential Information strictly confidential;
- 9.1.2. not disclose The Client Confidential Information to any person without The Client's prior written consent, and then only under conditions of confidentiality approved in writing by The Client;
- 9.1.3. use the same degree of care to protect the confidentiality of The Client Confidential Information as Keepthinking uses to protect Keepthinking's own confidential information of a similar nature, being at least a reasonable degree of care;

9.2. This Clause 9 imposes no obligations upon Keepthinking with respect to Customer Confidential Information that:

- 9.2.1. is known to Keepthinking before disclosure under this Agreement and is not subject to any other obligation of confidentiality;
- 9.2.2. is or becomes publicly known through no act or default of Keepthinking; or
- 9.2.3. is obtained by Keepthinking from a third party in circumstances where Keepthinking has no reason to believe that there has been a breach of an obligation of confidentiality.

9.3. The restrictions in this Clause 9 do not apply to the extent that any Customer Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of Keepthinking on any recognised stock exchange.

9.4. The provisions of this Clause 9 shall continue in force indefinitely following the termination of this Agreement.

10. Data protection

- 10.1. The Client warrants to Keepthinking that it has the legal right to disclose all Personal Data that it does in fact disclose to Keepthinking under or in connection with this Agreement.
- 10.2. Keepthinking shall only process The Client Personal Data during the Term and for not more than 30 (thirty) days following the end of the Term, subject to the other provisions of this Clause 10.
- 10.3. Keepthinking shall only process The Client Personal Data on the documented instructions of The Client (including with regard to transfers of The Client Personal Data), as set out in this Agreement or any other document agreed by the parties in writing.

- 10.4. Keepthinking shall promptly inform The Client if, in the opinion of Keepthinking, an instruction of The Client relating to the processing of The Client Personal Data infringes the Data Protection Laws.
- 10.5. Notwithstanding any other provision of this Agreement, Keepthinking may process The Client Personal Data if and to the extent that Keepthinking is required to do so by the law. In such a case, Keepthinking shall inform The Client of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest.
- 10.6. Keepthinking shall ensure that persons authorised to process The Client Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 10.7. Keepthinking and The Client shall each implement commercially appropriate technical and organisational measures to ensure an appropriate level of security for The Client Personal Data. Keepthinking acknowledges that in providing the Services, Confidential Information and/or certain other personal information of Customer such as names, addresses, and other financial information (collectively, "Data") may be stored on Keepthinking equipment, including but not limited to computer servers. Keepthinking warrants that it will employ reasonable and appropriate administrative, physical and technical safeguards, to secure such Data from unauthorized access, disclosure, alteration and use. Keepthinking will use industry-standard and up-to-date security tools and technologies such as anti-virus protections and intrusion detection methods in providing the Services under this Agreement.
- 10.8. Keepthinking shall make available to The Client, within 30 days of contract execution and annually thereafter, all information necessary to demonstrate the compliance of Keepthinking with its obligations under this Clause 10 and the Data Protection Laws, including, at The Client's request, accurately and promptly responding to an information security questionnaire provided by The Client.
- 10.9. Keepthinking shall, at the choice of The Client, delete or return all of The Client Personal Data to The Client after the provision of services relating to the processing, and shall delete existing copies save to the extent that applicable law requires storage of the relevant Personal Data.
- 10.10. If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under this Agreement, then the parties shall use their best endeavours promptly to agree such variations to this Agreement as may be necessary to remedy such non-compliance. Customer does not, by its execution of this Agreement, consent to the application of or agree to comply with the Data Protection Laws or any other laws or regulations relating to Customer Personal Data or any other data, records, or information that would otherwise not apply or that Customer would otherwise not be required to comply with.

10.11. Keepthinking agrees to and shall comply with Appendix F to the Solicitation, titled "GLO Information Security."

11. Warranties

11.1. Keepthinking warrants to The Client that:

- 11.1.1. Keepthinking has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;
- 11.1.2. Keepthinking will comply with all applicable legal and regulatory requirements applying to the exercise of Keepthinking's rights and the fulfilment of Keepthinking's obligations under this Agreement;
- 11.1.3. Keepthinking has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement;
- 11.1.4. Keepthinking shall perform all services hereunder in accordance with this Agreement, the GLO Terms, the Solicitation, and the Solicitation Response.

11.2. Keepthinking warrants to The Client that:

- 11.2.1. the Platform and Hosted Services will conform in all respects with the Hosted Services Specification;
- 11.2.2. the Hosted Services will be free from Hosted Services Defects;
- 11.2.3. the application of Updates and Upgrades to the Platform by Keepthinking will not introduce any Hosted Services Defects into the Hosted Services;
- 11.2.4. the Platform will be free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs; and
- 11.2.5. the Platform will incorporate security features reflecting the requirements of best industry practice.

11.3. Keepthinking warrants to The Client that the Hosted Services, when used by The Client in accordance with this Agreement, will not breach any laws, statutes or regulations applicable under law.

11.4. Keepthinking warrants to The Client that the Hosted Services, when used by The Client in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person or entity in any jurisdiction and under any applicable law.

11.5. The Client warrants to Keepthinking that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.

11.6. All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

12. Acknowledgements and warranty limitations

- 12.1. The Client acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, Keepthinking gives no warranty or representation that the Hosted Services will be wholly free from defects, errors and bugs. Notwithstanding the foregoing, Keepthinking shall, immediately after discovering or becoming aware of a security defect, promptly correct such defect.
- 12.2. The Client acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, Keepthinking gives no warranty or representation that the Hosted Services will be entirely secure.
- 12.3. The Client acknowledges that the Hosted Services are designed to be compatible only with that software and those systems specified in the Solicitation and Solicitation Response and specified as compatible in the Hosted Services Specification; and Keepthinking does not warrant or represent that the Hosted Services will be compatible with any other software or systems.
- 12.4. The Client acknowledges that Keepthinking will not provide any legal, financial, accounting or taxation advice under this Agreement or in relation to the Hosted Services; and, except to the extent expressly provided otherwise in this Agreement, Keepthinking does not warrant or represent that the Hosted Services or the use of the Hosted Services by The Client will not give rise to any legal liability on the part of The Client or any other person.

13. Liability

- 13.1. Nothing in this Agreement will:
- 13.1.1. limit or exclude any liability for fraud or fraudulent misrepresentation, tortious conduct or willful misconduct;
 - 13.1.2. limit any liabilities in any way that is not permitted under applicable law; or
 - 13.1.3. exclude any liabilities that may not be excluded under applicable law.
- 13.2. Neither party shall be liable to the other in respect of any losses arising out of a Force Majeure Event.
- 13.3. Keepthinking shall not be liable to The Client in respect of any loss of profits or anticipated savings.
- 13.4. Keepthinking shall not be liable to The Client in respect of any loss of revenue or income.
- 13.5. Keepthinking shall not be liable to The Client in respect of any loss of use or production.

- 13.6. Keepthinking shall not be liable to The Client in respect of any loss of business, contracts or opportunities.
- 13.7. Keepthinking shall not be liable to The Client in respect of any loss or corruption of any data, database or software, excepting any loss or corruption of any data, database or software that is attributable to an act or omission of Keepthinking.
- 13.8. Keepthinking shall not be liable to The Client in respect of any special, indirect or consequential loss or damage.
- 13.9. Except with regard to any obligation to indemnify, defend, or hold harmless the Client, the liability of Keepthinking to The Client under this Agreement in respect of any event or series of related events shall not exceed the total amount payable by The Client to Keepthinking under this Agreement.

14. Force Majeure Event

- 14.1. Neither party will be liable for or be deemed to have breached any of its obligations under this Agreement if that party's failure to perform under the terms of this Agreement is due to circumstances or causes beyond its reasonable control, including, without limitation, any of the following: insurrection, riot or other civil disturbance, war (whether declared or undeclared) or terrorist activities (excluding cyberattacks); strikes, lockouts, or other labor dispute; natural disasters (e.g., tornados, floods, earthquake, etc.); fires or explosions; government shutdowns; public health emergency, epidemic, or pandemic (including COVID-19); quarantine, state of emergency, or other law, order or requirement of any governmental or public authority, agency or court; Acts of God or any other acts or events beyond the reasonable control of the nonperforming party (an "Event of Force Majeure" or "Event"). Upon the occurrence of an Event of Force Majeure, the party claiming force majeure hereunder shall notify the other party as soon as reasonably practicable of such Event as provided for herein and the time for performance hereunder (except for undisputed payments owed to Keepthinking) shall be extended to a mutually agreeable date after the Event of Force Majeure has resolved and no longer prevents performance by either party of its obligations under this Agreement or, if an extension of performance is not possible, then the Agreement shall terminate. In the event this Agreement is terminated due to an Event of Force Majeure, Client shall pay to Keepthinking all sums not in dispute for performance of Services up through the date of termination; provided that if Client has paid for Services not yet performed, Keepthinking shall provide Client with a pro-rata refund of fees.
- 14.2. A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:
 - 14.2.1. promptly notify the other; and
 - 14.2.2. to the extent possible, inform the other of the period for which it is estimated that such failure or delay will continue.

- 14.3. A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

15. Termination

- 15.1. Except as otherwise set forth in this Agreement, either party may terminate this Agreement by giving written notice of termination to the other party and 90 (ninety) days opportunity to cure, if the other party commits a material breach of this Agreement.
- 15.2. Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:
- 15.2.1. the other party:
 - 15.2.1.1. is dissolved;
 - 15.2.1.2. ceases to conduct all (or substantially all) of its business;
 - 15.2.1.3. is or becomes insolvent or is declared insolvent.
- 15.3. This Agreement may be terminated in accordance with the GLO Terms.

16. Effects of termination

- 16.1. Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save for the provisions of this Agreement that shall survive and continue to have effect (in accordance with their express terms).
- 16.2. Except to the extent that this Agreement expressly provides otherwise, the termination of this Agreement shall not affect the accrued rights of either party.
- 16.3. Within 30 (thirty) days following the termination of this Agreement for any reason:
- 16.3.1. The Client must pay to Keepthinking any Charges in respect of Services properly performed and provided to The Client before the termination of this Agreement; and
 - 16.3.2. Keepthinking must refund to The Client any Charges paid by The Client to Keepthinking in respect of Services that were to be provided to The Client after the termination of this Agreement, without prejudice to the parties' other legal rights.
- 16.4. Upon termination and payment of the outstanding Fees, Keepthinking will deliver to The Client a copy of the MySQL database and all digital files uploaded into Qi.

17. Notices

- 17.1. Any notice from one party to the other party under this Agreement must be given by one of the following methods (using the relevant contact details set out in Clause 18.3:
- 17.1.1. delivered personally or sent by courier, in which case the notice shall be deemed to be received upon delivery; or
 - 17.1.2. sent by recorded signed-for post, in which case the notice shall be deemed to be received 10 (ten) Business Days following posting,
 - 17.1.3. sent via email, in which case the notice shall be deemed to be received immediately;
- 17.2. providing that, if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.
- 17.3. Keepthinking's contact details for notices under this Clause 18 are as follows:
Keepthinking Ltd, 38-40 Southwark Street, London SE1 1UN, United Kingdom, email info@keepthinking.it.
- 17.4. The addressee and contact details set out in Clause 19.3 may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 19.

18. General

- 18.1. No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.
- 18.2. This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 18.3. Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.
- 18.4. This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree to any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.
- 18.5. This Agreement, including the GLO Terms, the Solicitation, and Solicitation Response, shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 18.6. This Agreement shall be governed by and construed in accordance with the law of the State of Texas, without regard to the conflict of law provisions.

- 18.7. The venue of any suit arising under the contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the Client.
- 18.8. If the provisions of this Agreement, the GLO Terms, the Solicitation, or the Solicitation Response conflict, such conflict shall be resolved by giving precedence to these documents in the following order: first the GLO Terms, then the Solicitation, then the Solicitation Response, then this Agreement.

Execution

The parties have indicated their acceptance of this Agreement by executing it below.

SIGNED BY Cristiano Bianchi on behalf of Keepthinking:

DocuSigned by:

Cristiano Bianchi

91F6421B17414BB...

Signature

Date 8/31/2021

SIGNED BY **[Signatory]** on behalf of The Client:

DocuSigned by:

Mark A. Havens

7C299F4374E7497...

Signature

Name: Mark A. Havens

Title: Chief Clerk / Deputy Land Commissioner

Date: 8/31/2021

OGC 

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CIO 

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Schedule 1 - Specification of Hosted Services

1. Specification of Hosted Services

- 1.1. The Hosted Services include:
 - 1.1.1. No. 1 Virtual Private Server located in **AWS West Virginia** or other location to be agreed between the parties
 - 1.1.2. 1,000GB of disk space. Extra disk space is available at a cost of USD 1,000 per 1 additional TB
 - 1.1.3. Backup every 24 hours in a location to be agreed between the parties, with the following retention schedule:
 - 1.1.3.1. Source code and database backups: 1 year
 - 1.1.3.2. Digital media files: 1 copy

2. Financial provisions

- 2.1. This Agreement is subject to the annual fees of USD 16,000 (exclusive of VAT, if applicable)
- 2.2. The fees cover all of the following:
 - 2.2.1. The Hosted Services
 - 2.2.2. Unlimited Maintenance Services
 - 2.2.3. 48 hours per year of Support Services
- 2.3. The fees are invoiced and payable annually in advance.

3. Contractual notices

- 3.1. The software covered by support and maintenance under this Agreement includes the following components:
 - 3.1.1. Your website as developed by Keepthinking
 - 3.1.2. The Qi Content Management System
- 3.2. During the term of this Agreement Keepthinking shall provide the following Maintenance Services to The Client:
 - 3.2.1. Support the website and its related Qi Content Management System, in the original version developed by Keepthinking.
 - 3.2.2. Correct any errors and 'bugs' found during the normal use of the website and Content Management System as outlined in Section 3.9.

4. Maintenance Services

- 4.1. The Parties shall ensure that all faults in the Software shall be classified and handled as shown below. Failures shall be classified as to the severity that they have on the working system. The severity classification shall be used to determine the response time for returning the system to its fully operational state. The severity classification shall be:
 - 4.1.1. Class A: Urgent. Any Software problem resulting in serious loss or degradation of service or serious loss of functionality;
 - 4.1.2. Class B: Normal. Small defect, cosmetic, software or procedural problems requiring resolution in defined time scales;
- 4.2. The following targets shall be adopted by Keepthinking for returning the system to its fully operational state:
 - 4.2.1. Class A: within one Business Day of receipt of a report from The Client;
 - 4.2.2. Class B: on a three (3)-week schedule, running on Wednesdays and Thursday at regular 3-week intervals. The exact dates will be determined at the Effective Date and will be communicated to The Client;
- 4.3. The Client shall suggest the severity of classification of faults as they arise, to be validated by Keepthinking.
- 4.4. The error correction service shall not apply to any version of the Software other than the current release or to defects or errors resulting from any unauthorised modification or incorrect use of the current release (including use of the current release on or with faulty equipment or programs used in conjunction with the current release or on or with equipment (other than such computer equipment on which the Software is installed and in operational use) or programs not supplied by or approved in writing by Keepthinking, provided that for this purpose any programs designated for use with the current release in the Specification shall be deemed to have the written approval of Keepthinking).

5. Support Services

- 5.1. Support services include 48 hours per annum of design, development and project management time, which is available for:
 - 5.1.1. Making configuration changes;
 - 5.1.2. Create report templates;
 - 5.1.3. Training
 - 5.1.4. Any other tasks that are not included in the Maintenance Services.
- 5.2. Unused Support Service hours roll over year on year.

The Texas General Land Office (“the GLO”) and Keepthinking Ltd. (“Provider”) agree the terms and conditions herein are incorporated into the contract supplied by Provider (assigned GLO Contract No. 21-191-000-C945) (“Contract”) for all purposes. Provider certifies the statements and affirmations herein are true and correct. If any term, condition, statement, or affirmation herein conflicts with any part of the Contract, the term, condition, statement, or affirmation herein shall control.

1. **Abandonment or Default.** If Provider defaults on the Contract, the GLO may cancel the Contract without notice and either re-solicit or re-award the Contract to the next best responsive and responsible provider. The defaulting Provider will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by the GLO based on the seriousness of the default.
2. **Prohibited Benefits to Public Servants.** Pursuant to Section 2155.003 of the Texas Government Code, Provider represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract.
3. **Texas Resident Bidder.** Provider certifies that if its business address shown on the Contract is a Texas address, that address is the legal business address of Provider and Provider qualifies as a Texas Resident Bidder under Texas Administrative Code, Title 34, Part 1, Chapter 20.
4. **Prohibited Financial Participation.** Pursuant to Section 2155.004(a) of the Texas Government Code, Provider certifies that neither Provider nor any person or entity represented by Provider has received compensation from the GLO to participate in the preparation of the specifications or solicitation on which this Contract is based. Under Section 2155.004(b) of the Texas Government Code, Provider certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate. This Section does not prohibit Provider or a contract participant from providing free technical assistance.
5. **Delinquent Child Support.** Under Section 231.006 of the Family Code, the vendor or applicant [Provider] certifies that the individual or business entity named in this Contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
6. **Owner Information.** A bid or an application for a contract, grant, or loan paid from state funds must include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application. Provider certifies it has submitted this information to the GLO.
7. **Executive Head of State Agency.** In accordance with Section 669.003 of the Texas Government Code relating to contracting with the executive head of a state agency, Provider certifies that it (1) is not the executive head of the GLO; (2) was not, at any time during the four years before the effective date of the Contract, the executive head of the GLO; and (3) does not employ a current or former executive head of the GLO.
8. **Debt Owed to the State of Texas.** Provider agrees that any payments due under the Contract shall be directly applied towards eliminating any debt or delinquency it has to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.
9. **Excluded Parties.** Provider certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, “Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism”, published by the United States Department of the Treasury, Office of Foreign Assets Control.
10. **Suspension and Debarment.** Provider certifies that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in the Contract by any state or federal agency.
11. **Convictions or Penalties in Connection with Hurricanes Rita and Katrina.** Sections 2155.006 and 2261.053 of the Texas Government Code, prohibit state agencies from accepting a Response or awarding a contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Government Code, Provider certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
12. **State’s Right to Audit Provider.** The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. Acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Provider shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Provider and the requirement to cooperate is included in any subcontract it awards. The Contract may be amended unilaterally by the GLO to comply

with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code.

13. **Antitrust.** Provider represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Provider nor the firm, corporation, partnership, or institution represented by Provider, nor anyone acting for such a firm, corporation, partnership, or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Contract or any solicitation response upon which this Contract is based to any competitor or any other person engaged in the same line of business as Provider.
14. **Applicable Law; Venue; Sovereign Immunity.** This Contract shall be governed by and construed in accordance with the laws of the State of Texas. Except as provided by applicable statute, Venue for any suit arising under this Contract is fixed in any court of competent jurisdiction of Travis County, Texas. Neither the Contract, nor any conduct of any GLO representative, shall be construed to waive sovereign immunity on behalf of the GLO or the State of Texas.
15. **Preference for Texas Products and Materials.** In accordance with Section 2155.4441 of the Texas Government Code, Provider agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside Texas.
16. **Public Information.** The GLO shall post this Contract to the GLO's website. Provider understands that the GLO will comply with the Texas Public Information Act (Texas Government Code Chapter 552, the "PIA"), as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas (the "Attorney General"). Information, documentation, and other material in connection with this Contract may be subject to public disclosure pursuant to the PIA. In accordance with Section 2252.907 of the Texas Government Code, Provider is required to make any information created or exchanged with the GLO or the State of Texas pursuant to the Contract, and not otherwise excepted from disclosure under the PIA, available to the GLO in portable document file (".pdf") format or any other format agreed upon between the Parties that is accessible by the public at no additional charge to the GLO or the State of Texas. By failing to mark any information that Provider believes to be excepted from disclosure as "confidential" or a "trade secret," Provider waives any and all claims it may make against the GLO for releasing such information without prior notice to Provider. The Attorney General will ultimately determine whether any information may be withheld from release under the PIA. Provider shall notify the GLO's Office of General Counsel within twenty-four (24) hours of receipt of any third-party written requests for information and forward a copy of said written requests to PIALegal@glo.texas.gov. If a request for information was not written, Provider shall forward the

third party's contact information to the above-designated e-mail address.

17. **Dispute Resolution.** Except as otherwise provided by statute, rule, or regulation, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by Provider to attempt to resolve any dispute arising under the Contract. NOTHING IN THIS SECTION SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE GLO.
18. **Force Majeure.** Neither Provider nor the GLO shall be liable to the other for any delay in, or failure of performance, of any requirement included in the Contract caused by force majeure. Such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed, provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failures of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.
19. **Funding Out Clause.** This Contract is contingent upon the continued availability of lawful appropriations by the Texas Legislature. Provider understands that all obligations of the GLO under the Contract are subject to the availability of state funds. If such funds are not appropriated or become unavailable, the GLO may terminate the Contract. The Contract shall not be construed as creating a debt on behalf of the GLO in violation of Article III, Section 49a of the Texas Constitution.
20. **Taxes, Workers Compensation, Unemployment Insurance – Including Indemnity.** (a) Provider shall be solely liable and responsible for payment of Provider's and Provider's employees' taxes of whatever kind, arising out of the execution or performance of the Contract. Provider shall comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and workers' compensation. The GLO and the State of Texas shall not be liable to Provider or its officers, agents, employees, representatives, contractors, assignees, designees, or others for the payment of taxes, or the provision of unemployment insurance, workers' compensation, or any benefit available to a state employee or employee of another governmental entity.
 (b) Provider shall indemnify, defend, and hold harmless the State of Texas, the GLO, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from and against any and all liability, actions, claims, demands, damages, proceedings, or suits, and all related costs, attorney fees, and expenses arising out of, connected with, or resulting from tax liability, unemployment insurance, or workers' compensation in the execution or performance of the Contract and any Purchase Orders issued under the Contract.

Provider and the GLO shall furnish timely written notice to each other of any such claim. Provider shall be liable to pay all costs of defense including attorneys' fees. Provider shall coordinate its defense with the Office of the Attorney General when Texas state agencies are named defendants in any lawsuit and Provider may not agree to any settlement without first obtaining the written consent of the Office of the Attorney General.

(c) The GLO is exempt from federal, state, and local taxes. Provider shall not charge any taxes to the GLO.

21. Indemnity – Acts/Omissions. Provider shall indemnify, defend, and hold harmless the State of Texas, the GLO, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from and against any and all liability, actions, claims, demands, damages, proceedings, or suits, and all related costs, attorney fees, and expenses arising out of, connected with, or resulting from any acts or omissions of Provider or its officers, agents, employees, representatives, suppliers, contractors, subcontractors, assignees, designees, order fulfillers, or suppliers of contractors or subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. Provider and the GLO shall furnish timely written notice to each other of any such claim. Provider shall be liable to pay all costs of defense including attorneys' fees. Provider shall coordinate its defense with the Office of the Attorney General when Texas state agencies are named defendants in any lawsuit and Provider may not agree to any settlement without first obtaining the written consent of the Office of the Attorney General.

22. Infringement Including Indemnity. a) Provider shall indemnify, defend, and hold harmless the State of Texas, the GLO, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from and against any and all liability, actions, claims, demands, damages, proceedings, or suits, and all related costs, attorney fees, and expenses arising out of, connected with, or resulting from infringement of any United States patent, copyright, trade or service mark, or any other intellectual or intangible property right that occurs in the execution or performance of the Contract and any Purchase Orders issued under the Contract. Provider and the GLO shall furnish timely written notice to each other of any such claim. Provider shall be liable to pay all costs of defense including attorneys' fees. Provider shall coordinate its defense with the Office of the Attorney General when Texas state agencies are named defendants in any lawsuit and Provider may not agree to any settlement without first obtaining the written consent of the Office of the Attorney General.

b) Provider shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Provider's written approval, (iii) any modifications made to the product by the Provider pursuant to Customer's specific instructions, or (iv) any use of the product or service by Customer that is not in conformity with

the terms of any applicable license agreement.

c) If Provider becomes aware of an actual or potential claim, or the GLO provides Provider with notice of an actual or potential claim, Provider may (or in the case of an injunction against the GLO, shall), at Provider's sole option and expense; (i) procure for the GLO the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with a functionally equivalent or superior product or service so that the GLO's use is non-infringing.

23. Independent Contractor; Assignment. Provider and its employees, representatives, agents, and subcontractors shall serve as an independent contractor in the performance of the Contract. Provider and its employees, representatives, agents, and subcontractors shall not be employees of the GLO by virtue of the Contract. Should Provider subcontract any of the services required under the Contract, Provider agrees the GLO is not liable to any subcontractor(s) of Provider and that Provider is not relieved of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with the Contract. Provider shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from the GLO. Any attempted assignment in violation of this provision is void and without effect. The Contract binds Provider's heirs, assigns, and other successors in interest.

24. Records Retention. Provider shall maintain all records that may demonstrate payments under the Contract were expended in accordance with the laws and regulations of the State of Texas. Each Party shall retain in its records this Contract and all documents related to this Contract. Unless a longer retention period is specified by applicable federal law or regulation, the Parties may destroy the Contract and related documents only after the seventh anniversary of the date: the Contract is completed or expires; or all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the Contract or related documents are resolved. Provider shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the Contract. Provider and any subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Provider must retain all work and other supporting documents pertaining to the Contract, for purposes of inspections, monitoring, audits, or evaluations by the GLO and any authorized agency of the State of Texas.

25. Payment. Before authorizing payment to Provider, the GLO shall evaluate Provider's performance using the performance standards set forth in the Contract or in GLO Request for Offers No. X0023821-KM. Provider shall submit invoices to the GLO for delivered goods or completed services not later than the 15th day of the month after delivery or completion. The GLO shall make no payments without Provider's prior submission of detailed, correct invoices. The GLO shall make payments in accordance with Texas Government Code Chapter

2251. Payments under this Contract are subject to the availability of appropriated funds. Provider acknowledges and agrees that payments for services provided under this Contract are contingent upon the GLO's receipt of funds appropriated by the Texas Legislature. **ALL Provider invoices shall: 1) be submitted via email to VendorInvoices@GLO.TEXAS.GOV; 2) be supported by documentation that, in the judgment of the GLO, allows for full substantiation of the costs incurred; and 3) prominently display "GLO Contract No. 21-191-000-C945." If Provider does not submit invoices in strict accordance with the instructions in this section, payment of invoices may be significantly delayed. Provider agrees that the GLO shall not pay interest, fees, or other penalties for late payments resulting from Provider's failure to submit invoices in strict accordance with the instructions in this section.**
26. **Severability.** If a court of competent jurisdiction determines any term or condition herein or any provision of the Contract is invalid, void, or unenforceable, the remaining terms, provisions, covenants, and conditions shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.
27. **Termination.** The GLO may, in its sole discretion, terminate the Contract upon thirty (30) days' written notice to Provider by email, facsimile, or certified mail return receipt requested and is effective upon Provider's receipt. In the event of such termination, Provider shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. The GLO shall only be liable for payments for any goods or services delivered by Provider before the termination date. If Provider fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any terms or conditions of the Contract, the GLO may, upon written notice of default to Provider, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies as provided in equity, by law or under the Contract. The GLO may exercise any other right, remedy, or privilege which may be available to it under applicable law or may proceed by appropriate court action to enforce the provisions of the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless the GLO notifies Provider in writing prior to the exercise of such remedy. Provider shall be liable for all costs and expenses, including court costs, incurred by the GLO with respect to the enforcement of any of the remedies listed herein. In the event that the Contract is terminated for any reason, or upon its expiration, the GLO shall retain ownership of all associated work product and documentation obtained from Provider under the Contract.
28. **Fraud.** The GLO does not tolerate any type of fraud. GLO policy promotes consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Any violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. Provider shall report any possible fraud, waste, or abuse that occurs in connection with the Contract to GLO as directed by the GLO's website, <http://glo.texas.gov>.
29. **Assignment of Claims.** Provider hereby assigns to the GLO any and all claims for overcharges associated with this Contract arising under the laws of the United States or the State of Texas.
30. **Israel Boycott.** Provider represents and warrants that (1) it does not, and shall not for the duration of the Contract, boycott Israel or (2) the verification required by Section 2271.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Provider shall promptly notify the GLO.
31. **Prohibited Business Engagements.** Provider represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
32. **Computer Equipment Recycling.** If the Contract is for the purchase or lease of computer equipment, then Provider certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.
33. **Continuity and Disaster Recovery Plans.** Upon request of the GLO, Provider shall provide copies of its most recent business continuity and disaster recovery plans.
34. **False Statements or Material Misrepresentations.** Provider represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a false statement or making a material misrepresentation during the performance of a contract is a material breach of contract and may void the Contract or constitute grounds for its termination.
35. **Conflicts of Interest.** Provider has disclosed in writing to the GLO all existing or potential conflicts of interest related to the performance of the Contract.
36. **Signature Authority.** The person signing the Contract on behalf of Provider certifies they are 1) duly authorized to execute the Contract on their own behalf or on behalf of Provider and 2) legally empowered to contractually bind Provider to the Contract and related documents.
37. **Television Equipment Recycling.** If the Contract is for the purchase or lease of covered television equipment, Provider certifies its compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code, related to the Television Equipment Recycling Program.
38. **Survival of Terms and Conditions.** The terms and conditions herein and in the Contract shall survive the termination or expiration of the Contract.
39. **Contracting Information.** Provider represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552 of the Government Code, may apply

to the Contract and the Provider agrees that the Contract can be terminated if the Provider knowingly or intentionally fails to comply with a requirement of that subchapter..

as repayment of money received or ineligibility for additional money. In addition, Provider may be debarred from contracting with the State. The GLO or the Attorney General may strictly enforce this provision.

40. **Cybersecurity Training.** If Provider, in its performance of the Contract, has access to a state computer system or database, Provider must complete a cybersecurity training program certified under Texas Government Code Section 2054.519, as selected by the GLO. Provider must complete the cybersecurity training program during the initial term of the Contract and during any renewal period. Provider must verify in writing to the GLO its completion of the cybersecurity training program.
41. **Human Trafficking Prohibition.** Under Section 2155.0061, Texas Government Code, Provider certifies that the entity named in this Contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
42. Provider certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Provider's business. Provider acknowledges that such a vaccine or recovery requirement would make Provider ineligible for a state-funded contract.
43. Pursuant to Government Code Section 2274.0102, Provider certifies that neither it nor its parent company, nor any affiliate of Provider or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code Section 2274.0103, or (2) headquartered in any of those countries.
44. If Provider is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Provider verifies that Provider does not boycott energy companies and will not boycott energy companies during the term of the Contract. If Provider does not make that verification, Provider must notify the GLO and state why the verification is not required.
45. If Provider is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Provider verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a "firearm entity" or "firearm trade association" as those terms are defined in Texas Government Code section 2274.001 and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. If Provider does not make that verification, Provider must notify the GLO and state why the verification is not required.
46. If Provider is a "professional sports team" as defined by Texas Occupations Code Section 2004.002, Provider will play the United States national anthem at the beginning of each team sporting event held at the Provider's home venue or other venue controlled by Provider for the event. Failure to comply with this obligation constitutes a default of this Contract, and immediately subjects Provider to the penalties for default, such



**AMENDMENT NO. 1 TO
GLO CONTRACT NO. 21-191-000-C945**

THE TEXAS GENERAL LAND OFFICE (the “Client”) and **KEEPTHINKING LTD** (“Provider”), each a “Party” and collectively “the Parties” to GLO Contract No. 21-191-000-C945 (the “Agreement”), desire to amend the Agreement, specifically the portion of the Agreement labeled “**SaaS Agreement**” (starting at page 18 of the Agreement). Therefore, the Parties agree as follows:

1. **SECTION 5. SUPPORT SERVICES** of **SCHEDULE 1 – SPECIFICATION OF HOSTED SERVICES**, attached to the **SaaS Agreement**, is deleted and replaced in its entirety with the following:

“5. Support Services

5.1. Support services include 48 hours per annum of design, development and project management time, which is available for:

- 5.1.1. Making configuration changes;
- 5.1.2. Create report templates;
- 5.1.3. Training
- 5.1.4. Any other tasks that are not included in the Maintenance Services.

5.2. Unused Support Service hours roll over year on year.

5.3. Client may request additional support services, in excess of the hours allotted above, cost and specifications of which will be documented in a written amendment approved by the Parties.”

2. The Parties agree that Provider will perform additional support services, under Section 5.3, Schedule 1, of the **SaaS Agreement**, for an additional payment not to exceed **\$21,600.00**. The specifications of the additional services are set out in Schedule 2, attached to this Amendment No. 1 and incorporated into the **SaaS Agreement**.
3. Funding added by this Amendment No. 1 amends and increases total funding under the Agreement to an amount not to exceed **\$231,240.00** for the duration of the Agreement.
4. This Amendment shall be effective upon the date of the last signature.
5. The terms and conditions of the Agreement not amended herein shall remain in force and effect.

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE FOR AMENDMENT NO. 1 TO
GLO CONTRACT No. 21-191-000-C945

GENERAL LAND OFFICE

KEEPTHINKING LTD

Signed by:

E70CDF09B56540E...
Jennifer G. Jones

Chief Clerk and Deputy Land Commissioner

Date of execution: 12/12/2024

DocuSigned by:

91F6421B17414BB...
Name: Cristiano Bianchi

Title: Managing Director

Date of execution: 12/12/2024

OGC 

PM 

CIO 

DGC 

GC 

DCC 

ATTACHED TO THIS AMENDMENT:

SCHEDULE 2 – GLO: PAYMENT PROCESSOR SWITCH OVER

GLO: Payment processor switch over



Dear David,

Thank you for sharing the Developer Guide and mapping details, which we've used as the foundation for this quote.

Please see the below actions for transitioning your payment processor from NicUSA to First Data Merchant Services, LLC, and modifying EPay as necessary.

- Specifications:**
- API Investigation: Familiarize with the new API, identifying unique aspects and differences to ensure seamless integration.
 - HMAC Signature Generation: Configure and test the new signature to guarantee secure and error-free requests.
 - SOAP to REST Migration: Refactor code to shift from SOAP to REST protocols, adapting to structural differences.
 - API Response Handling: Update code to process and respond to the new API's formats and fields.
 - Comprehensive Testing: Testing is a critical phase of this project due to the complexity and sensitivity of integrating a new payment processor. Payment systems handle sensitive financial transactions, where errors or failures can lead to significant disruptions or security risks. Comprehensive testing ensures that the system functions reliably under various scenarios, including edge cases, and complies with the new API's requirements.

These steps are essential to deliver a seamless and secure transition from NicUSA to First Data Merchant Services, LLC., ensuring long-term reliability and performance.

Warm regards,
Cristiano & Tianna

clxstream.json

SnapPay Developer Guide v4

FROM
Keepthinking Ltd
+442074905337

Keepthinking
38-40 Southwark Street
London SE1 1UN
United Kingdom
www.keepthinking.it

PHONE
+442074905337

COMPANY NUMBER
04905582

VAT NUMBER
831132962

FOR
Texas General Land Office

TO
David Gibbs

QUOTE NUMBER
743

DATE
21 November 2024

EXPIRY DATE
13 March 2025

[📄 Download PDF](#)

Quotation

The work required is as follows:

- Investigation: 2 days
- Development: 8 days
- Testing: 4 days
- Project Management: 4 days

Total: 18 days

1,200.00
x 18
21,600.00

Subtotal 21,600.00
Total USD including VAT \$21,600.00

Questions & Answers