

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES

CONTRACT FOR SERVICES

GARTNER, INC.

1. Introduction

A. Parties

This Contract for Services (“Contract”) is entered into between the State of Texas (“State”), acting by and through the Department of Information Resources (“DIR”) with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Gartner, Inc. (“Vendor”), with its principal place of business at 56 Top Gallant Road, Stamford, Connecticut 06904.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-217, on December 17, 2013, for IT Research and Advisory Subscription Services. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-217 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Service Agreement; Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-217, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-217, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR may extend this Contract, by amendment, for up to two (2) optional one-year terms. Protracted contract negotiations may, in DIR’s sole discretion, result in fewer optional renewal terms.

3. Service Offerings

Services available under this Contract are limited to IT Research and Advisory Subscription Services as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their services offering; however, any changes must be within the scope of the RFO and services awarded based on the posting described in Section 1.B above. Vendor may not add services which were not included in the Vendor's response to the solicitation described in Section 1.B above.

4. Pricing

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 7, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index and shall include the DIR Administrative Fee.

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three quarters of one percent (.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated by Vendor in the price to the Customer.

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Dana Collins, Manager
Contract and Vendor Management
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 936-2233
Facsimile: (512) 475-4759
Email: mc.dorwart@dir.texas.gov

If sent to the Vendor:

Ishele Graves
Gartner, Inc.
106 E. Sixth Street, Suite 900
Austin, TX 78701
Phone: (512) 364-9120

Facsimile: (512) 233-2653
Email: Ishele.Graves@gartner.com

7. Service Agreement

Services provided under this Contract shall be in accordance with the Service Agreement as set forth in Appendix D of this Contract. No changes to the Service Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

8. Authorized Exceptions to Contract and any Appendices.

A. Appendix A, Section 2, Definitions, A. Customers is hereby amended and replaced in its entirety as follows:

A. Customer - any state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, and independent School Districts.

B. Appendix A, Section 4, Intellectual Property Matters, A.1) Definitions is hereby amended and replaced in its entirety as follows:

A. Definitions

1)“ Work Product” means any and all deliverables originally produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or a Statement of Work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with this Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer’s benefit: (a) by any Vendor personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Vendor or any of its affiliates or

subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

C. Appendix A, Section 4, Intellectual Property Matters, B. Ownership is hereby amended and replaced in its entirety as follows:

Ownership.

As between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered “works made for hire” and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor and Customer do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8AM to 5PM) and upon reasonable prior notice to Vendor, to all Vendor materials, premises and computer files containing the Work Product. Vendor and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Vendor.

Ownership Rights by Customer. All tangible and intangible property, including Intellectual Property Rights therein, that is owned by Customer prior to the execution of any Statement of Work (e.g. copyrights, trademarks, etc.) shall continue to be exclusively owned by the Customer and Vendor shall have no ownership thereof and no rights thereto, other than the limited, non-exclusive right to use such property solely for purposes set forth in the Statement of Work, which is hereby granted by Customer.

Ownership of Prior Rights by Vendor. All tangible and intangible property, including Intellectual Property Rights therein, that is owned by Vendor prior to the execution of any Statement of Work (e.g. copyrights, trademarks, etc.) shall continue to be exclusively owned by the Vendor and Customer shall have no ownership thereof and no rights thereto, other than the limited, non-exclusive right to use such property solely for purposes set forth in the Statement of Work, which is hereby granted by Vendor.

Ownership Where Pre-Existing Rights become embodied in Works. To the extent any pre-existing rights or property of either party are embodied or contained in the Works, each party shall retain ownership of its pre-existing rights and property (e.g. Vendors pre-existing tools, processes, methodologies, proprietary research data, and proprietary databases) (hereinafter “Pre-existing Vendor IP”) shall continue to exclusively owned by Vendor and Customer shall have no ownership thereof, and no rights thereto other than the limited, non-exclusive right to use such Pre-existing Vendor IP for internal business use, solely for purposes set forth in a Statement of Work, which is hereby granted by Vendor.

Benchmark/Measurement Reports. With respect to any measurement or benchmarking services that may be performed by Vendor under any Statement of Work, the parties acknowledge and agree that the contents of such measurement report(s) may be based in part upon information that is proprietary to Vendor and contained in Vendor’s proprietary data base.

D. Appendix A, Section 4, Intellectual Property Matters, H. Vendor License to Use is hereby amended and replaced in its entirety as follows:

H. Vendor License to Use.

Customer hereby grants to Vendor a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the Services to Customer. Except as provided in this Section, neither Vendor nor any Subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer’s sole discretion.

Customer hereby grants to Vendor a non-transferable, non-exclusive, royalty free, fully paid-up license to use any Work Product solely as necessary to provide the Service to Customer. Except as provided in this neither the Vendor nor any Subcontractor shall have the right to use the Work Product in connection with the provision of Services to its other customers.

E. Appendix A, Section 4, Intellectual Property Matters, I. Third-Party Underlying and Derivative Works is hereby amended and replaced in its entirety as follows:

I. Third-Party Underlying and Derivative Works.

To the extent any 3rd Party or Vendor IP is embodied or reflected in Work Product or is necessary to provide the Services, Vendor hereby grants to the Customer, or shall obtain from the applicable third party for Customer’s benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for Customer’s internal business purposes only, to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Vendor IP or Third Party IP and any derivative works thereof embodied in or delivered to Customer in conjunction with the Work Product, and (ii) authorize others to do any or all of the foregoing. Vendor agrees to notify Customer on delivery of the Work

Product or Services if such materials include any 3rd Party IP. The Vendor agrees that it's Pre-existing Vendor IP may be either redacted or segregated into an Appendix labeled "Gartner Inc.'s Pre-existing Intellectual Property" without impacting the usefulness or readability of the works provided to the Customer. Unless the Deliverable is a Request for Proposal (RFP) or similar document intended to be distributed by the Customer, the Customer shall not make the Works available in whole or in part to anyone outside of the Customer, or quote excerpts from Deliverables to the Public, without the prior written consent of Vendor, subject to requirements of the Texas Public Information Act. Notwithstanding the foregoing, Customer may share the Pre-existing Vendor IP on a confidential basis with (a) its outside auditors or accountants, (b) third parties who have signed appropriate confidentiality agreements with Customer who are engaged by Customer to review or implement suggestions or to further research the issues contained in the deliverables and (c) governmental or regulatory bodies as required by law.

F. Appendix A, Section 9, Vendor Responsibilities, A. Indemnifications, 2) Acts or Omissions is hereby amended and replaced in its entirety as follows:

2) Acts or Omissions

Vendor ("Indemnitor") shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNNESS (collectively "**Texas Indemnified Parties**" or individually a "**Texas Indemnified Party**") FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS (collectively, "Claims"), AND ALL RELATED COSTS, ATTORNEYS FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Indemnitor or its agents, employees, and/or subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. VENDOR SHALL PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS FEES. THE DEFENSE SHALL BE COORDINATED WITH THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS. VENDOR AND CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OR SUCH CLAIM.

G. Appendix A, Section 9, Vendor Responsibilities, A. Indemnifications, 3) Infringements is hereby amended and replaced in its entirety as follows:

3) Infringements

Vendor ("Indemnitor") shall indemnify and hold harmless the State of Texas Indemnified Party from any and all 3rd Party claims involving infringement of a US patent, copyright, trade and service mark and any other intellectual or intangible property rights in connection with the performance or actions of the Vendor pursuant to this Contract. VENDOR AND CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING

ATTORNEYS FEES. THE DEFENSE SHALL BE COORDINATED WITH THE OFFICE OF THE ATTORNEY GENERAL FOR THE STATE OF TEXAS STATE AGENCY CUSTOMERS AND WITH CUSTOMERS LEGAL COUNSEL FOR ALL NON-STATE AGENCY CUSTOMERS.

If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer shall) at Vendors sole option and expense: (i) procure for the Customer 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 functionally equivalent or superior product or service so that Customer's use is non-infringing. Notwithstanding the foregoing obligations of the Vendor, Vendor shall have no obligation under this section for any claim of infringement based solely on any unauthorized modification of the materials by the Customer or any 3rd Party or the unauthorized use of the materials.

H. Appendix A, Section 9, Vendor Responsibilities, H. Confidentiality is hereby amended and replaced in its entirety as follows:

H. Confidentiality

- 1) Vendor acknowledges that DIR and Customers that are state agencies are government agencies subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are state agencies will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.
- 2) Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.
- 3) Vendor agrees to keep confidential any information communicated by Customer to Vendor in connection with this Agreement. This obligation of confidence shall not apply to information that (1) is in the public domain at the time of its communication; (2) is independently developed by Vendor; (3) entered into public domain through no fault of Vendor subsequent to Customer's communication to Vendor; (4) is in Vendors possession free of any obligation of confidence at the time of Customers communication to Vendor; or (5) is communicated by the Customer to a third-party free of any obligation of confidence. Additionally Vendor may disclose such information to extent required by legal process.

I. Appendix A, Section 9, Vendor Responsibilities, K. Limitation of Liability is hereby amended and replaced in its entirety as follows:

K. Limitation of Liability

Vendor's liability for damages of any kind to the Customer shall be limited to the greater of three (3) times the total amount paid to Vendor for the Statement of Work or Task Order that gave rise to the claim under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action or \$1,000,000. However, this limitation of Vendors liability shall not apply to claims of patent, trademark, or copyright infringement.

This Contract is executed to be effective as of the date of last signature.

GARTNER, INC.

Authorized By: Signature on File

Name: Phillip A. Cummings

Title: Director, Government Contracts

Date: 1/27/14

The State of Texas, acting by and through the Department of Information Resources

Authorized By: Signature on File

Name: Karen Robinson

Title: Executive Director

Date: 1/17/14

Office of General Counsel: djb 1/27/14