

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 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and *Gartner, Inc.* ("Vendor"), with its principal place of business at 56 Top Gallant Road, Stamford CT, 06902.

**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-414, on August 8, 2017, for IT Research and Advisory Subscription Services. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-414 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-414, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-414, 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substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.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 initial term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor, with three (3) optional one-year renewals. Prior to expiration of each term, the contract will renew automatically under the same terms and conditions unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

**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 (0.75%). 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:

Kelly A Parker, CTPM, CTCM  
Director, Cooperative Contracts  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 475-1647  
Facsimile: (512) 475-4759  
Email: [kelly.parker@dir.texas.gov](mailto:kelly.parker@dir.texas.gov)

If sent to the Vendor:

Phillip A. Cummings  
Contracts Counsel  
Gartner, Inc.  
1201 Wilson Blvd 17th Floor;  
Arlington VA 22209  
Phone: (703) 387 - 5619  
Facsimile: (800) 446-3597  
Email: [phillip.cummings@gartner.com](mailto:phillip.cummings@gartner.com)

**7. Service Agreement**

**A)** 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.

**B) Conflicting or Additional Terms**

In the event that conflicting or additional terms in Service Agreements or linked or supplemental documents amend or diminish the rights of DIR Customers or the State, such conflicting or additional terms shall not take precedence over the terms of this Contract.

In the event of a conflict, any linked documents may not take precedence over the printed or referenced documents comprising this contract; provided further that any update to such linked documents shall only apply to purchases or leases of the associated Vendor product or service offering after the effective date of the update; and, provided further, that, if Vendor has responded to a solicitation or request for pricing, no update of such linked documents on or after the initial date of Vendor's initial response shall apply to that purchase unless Vendor directly informs Customer of the update before the purchase is consummated.

In the event that different or additional terms or conditions would otherwise result from accessing a linked document, agreement to said linked document shall not be effective until reviewed and approved in writing by Customer's authorized signatory.

Vendor shall not [without prior written agreement from Customer's authorized signatory,] require any document that: 1) diminishes the rights, benefits, or protections of the Customer, or that alters the definitions, measurements, or method for determining any authorized rights, benefits, or protections of the Customer; or 2) imposes additional costs, burdens, or obligations upon Customer, or that alters the definitions, measurements, or method for determining any authorized costs, burdens, or obligations upon Customer.

If Vendor attempts to do any of the foregoing, the prohibited documents will be void and inapplicable to the contract between DIR and Vendor or Vendor and Customer, and Vendor will nonetheless be obligated to perform the contract without regard to the prohibited documents, unless Customer elects instead to terminate the contract, which in such case may be identified as a termination for cause against Vendor.

The foregoing requirements apply to all contracts, including, but not limited to, contracts between Customer and a reseller who attempts to pass through documents and obligations from its Manufacturer or Publisher.

**8. Authorized Exceptions to Contract and any Appendices.**

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

**B. 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 thru 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 of Prior Rights by Customer – All tangible and intangible property including the Intellectual Property Rights therein, which are owned by Customer prior to the execution of any Statement of Work (e.g. copyrights, trademarks, etc.) shall 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 for purposes set forth in a Statement of Work and only for the duration of such Statement of Work which is hereby granted to Vendor by Customer.

Ownership of Prior Rights by Vendor – All tangible and intangible property including the Intellectual Property Rights therein, which is owned by Vendor prior to the execution of any Statement of Work (e.g. pre-existing tools, processes, methodologies, proprietary research data and proprietary databases) (hereinafter “Pre-existing Vendor IP”) 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 Pre-existing Vendor IP for internal business use, solely for purposes set forth in a Statement of Work.

Ownership of Pre-Existing Right Embodied in Deliverables – 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.

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

**2) Acts or Omissions**

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any intentional, willful, reckless, negligent or otherwise wrongful acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY

GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

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

**K. Limitation of Liability**

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) 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 Vendor's liability shall not apply to claims of bodily injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under this Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind.

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: Sr. Director Contracts Counsel

Date: 3/29/2018

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

Authorized By: /Signature on File/

Name: Hershel Becker

Title: Chief Procurement Officer

Date: 4/6/2018

Office of General Counsel: DB 4/6/2018