



State of Oklahoma
Office of Management and Enterprise Services

**ADDENDUM 1 TO
STATE OF OKLAHOMA CONTRACT WITH GARTNER, INC
RESULTING FROM STATEWIDE CONTRACT NO. 1026**

This Addendum 1 (“Addendum”) is an Amendment to the Contract awarded to Gartner, Inc. in connection with Solicitation 0900000326 (“Solicitation”) and is effective January 22, 2019.

Recitals

Whereas, the State issued a Solicitation for proposals to provide Information Technology (IT) research and advisory subscription services and consultancy services, to support IT strategic, tactical and operational initiatives underway, as more particularly described in the Solicitation;

Whereas, Gartner, Inc. (“Gartner,” “Vendor,” or “Contractor”) submitted a proposal with exceptions in response to the Solicitation terms and provided various other Contract Documents; and

Whereas, the State and Gartner have negotiated the final terms under which Gartner will perform the Services under the Contract.

Now, therefore, in consideration of the foregoing and the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

1. **Addendum Purpose.**

This Addendum memorializes the agreement of the parties with respect to negotiated terms of the Contract that is being awarded to Gartner as of even date with execution of this Addendum. The parties agree that Contractor has not yet begun performance of work contemplated by the Solicitation.

2. **Negotiated Documents of the Contract.**

2.1. The parties have negotiated certain terms of the Contract as follows:

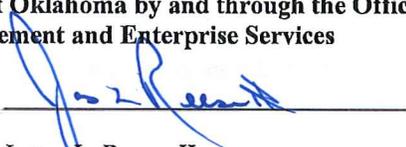
- i. certain exceptions to the Solicitation as contained in Attachment A to this Addendum titled, “Negotiated Exceptions and Additional Terms to the Solicitation”;

- ii. revisions to the special terms addendum as contained in Attachment B to this Addendum titled, "Special Terms Addendum";
- iii. revisions to the research & advisory services terms addendum as contained in Attachment C to this Addendum titled, "Research & Advisory Services Terms Addendum";
- iv. revisions to the service agreement as contained in Attachment D to this Addendum titled, "Service Agreement," and
- v. revisions to the statement of work form as contained in Attachment E to this Addendum titled, "Statement of Work."

2.2. Accordingly, any reference to a Contract Document refers to such Contract Document as it may have been amended. If and to the extent any provision is in multiple documents and addresses the same or substantially the same subject matter but does not create an actual conflict, the more recent provision is deemed to supersede earlier versions.

2.3. Gartner affirmatively acknowledges that it will not ask the State or any agency to execute additional documents not listed above in connection with this Contract.

State of Oklahoma by and through the Office of Management and Enterprise Services

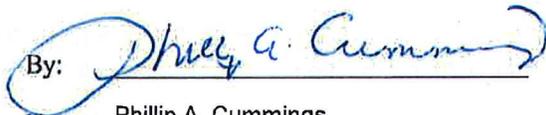
By: 

Name: James L. Reese, II

Title: Chief Information Officer

Date: 1-22-2019

Gartner, Inc.

By: 

Name: Phillip A. Cummings

Title: Contracts Counsel

Date: 10 January 2019

**Attachment A to
Addendum 1 to
STATE OF OKLAHOMA CONTRACT WITH GARTNER, INC
RESULTING FROM STATEWIDE CONTRACT NO. 1026**

Negotiated Exceptions and Additional Terms to the Solicitation

The Solicitation is hereby amended to include the terms as set forth below and supersedes all prior terms and Exceptions submitted by **Gartner, Inc.** or discussed by the parties.

RFP Section	Exception
<p>A. General Provisions, A.12.1. Contract Modification</p>	<p><u>Section A.12.1 is deleted in its entirety and replaced by the following:</u></p> <p>The Contract Documents issued as a result of this Solicitation is under the authority of the State personnel signing the Contract Documents. The Contract may be modified only through a written Amendment, mutually signed by the State and the Contractor.</p>
<p>A. General Provisions, A.45. Compliance with Technology Policies</p>	<p><u>Section A.45 is deleted in its entirety and replaced by the following:</u></p> <p>As between Contractor and the State, the Work Product and intellectual property rights therein are and shall be owned exclusively by the State, and not Contractor. Contractor 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 the state. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Contractor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to the State all right, title and interest in and to all ownership rights and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and the State shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Contractor acknowledges that Contractor and the State do not intend Contractor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. The State shall have access, during normal business hours (Monday through Friday, 8:00 a.m. to 5:00 p.m.) and upon reasonable prior notice to Contractor, to all Contractor materials, premises and computer files containing the Work Product. Contractor and the State,</p>

RFP Section	Exception
	<p>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 under the Contract to any Third Party Intellectual Property, except as may be incorporated in the Work Product by Contractor.</p> <p>The term (“Work Product”) means any and all deliverables produced by Contractor solely for the State under a statement of work executed by the parties and 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 solely for such deliverables, 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, and (vii) all intellectual property rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use of benefit of the State in connection with the statement of work for the deliverables.</p>
<p>B. Special Provisions, B.2.3. Obligations of Permitted Subcontractor</p>	<p><u>Section B.2.3 is hereby added to include the following:</u></p> <p>Gartner, Inc. shall obtain written approval from the State prior to utilization of a subcontractor and each employee of such subcontractor binding them to the same terms, conditions, certifications, and covenants herein. Gartner has affirmed that no subcontractors will be utilized at this time and prior written approval from the State is an ongoing obligation before any subcontractors are utilized.</p>

RFP Section	Exception
B. Special Provisions, B.6. Web Site Requirements	<p><u>Section B.6 is deleted in its entirety and replaced by the following:</u></p> <p>Gartner will provide the State with a price list that is valid for twelve (12) months that can be posted. Additionally, the Gartner Account Executive will provide price quotes to all perspective customers upon request.</p>

**Attachment B to
Addendum 1 to
STATE OF OKLAHOMA CONTRACT WITH GARTNER, INC.
RESULTING FROM STATEWIDE CONTRACT NO. 1026**

The **Special Terms Addendum** is hereby amended as set forth below and supersedes all prior documents submitted by **Gartner, Inc. (“Vendor” or “Contractor”)** or discussed by the parties. This Special Terms Addendum is between Gartner and the Office of Management and Enterprise Services, (“OMES” or “State”) collectively referred to as the Parties, on behalf of State and Interlocal Entities (Customer).

SPECIAL TERMS ADDENDUM

The parties expressly agree the attached special consulting terms listed herein shall control in the areas listed below notwithstanding the language of terms and/or conditions contained in other parts of this Solicitation/Agreement.

1. Indemnification Person and/or Tangible Property - Contractor agrees to indemnify, defend and hold harmless the State, its employees, officers and agents, from and against any third party claims, demands, loss, damage or expenses (including reasonable attorney's fees and court costs) relating to bodily injury or death of any person or damage to real and/or tangible personal property directly caused by the negligence or willful misconduct of the Contractor, its personnel, or agents during the course of the Services under this Agreement. *THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN OKLAHOMA STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT THAT BINDS A STATE AGENCY WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THE STATE AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.*
2. Indemnity for Intellectual Property – Upon notification of a claim against Customer alleging any Deliverable infringes a copyright, US patent or trade secret of any third party, Contractor will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Customer. Contractor will not indemnify Customer however, if the claim of infringement is caused by (1) Customer's misuse or modification of the Deliverable; (2) Customer's failure to use corrections or enhancements made readily available by Contractor at no additional cost; Customer's use of the Deliverable in combination with any product or information not owned or developed by Contractor, where such infringement is in no way contributable to Gartner. If any Deliverable is, or in Contractor's opinion is likely to be, held to be infringing, Contractor shall at its expense and option either: (a) procure the right for Customer to continue using it, (b) replace it with a noninfringing equivalent, (c) modify it to make it noninfringing, or (d) direct the return of the Deliverable and refund to Customer the fees paid for such Deliverable.
3. Intellectual Property Ownership. (a) Subject to payment of fees specified in the applicable SOW, Contractor grants to Customer ownership of any Deliverable originally created for and submitted to Customer. Contractor shall retain sole and exclusive ownership of its preexisting tools, methodologies, questionnaires, responses, and

proprietary research and/or any data generated in the course of performing the consulting services, together with all intellectual property rights therein (collectively, the "Contractor Materials"). Contractor grants to Customer a perpetual, non-exclusive, royalty-free license to use and to disclose during the course of its internal business operations any Contractor Materials embodied in a Deliverable not originally created for and submitted to the Customer.

(b) Nothing contained in this Agreement shall preclude Contractor from rendering services to others or developing work products that are competitive with, or functionally comparable to, the consulting services performed. Contractor shall not be restricted in its use of ideas, concepts, know-how, data and techniques acquired or learned in the course of performing the consulting services, provided that Contractor shall not use or disclose any of Customer's confidential information, as defined below.

(c) With respect to any benchmarking Services performed by Contractor, Customer acknowledges that (i) the contents of the Benchmarking Report (as defined in the applicable Statement of Work – "Attachment E") and other deliverables are based upon information which is proprietary to Contractor and contained in Contractor's proprietary database, (ii) the contents of the database belong to Contractor solely, (iii) Customer's data will become part of the database, (iv) Contractor will code any presentation of Customer's data to preserve Customer's anonymity, and (v) the database will be used by Contractor in future consulting and benchmarking engagements.

(d) Customer shall retain its rights in any proprietary material that Customer supplies to Contractor. If Customer provides Contractor with materials owned or controlled by Customer or with use of, or access to, such materials, Customer grants to Contractor all rights and licenses that are necessary for Contractor to fulfill its obligations under each Statement of Work ("Attachment E") for consulting services.

4. Use of Deliverables. Subject to payment in full of the applicable fees, Contractor grants to Customer for internal purposes only a worldwide, royalty-free, perpetual license to use, reproduce, display, distribute copies of, and prepare derivative works of any Consulting Deliverables. Unless the Deliverable is a Request for Proposal (RFP) or similar document intended to be distributed by Customer, Customer shall not make the Deliverables available, in whole or in part, to anyone outside of State of Oklahoma, or quote excerpts from the Deliverables to the public, without the prior written consent of Contractor. Notwithstanding the foregoing, State of Oklahoma may share the Deliverables with (i) its outside auditors and/or accountants, (ii) third parties who have signed appropriate confidentiality agreements with State of Oklahoma who are engaged by State of Oklahoma to review or implement suggestions or to further research the issues contained in the Deliverables, and (iii) individuals or groups requesting release of information under the State's Freedom of Information statute(s).
5. Limitation of Liability. (a) Neither party shall be liable for any consequential, indirect, special or incidental damages, such as damages for lost profits, business failure or loss arising out of use of the Deliverables or the consulting services, whether or not advised of the possibility of such damages. Neither party's total liability under this agreement will exceed an amount equal to the fee payable by the Customer under the Statement of Work under which such liability arises. Notwithstanding anything to the contrary in this Contract, the foregoing provisions of this Section shall not apply to or limit damages, expenses, costs, actions, claims, and liabilities arising from or related to property damage, bodily injury or death caused by Contractor; the Contractor's indemnity obligations under this Contract; Contractor's confidentiality obligations under this

Contract; the bad faith, gross negligence or intentional misconduct of the Contractor or its employees, agents and subcontractors; or other acts for which applicable law does not allow exemption from liability.

6. Warranty. (a) Contractor warrants that the Deliverables, in the form provided to Customer, do not infringe any copyright, trademark, trade secret or other right of any third party. (b) CONTRACTOR DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE INFORMATION IN THE DELIVERABLES HAS BEEN OBTAINED FROM SOURCES THAT CONTRACTOR BELIEVES TO BE RELIABLE. ALL DELIVERABLES SPEAK AS OF THE DATE OF DELIVERY TO THE Customer.
7. Acceptance of Deliverables. All Deliverables provided by Contractor to Customer shall be deemed to be accepted within 15 days of receipt by Customer unless Contractor receives written notice of non-acceptance within 15 days after delivery. Any notice of non-acceptance must state in reasonable detail how the Deliverables did not conform to the Statement of Work and Contractor shall use its reasonable business efforts to correct any deficiencies in the Deliverables so that they conform to the Statement of Work.
8. No Third-Party Beneficiaries. This Agreement is for the benefit of the parties only. None of the provisions of this Agreement are for the benefit of, or enforceable by, any third party. It is the intention of Contractor and STATE that no third party shall have the right to (i) rely on the consulting services provided by Contractor or (ii) seek to impose liability on Contractor as a result of the consulting services or any Deliverables furnished to STATE.
9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma, without reference to conflict of law principles.

**Attachment C to
Addendum 1 to
STATE OF OKLAHOMA CONTRACT WITH GARTNER, INC.
RESULTING FROM STATEWIDE CONTRACT NO. 1026**

The **Research & Advisory Services Terms Addendum** is hereby amended as set forth below and supersedes all prior documents submitted by **Gartner, Inc. (“Vendor” or “Contractor”)** or discussed by the parties. This Service Terms Addendum is between Gartner and the Office of Management and Enterprise Services, (“OMES” or “State”) collectively referred to as the Parties, on behalf of State and Interlocal Entities (Customer).

RESEARCH & ADVISORY SERVICES TERMS ADDENDUM

Ownership and Use of the Services. Gartner owns and retains all rights to the Services not expressly granted to Customer herein. Only the individuals named in this SA (each a “**Licensed User**”) may access the Services. Each Licensed User will be issued a unique password, which may not be shared. Customer may substitute Licensed Users, excerpt from and/or share Gartner Research documents within the Customer organization, and quote or excerpt from the Services externally.

DISCLAIMER OF WARRANTIES. GARTNER EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR AS TO ADEQUACY OF INFORMATION. CUSTOMER RECOGNIZES THE UNCERTAINTIES INHERENT IN ANY ANALYSIS OR INFORMATION THAT MAY BE PROVIDED AS PART OF THE SERVICES, AND ACKNOWLEDGES THAT THE SERVICES ARE NOT A SUBSTITUTE FOR ITS OWN INDEPENDENT EVALUATION AND ANALYSIS.

Miscellaneous

(a) **Use of Name, Trademark, and Logo.** Absent the prior written consent of the other party, neither party shall use the name, trademarks, or logo of the other in promotional materials, publicity releases, advertising, or any other similar publications or communications.

(b) **No Third Party Beneficiaries.** This SA is for the benefit of Gartner, the State, and Customer only.

Please attach any required Purchase Order (“**PO**”) to this SA and enter the PO number below. Any pre-printed or additional contract terms included on the PO shall be inapplicable and of no force or effect. All PO’s are to be sent to purchaseorders@gartner.com. This SA may be signed in counterparts.

4. CLIENT BILLING INFORMATION

Purchase Order Number

Billing Address

Invoice Recipient Name

Invoice Recipient Email

Invoice Recipient Tel. No.

NOTICE

Name

Address

Title

Phone

5. AUTHORIZATION

Client:

Gartner, Inc.

Signature/Date

Signature/Date

Print Name and Title

Print Name and Title

IF USING A DIGITAL SIGNATURE, PLEASE CONFIRM THE FOLLOWING AS A CONDITION OF CONTRACT EXECUTION:
[] By ticking this box, I agree that by affixing my digital signature hereunder I am attesting that: (i) this is my own personal legal signature; and (ii) I am a duly authorized signatory for my company. My signature verifies that the information provided to Gartner hereunder is subscribed by me, under penalty of false statement and material breach of contract.

**Attachment E to
Addendum 1 to
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The **Statement of Work** is hereby amended as set forth below and supersedes all prior documents submitted by **Gartner, Inc. (“Vendor” or “Contractor”)** or discussed by the parties. The parties agree to use this **Statement of Work** or a document substantially similar.

**Statement of Work
Between [Name of Agency] and Gartner Inc.**

This Statement of Work (SOW) is issued by Authorized User to acquire [redacted] from Gartner Inc.

STATEMENT OF WORK

The Contractor shall perform the following Task(s): [insert description of task]

1. **Period of Performance** – The work authorized by this SOW will occur with [redacted] months of the execution of this SOW.
2. **Place of Performance** – The work authorized by the SOW will be performed at [redacted] or other locations as authorized by the Authorized User.

TASK 1:
[Insert tasking]

- Deliverables:**
- Define Deliverable(s)

TASK 2:
[Insert tasking]

- Deliverables:**
- Define Deliverable(s)

TASK 3:
[insert tasking]

- Deliverables:**
- Define Deliverable(s)

DELIVERABLES:

No.	Title	Due Date	Required Format	Distribution (if applicable)	
1					
2					
3					

PAYMENT SCHEDULE:

Deliverable	Due Date	Price	
1	TBD	TBD	
2	TBD	TBD	
3	TBD	TBD	

ACCEPTANCE CRITERIA:

To Be Determined

PROJECT ASSUMPTIONS:

A. Project Assumptions – The following assumptions are specific to this project:

TBD

B. Project Roles and Responsibilities – The following roles and responsibilities have been defined for this project.

TBD

POINT OF CONTACT:

For the duration of this project, the following project managers shall serve as the points of contact for day-to-day communication between the Authorized User and Gartner:

Authorized User:

Gartner:

