



Department of Administration
 Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
 Charleston, WV 25305-0130

State of West Virginia
Purchase Order

CORRECT ORDER NUMBER MUST APPEAR
 ON ALL PACKAGES, INVOICES, AND
 SHIPPING PAPERS. QUESTIONS
 CONCERNING THIS ORDER SHOULD BE
 DIRECTED TO THE DEPARTMENT
 CONTACT.

Order Date: 11-09-2022

Order Number:	CPO 0313 0313 DEP230000004 2	Procurement Folder:	1058469
Document Name:	BTO216-22 IT Consulting Contract - Enterprise IT Leaders	Reason for Modification:	CO#1 TO ESTABLISH SERVICE DATES AND ATTACH SIGNED AGREEMENT
Document Description:	CO#1 TO ESTABLISH SERVICE DATES		
Procurement Type:	Central Purchase Order		
Buyer Name:	Joseph E Hager III		
Telephone:	(304) 558-2306		
Email:	joseph.e.hageriii@wv.gov		
Shipping Method:	Best Way	Effective Start Date:	2022-09-01
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2023-08-31

VENDOR		DEPARTMENT CONTACT		
Vendor Customer Code:	000000100841	Requestor Name:	Jessica S Chambers	
GARTNER INC PO BOX 911319		Requestor Phone:	304-926-0499	
DALLAS TX 753911319 US		Requestor Email:	jessica.s.chambers@wv.gov	
Vendor Contact Phone:	7175033286 Extension:	<div style="font-size: 48px; font-weight: bold;">23</div> <div style="font-weight: bold;">FILE LOCATION _____</div>		
Discount Details:				
Discount Allowed	Discount Percentage			Discount Days
#1 No	0.0000			0
#2 Not Entered				
#3 Not Entered				
#4 Not Entered				

INVOICE TO	SHIP TO
ENVIRONMENTAL PROTECTION OFFICE OF ADMINISTRATION 601 57TH ST SE CHARLESTON WV 25304 US	ENVIRONMENTAL PROTECTION 601 57TH ST CHARLESTON WV 25304 US

11-15-22 BJS

Purchasing Division's File Copy

Total Order Amount:	\$66,255.00
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ENTERED

PURCHASING DIVISION AUTHORIZATION DATE: <i>11/15/22</i> ELECTRONIC SIGNATURE ON FILE	ATTORNEY GENERAL APPROVAL AS TO FORM DATE: <i>11/17/22</i> ELECTRONIC SIGNATURE ON FILE	ENCUMBRANCE CERTIFICATION DATE: <i>Beverly Tolson 11-17-22</i> ELECTRONIC SIGNATURE ON FILE
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11/17/2022

Extended Description:
CHANGE ORDER #1

CHANGE ORDER #1 IS ISSUED TO ESTABLISH CONTRACT SERVICE DATES AND ATTACH SIGNED GARTNER AGREEMENT ACCORDING TO ALL TERMS, CONDITIONS, PRICES, AND SPECIFICATION CONTAINED IN THE ORIGINAL CONTRACT INCLUDING ALL AUTHORIZED CHANGE ORDERS.

EFFECTIVE SERVICE DATES 09/01/2022 TO 08/31/2023

NO OTHER CHANGES

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
1	81141902	0.00000		0.000000	66255.00
Service From	Service To	Manufacturer	Model No		
2022-09-01	2023-08-31				

Commodity Line Description: Consulting Services for Enterprise IT Leaders

Extended Description:
Consulting Services for Enterprise IT Leaders



west virginia department of environmental protection

Information Technology Support
601 57th Street, S.E.
Charleston, WV 25304

Harold D. Ward, Cabinet Secretary
dep.wv.gov

GARTNER INC
PO BOX 911319
DALLAS TX, 75391

Establishing Service Dates
BTO216-22 IT Consulting
Contract - Enterprise IT
Leaders
CPO DEP2300000004

Dear Vendor:

Please be advised that the official starting date for BTO216-22 IT Consulting Contract – Enterprise IT Leaders will be September 1, 2022, through August 31, 2023. If you Agree this, please sign and date below.

If you need further information, please contact Neil Chakrabarty at extension 41987

DocuSigned by:
Ashley Belueh
3C9881B4DAC2436...

October 27, 2022

Vendor Signature

Date

Jessica Smith
Agency Signature

11/2/2022

Date

**STATE OF WEST VIRGINIA
ADDENDUM TO VENDOR'S STANDARD CONTRACTUAL FORMS**

State Agency, Board, or Commission (the "State"): The West Virginia Department of Environmental Protection
Vendor: Gartner Inc.

Contract/Lease Number ("Contract"): CCT 0313 DEP2300000004

Commodity/Service: BTO216-22 IT Consulting - Enterprise IT Leaders

The State and the Vendor are entering into the Contract identified above. The Vendor desires to incorporate one or more forms it created into the Contract. Vendor's form(s), however, include(s) one or more contractual terms and conditions that the State cannot or will not accept. In consideration for the State's incorporating Vendor's form(s) into the Contract, the Vendor enters into this Addendum which specifically eliminates or alters the legal enforceability of certain terms and conditions contained in Vendor's form(s). Therefore, on the date shown below each signature line, the parties agree to the following contractual terms and conditions in this Addendum are dominate over any competing terms made a part of the Contract:

1. **ORDER OF PRECEDENCE:** This Addendum modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Addendum. IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS ADDENDUM, THIS ADDENDUM SHALL CONTROL.
2. **PAYMENT** – Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance.

Any language imposing any interest or charges due to late payment is deleted.
3. **FISCAL YEAR FUNDING** – Performance of this Contract is contingent upon funds being appropriated by the WV Legislature or otherwise being available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.
4. **RIGHT TO TERMINATE** – The State reserves the right to terminate this Contract upon thirty (30) days written notice to the Vendor. If this right is exercised, the State agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are deleted that seek to require the State to (1) compensate Vendor, in whole or in part, for lost profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.

Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.
5. **DISPUTES** – Any language binding the State to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.

Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.

Any language requiring the State to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.
6. **FEES OR COSTS:** Any language obligating the State to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.
7. **GOVERNING LAW** – Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia.
8. **RISK SHIFTING** – Any provision requiring the State to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.
9. **LIMITING LIABILITY** – Any language limiting the Vendor's liability for direct damages to person or property is deleted.
10. **TAXES** – Any provisions requiring the State to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. The State will, upon request, provide a tax exempt certificate to confirm its tax exempt status.
11. **NO WAIVER** – Any provision requiring the State to waive any rights, claims or defenses is hereby deleted.

- 12. **STATUTE OF LIMITATIONS** -- Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.
- 13. **ASSIGNMENT** -- The Vendor agrees not to assign the Contract to any person or entity without the State's prior written consent, which will not be unreasonably delayed or denied. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract.
- 14. **RENEWAL** -- Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.
- 15. **INSURANCE** -- Any provision requiring the State to maintain any type of insurance for either its or the Vendor's benefit is deleted.
- 16. **RIGHT TO REPOSSESSION NOTICE** -- Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.
- 17. **DELIVERY** -- All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
- 18. **CONFIDENTIALITY** -- Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act ("FOIA") (W. Va. Code §29B-a-1, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the State's sole discretion.

Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.

- 19. **THIRD-PARTY SOFTWARE** -- If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that it has the authority to modify such third-party software's terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the State against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.
- 20. **AMENDMENTS** -- The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

Notwithstanding the foregoing, this Addendum can only be amended by (1) identifying the alterations to this form by using *Italics* to identify language being added and ~~striketrough~~ for language being deleted (do not use track-changes) and (2) having the Office of the West Virginia Attorney General's authorized representative expressly agree to and knowingly approve those alterations.

State: WV Dept. of Environmental Protection
 By: *B.J. Chestnut*
 Printed Name: B.J. Chestnut
 Title: Asst. Chief - DEP Business Operations Office
 Date: 11-10-2022

Vendor: Gartner Inc
 DocuSigned by:
 By: *Alexandra Canizales*
 Printed Name: Alexandra Canizales
 Title: Senior Contracts Specialist
 Date: October 18, 2022

Master Client Agreement – Gartner, Inc.

This MASTER CLIENT AGREEMENT (the “MCA”) for subscription-based research and related services is between Gartner, Inc. of 56 Top Gallant Road, Stamford, CT 06904 (“Gartner”) and West Virginia DEP 601 57th Street SE, Charleston, WV 25304-2345 (“Client”), and sets forth the general terms applicable to the use of Gartner products and services (the “Services”) provided to Client, or to any majority-owned affiliate of Client.

1. **Service Agreements.** Service Agreements set forth the Service(s) to be provided by Gartner (as more fully described in one or more “Service Descriptions”), the term of Client’s license for such Services, and the fees payable by Client. Service Agreements are non-cancelable, and may be terminated only for material breach by either party, upon 30 days prior written notice, if the breach is not cured within the notice period. In the event of an inconsistency between any provision of this MCA and a provision of a Service Agreement, the Service Agreement shall control during its term.

2. **Ownership and Use of the Services.** Gartner owns and retains all rights to the Services not expressly granted to Client. Only the individuals named in the Service Agreement (each a “Licensed User”) may access the Services. Each Licensed User will be issued a unique password, which may not be shared. Client agrees to review and comply with the *Gartner Usage Policy*, which is accessible to all Licensed Users via the “Policies” section of gartner.com. Among other things, the *Gartner Usage Policy* describes how Client may substitute Licensed Users, excerpt from and/or share Gartner research documents within the Client organization, and quote or excerpt from the Services externally.

3. **DISCLAIMER OF WARRANTIES.** THE SERVICES ARE PROVIDED ON AN “AS IS” BASIS, AND 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 ACCURACY, COMPLETENESS OR ADEQUACY OF INFORMATION. CLIENT 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 AND SHOULD NOT BE CONSIDERED A RECOMMENDATION TO PURSUE ANY COURSE OF ACTION. GARTNER SHALL NOT BE LIABLE FOR ANY ACTIONS OR DECISIONS THAT CLIENT MAY TAKE BASED ON THE SERVICES OR ANY INFORMATION OR DATA CONTAINED THEREIN. EXCEPT FOR DIRECT DAMAGES TO PERSONS OR PROPERTY CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT, OF GARTNER, ITS PERSONNEL, OR AGENTS DURING THE PROVISION OF SERVICES HEREUNDER, CLIENT UNDERSTANDS THAT IT ASSUMES THE ENTIRE RISK WITH RESPECT TO THE USE OF THE SERVICES.

4. **Client Confidential Information.** Gartner agrees to keep confidential any Client-specific information communicated by Client to Gartner in connection with this MCA that is (i) clearly marked confidential if provided in written form, or (ii) preceded by a statement that such information is confidential, if provided in oral form, and such statement is confirmed in writing within 15 days of its initial disclosure. This obligation of confidence shall not apply to any information that: (1) is in the public domain at the time of its communication; (2) is independently developed by Gartner; (3) entered the public domain through no fault of Gartner subsequent to Client’s communication to Gartner; (4) is in Gartner’s possession free of any obligation of confidence at the time of Client’s communication to Gartner; or (5) is communicated by the Client to a third party free of any obligation of confidence. Additionally, Gartner may disclose such information to the extent required by legal process.

5. **Data Protection.** In performing its obligations under this MCA, Gartner and Client will each comply with all applicable data privacy legislation. Without limitation to this, Client shall ensure that any disclosure of personal data, whether in relation to Client’s employees or otherwise, made to Gartner by Client or on its behalf is made with the data subject’s consent or is otherwise lawful. In so far as any disclosure relates to Client’s own employee or subcontractor, Client shall notify that employee or subcontractor that Gartner and its affiliates may: (a) use the personal data to provide Client with the Services, (b) disclose the personal data to third parties to provide the Services; and (c) inform Client about

other products or services that Gartner believes may be of interest. If any person does not wish to receive such Gartner communications, they may contact Gartner at privacy@gartner.com.

6. **Miscellaneous**

- (a) **Assignability.** This MCA and the rights granted to Client hereunder may not be assigned, sublicensed or transferred, in whole or in part, by either party without the prior written consent of the other party, except to a successor to substantially all of the business or assets of a party by merger or acquisition. Where consent is required, it will not be unreasonably withheld.
- (b) **Arbitration.** Any unresolved dispute under this MCA shall be decided by arbitration conducted in Stamford, Connecticut before a single arbitrator under the administration of JAMS, in accordance with JAMS' Streamlined Arbitration Rules and Procedures. The decision of the arbitrator shall be final and binding, and the award may be entered in any court having jurisdiction. The prevailing party in any arbitration shall be entitled to an award of its reasonable attorneys' fees and costs, in addition to any award of damages or other relief.
- (c) **Applicable Law.** This MCA shall be governed by and construed in accordance with the procedural and substantive laws of the State of Connecticut, without reference to its conflict of law principles.
- (d) **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.
- (e) **No Third Party Beneficiaries.** This MCA is for the benefit of the parties only.
- (f) **Surviving Clauses.** Sections 3, 4, 5 and 6 (b), (c), (d), (e), (f), and (g) shall survive the termination of this MCA.
- (g) **Entire Agreement.** This MCA, together with any Service Agreements, sets forth the entire agreement between the parties with respect to the subject matter hereof. This MCA supersedes any previous agreements between the parties and may be signed in counterparts. No modifications may be made except in writing signed by both parties.

GARTNER, INC.

Authorized Signature:

DocuSigned by:

Ashley Beluch

3C8881E4DAC2436...

Date: October 27, 2022

West Virginia DEP

Authorized Signature:

Jessica Smith

Date: 11/2/2022

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.

Printed Name and Title: Jessica Smith, ASMT II

Please return a signed original of this MCA to:
Contracts Administration Department

Address: WV DEP
601 57th Street SE
Charleston, WV 25304-2345

Gartner, Inc.
12651 Gateway Blvd

Fort Myers, FL 33913

Telephone: 239-561-4000

Facsimile: 866-225-4277

Telephone: 304-926-0440

(304) 926-0479

Facsimile: _____