

**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, 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substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.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. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 936-2233  
Facsimile: (512) 475-4759  
Email: [mc.dorwart@dir.texas.gov](mailto: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](mailto: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 3<sup>rd</sup> 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



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Product or Services if such materials include any 3<sup>rd</sup> 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 DESIGNEES (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

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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:



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**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



## APPENDIX D to DIR Contract No. DIR-TSO-2531

### Gartner, Inc. Services Agreement for Williamson County ("Customer")

This Service Agreement ("SA") and DIR Contract No. DIR-TSO-2531 constitutes the complete agreement between Gartner, Inc. of 56 Top Gallant Road, Stamford, CT 06904 ("Gartner") and Customer for the Services (as defined below). The SA is based upon and governed by the Contract for Services with the State of Texas Department of Information Services ("DIR") Contract No. DIR-TSO-2531, between Gartner and DIR, the terms of which are incorporated by reference for use by the Customer. The General Terms contained herein and all applicable Vendor Services Descriptions shall apply to this SA and shall be effective when signed by both parties. Customer agrees to subscribe to the following Services for the term and fees set forth below. All fees shall be as set forth in Appendix C of DIR Contract No. DIR-TSO-2531.

#### 1. DEFINITIONS AND ORDER SCHEDULE

**a. Services** are the subscription-based research and related services purchased by Customer in the Order Schedule below and described in the Service Descriptions.

**b. Service Descriptions**, the terms of which are incorporated by reference, are attached to this SA and describe each Service purchased, specify the deliverables for each Service, and set forth any additional terms unique to a specific Service.

Service Names and Levels of Access are defined in the Service Descriptions. Gartner may periodically update the names and the deliverables for each Service. If Customer adds Services or upgrades the level of service or access, an additional Service Agreement will be required.

| <u>Service Name</u>            | <u>Level of Access</u>           | <u>Number of Users</u> | <u>Name of User to be Licensed</u>                      | <u>Contract Term Start Date</u> | <u>Contract Term End Date</u>    | <u>Annual Fee \$</u> | <u>Total Fee \$</u> |
|--------------------------------|----------------------------------|------------------------|---|---------------------------------|----------------------------------|----------------------|---------------------|
| Gartner for IT Leadership Team | 1 Leader<br>3 Essentials Members | 4                      | Jay Schade, Alison Gleason, Otis Coufal, Richard Semple | 12/1/2015                       | 12/31/2015                       | \$0.00               | \$0.00              |
| Gartner for IT Leadership Team | 1 Leader<br>3 Essentials Members | 4                      | Jay Schade, Alison Gleason, Otis Coufal, Richard Semple | 1/1/2015                        | 12/31/2016                       | \$47,628             | \$47,628            |
|                                |                                  |                        |   | Total Services:                 | (Excluding applicable sales tax) | \$47,628             | \$47,628            |

#### 2. SERVICE DESCRIPTIONS

| <u>Service Name/ Level of Access</u>             | <u>Service Description URL</u>  |
|--|---|
| Gartner for IT Leadership Team Leader            | <a href="http://www.gartner.com/it/sd/sd/itl_team_leader.pdf">http://www.gartner.com/it/sd/sd/itl_team_leader.pdf</a>                       |
| Gartner for IT Leadership Team Essential Members | <a href="http://www.gartner.com/it/sd/sd/itl_team_essentials_member.pdf">http://www.gartner.com/it/sd/sd/itl_team_essentials_member.pdf</a> |

#### 3. PAYMENT TERMS

Gartner will invoice Customer in advance for all Services. Payment shall be in accordance with Section 7.K. of Appendix A of the DIR Contract DIR-TSO-2531.

Please attach any required Purchase Order ("PO") to this SA and enter the PO number below. If an annual PO is required for multi-year contracts, Customer will issue the new PO at least 30 days prior to the beginning of each subsequent contract year. Any pre-printed or additional contract terms included on the PO shall be inapplicable and of no force or effect.

**CUSTOMER BILLING INFORMATION**

Purchase Order Number

Billing Address

Invoice Recipient Name

Invoice Recipient Email

Invoice Recipient Tel. No.

**4. AUTHORIZATION**

**State of Texas Customer:**

**Gartner, Inc.**

Signature/Date

Signature/Date

11/15/2015

Print Name and Title

Print Name and Title

Account executive



## General Terms and Guidelines for Vendor's Services

1. This SA for subscription-based research and related services (the "**Services**") is subject to Section 8.B. of Appendix A of the DIR Contract No. DIR-TSO-2531.
2. **Services** are the subscription-based research and related services described herein. Service Descriptions, Names and Levels of Access are as detailed for each product offering. Vendor may periodically update the names and the deliverables for each Service.
3. **Modification of Services by Vendor.** In order to remain current and timely in its Service offerings, Vendor may make minor modifications from time to time in the content of any Service. If Vendor discontinues any Service in its entirety, Customer may, at its option, receive a substitute Service, or obtain a pro rata refund of the fees paid for the discontinued Service.
4. **Licensed User** is the individual named in the Customer Purchase Order who is licensed to use the Services. Customer will limit access to the Services to the agreed upon number of Licensed Users.
5. **Ownership and Use of the Services.** Vendor owns and retains all rights to the Services not expressly granted to Customer. Only the individuals named in the Customer Purchase Order (each a "**Licensed User**") may access the Services. Each Licensed User will be issued a unique password, which may not be shared. Customer agrees to review and comply with the **Usage Guidelines for Gartner Services ("Guidelines")**, which are accessible to all Licensed Users via the "Policies" section of [www.gartner.com](http://www.gartner.com). Among other things, these Guidelines describe how Customer may substitute Licensed Users, excerpt from and/or share Vendor research documents within the Customer organization, and quote or excerpt from the Services externally. Customer may not redistribute copies of individual research documents, by electronic means or otherwise, to non-Users without Vendor's prior written permission. Licensed Users may not reproduce or distribute the Services externally without Vendor's prior written permission, except for external distribution, in their entirety only, of reprints of individual documents purchased by Customer.  
  
Customer may excerpt from the Services for external use only if Customer obtains the prior written approval of Gartner Quote Requests, at [quote.requests@gartner.com](mailto:quote.requests@gartner.com). Any approved external use of the Services must comply with Vendor's **Copyright and Quote Policy** which may be viewed on the Gartner Vendor Relations section of [www.gartner.com](http://www.gartner.com). Services may not be stored by Customer on any Information storage and retrieval system.
6. **Access to the Services.** ID's for access to Vendor Core Research and Analyst Inquiry may not be shared. Access to the Services is restricted to the number of named individuals (each a "**Licensed User**") as identified in the Customer Purchase Order.
7. **Monitoring of Usage.** Customer acknowledges and agrees to inform all Licensed Users that Vendor may monitor activity on Vendor's web site, including access to, and use of, the Services by individuals. Upon request, Customer agrees to provide Vendor with assurance from a responsible party (or other relevant evidence) of compliance with these usage terms.
8. **DISCLAIMER OF WARRANTIES.** THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND VENDOR 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. 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 AND SHOULD NOT BE CONSIDERED A RECOMMENDATION TO PURSUE ANY COURSE OF ACTION. VENDOR SHALL NOT BE LIABLE FOR ANY ACTIONS OR DECISIONS THAT CUSTOMER MAY TAKE BASED ON THE SERVICES OR ANY INFORMATION OR DATA CONTAINED THEREIN. CUSTOMER UNDERSTANDS THAT IT ASSUMES THE ENTIRE RISK WITH RESPECT TO THE USE OF THE SERVICES.
9. **Applicable Law.** This SA shall be governed by and construed in accordance with the procedural and substantive laws of the State of Texas, without reference to its conflict of law principles, venue for disputes shall be Travis County, Texas.
10. **Customer Confidential Information.** To the extent allowable under the Texas Public Information Act, Vendor agrees to keep confidential any Customer-specific information communicated by Customer to Vendor 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 Vendor; (3) entered the public domain through no fault of Vendor subsequent to Customer's communication to Vendor; (4) is in Vendor's possession free of any obligation of confidence at the time of Customer's 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 the extent required by legal process. Customer acknowledges that Vendor is in the business of researching and analyzing information technology and this obligation of confidence shall not apply to information obtained by Vendor's research, analysis or consulting organization(s) from other sources.