

Agreement for Technology Advisory Services
Ventura County – Gartner, Inc.

This contract entered into this _____ day of April, 2006, by and between the COUNTY OF VENTURA, a political subdivision of the State of California, hereinafter called "County" and Gartner, Inc., hereinafter called "Contractor."

WITNESSETH

WHEREAS, pursuant to Section 3 item f of the County of Ventura Ordinance Code 4084, the Purchasing Agent of the County has the authority to engage independent contractors to perform services for the County, with or without the furnishing of material; and

WHEREAS, other Government Entities within the State of California desire to obtain Technology Advisory Services at a discounted rate; and

WHEREAS, it is necessary and desirable that Contractor be engaged by County for the purpose of performing services hereinafter described; and

WHEREAS, Ventura County and Contractor desire to establish this Agreement as a master contract for all Government Entities within the State of California to obtain Technology Advisory Services as provided for herein:

NOW, THEREFORE, IT IS HEREBY AGREED by the parties as follows:

1. SERVICES TO BE PERFORMED BY CONTRACTOR

In consideration of the payments hereinafter set forth, Contractor will perform services for County in accordance with the terms, conditions and specifications set forth herein and in Exhibits attached hereto and by this reference made a part hereof.

2. PAYMENTS

In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein and in Exhibits attached hereto, County will make payment to Contractor in the manner specified in said Exhibits.

3. TERM

The term of this Agreement shall be through April 30, 2007 and may be extended thereafter on a year-to-year basis by mutual consent of the parties. The initial enrollment period shall be as provided for in Exhibit A and each enrollment thereafter through the term of the Agreement shall be for one-year periods. Each Government Entity participant shall execute an Enrollment Form, Exhibit B, attached hereto and by this reference made a part hereof, for the initial enrollment period. Thereafter each participant shall optionally enroll, renew, add or remove licenses by

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completion of a new Enrollment Form prior to sixty (60) days from the start of the next enrollment period.

4. RESPONSIBILITY OF CONTRACTOR

The Contractor shall, prior to start of any work awarded hereby, secure at Contractor's own expense all persons, employees and equipment required to perform the contract requirements. Contractor will be held fully responsible for performance of any subcontractors.

5. WARRANTIES

Contractor shall warrant and represent that:

- a. its work hereunder shall be of professional quality and performed consistent with generally accepted industry standards.
- b. there exists no actual or potential conflict of interest concerning the services to be performed under this agreement. Contractor represents that performance under this agreement does not require the breach of any agreement or obligation to keep in confidence the proprietary information of another party.

6. INDEPENDENT CONTRACTOR

No relationship of employer and employee is created by this contract, it being understood that Contractor is an independent contractor, and neither Contractor nor any of the persons performing services for Contractor pursuant to this contract, whether said person be member, partner, employee, subcontractor, or otherwise, will have any claim under this contract or otherwise against County for sick leave, vacation pay, retirement benefits, social security, workers' compensation, disability, unemployment insurance benefits, or employee benefits of any kind.

It is further understood and agreed by the parties hereto that, except as provided in this contract, Contractor in the performance of its obligation hereunder is subject to the control or direction of County merely as to the result to be accomplished by the services hereunder agreed to be rendered and performed and not as to the means and methods for accomplishing the results.

If, in the performance of this contract, any third persons are employed by Contractor, such persons will be entirely and exclusively under direction, supervision and control of Contractor. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other terms of employment or requirements of law, will be determined by Contractor, and County will have no right or authority over such persons or the terms of such employment, except as provided in this contract.

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The Contractor will comply with all of the provisions of the Worker's Compensation Insurance and Safety Acts of the State of California, the applicable provisions of Division 4 and 5 of the California Labor Code and all amendments, thereto; and all similar State and Federal acts or laws applicable; and will indemnify and hold harmless the County of Ventura from and against all claims, demands, payments, suits, actions, proceedings and judgments of every nature and description, including attorney's fees and costs, presented, brought or recovered against the County of Ventura, for or on account of any liability under any of said Acts which may be incurred by reasons of any work to be performed under this Contract.

7. **NON-ASSIGNABILITY**

Contractor will not assign this Contract or any portion thereof, to a third party without the prior written consent of County, and any attempted assignment without such prior written consent will be null and void and will be cause, at County's sole and absolute discretion, for immediate termination of this Contract.

8. **TERMINATION**

The County shall be able to cancel the contract, without penalty to the County, as follows:

- a. County's obligation hereunder will be limited to the funds appropriated by the Board of Supervisors for this purpose for each fiscal year in which this contract is in effect. In the event that the Board of Supervisors fails to so appropriate said funds; County's obligation hereunder will terminate at the end of the fiscal year for which funds were appropriated or at the end of the contract term, which ever occurs first.
- b. The County may terminate this contract under the provisions of, "Rights and Remedies of County for Default" paragraph for cause.
- c. The County at its sole option may terminate this agreement upon thirty (30) days written notice with or without cause. In the event of termination under this paragraph, Contractor shall be paid for all work provided to the date of termination, as long as such work meets the terms and conditions of this agreement. On completion or termination of this agreement, County shall be entitled to immediate possession of and Contractor shall furnish all computations, correspondence and other pertinent data gathered or computed by Contractor specifically for the services required hereunder prior to such termination.
- d. Contractor hereby expressly waives any and all claims for damages or compensation arising under this Agreement except as set forth in this paragraph in the event of such termination.

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- e. This right of termination belonging to the County of Ventura may be exercised without prejudice to any other remedy which it may be entitled at law or under this agreement.
- f. Upon termination or other expiration of this contract, each party will assist the other party in the orderly termination of the contract and the transfer of all assets, tangible and intangible, as may facilitate the orderly, non-disrupted business continuation of each party.

In the event of termination as provided for hereinabove, Contractor shall provide a prorated refund to County for all applicable prepaid fees. All reports, documents and other items generated or gathered in the course of providing services to the County under this Agreement are and shall remain the property of the County, and shall be returned to County upon full completion of all services by Contractor or termination of this Agreement, whichever first occurs.

9. RIGHTS AND REMEDIES OF COUNTY FOR DEFAULT

If Contractor defaults in the performance of any term or condition of this contract, Contractor must cure that default by a satisfactory performance within 10 days after service upon Contractor of written notice of the default. If Contractor fails to cure the default within that time, then County may terminate this contract without further notice.

10. INDEMNIFICATION, HOLD HARMLESS AND WAIVER OF SUBROGATION

- a. All activities and/or work covered by this contract will be at the risk of Contractor alone. Contractor agrees to defend, indemnify, and save harmless the County of Ventura, including all of its boards, agencies, departments, officers, employees, agents and volunteers, against any and all claims, lawsuits, whether against Contractor, County or others, judgments, debts, demands and liability, including without limitation, those arising from injuries or death of persons and/or for damages to property, arising directly or indirectly out of the obligations herein described or undertaken or out of operations conducted or subsidized in whole or in part by Contractor, save and except claims or litigation arising through the sole negligence or wrongdoing and/or sole willful misconduct of County, p

Contractor

Contractor

Contractor

Contractor agrees to waive all rights of subrogation against County for losses arising directly or indirectly from the activities and/or work covered by this contract.

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- b. If any claim is asserted or action or proceeding brought against County which alleges that all or any part of the services or products in the form supplied by Contractor or County's use thereof, infringes or misappropriates any United States or foreign patent or copyright, or any trade secret or other proprietary right, County shall give Contractor prompt written notice thereof. Contractor shall defend any such claim or action with counsel of Contractor's choice and at Contractor's expense and shall indemnify County for any costs, including reasonable attorney's fees and damages actually incurred by County in connection therewith, including steps County may take to avoid entry of any default judgment or other waiver of County's rights. County shall cooperate fully with and may monitor Contractor in the defense of any claim, action or proceeding and will make employees available as Contractor may reasonably request with regard to such defense, subject to reimbursement by Contractor of all costs and expenses occasioned by County's cooperation in such defense.

This indemnity does not extend to modifications or additions to the services or products made by County or any third party without written consent of Contractor, or to any unauthorized use of the services or products by County.

If the services or products are, in Contractor's opinion, likely to become or do become the subject of a claim of infringement or misappropriation of a United States or foreign patent, copyright, trade secret or other proprietary right, or if a temporary restraining order or other injunctive relief is entered against the use of part or all of the services or products, Contractor shall within ninety (90) days:

1. Promptly replace the services or products with compatible, functionally equivalent and non-infringing services or products;
2. Promptly modify the services or products to make them non-infringing without materially impairing County's ability to use the services or products as intended;
3. Promptly procure the right of County to continue using the services or products; or
4. As a last resort, if none of the foregoing alternatives are reasonably available to Contractor and County is enjoined or otherwise precluded legally from using the services or products, Contractor will within 120 days of the judgment or other court action promptly refund to County all fees and costs paid for the services or products under this Agreement and amendments thereto whereupon this Agreement shall terminate. All licensed service products will be disposed of as ordered by the governing court at the expense of Contractor or as determined by County if the court does not so direct.

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Upon completion of this Agreement, the provisions of this sub-section 11.B shall continue to survive.

11. INSURANCE PROVISIONS

- a. CONTRACTOR, at its sole cost and expense, will obtain and maintain in full force during the term of this contract the following types of insurance:
 - 1) Commercial General Liability "occurrence" coverage in the minimum amount of \$1,000,000 combined single limit (CSL) bodily injury & property damage each occurrence and \$2,000,000 aggregate, including personal injury, broad form property damage, products/completed operations, broad form blanket contractual and \$100,000 fire legal liability.
 - 2) Workers' Compensation (WC) coverage, in full compliance with California statutory requirements, for all employees of CONTRACTOR and Employer's Liability in the minimum amount of \$500,000.
- b. All insurance required will be primary coverage as respects COUNTY and any insurance or self-insurance maintained by COUNTY will be excess of CONTRACTOR'S insurance coverage and will not contribute to it.
- c. COUNTY is to be notified immediately if any aggregate insurance limit is exceeded. Additional coverage must be purchased to meet requirements.
- d. The County of Ventura, Its Boards, Agencies, Departments, Offices, Employees, Agents, and Volunteers are to be named as Additional Insured as respects work done by CONTRACTOR under the terms of this contract on all policies required (except Workers' Compensation).
- e. Contractor agrees to waive all rights of subrogation against the County of Ventura, Its Boards, Agencies, Departments, Officers, Employees, Agents and Volunteers for losses arising from work performed by Contractor under the terms of this contract.
- f. Policies will not be canceled, non-renewed or reduced in scope of coverage until after sixty (60) days written notice has been given to the County of Ventura, Risk Management Division.
- g. CONTRACTOR agrees to provide COUNTY with the following insurance documents on or before the effective date of this contract:
 1. Certificates of Insurance for all required coverage.
 2. Additional Insured endorsements.

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3. Waiver of Subrogation endorsements (a.k.a.: Waiver of Transfer Rights of Recovery Against Others, Waiver of Our Right to Recover from Others)

Failure to provide these documents will be grounds for immediate termination or suspension of this contract.

12. **NON-DISCRIMINATION**

a. General.

No person will on the grounds of race, color, national origin, religious affiliation or non-affiliation, sex, age, handicap, disability, or political affiliation, be excluded from participation in, be denied the benefits, or be subjected to discrimination under this Contract.

b. Employment.

Contractor will insure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all employees under this Contract. Contractor's personnel policies will be made available to County upon request.

13. **SUBSTITUTION**

If particular people are identified in Exhibit A as working under this Contract, the Contractor will not assign others to work in their place without written permission from the County Purchasing Agent. Any substitution will be with a person of commensurate experience and knowledge.

14. **INVESTIGATION AND RESEARCH**

Contractor by investigation and research has acquired reasonable knowledge of all conditions affecting the work to be done and labor and material needed, and the execution of this Contract is to be based upon such investigation and research, and not upon any representation made by the County or any of its officers, agents or employees, except as provided herein.

15. **ADDENDA**

County may from time to time require changes in the scope of the services required hereunder. Such changes, including any increase or decrease in the amount of Contractor's compensation which are mutually agreed upon by and between County and Contractor will be effective when incorporated in written amendments to this Contract.

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16. **CONFLICT OF INTEREST**

Contractor covenants that Contractor presently has no interest, including, but not limited to, other projects or independent contracts, and will not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. Contractor further covenants that in the performance of this Contract no person having such interest will be employed or retained by Contractor under this contract.

17. **FORCE MAJEURE**

Except for defaults of subcontractors, neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party.

Such acts shall include but shall not be limited to acts of God, fire, flood, earthquake, other natural disaster, nuclear accident, strike, lockout, riot, freight embargo, public regulated utility, or governmental statutes or regulations superimposed after the fact.

If a delay or failure in performance by the Contractor arises out of a default of its subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for damages of such delay or failure, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule.

18. **NON-EXCLUSIVITY**

The County reserves the right to contract with providers of similar services and/or equipment other than the Contractor when it is reasonably determined to be in the best interest of the County.

19. **NOTICES**

All notices required under this Contract will be made in writing and addressed or delivered as follows:

TO COUNTY: VENTURA COUNTY
 GENERAL SERVICES AGENCY
 PROCUREMENT SERVICES
 800 SOUTH VICTORIA AVENUE
 VENTURA, CALIFORNIA 93009-3120

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TO CONTRACTOR:Gartner, Inc,
Contract Administration
Attn: Frank Murphy
8405 Greensboro Drive
McLean, VA 22102

With a simultaneous copy to:
Gartner, Inc.
5950 CANOGA AVENUE, SUITE 600
WOODLAND HILLS, CA 91367

Either party may, by giving written notice in accordance with this paragraph, change the names or addresses of the persons or departments designated for receipt of future notices. When addressed in accordance with this paragraph and deposited in the United States mail, postage prepaid, notices will be deemed given on the third day following such deposit in the United States mail. In all other instances, notices will be deemed given at the time of actual delivery.

20. MERGER CLAUSE

This Contract supersedes any and all other contracts, either oral or written, between Contractor and the County of Ventura, with respect to the subject of this contract. This contract contains all of the covenants and contracts between the parties with respect to the services required hereunder. Contractor acknowledges that no representations, inducements, promises or contracts have been made by or on behalf of County except those covenants and contracts embodied in this contract. No contract, statement, or promise not contained in this contract will be valid or binding.

This Agreement may not be altered, amended, or modified except by written instrument signed by the duly authorized representatives of both parties. In the event of an inconsistency in this Agreement, the inconsistency shall be resolved in the following order:

- 1.) This Agreement (including Exhibit A)
- 2.) Contractor's U.S. Master Client Agreement (Exhibit C)
- 3.) Enrollment Form (Exhibit B)

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21. **GOVERNING LAW**

The validity of this contract and any of its terms or provisions, as well as the rights and duties of the parties under this contract, will be construed pursuant to and in accordance with the laws of the State of California. This Agreement has been entered into and is to be performed in the County of Ventura. Accordingly, the parties agree that the venue of any action relating to this Agreement shall be in the County of Ventura or the county in which the Government Entity is located.

22. **SEVERABILITY OF CONTRACT**

If any term of this contract is held by a court of competent jurisdiction to be void or unenforceable, the remainder of the contract terms will remain in full force and effect and will not be affected.

23. **CUMULATIVE REMEDIES**

The exercise or failure to exercise of legal rights and remedies by the County of Ventura in the event of any default or breach hereunder will not constitute a waiver or forfeiture of any other rights and remedies, and will be without prejudice to the enforcement of any other right or remedy available by law or authorized by this contract.

24. **AUDIT, INSPECTION AND RETENTION OF RECORDS**

Contractor agrees to maintain and make available to County accurate books and records relative to all its activities under this Agreement. Contractor shall permit County to audit, examine and make excerpts and transcripts from such records, and to conduct audits of all invoices, materials, records of personnel or other data related to all other matters covered by this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than three (3) years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last. The State of California and/or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon County herein.

25. **COMPLIANCE WITH LAWS**

Each party to this contract will comply with all applicable laws.

26. **CONSTRUCTION OF COVENANTS AND CONDITIONS**

Each term and each provision of this contract will be construed to be both a covenant and a condition.

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IN WITNESS WHEREOF the parties hereto have executed this Contract.

COUNTY OF VENTURA

CONTRACTOR

by: _____
Authorized Signature

by: _____
Authorized Signature

Printed name

Printed name

Title

Title

Date

Date

Tax Identification #