

## Amended Master Client Agreement – Gartner Canada Co.

Whereas this **AMENDED MASTER CLIENT AGREEMENT** (the “**MCA**” or “Master Client Agreement”) for subscription-based research and related services is between **Gartner Canada Co.** of 5000 Yonge Street, 14th Floor, Suite 1402, Toronto ON, M2N 7E9 Canada (“**Gartner**”) and Her Majesty the Queen in right of the Province of British Columbia (the “Province” or the “Client”), and sets forth the general terms applicable to the use of Gartner products and services (the “**Services**”) provided to Client; and

Whereas the parties wish to voluntarily enter into this non-exclusive MCA pursuant to Notice of Intent No. 11871 issued on November 30, 2020; and

Whereas BPS Entities may wish, but are not obliged, to enter into agreements with Gartner on terms and conditions substantially similar to the terms of this MCA.

The parties agree as follows:

1. **Administration.** This MCA with the Province, excluding Service Agreements (which will be administered on behalf of the Province as set out in the particular Service Agreement) will be administered on behalf of the Province by the Ministry of Technology, Innovation and Citizens’ Services as may be renamed or continued from time to time through its Contract Manager, as notified in writing from the Province from time to time. For greater certainty, the Contract Manager includes that person’s superior and authorized delegates.

2. **Application.** This MCA is open to any ministry, agency, board, commission, office or other body that is part of Her Majesty the Queen in right of the Province of British Columbia from time to time that requires Services under this MCA.

3. **Service Agreements.**

(a) 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. A sample Service Agreement template is attached at Appendix 1.

(b) The fees set forth in Service Agreements must not be more than Gartner’s then current standard public sector pricing, having regard to the particular quantity and duration of the Service(s) ordered. Upon request by Client Gartner must make available to Client evidence of such standard public sector pricing or certify that the fees set forth in the Service Agreements in question are not more than such standard public sector pricing.

(c) The fees set forth in Service Agreements will be in Canadian currency unless otherwise stated.

(d) Either party may terminate a Service Agreement for material breach, upon 30 days prior written notice, if the breach is not cured within the notice period.

(e) In addition, except for any metered Services, such as Strategic Advisory Services or event tickets, or unless expressly waived in a Service Agreement, Client may terminate a Service Agreement for any reason at any time upon 30 days prior written notice. In the event of termination of a Service Agreement under this paragraph (e) before the expiry of a minimum purchase period for a Service for a reason other than for material breach, pay Gartner:

- (i) any unpaid portion of the fees for the portion of the Services provided to the date of termination; or
- (ii) the difference between the fees that would have been charged Client for the Service for the period up to the date of termination had the Client selected shorter minimum purchase period(s) and the discounted fees paid or payable under (i).

That payment will discharge Client from all liability to Gartner under the Service Agreement.

(f) In the event of an inconsistency between any provision of this MCA and a provision of a Service Agreement, this MCA shall control during its term. Notwithstanding the foregoing, in the event any service entitlements set forth in a Service Description conflict with the Guidelines (as defined in s. 4(a) below), the

service entitlements set forth in the Service Description shall prevail over the Guidelines during the Service Agreement term.

(g) For Services provided to the Province pursuant to a Service Agreement, Gartner will invoice the Province ministry, agency, board, commission, office or other body as the Province identifies and requests in the Service Agreement. Each invoice will comply with the requirements of the Client's "Core Policy and Procedures Manual" (as may be accessed at <http://www.fin.gov.bc.ca/ocg/fmb/manuals/CPM/CPMtoc.htm>).

(h) In performing its obligations under this MCA, Gartner will comply with all applicable laws, including applicable occupational health and safety laws such as the *Workers Compensation Act* (British Columbia) or similar laws in other jurisdictions.

(i) In the event Client provides Gartner with access to any Client site to provide any Services, Gartner will comply with Client's reasonable instructions and procedures relating to occupational health and safety and security at the site.

#### 4. ***Ownership and Use of the Services.***

(a) 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 *Usage Guidelines for Gartner Services* ("**Guidelines**"), which are accessible to all Licensed Users via the "Policies" section of [gartner.com](http://gartner.com). Among other things, these Guidelines describe 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.

(b) Notwithstanding any existing or future provision to the contrary under this MSA, including the Guidelines, and without limiting any exceptions to infringement under the *Copyright Act*, R.S.C. 1985, c. C-42, Gartner agrees that any right granted to excerpt from Gartner research documents includes, without restriction or requirement to purchase any additional entitlement, the rights to backup and archive the Client records containing such excerpts and to keep those records both during and after the term of the applicable Service Agreement in accordance with Client's policies and applicable law, including the *Document Disposal Act*, R.S.B.C. 1996, c. 99.(c) Gartner agrees that any entitlement under a Service Agreement to share any Client record containing a permitted excerpt from a Gartner research document that is limited to within the Client organization and is in accordance with the Guidelines includes the right, without requirement to purchase any external entitlement, to share that record with an independent contractor providing services to the Client provided that the independent contractor is under obligation of confidentiality to Client and the independent contractor only uses the excerpts in the record for providing the services to Client. For avoidance of doubt, independent contractors shall not have access to research notes unless the independent contractor is a licensed user, as further provided for in the Guidelines.

(c) No existing or future provision in the Guidelines or other document incorporated by reference in a Service Agreement (including to a Service Description URL) obliging Client or Licensed Users to defend, save harmless or give an indemnity will have any force or effect unless expressly set out and agreed to by Client in the Service Agreement and compliant with the *Financial Administration Act*, R.S.B.C. 1996, c. 138, including its *Guarantee and Indemnities Regulation*.

5. ***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.

#### 6. ***Indemnification and Insurance***

(a) Gartner must indemnify and save harmless the Client and the Client's employees and agents from any loss, claim (including any claim of infringement of third-party intellectual property rights), damage award, action, cause of action, cost or expense that the Client or any of the Client's employees or agents may sustain, incur, suffer or be put to at any time, either before or after this MCA ends, (each a "Loss") to the extent that the Loss is directly or indirectly caused or contributed to by

- (i) any act or omission by Gartner or by any of Gartner's agents, employees, officers, directors or subcontractors in connection with this MCA; or
- (ii) any representation or warranty of Gartner being or becoming untrue or incorrect.

(b) The indemnification by Gartner pursuant to section 6(a) is limited to:

- (i) \$2,000,000 per Loss; and
- (ii) \$4,000,000 in the aggregate for all Losses.

(c) The limitations set out in section 6(b) do not apply to a Loss resulting from or relating to any of the following:

- (i) bodily injury or damage to real property or tangible personal property;
- (ii) third-party intellectual property rights; or
- (iii) breach of confidentiality.

(d) To claim indemnification for a Loss pursuant to section 6(a), the Client must notify Gartner in writing of the Loss as soon as reasonably practicable after the Client becomes aware of the Loss provided that a failure by the Client to provide such notification will not invalidate the claim unless Gartner is materially prejudiced by that failure.

(e) If the Loss is on the basis of a third-party claim that any element of the Services infringes the intellectual property rights of any person,

- (i) then, without limiting section 6(a), Gartner must defend the Client against that claim at Gartner's expense and Gartner must pay all associated costs, damages and legal fees that a court or arbitrator finally awards or are included in a settlement agreement agreed to by Gartner; and
- (ii) the Client and Gartner will cooperate in the defence of the claim and, where appropriate in the discretion of the Client, Client will allow Gartner to appoint and instruct counsel and otherwise control the defence and any related settlement negotiations, except that Gartner must not agree to any settlement impacting Client without Client's prior written authorization.

(f) At its own expense Gartner will maintain with licensed insurers, such insurance covering the liabilities and obligations of Gartner under this MCA as would be maintained by a reasonable and prudent operator of any business similar to that of Gartner. If requested by the Client at any time, Gartner shall provide evidence of such insurance.

**7. Client Confidential Information.** Gartner agrees to keep confidential all Client-specific information communicated by Client to Gartner in connection with this MCA, including personal information. 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 applicable law.

For greater certainty, Gartner agrees to keep confidential any metadata generated by Client's use of the Services that identifies the Licensed User or Client. However, Gartner may disclose such metadata to a third party under obligation of confidentiality to Gartner that is restricted to using such information for the sole purpose of providing services to Gartner.

Notwithstanding the exceptions listed above, Gartner must protect “personal information”, as defined in the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165, and the *Personal Information Protection Act*, S.B.C. 2003, c. 63, to the fullest extent possible as permitted under those Acts and any other applicable laws. For clarity, this applies to personal information which is collected or created by Gartner as a result of this MCA or any previous agreement between the Client and Gartner dealing with the same subject matter as this MCA.

#### **8. Terms Available to BPS Entities**

(a) In this Section, “BPS Entity” means any “government organization” or “local public body”, as those terms are defined in the *Procurement Services Act*, S.B.C. 2003, c. 22, that is on the Province’s CSA users list at [http://www2.gov.bc.ca/assets/gov/government/services-for-government-and-broader-public-sector/buy-goods-services-and-construction/goods-and-services-catalogue/csa-assets/csa-users-list/csa\\_users\\_list.pdf](http://www2.gov.bc.ca/assets/gov/government/services-for-government-and-broader-public-sector/buy-goods-services-and-construction/goods-and-services-catalogue/csa-assets/csa-users-list/csa_users_list.pdf) or such other list or website as the Province’s Contract Manager gives notice of in writing. For greater clarity, a BPS Entity is not part of the Province.

(b) Gartner agrees to enter into a Master Client Agreement on similar terms and conditions (including pricing) as this MCA with the Province (“Province MCA”) with any BPS Entity that requests to do so, but with the BPS Entity as the “Client” (as opposed to the “Province”) (each a “BPS Entity Agreement”). For greater certainty, nothing in this Province MCA will preclude a BPS Entity from entering into a different agreement with Gartner or separately procuring services similar to the Services described in this MCA from Gartner or any other party.

(c) For greater certainty, a BPS Entity Agreement will not result in the Province and the BPS Entity being jointly liable under the Province MCA or the BPS Entity Agreement. A breach by the BPS Entity of its BPS Entity Agreement will not result in a breach by the Province of that BPS Entity Agreement or of the Province MCA and a breach by the Province of the Province MCA will not result in a breach by any BPS Entity of its BPS Entity Agreement or the Province MCA.

#### **9. Term of the MCA**

This MCA has a term of one (1) year from the date of execution by both parties. Notwithstanding the term, if the Client purchases a good or service from Gartner pursuant to this MCA before the expiry or termination of this MCA, and such purchase has a minimum purchase period which expires after the expiry or termination of this MCA, Gartner shall continue to provide that good or service to the Client until the expiry of that minimum purchase period. For clarity, a minimum purchase period may apply to subscription-based services under this MCA.

#### **10. Termination**

The Client may terminate this MCA at any time for any reason. For greater certainty, only the Contract Manager may terminate this MCA on behalf of the Client. Notwithstanding the foregoing, the terms of this MCA shall continue to apply for the minimum purchase period remaining in any outstanding Service Agreement.

#### **11. Fees Subject to Financial Administration Act**

Client’s obligation to pay money to Gartner is subject to the *Financial Administration Act*, R.S.B.C. 1996, c. 138, which makes that obligation subject to an appropriation being available in the fiscal year of the Client during which payment becomes due, and Treasury Board not having controlled or limited expenditure under that appropriation. In case of Client not being able pay for any additional term of a multi-year Service Agreement due to non-appropriated funds, Client will terminate the affected Service Agreement upon at least 30 days written notice to Gartner prior to the annual term start date set forth in the applicable Service Agreement.

## 12. *Non-resident Income Tax*

If Gartner is not a resident in Canada, Gartner acknowledges that the Client may be required by law to withhold income tax from the fees described in this MCA and then to remit that tax to the Receiver General of Canada on the Gartner's behalf.

## 13. *Dispute Resolution*

(a) In the event of any dispute between the parties arising out of or in connection with this MCA, the following dispute resolution process will apply unless the parties otherwise agree in writing:

- (i) the parties must initially attempt to resolve the dispute through collaborative negotiation;
- (ii) if the dispute is not resolved through collaborative negotiation within 15 business days of the dispute arising, the parties must then attempt to resolve the dispute through mediation under the rules of the Mediate BC Society; and
- (iii) if the dispute is not resolved through mediation within 30 business days of the commencement of mediation, the dispute must be referred to and finally resolved under the *Arbitration Act*, R.S.B.C. 1996, c. 55.

(b) Unless the parties otherwise agree in writing, an arbitration or mediation under section 13(a) will be held in Victoria, British Columbia.

(c) Unless the parties otherwise agree in writing or, in the case of an arbitration, the arbitrator otherwise orders, the parties must equally share the costs of an arbitration or mediation under section 13(a) other than those costs relating to the production of expert evidence or representation by counsel.

## 14. *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, or as otherwise authorized by law. Where consent is required, it will not be unreasonably withheld.

(b) **Applicable Law.** This MCA, including any Service Agreements, shall be governed by, interpreted and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

(c) **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.

(d) **No Publicity.** Absent prior written consent of the other party, neither party shall refer for promotional purposes to Client being a customer of Gartner or the parties having entered into this MCA. Gartner hereby consents to the Province making reference to the Province being a customer of Gartner and the parties having entered into this MCA on the Province's web pages listing agreements accessible to BPS Entities as well as providing this MCA and any necessary information upon request by a BPS Entity to enable that BPS Entity to consider or enter into an agreement with Gartner on similar terms and conditions as this MCA.

(e) **Fettering.** Nothing in or under this MCA, including any requirement to use reasonable or best efforts, act reasonably or in good faith, or not unreasonably withhold consent or approval, may require the Client to act contrary to its "Standards of Conduct" or "Core Policy and Procedures Manual", or to act contrary to or interfere with or otherwise fetter the exercise by the Client of any statutory, prerogative, executive or legislative power or duty.

(f) **No Third Party Beneficiaries.** Subject to section 8, this MCA is for the benefit of the parties only.

(g) **Surviving Clauses.** Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 (b), (c), (d), (e), (f), (g) and (h) shall survive the termination of this MCA.

(h) **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. For greater certainty, only the Contract Manager may modify this MCA on behalf of the Client.

(i) **Interpretation.** A reference to any enactment refers to it as amended or contained in a later enactment and in force at the applicable time and includes any subordinate enactments made under it.


AGREED by the parties through their duly authorized signatories on the dates below.

**GARTNER CANADA CO.**

**HER MAJESTY THE QUEEN IN RIGHT OF THE  
PROVINCE OF BRITISH COLUMBIA**, as represented  
by the Minister of Citizens' Services

Authorized Signature:  3C6861B4DAC2436...

Date: March 18, 2021

Authorized Signature: 

Date: March 23, 2021

Printed Name and Title: Alex MacLennan, Assistant Deputy Minister

*Please return a signed original of this MCA to:*

**Contracts Administration Department  
Gartner, Inc.  
12651 Gateway Blvd  
Fort Myers, FL 33913**

Address: 4000 Seymour Place

Victoria, BC V8X 4S7

Telephone: **239-561-4000**

Facsimile: **866-225-4277**

Telephone: 250-507-6361

Facsimile: \_\_\_\_\_

**Gartner Canada Co. Service Agreement for \_\_\_\_\_ (“Client”)**

This Service Agreement (“SA”) is between **Gartner Canada Co.** of 5000 Yonge Street, 14th Floor, Suite 1402, Toronto ON, M2N 7E9 Canada (“Gartner”), on behalf of itself and all wholly-owned affiliates of Gartner, Inc., and Client of <Insert Client Company Address> (“Client”), and includes the Master Client Agreement between Gartner and Client or Client’s parent or affiliate dated <Insert Month/Year> the terms of which are incorporated by reference, and all applicable Service Descriptions. This SA constitutes the complete agreement between Gartner and Client. Client agrees to subscribe to the following Services for the term and fees set forth below.

**1. DEFINITIONS AND ORDER SCHEDULE:**

*Services* are the subscription-based research and related services purchased by Client in the Order Schedule below and described in the Service Descriptions. 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 Client adds Services or upgrades the level of service or access, an additional Service Agreement will be required.

*Service Descriptions* describe each Service purchased, specify the deliverables for each Service, and set forth any additional terms unique to a specific Service. Service Descriptions for the Services purchased in this SA may be viewed and downloaded through the hyperlinks listed in Section 2 below or may be attached to this SA in hard copy, and are incorporated by reference into this SA.

<u>Service Name</u>	<u>Level of Access</u>	<u>Quantity</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>
				<b>Total Services:</b>	<b>(Excluding applicable sales tax)</b>		

**2. SERVICE DESCRIPTIONS:**

<u>Service Name/ Level of Access</u>	<u>Service Description URL</u>

**3. PAYMENT TERMS**

Gartner will invoice Client annually in advance for all Services. Payment is due 30 days from the invoice date. Client shall pay any sales, use, value-added, or other tax or charge imposed or assessed by any governmental entity upon the sale, use or receipt of Services, with the exception of any taxes imposed on the net income of Gartner.

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, Client 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. All PO’s are to be sent to [purchaseorders@gartner.com](mailto:purchaseorders@gartner.com). This SA may be signed in counterparts.

**4. CLIENT BILLING INFORMATION**

\_\_\_\_\_  
Purchase Order Number

\_\_\_\_\_  
Billing Address

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*Invoice Recipient Name  
Recipient Tel. No.*

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*Invoice Recipient Email*

*Invoice*

**5. AUTHORIZATION**

**Client:**

**Gartner Canada Co.**

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*Signature/ Date*

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*Signature/Date*

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*Print Name and Title*

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*Print Name and Title*



