

Pages 1 through 117 redacted for the following reasons:

s13, s17

PROVINCE OF BRITISH COLUMBIA

MINISTRY OF EDUCATION

CONTRACT AMENDMENT

Amendment # 1

Contract Number: C11/1456

This AGREEMENT dated for reference the 25th day of March, 2011.

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA represented by
the Minister of Education, (herein called the "Province")**

OF THE FIRST PART

AND:

Gartner Canada Co.

(herein called the "Contractor" or "Recipient")

OF THE SECOND PART

WITNESS THAT WHEREAS:

- A. The parties hereto entered in an Agreement dated for reference the 11th day of February, 2011, (hereinafter called the "Agreement"),
- B. **AND WHEREAS** the parties have agreed to amend the Agreement.



NOW THEREFORE in consideration of the covenants and agreements herein contained, the parties agree as follows:

- (1) That Part 2, Fees of Schedule B – Fees and Expenses is amended to replace the payment table with the following:

Deliverable/Task	Price (Canadian Dollars)	Timeline
Phase 1: Project Kick-off and Requirements Definition (Initial)	\$80,000	March 31, 2011
Phase 1: Project Kick-off and Requirements Definition (Final)	\$60,000	As per Schedule A
Phase2: Current System and Market Assessment	\$45,000	As per Schedule A
Phase 3: Alternatives Identification and Decision	\$58,000	As per Schedule A

- (2) That in all other respects, the terms and conditions of the Agreement remain unchanged.

The parties hereto have executed this Agreement on the day and year as set out above.

SIGNED AND DELIVERED by the Contractor or by an Authorized Representative.

Marita E. Hume
Vice President
Gartner, Inc

(Print Name of Contractor or Authorized Representative)

Marta E. Hume 3-29-11
(Signature)

) **SIGNED AND DELIVERED** on
) behalf of the Province by an authorized
) representative of the Province.

)
)
)
)
)
) James Shypitka

(Print Name of Authorized Representative)

)
)
)
)
)
)
)
)(Signature)

INFORMATION TECHNOLOGY & MANAGEMENT CONSULTING PROFESSIONAL SERVICES AGREEMENT



BRITISH
COLUMBIA

The Best Place on Earth

<i>For Administrative Purposes Only</i>	
Reviewed and approved by FASB and Legal Services Branch, February 2011. Consulted Risk Management Branch and Intellectual Property Program.	
Ministry Contract No.: C11/1456	Financial Information
Requisition No.: _____	
Solicitation No.(If applicable): _____	
Commodity Code: _____	
Contractor Information	
Supplier Name: Gartner Canada Co.	
Supplier No.: _____	
Telephone No.: 619-542-4811	
E-mail Address: Irma.fabular@gartner.com	
Website: gartner.com	
Client: 062	
Responsibility Centre: 22221	
Service Line: 07050	
STOB: 7703	
Project: 2240218	
Template version: September 29, 2010	



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SCHEDULE A - SERVICES

- Part 1 - Term
- Part 2 - Scope of Project and Required Services
- Part 3 - Deliverables
- Part 4 - Key Personnel

SCHEDULE B - FEES AND EXPENSES

- Part 1 - Maximum Amount Payable
- Part 2 - Fees
- Part 3 - Expenses
- Part 4 - Statements of Account
- Part 5 - Payments Due

SCHEDULE C - APPROVED SUBCONTRACTOR(S)

SCHEDULE D - INSURANCE

SCHEDULE E - PRIVACY PROTECTION SCHEDULE

SCHEDULE F - ADDITIONAL TERMS

SCHEDULE G - SECURITY SCHEDULE

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THIS AGREEMENT is dated for reference the 11th day of February, 2011.

BETWEEN:

Garner Canada Co. (the "Contractor") with the following specified address and fax number:
5700 Yonge Street, 12th Floor, Suite 1205,
Toronto, Ontario
M2M 4K2
866-519-4740 Fax

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented
by the Ministry of Education (the "Province") with the following specified address and fax number:
PO Box 9592 Stn Prov Gov't
Victoria, British Columbia
V8W 9K4
250-356-1520 Fax

The Province wishes to retain the Contractor to provide the services specified in Schedule A and, in consideration for the remuneration set out in Schedule B, the Contractor has agreed to provide those services, on the terms and conditions set out in this Agreement.

As a result, the Province and the Contractor agree as follows:

1 DEFINITIONS

General

1.1 In this Agreement, unless the context otherwise requires:

- (a) "Business Day" means a day, other than a Saturday or Sunday, on which Provincial government offices are open for normal business in British Columbia;
- (b) "Incorporated Material" means any material in existence prior to the start of the Term or developed independently of this Agreement, and that is incorporated or embedded in the Produced Material by the Contractor or a Subcontractor;
- (c) "Material" means the Produced Material and the Received Material;
- (d) "Produced Material" means records, software and other material, whether complete or not, that, as a result of this Agreement, are produced by the Contractor or a Subcontractor and includes the Incorporated Material;
- (e) "Received Material" means records, software and other material, whether complete or not, that, as a result of this Agreement, are received by the Contractor or a Subcontractor from the Province or any other person;
- (f) "Services" means the services described in Part 2 of Schedule A;
- (g) "Subcontractor" means a person described in paragraph (a) or (b) of section 13.4; and
- (h) "Term" means the term of the Agreement described in Part 1 of Schedule A subject to that term ending earlier in accordance with this Agreement.

Meaning of "record"

1.2 The definition of "record" in the *Interpretation Act* is incorporated into this Agreement and "records" will bear a corresponding meaning.



2 SERVICES

Provision of services

- 2.1 The Contractor must provide the Services in accordance with this Agreement.

Term

- 2.2 Regardless of the date of execution or delivery of this Agreement, the Contractor must provide the Services during the Term.

Supply of various items

- 2.3 Unless the parties otherwise agree in writing, the Contractor must supply and pay for all labour, materials, equipment, tools, facilities, approvals and licenses necessary or advisable to perform the Contractor's obligations under this Agreement, including the license under section 6.4.

Standard of care

- 2.4 Unless otherwise specified in this Agreement, the Contractor must perform the Services to a standard of care, skill, and diligence maintained by persons providing, on a commercial basis, services similar to the Services.

Standards in relation to persons performing Services

- 2.5 The Contractor must ensure that all persons employed or retained to perform the Services are qualified and competent to perform them and are properly trained, instructed and supervised.

Instructions by Province

- 2.6 The Province may from time to time give the Contractor reasonable instructions (in writing or otherwise) as to the performance of the Services. The Contractor must comply with those instructions but, unless otherwise specified in this Agreement, the Contractor may determine the manner in which the instructions are carried out.

Confirmation of non-written instructions

- 2.7 If the Province provides an instruction under section 2.6 other than in writing, the Contractor may request that the instruction be confirmed by the Province in writing, which request the Province must comply with as soon as it is reasonably practicable to do so.

Effectiveness of non-written instructions

- 2.8 Requesting written confirmation of an instruction under section 2.7 does not relieve the Contractor from complying with the instruction at the time the instruction was given.

Applicable laws

- 2.9 In the performance of the Contractor's obligations under this Agreement, the Contractor must comply with all applicable laws.

3 PAYMENT

Fees and expenses

3.1 If the Contractor complies with this Agreement, then the Province must pay to the Contractor at the times and on the conditions set out in Schedule B:

- (a) the fees described in that Schedule;
- (b) the expenses, if any, described in that Schedule if they are supported, where applicable, by proper receipts and, in the Province's opinion, are necessarily incurred by the Contractor in providing the Services; and
- (c) any applicable taxes payable by the Province under law or agreement with the relevant taxation authorities on the fees and expenses described in paragraphs (a) and (b).

The Province is not obliged to pay to the Contractor more than the "Maximum Amount" specified in Schedule B on account of fees and expenses.

Statements of accounts

3.2 In order to obtain payment of any fees and expenses under this Agreement, the Contractor must submit to the Province a written statement of account in a form satisfactory to the Province upon completion of the Services or at other times described in Schedule B.

Withholding of amounts

3.3 Without limiting section 9.1, the Province may withhold from any payment due to the Contractor an amount sufficient to indemnify in whole or in part the Province and its employees and agents against any liens or other third-party claims that have arisen or could arise in connection with the provision of the Services. An amount withheld under this section must be promptly paid by the Province to the Contractor upon the basis for withholding the amount having been fully resolved to the satisfaction of the Province.

Appropriation

3.4 The Province's obligation to pay money to the Contractor is subject to the *Financial Administration Act*, which makes that obligation subject to an appropriation being available in the fiscal year of the Province during which payment becomes due.

Currency

3.5 Unless otherwise specified in this Agreement, all references to money are to Canadian dollars.

Non-resident income tax

3.6 If the Contractor is not a resident in Canada, the Contractor acknowledges that the Province may be required by law to withhold income tax from the fees described in Schedule B and then to remit that tax to the Receiver General of Canada on the Contractor's behalf.

Prohibition against committing money

3.7 Without limiting section 13.10(a), the Contractor must not in relation to performing the Contractor's obligations under this Agreement commit or purport to commit the Province to pay any money except as may be expressly provided for in this Agreement.

Refunds of taxes

3.8 The Contractor must:

- (a) apply for, and use reasonable efforts to obtain, any available refund, credit, rebate or remission of federal, provincial or other tax or duty imposed on the Contractor as a result of this Agreement that the Province has paid or reimbursed to the Contractor or agreed to pay or reimburse to the Contractor under this Agreement; and
- (b) immediately on receiving, or being credited with, any amount applied for under paragraph (a), remit that amount to the Province.

4 REPRESENTATIONS AND WARRANTIES

4.1 As at the date this Agreement is executed and delivered by, or behalf of, the parties, the Contractor represents and warrants to the Province as follows:

- (a) except to the extent the Contractor has previously disclosed otherwise in writing to the Province,
 - (i) all information, statements, documents and reports furnished or submitted by the Contractor to the Province in connection with this Agreement (including as part of any competitive process resulting in this Agreement being entered into) are in all material respects true and correct,
 - (ii) the Contractor has sufficient trained staff, facilities, materials, appropriate equipment and approved subcontractual agreements in place and available to enable the Contractor to fully perform the Services, and
 - (iii) the Contractor holds all permits, licenses, approvals and statutory authorities issued by any government or government agency that are necessary for the performance of the Contractor's obligations under this Agreement; and
- (b) if the Contractor is not an individual,
 - (i) the Contractor has the power and capacity to enter into this Agreement and to observe, perform and comply with the terms of this Agreement and all necessary corporate or other proceedings have been taken and done to authorize the execution and delivery of this Agreement by, or on behalf of, the Contractor, and
 - (ii) this Agreement has been legally and properly executed by, or on behalf of, the Contractor and is legally binding upon and enforceable against the Contractor in accordance with its terms except as enforcement may be limited by bankruptcy, insolvency or other laws affecting the rights of creditors generally and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction.

5 PRIVACY, SECURITY AND CONFIDENTIALITY

Privacy

5.1 The Contractor must comply with the Privacy Protection Schedule attached as Schedule E.

Security

5.2 The Contractor must:

- (a) make reasonable security arrangements to protect the Material from unauthorized access, collection, use, disclosure, alteration or disposal; and
- (b) comply with the Security Schedule attached as Schedule G.

Confidentiality

- 5.3 The Contractor must treat as confidential all information in the Material and all other information accessed or obtained by the Contractor or a Subcontractor (whether verbally, electronically or otherwise) as a result of this Agreement, and not permit its disclosure or use without the Province's prior written consent except:
- (a) as required to perform the Contractor's obligations under this Agreement or to comply with applicable laws;
 - (b) if it is information that is generally known to the public other than as result of a breach of this Agreement; or
 - (c) if it is information in any Incorporated Material.

Public announcements

- 5.4 Any public announcement relating to this Agreement will be arranged by the Province and, if such consultation is reasonably practicable, after consultation with the Contractor.

Restrictions on promotion

- 5.5 The Contractor, must not, without the prior written approval of the Province, refer for promotional purposes to the Province being a customer of the Contractor or the Province having entered into this Agreement.

6 MATERIAL AND INTELLECTUAL PROPERTY

Access to Material

- 6.1 If the Contractor receives a request for access to any of the Material from a person other than the Province, and this Agreement does not require or authorize the Contractor to provide that access, the Contractor must promptly advise the person to make the request to the Province.

Ownership and delivery of Material

- 6.2 The Province exclusively owns all property rights in the Material which are not intellectual property rights. The Contractor must deliver any Material to the Province immediately upon the Province's request.

Matters respecting intellectual property

- 6.3 The Province exclusively owns all intellectual property rights, including copyright, in:
- (a) Received Material that the Contractor receives from the Province; and
 - (b) Produced Material, other than any Incorporated Material.

Upon the Province's request, the Contractor must deliver to the Province documents satisfactory to the Province that irrevocably waive in the Province's favour any moral rights which the Contractor (or employees of the Contractor) or a Subcontractor (or employees of a Subcontractor) may have in the Produced Material and that confirm the vesting in the Province of the copyright in the Produced Material, other than any Incorporated Material.

Rights in relation to Incorporated Material

- 6.4 Upon any Incorporated Material being embedded or incorporated in the Produced Material and to the extent that it remains so embedded or incorporated, the Contractor grants to the Province:
- (a) a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to use, reproduce, modify and distribute that Incorporated Material; and
 - (b) the right to sublicense to third-parties the right to use, reproduce, modify and distribute that Incorporated Material.

Right of Province to negotiate license of Produced Material

- 6.5 After the end of the Term, the Province in its sole discretion, may negotiate with the Contractor to provide the Contractor a license (which may be exclusive or non-exclusive) for the Contractor to use, reproduce, modify or distribute some or all of the Produced Material.

7 RECORDS AND REPORTS

Work reporting

- 7.1 Upon the Province's request, the Contractor must fully inform the Province of all work done by the Contractor or a Subcontractor in connection with providing the Services.

Time and expense records

- 7.2 If Schedule B provides for the Contractor to be paid fees at a daily or hourly rate or for the Contractor to be paid or reimbursed for expenses, the Contractor must maintain time records and books of account, invoices, receipts and vouchers of expenses in support of those payments, in form and content satisfactory to the Province. Unless otherwise specified in this Agreement, the Contractor must retain such documents for a period of not less than seven years after this Agreement ends.

8 AUDIT

- 8.1 In addition to any other rights of inspection the Province may have under statute or otherwise, the Province may at any reasonable time and on reasonable notice to the Contractor, enter on the Contractor's premises to inspect and, at the Province's discretion, copy any of the Material and the Contractor must permit, and provide reasonable assistance to, the exercise by the Province of the Province's rights under this section.

9 INDEMNITY AND INSURANCE

Indemnity

- 9.1 The Contractor must indemnify and save harmless the Province and the Province's employees and agents from any losses, claims, damages, actions, causes of action, costs and expenses that the Province or any of the Province's employees or agents may sustain, incur, suffer or be put to at any time, either before or after this Agreement ends, including any claim of infringement of third-party intellectual property rights, where the same or any of them are based upon, arise out of or occur, directly or indirectly, by reason of any act or omission by the Contractor or by any of the Contractor's agents, employees, officers, directors or Subcontractors in connection with this Agreement (each a "Loss"), excepting always liability arising out of the independent acts or omissions of the Province and the Province's employees and agents.

Monetary limitations of indemnity

- 9.2 The indemnification by the Contractor pursuant to section 9.1 is limited to:
- (a) \$2,000,000 per Loss; and

- (b) \$4,000,000 in the aggregate for all Losses.

Exceptions to monetary limitations

- 9.3 The limitations set out in section 9.2 do not apply to a Loss resulting from any of the following:
- (a) bodily injury or damage to real property or tangible personal property;
 - (b) a claim of infringement of third-party intellectual property rights; or
 - (c) a breach of section 5.1, 5.2, 5.3 or 6.1 of this Agreement.

Province to notify Contractor of Loss

- 9.4 To claim indemnification for a Loss pursuant to section 9.1, the Province must notify the Contractor in writing of the Loss as soon as reasonably practicable after the Province becomes aware of the Loss provided that a failure by the Province to provide such notification will not invalidate the claim unless the Contractor is materially prejudiced by that failure.

Third-party intellectual property infringement claims

- 9.5 If the Loss is on the basis of a third-party claim that any element of the Material infringes the intellectual property rights of any person,
- (a) then the Contractor must defend the Province against that claim at the Contractor's expense and the Contractor must pay all associated costs, damages and legal fees that a court or arbitrator finally awards or are included in a settlement agreed to by the Contractor; and
 - (b) the Province must cooperate with the Contractor in the defence of the claim and, where appropriate in the discretion of the Province, will allow the Contractor to appoint and instruct counsel and otherwise control the defence and any related settlement negotiations.

Insurance

- 9.6 The Contractor must comply with the Insurance Schedule attached as Schedule D.

Workers compensation

- 9.7 Without limiting the generality of section 2.9, the Contractor must comply with, and must ensure that any Subcontractors comply with, all applicable occupational health and safety laws in relation to the performance of the Contractor's obligations under this Agreement, including the *Workers Compensation Act* in British Columbia or similar laws in other jurisdictions.

Personal optional protection

- 9.8 The Contractor must apply for and maintain personal optional protection insurance (consisting of income replacement and medical care coverage) during the Term at the Contractor's expense if:
- (a) the Contractor is an individual or a partnership of individuals and does not have the benefit of mandatory workers compensation coverage under the *Workers Compensation Act* or similar laws in other jurisdictions; and
 - (b) such personal optional protection insurance is available for the Contractor from WorkSafeBC or other sources.

Evidence of coverage

- 9.9 Within 10 Business Days of being requested to do so by the Province, the Contractor must provide the Province with evidence of the Contractor's compliance with sections 9.7 and 9.8.

10 FORCE MAJEURE

Definitions relating to force majeure

10.1 In this section and sections 10.2 and 10.3:

- (a) "Event of Force Majeure" means one of the following events:
 - (i) a natural disaster, fire, flood, storm, epidemic or power failure,
 - (ii) a war (declared and undeclared), insurrection or act of terrorism or piracy,
 - (iii) a strike (including illegal work stoppage or slowdown) or lockout, or
 - (iv) a freight embargoif the event prevents a party from performing the party's obligations in accordance with this Agreement and is beyond the reasonable control of that party; and
- (b) "Affected Party" means a party prevented from performing the party's obligations in accordance with this Agreement by an Event of Force Majeure.

Consequence of Event of Force Majeure

10.2 An Affected Party is not liable to the other party for any failure or delay in the performance of the Affected Party's obligations under this Agreement resulting from an Event of Force Majeure and any time periods for the performance of such obligations are automatically extended for the duration of the Event of Force Majeure provided that the Affected Party complies with the requirements of section 10.3.

Duties of Affected Party

10.3 An Affected Party must promptly notify the other party in writing upon the occurrence of the Event of Force Majeure and make all reasonable efforts to prevent, control or limit the effect of the Event of Force Majeure so as to resume compliance with the Affected Party's obligations under this Agreement as soon as possible.

11 DEFAULT AND TERMINATION

Definitions relating to default and termination

11.1 In this section and sections 11.2 to 11.4:

- (a) "Event of Default" means any of the following:
 - (i) an Insolvency Event,
 - (ii) the Contractor fails to perform any of the Contractor's obligations under this Agreement, or
 - (iii) any representation or warranty made by the Contractor in this Agreement is untrue or incorrect; and
- (b) "Insolvency Event" means any of the following:
 - (i) an order is made, a resolution is passed or a petition is filed, for the Contractor's liquidation or winding up,
 - (ii) the Contractor commits an act of bankruptcy, makes an assignment for the benefit of the Contractor's creditors or otherwise acknowledges the Contractor's insolvency,
 - (iii) a bankruptcy petition is filed or presented against the Contractor or a proposal under the *Bankruptcy and Insolvency Act* (Canada) is made by the Contractor,
 - (iv) a compromise or arrangement is proposed in respect of the Contractor under the *Companies' Creditors Arrangement Act* (Canada),

- (v) a receiver or receiver-manager is appointed for any of the Contractor's property, or
- (vi) the Contractor ceases, in the Province's reasonable opinion, to carry on business as a going concern.

Province's options on default

- 11.2 On the happening of an Event of Default, or at any time thereafter, the Province may, at its option, elect to do any one or more of the following:
- (a) by written notice to the Contractor, require that the Event of Default be remedied within a time period specified in the notice;
 - (b) pursue any remedy or take any other action available to it at law or in equity; or
 - (c) by written notice to the Contractor, terminate this Agreement with immediate effect or on a future date specified in the notice, subject to the expiration of any time period specified under section 11.2(a).

Delay not a waiver

- 11.3 No failure or delay on the part of the Province to exercise its rights in relation to an Event of Default will constitute a waiver by the Province of such rights.

Province's right to terminate other than for default

- 11.4 In addition to the Province's right to terminate this Agreement under section 11.2(c) on the happening of an Event of Default, the Province may terminate this Agreement for any reason by giving at least 10 days' written notice of termination to the Contractor.

Payment consequences of termination

- 11.5 Unless Schedule B otherwise provides, if the Province terminates this Agreement under section 11.4:
- (a) the Province must, within 30 days of such termination, pay to the Contractor any unpaid portion of the fees and expenses described in Schedule B which corresponds with the portion of the Services that was completed to the Province's satisfaction before termination of this Agreement; and
 - (b) the Contractor must, within 30 days of such termination, repay to the Province any paid portion of the fees and expenses described in Schedule B which corresponds with the portion of the Services that the Province has notified the Contractor in writing was not completed to the Province's satisfaction before termination of this Agreement.

Discharge of liability

- 11.6 The payment by the Province of the amount described in section 11.5(a) discharges the Province from all liability to make payments to the Contractor under this Agreement.

Notice in relation to Events of Default

- 11.7 If the Contractor becomes aware that an Event of Default has occurred or anticipates that an Event of Default is likely to occur, the Contractor must promptly notify the Province of the particulars of the Event of Default or anticipated Event of Default. A notice under this section as to the occurrence of an Event of Default must also specify the steps the Contractor proposes to take to address, or prevent recurrence of, the Event of Default. A notice under this section as to an anticipated Event of Default must specify the steps the Contractor proposes to take to prevent the occurrence of the anticipated Event of Default.

12 DISPUTE RESOLUTION

Dispute resolution process

- 12.1 In the event of any dispute between the parties arising out of or in connection with this Agreement, the following dispute resolution process will apply unless the parties otherwise agree in writing:
- (a) the parties must initially attempt to resolve the dispute through collaborative negotiation;
 - (b) 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 British Columbia Mediator Roster Society; and
 - (c) 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 by arbitration under the *Commercial Arbitration Act*.

Location of arbitration or mediation

- 12.2 Unless the parties otherwise agree in writing, an arbitration or mediation under section 12.1 will be held in Victoria, British Columbia.

Costs of arbitration or mediation

- 12.3 Unless the parties otherwise agree in writing or, in the case of an arbitration, the arbitrator otherwise orders, the parties must share equally the costs of a arbitration or mediation under section 12.1 other than those costs relating to the production of expert evidence or representation by counsel.

13 MISCELLANEOUS

Delivery of notices

- 13.1 Any notice contemplated by this Agreement, to be effective, must be in writing and delivered as follows:
- (a) by fax to the addressee's fax number specified on the first page of this Agreement, in which case it will be deemed to be received on the day of transmittal unless transmitted after the normal business hours of the addressee or on a day that is not a Business Day, in which cases it will be deemed to be received on the next following Business Day;
 - (b) by hand to the addressee's address specified on the first page of this Agreement, in which case it will be deemed to be received on the day of its delivery; or
 - (c) by prepaid post to the addressee's address specified on the first page of this Agreement, in which case if mailed during any period when normal postal services prevail, it will be deemed to be received on the fifth Business Day after its mailing.

Change of address or fax number

- 13.2 Either party may from time to time give notice to the other party of a substitute address or fax number, which from the date such notice is given will supersede for purposes of section 13.1 any previous address or fax number specified for the party giving the notice.

Assignment

- 13.3 The Contractor must not assign any of the Contractor's rights under this Agreement without the Province's prior written consent.

Subcontracting

- 13.4. The Contractor must not subcontract any of the Contractor's obligations under this Agreement to any person without the Province's prior written consent, excepting persons listed in the attached Schedule C. No subcontract, whether consented to or not, relieves the Contractor from any obligations under this Agreement. The Contractor must ensure that:
- (a) any person retained by the Contractor to perform obligations under this Agreement; and
 - (b) any person retained by a person described in paragraph (a) to perform those obligations
- fully complies with this Agreement in performing the subcontracted obligations.

Waiver

- 13.5 A waiver of any term or breach of this Agreement is effective only if it is in writing and signed by, or on behalf of, the waiving party and is not a waiver of any other term or breach.

Modifications

- 13.6 No modification of this Agreement is effective unless it is in writing and signed by, or on behalf of, the parties.

Entire agreement

- 13.7 This Agreement (including any modification of it) constitutes the entire agreement between the parties as to performance of the Services.

Survival of certain provisions

- 13.8 Sections 2.9, 3.1 to 3.4, 3.7, 3.8, 5.1 to 5.5, 6.1 to 6.5, 7.1, 7.2, 8.1, 9.1 to 9.6, 9.9, 10.1 to 10.3, 11.2, 11.3, 11.5, 11.6, 12.1 to 12.3, 13.1, 13.2, 13.8, and 13.10, any accrued but unpaid payment obligations, and any other sections of this Agreement (including schedules) which, by their terms or nature, are intended to survive the completion of the Services or termination of this Agreement, will continue in force indefinitely, even after this Agreement ends.

Schedules

- 13.9 The schedules to this Agreement (including any appendices or other documents attached to, or incorporated by reference into, those schedules) are part of this Agreement.

Independent contractor

- 13.10 In relation to the performance of the Contractor's obligations under this Agreement, the Contractor is an independent contractor and not:
- (a) an employee or partner of the Province; or
 - (b) an agent of the Province except as may be expressly provided for in this Agreement.

The Contractor must not act or purport to act contrary to this section.

Personnel not to be employees of Province

- 13.11 The Contractor must not do anything that would result in personnel hired or used by the Contractor or a Subcontractor in relation to providing the Services being considered employees of the Province.

Key Personnel

- 13.12 If one or more individuals are specified as "Key Personnel" of the Contractor in Part 4 of Schedule A, the Contractor must cause those individuals to perform the Services on the Contractor's behalf, unless the Province otherwise approves in writing, which approval must not be unreasonably withheld.

Pertinent Information

- 13.13 The Province must make available to the Contractor all information in the Province's possession which the Province considers pertinent to the performance of the Services.

Conflict of interest

- 13.14 The Contractor must not provide any services to any person in circumstances which, in the Province's reasonable opinion, could give rise to a conflict of interest between the Contractor's duties to that person and the Contractor's duties to the Province under this Agreement.

Time

- 13.15 Time is of the essence in this Agreement and, without limitation, will remain of the essence after any modification or extension of this Agreement, whether or not expressly restated in the document effecting the modification or extension.

Conflicts among provisions

- 13.16 Conflicts among provisions of this Agreement will be resolved as follows:
- (a) a provision in the body of this Agreement will prevail over any conflicting provision in, attached to or incorporated by reference into a schedule, unless that conflicting provision expressly states otherwise; and
 - (b) a provision in a schedule will prevail over any conflicting provision in a document attached to, or incorporated by reference into a schedule, unless the schedule expressly states otherwise.

Agreement not permit nor fetter

- 13.17 This Agreement does not operate as a permit, license, approval or other statutory authority which the Contractor may be required to obtain from the Province or any of its agencies in order to provide the Services. Nothing in this Agreement is to be construed as interfering with, or fettering in any manner, the exercise by the Province or its agencies of any statutory, prerogative, executive or legislative power or duty.

Remainder not affected by invalidity

- 13.18 If any provision of this Agreement or the application of it to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other person or circumstance will not be affected or impaired and will be valid and enforceable to the extent permitted by law.

Further assurances

- 13.19 Each party must perform the acts, execute and deliver the writings, and give the assurances as may be reasonably necessary to give full effect to this Agreement.

Additional terms

- 13.20 Any additional terms set out in the attached Schedule F apply to this Agreement.

Governing law

13.21 This Agreement is governed by, and is to be interpreted and construed in accordance with, the laws applicable in British Columbia.

14 INTERPRETATION

14.1 In this Agreement:

- (a) "includes" and "including" are not intended to be limiting;
- (b) unless the context otherwise requires, references to sections by number are to sections of this Agreement;
- (c) the Contractor and the Province are referred to as "the parties" and each of them as a "party";
- (d) "attached" means attached to this Agreement when used in relation to a schedule;
- (e) unless otherwise specified, a reference to a statute by name means the statute of British Columbia by that name, as amended or replaced from time to time;
- (f) the headings have been inserted for convenience of reference only and are not intended to describe, enlarge or restrict the scope or meaning of this Agreement or any provision of it;
- (g) "person" includes an individual, partnership, corporation or legal entity of any nature; and
- (h) unless the context otherwise requires, words expressed in the singular include the plural and *vice versa*.

15 EXECUTION AND DELIVERY OF AGREEMENT

15.1 This Agreement may be entered into by a separate copy of this Agreement being executed by, or on behalf of, each party and that executed copy being delivered to the other party by a method provided for in section 13.1 or any other method agreed to by the parties.

The parties have executed this Agreement as follows:

<p>SIGNED on the <u>16</u> day of <u>February</u>, 2011 by the Contractor (or, if not an individual, on its behalf by its authorized signatory or signatories):</p> <p><u>Marita E Hume</u></p> <p>Signature(s)</p> <p><u>Marita E. Hume</u></p> <p>Print Name(s)</p> <p><u>Vice President</u></p> <p>Print Title(s)</p> <p>Gartner, Inc</p>	<p>SIGNED on the <u>16</u> day of <u>February</u>, 2011 on behalf of the Province by its duly authorized representative:</p> <p><u>James Shypitka</u></p> <p>Signature</p> <p><u>JAMES SHYPITKA</u></p> <p>Print Name</p> <p><u>CEO, Ministry of Education</u></p> <p>Print Title</p>
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Schedule A – Services

Part 1. Term:

The term of this Agreement commences on February 14, 2011 and ends on May 31, 2011.

Part 2. Scope of Project and Required Services:

The scope of the project is to investigate the needs and expectations for a student information system, assess the ability of eSIS to meet the expectations of a 21st century learning environment, assess competitive market alternatives and provide recommendations.

The project objective is to provide an impartial and substantiated understanding of:

- The gap between needs and expectations and the current BCeSIS system.
- The prospects for successfully meeting needs and expectations through the implementation of competing commercial software or development of custom software in alignment with 21st century learning.

The Contractor will provide the following services in the preparation of project deliverables to meet project objectives:

- Design and execute consultations;
- Design and execute an assessment of eSIS and other SIS;
- Assess current operational environment;
- Develop recommendations; and
- Overall project management on the engagement.

In order to provide these services, the Contractor will conduct the following activities:

Phase 1 – Project Kick-off and Requirements Definition

1. Conduct Project Kick-off: Meet with the project sponsor and key stakeholders to clarify expectations, validate the detailed project work plan and schedule, determine method for status reporting, and discuss the issue resolution process.
2. Identify Requirements: Provide the Ministry with detailed industry best practice business requirements for Student Information Systems (SIS), work with the Ministry and its stakeholders to determine the validity of these best practice requirements within British Columbia's environment, and identify British Columbia's additional unique current and future business and functional needs.

Phase 2 – Current System and Market Assessment

1. Assess Current System: Use the Contractor's Systems Assessment Methodology to determine the health of the current application and determine its strategic viability, from a variety of stakeholder perspectives, including educational, administrative, operational, and analytic/informational representatives. This will consist of two steps:
 - Conduct an Application Health Check to evaluate the systems business, operational and technical performance and determine how well the application supports current and future requirements.
 - Based on the results of the Health Check conduct Strategic Viability Assessment - a more in depth strategic assessment of identified problem areas to determine if the system is a candidate for containment, enhancement or replacement.
2. Conduct Market Scan: The Contractor will utilize its current research resources to conduct a SIS Market Scan and analyze how well commercially available Student Information Systems meet the British Columbia education system's strategic business and detailed functional requirements. The Contractor

will provide the Ministry an overview of current market trends, a briefing of commercially available products and an assessment of how these products potentially meet the British Columbia education system's requirements.

Phase 3 – Alternatives Identification and Decision Framework

1. **Identify Viable Alternatives:** Based on the information gathered during the preceding steps; the Contractor will work with the Ministry to identify the viable strategic alternatives for the Ministry's strategic deployment of a SIS. The Contractor will identify the strategic business, operational and technical pros and cons of the viable alternatives including a high level cost benefit analysis of these alternatives.
2. **Develop Decision Framework:** The Contractor will then work with the Ministry to develop an appropriate mechanism to evaluate these alternatives which would include a listing of the key decisions to be made by the British Columbia education system's key business areas.

Part 3. Deliverables:

The Contractor will provide the following deliverables:

1. Structured compilation of business requirements for a student information system.
 - High-level scan of all 60 school districts to provide a general overview of current and future business requirements.
 - Detailed key business requirements for a cross section of nine school districts – three urban, three rural and three remote – and a cross section of users in the school districts (the 9 school districts to be identified by a steering committee on behalf of all school districts)
2. Gap/fit analysis between school district needs and functionality of different student information systems.
3. Assessment of alternative commercial software to meet needs and expectations.
4. Cost and benefit assessment of alternative strategies.
5. Decision framework for next steps showing how and what decisions need to be made for the key business areas.

The outcomes, which are described as Milestones or Deliverables are as follows, including expected delivery date:

Milestone/Deliverable	End Date (following project start date)
Phase 1 – Project Initiation and Requirements	Week 8
Task 1 – Project Initiation	
Kickoff meeting materials	
Draft Project Schedule	
Draft Project Work Plan	
List of Required Background Materials	
Task 2 – Conduct Leadership Interviews and Survey (Business, IT and School District Stakeholders)	
Survey results and rationalized list of high-level SIS business requirements as they relate to the British Columbia education system's strategic business goals and objectives	
Task 3 – Identify Detailed Business Requirements	
List of detailed best practice business and functional requirements for a SIS	
Business requirements validation workshop materials	
Technical issues workshop materials	

Validated list of detailed British Columbia education system's business and functional requirements for a SIS	
Description of current and future technical requirements for a SIS system	
Task 4 - Obtain Administrative Assistants Ltd. / Pearson School Systems Input on Business Requirements	
Completed response of BCeSIS vendor to meeting identified business requirements	

Phase II - Conduct Assessment of Current BCeSIS System and SIS Products in the Market	Week 10
Task 1 - Assess Current BCeSIS	
BCeSIS Application Health Check Results	
BCeSIS Strategic Viability Assessment	
Task 2 - Conduct SIS Market Scan and Analysis	
Overview presentation on SIS market trends and summary presentation on viable commercially available products	
High-level gap assessment of how well commercially available products meet British Columbia education system's strategic business and functional requirements.	Week 14
Phase III - Alternatives Identification and Decision Framework Development	
Task 1 - Identify Viable Strategic Alternatives for the Ministry's SIS Deployment	
Workshop presentation to facilitate discussion on SIS Strategic Deployment Alternatives	
Report on finalized SIS Strategic Deployment Alternatives for the Ministry in MS PowerPoint format	
Task 2 - Develop Decision Framework	
Documented decision framework for the Ministry's deployment of a SIS	
Final Report "SIS Strategic Review" documenting: <ul style="list-style-type: none"> The British Columbia education system's high-level strategic business needs Detailed business requirements for a SIS that will meet current and future business goals Assessment of current BCeSIS Market scan and capability assessment of commercially available SIS products Identification and assessment of viable alternatives for deploying an SIS Decision framework for choosing the alternative that best meets the British Columbia education system's strategic goals 	
Project Sponsor Team Meetings	
Status Meetings	
	tbd - bi-weekly
	February 25, March 11, March 25, April 8, April 22, May 6, May 20

Part 4. Key Personnel

The designated resources to perform the contracted services on behalf of the Contractor, Gartner Canada Co.
are:

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Any changes to Key Personnel for the purpose of this Agreement are subject to the approval of the Contract Manager on behalf of the Province.

Margaret Parkinson is named the Contract Manager on behalf of the Province.

Schedule B – Fees and Expenses

Part 1. Maximum Amount Payable:

In no event will the amount the Province is obliged to pay to the Contractor, in accordance with this Schedule, exceed a maximum of \$243,000 for fees (exclusive of applicable taxes) under this Agreement.

Part 2. Fees:

Fees will be based on the following deliverable-based schedule during the term of this Agreement when the Contractor provides the Services outlined in Schedule A. Payment of invoices is subject to deliverable acceptance by the Province.

Deliverable/Task	Price (Canadian Dollars)	Timeline
Phase 1: Project Kick-off and Requirements Definition	\$140,000	As per Schedule A
Phase 2: Current System and Market Assessment	\$45,000	As per Schedule A
Phase 3: Alternatives Identification and Decision	\$58,000	As per Schedule A

Part 3. Expenses:

Expenses are part of the overall pricing stated above. No additional amounts will be reimbursed for expenses.

Part 4. Statements Of Account:

In order to obtain payment of any fees and expenses under this Agreement for a period from and including the 1st day of a month to and including the last day of that month (each a "Billing Period"), the Contractor must deliver to the Province on a date after the Billing Period (each a "Billing Date"), a written statement of account in a form satisfactory to the Province containing:

- the Contractor's legal name and address;
- the date of the statement, and the Billing Period to which the statement pertains;
- the Contractor's calculation of all fees claimed for that Billing Period, including a declaration by the Contractor of all hours worked during the Billing Period for which the Contractor claims fees and a description of the applicable fee rates;
- a chronological listing, in reasonable detail, of any expenses claimed by the Contractor for the Billing Period with receipts attached, if applicable;
- the Contractor's calculation of any applicable taxes payable by the Province in relation to the Services for the Billing Period;
- a description of this Agreement;
- a statement number for identification; and
- any other billing information reasonably requested by the Province.

Part 5. Payments Due:

Within 30 days of our receipt of your written statement of account delivered in accordance with this Schedule, we must pay you the fees (plus all applicable taxes) and expenses, claimed in the statement if they are in accordance with this Schedule. Statements of account or contract invoices offering an early payment discount may be paid by us as required to obtain the discount.

Schedule C – Approved Subcontractor(s)

Not applicable



Schedule D - Insurance

1. The Contractor must, without limiting the Contractor's obligation or liabilities and at the Contractor's own expense, purchase and maintain throughout the Term the following insurances with insurers licensed in Canada in forms and amounts acceptable to the Province:
 - (a) Commercial General Liability in an amount not less than \$2,000,000 inclusive per occurrence against bodily injury, personal injury and property damage and including liability assumed under this Agreement and this insurance must:
 - (i) include the Province as an additional insured,
 - (ii) be endorsed to provide the Province with 30 days advance written notice of cancellation or material change, and
 - (iii) include a cross liability clause; and
 - (b) Professional Errors and Omissions Liability insuring the Contractor's liability resulting from errors or omissions in the performance of the Services in an amount per occurrence, and in the aggregate, calculated as follows:
 - (i) not less than \$1,000,000, if the "Maximum Amount" set out in Schedule B is less than \$500,000; and
 - (ii) not less than \$2,000,000, if the "Maximum Amount" set out in Schedule B is \$500,000 or greater.
2. All insurance described in section 1 of this Schedule must:
 - (a) be primary; and
 - (b) not require the sharing of any loss by any insurer of the Province.
3. The Contractor must provide the Province with evidence of all required insurance as follows:
 - (a) within 10 Business Days of commencement of the Services, the Contractor must provide to the Province evidence of all required insurance in the form of a completed Province of British Columbia Certificate of Insurance;
 - (b) if any required insurance policy expires before the end of the Term, the Contractor must provide, within 10 Business Days of the policy's expiration, evidence of a new or renewal policy meeting the requirements of the expired insurance in the form of a completed Province of British Columbia Certificate of Insurance; and
 - (c) despite paragraph (a) or (b) above, if requested by the Province at any time, the Contractor must provide to the Province certified copies of the required insurance policies.
4. Despite section 1(b) of this Schedule, if in the Province's sole discretion, the Province has approved in writing either a fronted self-insurance program or a duly licensed captive insurer as an alternative to the Professional Liability Insurance requirement set out in section 1(b), then the Contractor must maintain throughout the Term that alternative in accordance with the terms of the approval.



Schedule E - Privacy Protection Schedule

Not applicable



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Schedule G – Security Schedule

Not applicable



PROVINCE OF BRITISH COLUMBIA

MINISTRY OF EDUCATION

CONTRACT AMENDMENT

Amendment # 2

Contract Number: C11/1456

This AGREEMENT dated for reference the 25th day of May, 2011.

**BETWEEN: HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA represented by
the Minister of Education, (herein called the "Province")**

OF THE FIRST PART

AND:

Gartner Canada Co.

(herein called the "Contractor" or "Recipient")

OF THE SECOND PART

WITNESS THAT WHEREAS:

- A. The parties hereto entered in an Agreement dated for reference the 11th day of February, 2011, *[and subsequently amended on the 25th day of March, 2011.]* (hereinafter called the "Agreement"),
- B. **AND WHEREAS** the parties have agreed to amend the Agreement.

Pages 150 through 253 redacted for the following reasons:

s13, s17