

# Spikes Cavell Analytic Inc.

## Standard End User License Agreement

### 1. Interpretation

#### 1.1. In these Terms:

"Access Tools" means the Observatory and other software applications provided by Spikes Cavell that facilitate access to and analysis of the Client Standardized Data and Information;

"Applicable Codes" means the Freedom of Information Act, 5 U.S.C. §552, as amended, public records acts, open records laws and other local, state and federal laws providing public access to government records as applicable to Client;

"Business Day" means any day other than a Saturday, a Sunday, a United States federal government holiday or a holiday on which the Client is closed;

"Client" means a client of the Reseller;

"Client Raw Data" means all data provided by the Client to Spikes Cavell in connection with the Contract and any derivatives thereof, including the Client Standardized Data;

"Client Standardized Data" means the standardized and classified data that has been created from the Client Raw Data pursuant to the provision of the Services, and excludes the Information;

"Confidential Information" means all business and technical information of a party (however recorded or preserved) which that party treats as confidential in the ordinary course of its operations. Spikes Cavell's Confidential Information includes, but is not limited to, configurations, programming, computer code, software (including, without limitation, the Access Tools), trade secrets, formulas, methods, know-how, processes, designs, graphics, user interfaces, techniques, documentation regarding the operation of the Access Tools or the Services, information regarding Spikes Cavell's financial condition, customer lists, suppliers, marketing strategy, business plans, product information, names of employees, compensation amounts and formulas, billing amounts, operations, proprietary information and prospects;

"Contract" means the contract between the Client and Reseller for the procurement by the Client of the Information and the Services, and such contract shall be comprised of the Quotation, Standard Procurement Terms and Conditions of the Client and these Terms;

"Data Specification" means the document provided by Spikes Cavell to the Client which sets out the technical specifications for the Client Raw Data and which is available upon request;

"Deliverables" means any documents or materials in any form (including computer programs, reports, specifications and drafts) which are provided to the Client as part of the Services;

"Derivative Works" means derivative works as that phrase is defined in the Copyright Act, 17 U.S.C. §101 et seq.;

"Fees" means the fees payable by the Client for the provision of the Services as set out in the Quotation;

"Information" means any and all data and information other than the Client Standardized Data which can be accessed using the Access Tools or which is contained in the Deliverables;

"Intellectual Property Rights" means intellectual property and industrial property rights of any kind or nature, including all U.S. and foreign (i) inventions, whether or not patentable, reduced to practice or made the subject matter of one or more pending patent applications, patents, patent applications, patent disclosures, and all related continuations, continuations-in-part, divisions, reissues, re-examinations, substitutions, and extensions thereof and improvements thereto, (ii) trademarks, service marks, names, corporate names, trade names, domain names, logos, slogans, trade dress, and other similar designations of source or origin, together

with the goodwill symbolized by any of the foregoing, (iii) registered and unregistered copyrights and all applications to register the same and copyrightable subject matter, (iv) rights of publicity, (v) computer programs (whether in source code, object code, or other form), algorithms, databases, compilations and data, technology supporting the foregoing, and all documentation, including user manuals and training materials, related to any of the foregoing, (vi) trade secrets and all other confidential information, business information (including pricing and cost information, business and marketing plans and customer and supplier lists), know-how (including techniques and research and development information), inventions, proprietary processes, formulae, models, and methodologies, (vii) rights of privacy and rights to personal information, (viii) telephone numbers and Internet protocol addresses, and (ix) all rights in the foregoing and in other similar intangible assets, (x) all applications (or rights to apply), registrations and renewals or extensions for the foregoing, (xi) all rights and remedies against past, present, and future infringement, misappropriation, or other violation thereof, and (xii) and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"Licensed User" means a person who is authorized by the Client to use the Access Tools in accordance with these Terms and identified by the Client in a written notice to Spikes Cavell from time to time;

"Losses" means any and all losses, costs (including but not limited to reasonable attorney's fees through appeal), damages, fines, penalties, settlement payments, awards, expenses and other charges and liabilities incurred by a party;

"Password" means a password provided by Spikes Cavell to the Client to permit a Licensed User to use the Access Tools in accordance with these Terms;

"Public Website" means a website operated by Spikes Cavell and accessible by the general public on which Client's expenditure data is made available;

"Request for Information" means a request for information or an apparent request under the Applicable Codes;

"Reseller" means Insight Public Sector (IPS), a US Communities vendor, with offices located at 6820 South Harl Avenue, Tempe, AZ 85283;

"Reseller Agreement" means Insight's Terms of Purchase with Spikes Cavell;

"Quotation" means the document provided by Reseller to the Client setting out the proposal by Reseller for the procurement by the Client of the Information and the Services;

"Services" means the services provided by Spikes Cavell to transform the Client Raw Data into the Client Standardized Data, licensing and appending the Information, providing access to and use of the Access Tools, providing training and support, and all other services provided by Spikes Cavell under the Contract;

"Observatory" means the online platform powered by Spikes Cavell that provides spend and contract analysis;

"Spikes Cavell" means Spikes Cavell Analytic Inc., a Delaware Corporation with offices located at 151 Spring St., Herndon, VA 20170;

"Term" means the term of the Contract as set out in the Quotation;

"Terms" means this End User License Agreement for the provision of the Services and the grant of the license to use the Information and the Access Tools.

1.2. In these Terms:

1.2.1. references to the singular include the plural and vice versa, and headings will not affect the interpretation of these Terms;

1.2.2. unless the context clearly indicates otherwise, the word "including" when used in these Terms means "including but not limited to"; and

- 1.2.3. references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.
- 1.2.4. Each party has agreed to the use of the particular language of the provisions of the Contract and has had the opportunity to consult with legal counsel of its own choosing. Therefore, the parties agree that that the rule of construction which provides that ambiguities in a contract shall be construed against the drafter shall not apply to this Contract and the parties waive any such defense to the terms of this Contract.

## 2. Intellectual Property Rights

- 2.1. The Client warrants and represents to Spikes Cavell that:
  - 2.1.1. it has the authority to provide the Client Raw Data and to grant the license to Spikes Cavell in respect of the Client Raw Data pursuant to Section 4 (License to use the data of the Client); and
  - 2.1.2. the use of the Client Raw Data by Spikes Cavell in accordance with the Contract will not violate any applicable law or regulation and will not constitute an infringement or other violation of any Intellectual Property Right of any third party.
- 2.2. Subject to the license granted under Section 4 (License to use the data of the Client), no Intellectual Property Rights in the Client Raw Data shall transfer to Spikes Cavell under the Contract.
- 2.3. Spikes Cavell warrants and represents to the Client that:
  - 2.3.1. Spikes Cavell is the owner or authorized licensee of all Intellectual Property Rights in the Information and the Access Tools;
  - 2.3.2. Spikes Cavell has the full authority to grant the license to the Client in respect of the Information and the Access Tools in accordance with Section 3 (License to use the Information and the Access Tools); and
- 2.4. Subject to the license granted under Section 3 (License to use the Information and the Access Tools), no Intellectual Property Rights in the Information and the Access Tools shall transfer to the Client under the Contract. All Intellectual Property Rights in any Derivative Works created under the Contract shall be owned by Spikes Cavell, and the Client will take reasonable steps necessary to cause such rights to vest with Spikes Cavell. All rights not expressly granted to the Client under the Contract are reserved by Spikes Cavell.
- 2.5. The Client acknowledges that the Information is proprietary to Spikes Cavell and comprises (a) works of original authorship, including compiled information containing Spikes Cavell's selection, arrangement, coordination and expression of such information or pre-existing material that Spikes Cavell has created, gathered or assembled, (b) confidential and trade secret information, and (c) information that Spikes Cavell has created, developed and maintained at great expense of time and money, such that misappropriation or unauthorized use by others for commercial gain would unfairly or irreparably harm Spikes Cavell. Accordingly:
  - 2.5.1. the Client will not, and will not authorize any of its employees, agents or sub-contractors to, through any act or omission, impair the Intellectual Property Rights of Spikes Cavell in the Information;
  - 2.5.2. the Client will not use any of Spikes Cavell's trade names, trademarks, service marks or copyrighted materials, or otherwise identify Spikes Cavell, in listings or advertising in any manner without the prior written approval of Spikes Cavell; and
  - 2.5.3. the Client will reproduce copyright notice and proprietary rights legend of Spikes Cavell on all authorized copies of the Information which are to be disclosed to third parties in accordance with Section 3 (License to use the Information and the Access Tools). For the avoidance of doubt, the copyright notice and proprietary rights legend required to be reproduced under this section are automatically embedded in all charts and graphs exported directly from the Access Tools.

## 3. License to use the Information and the Access Tools

- 3.1. The Client acknowledges that the Intellectual Property Rights in certain parts of the Information are owned by third parties, and such third parties may have imposed restrictions on the use of such data. Accordingly the Information is made available to the Client on the following terms as set out in this Section 3 (License to use the Information and the Access Tools).

- 3.2. In consideration of the payment of the applicable Fees to Reseller by the Client, Spikes Cavell hereby grants to the Client a non-exclusive, non-transferable, revocable license to use the Information in the United States for the Term subject to the terms of the Contract including the following:
- 3.2.1. the Client may use, copy and create Derivative Works of the Information for its internal purposes only without restriction;
  - 3.2.2. the Client will use the Information only in compliance with applicable laws and regulations, including laws and regulations regarding telemarketing, customer solicitation (including fax and/or email solicitation), data protection and privacy; and
  - 3.2.3. notwithstanding the obligations as set out in Section 12 (Confidentiality), the Client may disclose the Information to third parties, in each case solely in an aggregated form provided that:
    - a. such Information shall relate to the Client only;
    - b. the source of the Information is credited to Spikes Cavell;
    - c. the Client shall not seek any financial gain in relation to any disclosure of the Information;
    - d. the Information shall not be attributable or identifiable to any individual supplier or vendor unless the identity of such supplier or vendor may be determined from the Client Raw Data; and
    - e. in the case of disclosure of the Information to a third party, the Information may only be used by such third parties for their internal purposes, and the third parties shall not be entitled to publish the Information.
- 3.3. In consideration of the payment of the applicable Fees to Reseller by the Client, Spikes Cavell hereby grants to the Client a non-exclusive, non-transferable, revocable license to use the Access Tools in the United States for the Term subject to the terms of the Contract. The Client shall only use the Access Tools in accordance with Section 6 (Passwords); and the Client shall take commercially reasonable precautions to ensure that no unauthorized use is made of (and that no unauthorized person gains access to) the Information, in whole or in part.

#### 4. License to use the data of the Client

- 4.1. The Client shall provide the Client Raw Data to Spikes Cavell in accordance with the Data Specification. Unless otherwise agreed by the parties, the Client Raw Data may only consist of data that the Client is required to make available to the public under the Applicable Codes upon receipt of a Request for Information, and the Client shall use commercially reasonable efforts to remove all personally identifiable data of individuals from the Client Raw Data. The Client acknowledges that Spikes Cavell is unable to provide the Client Standardized Data or the Information until the Client has provided Spikes Cavell with the Client Raw Data in accordance with the Data Specification.
- 4.2. The Client hereby grants to Spikes Cavell a perpetual, royalty-free, non-exclusive license to use the Client Raw Data subject to the terms of the Contract including the following:
- 4.2.1. Spikes Cavell may use, copy and create Derivative Works of the Client Raw Data (including but not limited to the Client Standardized Data);
  - 4.2.2. notwithstanding the obligations as set out in Section 12 (Confidentiality), Spikes Cavell may for its business purposes, grant sublicenses to the following organizations to use the Client Standardized Data on the following terms:

- a. public sector and higher education organizations which are customers of Spikes Cavell, together with their Licensed Users, may use the Client Standardized Data on the standard terms and conditions of Spikes Cavell (as updated from time to time); and
  - b. other third parties may use the Client Standardized Data subject to the following restrictions:
    - i. the Client Standardized Data is completely anonymized and aggregated with the data of other Clients so that the identity of the source of the Client Standardized Data cannot be determined; and
    - ii. the Client Standardized Data may only be used by third parties for their internal purposes, and the third party shall not be entitled to publish the Client Standardized Data.
- 4.3. If the Client has procured Spikes Cavell's public spend transparency Services through the Reseller, the Client's expenditure data will be published to the Public Website for access by the general public.

## 5. Provision of the Services

- 5.1. In consideration of the payment of the applicable Fees to Reseller by the Client, Spikes Cavell shall perform the Services in accordance with the Quotation.
- 5.2. Time for performance of the Services shall not be of the essence and, unless Spikes Cavell otherwise expressly agrees in writing, any specific dates cited by Spikes Cavell in the Contract for performance are only estimates. Notwithstanding the foregoing, Spikes Cavell hereby agrees to provide a Data Fitness Check to the Client within 14 days of receipt of complete Client Raw Data and to transform the Client Raw Data into the Client Standardized Data, append the Information and publish both to the Access Tools within 56 days following the Client's signoff of the Data Fitness Check document.

## 6. Passwords

- 6.1. The Client will, as soon as practicable upon request made by Spikes Cavell, provide written notice to Spikes Cavell of the names of the Licensed Users at the start of the Contract, and the Client will notify Spikes Cavell as necessary of any changes to the identity of such Licensed Users. The Client may, without limitation, substitute individuals as Licensed Users throughout the Term at no additional cost.
- 6.2. Spikes Cavell will issue a Password to each of the Licensed Users to use the Access Tools. Each such Password may only be used by the respective Licensed User in accordance with these Terms, and no other use may be made of the Password.
- 6.3. The Client is entirely responsible for maintaining the confidentiality of the account information of the Licensed Users, including the Passwords, and for any and all activity that occurs under the accounts of the Licensed Users. The Client agrees to notify Spikes Cavell as soon as practical upon becoming aware of any unauthorized use of the accounts of the Licensed Users or the Passwords or any other breach of security. Spikes Cavell will not be liable for any Losses that the Client may incur as a result of someone other than the Licensed User using its Password or account other than where such use arises due to the negligence or wilful misconduct of Spikes Cavell, either with or without the knowledge of the Client.
- 6.4. Without limiting its other rights, Spikes Cavell may at any time cancel any of the Passwords and/or terminate the right of any Licensed User to use the Access Tools a) if the Client is in default of the Contract; or b) upon the expiry or termination of the Contract; or c) if Spikes Cavell is or becomes unable to grant the Client a right to use the Access tools or the Information.

## 7. Warranties

- 7.1. Spikes Cavell hereby represents and warrants that during the Term the Services shall be performed in a professional manner by appropriately skilled and qualified persons and be performed in accordance with applicable law, regulation and industry standards.
- 7.2. While Spikes Cavell uses commercially reasonable procedures to keep the Information current and accurate, the Client acknowledges that the Information may contain a degree of error and that the Client is responsible for determining whether the Information is sufficiently accurate for its use. Accordingly, all Information is provided on an "as is" basis.

- 7.3. The Access Tools are made available via the internet over which Spikes Cavell has no control. Accordingly, the Information which is accessed using the Access Tools is provided on an "as available" basis. Spikes Cavell does not provide any warranties, express or implied, that use of the Access Tools will be uninterrupted. The Client is solely responsible for the operation, performance, access and security of the networks (including WAN, LAN and wireless) and computers over and on which the Information and Access Tools will be accessed. Spikes Cavell makes no warranties and have no responsibility for network security, firewalls, servers, bandwidth, load balancers, SSL certificates, domain name systems (DNS), intrusion detection systems (IDS), monitoring, routers, anti-virus mechanisms, operating system and other third-party product updates and upgrades, and any other aspects of the Client's network or computers. Except as expressly granted herein Spikes Cavell disclaims that the Information and Access Tools will be without error or invulnerable to viruses, worms or other harmful software or hardware. The Client hereby acknowledges that the Information or Access Tools may not be available due to any number of factors including without limitation periodic system maintenance, scheduled or unscheduled, acts of god, unauthorized access, viruses, denial of service or other attacks, technical failure of the information or access tools, telecommunications infrastructure, or disruption.
- 7.4. The Client assumes the entire cost of all necessary servicing, repair or correction of problems and any other direct or indirect damages or costs caused by unauthorized network or computer access or viruses, worms or other harmful or unauthorized software or hardware.

## 8. Security

- 8.1. Spikes Cavell will use reasonable endeavors:
- 8.1.1. to keep all Client Raw Data secure and to use no less stringent measures for the protection of such Client Raw Data as Spikes Cavell uses for its own data; and
- 8.1.2. to preserve the integrity of Client Raw Data and to prevent the loss or corruption of Client Raw Data.
- 8.2. If at any time Spikes Cavell suspects or has reason to believe that Client Raw Data has or may have been corrupted, lost or sufficiently degraded in any way for any reason, Spikes Cavell will notify the Client as soon as possible and in any event within five (5) Business Days. If Spikes Cavell is in breach of Section 8.1 of Section 8 (Security), it will use reasonable endeavors to restore the Client Raw Data as soon as practicable.

## 9. Term and Termination

- 9.1. These Terms shall come into effect on the date of signature, and shall continue for the Term.
- 9.2. Upon expiry or termination of the Contract for any reason:
- 9.2.1. these Terms shall automatically terminate with immediate effect, and all rights of the Client to use the Information pursuant to the Contract shall cease; and
- 9.2.2. the Client shall be entitled to continue to use any charts, graphs or other derivative products that contain aggregated extracts of the Information for its internal purposes only, and all other rights of the Client to use the Information whether pursuant to Section 4 (License to use the data of the Client) or otherwise shall cease; and
- 9.2.3. neither party shall have any further right or obligation with respect to the other party except as set out in this Section 9 (Term and Termination) and in the following additional sections, which shall survive such expiration or termination: Section 2 (Intellectual Property Rights), Section 4 (License to use the data of the Client), Section 7 (Warranties), Section 8 (Security), Section 10 (Third Party Rights), Section 11 (Limitation of Liability), Section 12 (Confidentiality), and Section 13 (General).
- 9.3. The expiration or termination of the Contract shall not prejudice or affect any right of action or remedy which has accrued or thereafter accrues to a party under these Terms or at law or equity.

## 10. Third Party Rights

- 10.1. The Client acknowledges Spikes Cavell is an authorized licensee and distributor of Information from third party data providers. Accordingly the parties acknowledge that:
- 10.1.1. Experian Limited is a third party data provider ("Data Provider") who provides Information and Intellectual Property which is fundamental to the provision of the Services. Therefore, the Data Provider is an intended third party beneficiary of the Contract. The Data Provider may, in its own name or in the name of Spikes Cavell, enforce the Contract against the Client provided, however,

that the Client may look only to Spikes Cavell and not to the Data Provider for performance by Spikes Cavell of its obligations to the Client under the Contract.

- 10.1.2. Third parties that provide information to the Data Providers for use in providing the Information are intended third party beneficiaries of Section 7 (Warranties) and Section 11 (Limitation of Liability). Notwithstanding the foregoing, the Contract may be amended or terminated without the consent of any such third party beneficiaries.

**11. Limitation of Liability**

- 11.1. Nothing in these Terms excludes or limits the liability of Spikes Cavell or the Client (including, without limitation, their employees, agents and subcontractors) for (a) death or personal injury caused by its gross negligence or willful misconduct; (b) fraud in the Inducement; or (c) any other liability that cannot be excluded or limited under applicable law.

**12. [Section deleted]**

**13. General**

- 13.1. Nothing in these Terms shall create an agency, partnership, joint venture or employment relationship between Spikes Cavell and the Client. Neither party is authorized to make or enter into any commitments for or on behalf of the other party.
- 13.2. Spikes Cavell will not be liable if it is delayed in or prevented from performing its obligations due to circumstances outside its reasonable control including acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, failures in utility supply, supplier failures, systems interruption, power surges, network unavailability, equipment failures, virus attack and any comparable circumstances.
- 13.3. No failure or delay by Spikes Cavell or Client to exercise any right or remedy provided under these Terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 13.4. Except as otherwise expressly provided by these Terms, all remedies available to Spikes Cavell or Client for breach of the Terms are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 13.5. If any provision of the Terms is held to be invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Terms had been executed with the invalid provision eliminated.
- 13.6. Client acknowledges that, in entering into these Terms, it has not relied on, and shall have no right or remedy for, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in these Terms.
- 13.7. Client acknowledges that irreparable damage will occur in the event that any of the confidentiality or license restrictions are not performed in accordance with their specific terms or are otherwise breached. It is accordingly agreed that Spikes Cavell shall be entitled to seek and obtain injunctive relief to prevent such breaches of the Contract.

For the City of Franklin, Tennessee

For Spikes Cavell

Name: *Eric S. Stenberg*

Name: Jonathan White

Title: City Administrator

Title: Sales Director

Signature: Eric S. Sumbay

Signature: [Handwritten Signature]

Date: Sept. 29, 2014

Date: 19 Sept 2014

Approved as to form:

By: Shauna R. Billingsley  
Shauna R. Billingsley, City Attorney



# Standard Procurement Terms and Conditions

## City of Franklin, Tennessee

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1. Assignment/Subcontracting. Neither party may assign any rights or obligations under these Standard Procurement Terms and Conditions or any Statement of Work without the prior written consent of the other party, not to be unreasonably withheld. These Standard Procurement Terms and Conditions will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Vendor may subcontract any portion of the work only with the prior consent of the City, but such subcontracting will not relieve Vendor of its duties under these Standard Procurement Terms and Conditions.
  
2. [Section deleted]
  
3. Taxes. As a tax-exempt entity, the City shall not be responsible for sales or use taxes incurred for products or services. Upon request, the City shall supply Vendor with a copy of its Sales and Use Tax Exemption Certificate. Vendor shall bear the burden of providing its suppliers with a copy of the City's tax exemption certificate and shall assume all liability for such taxes, if any, that should be incurred.
  
4. Notices. Any notice provided pursuant to these Standard Procurement Terms and Conditions, if specified to be in writing, will be in writing and will be deemed given: (a) if by hand delivery, then upon receipt thereof; (b) if mailed, then three (3) City business days after deposit in the mail where sender is located, postage prepaid, certified mail return receipt requested; (c) if by next day delivery service, then upon such delivery; or (d) if by facsimile transmission or electronic mail, then upon confirmation of receipt. All notices will be addressed to the parties at the addresses set forth below (or set forth in such other document which these Standard Procurement Terms and Conditions may accompany, or such other address as either party may in the future specify in writing to the other):

In the case of the City:

City of Franklin  
Attn: Purchasing Manager  
  
109 Third Ave. South  
P.O. Box 305  
Franklin, TN 37065-0305  
FAX: 615/550-0079  
E-mail: [purchasing@franklintn.gov](mailto:purchasing@franklintn.gov)

In the case of Vendor:

Spikes Cavell Analytic, Inc.  
Attn: Director of Sales - U.S.  
  
151 Spring St.  
  
Herndon, VA 20170  
FAX: 571/313-5218  
E-mail: [jonathan.white@spikescavell.com](mailto:jonathan.white@spikescavell.com)

Re: City of Franklin Contract No. 2014-0229

# Standard Procurement Terms and Conditions

## City of Franklin, Tennessee

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5. Confidentiality and Proprietary rights. Vendor waives any right to confidentiality of any document, e-mail or file it fails to clearly mark on each page (or section as the case may be) as confidential or proprietary. City may be required to disclose documents under state or federal law. City shall notify Vendor if a request for documents has been made and shall give Vendor a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. In exchange, Vendor agrees to indemnify, defend, and hold harmless City for any claims by third parties relating thereto or arising out of (i) the City's failure to disclose such documents or information required to be disclosed by law, or (ii) the City's release of documents as a result of City's reliance upon Vendor's representation that materials supplied by Vendor (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads Vendor and Vendor assumes control over that claim.
  
6. [Section deleted]
  
7. Arbitration/Mediation. No arbitration shall be required as a condition precedent to filing any legal claim arising out of or relating to the Contract. No arbitration or mediation shall be binding.
  
8. Waiver. Neither party's failure or delay to exercise any of its rights or powers under these Standard Procurement Terms and Conditions will constitute or be deemed a waiver or forfeiture of those rights or powers. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either (a) a future or continuing waiver of that same right or power, or (b) the waiver of any other right or power.
  
9. Warranties/Limitation of Liability/Waiver. City reserves all rights afforded to local governments under law for all general and implied warranties. The City does not waive any rights it may have to all remedies provided by law and therefore any attempt by Vendor to limit its liability shall be void and unenforceable.
  
10. Severability. If any term or provision of these Standard Procurement Terms and Conditions is held to be illegal or unenforceable, the validity or enforceability of the remainder of these Standard Procurement Terms and Conditions will not be affected.
  
11. Precedence. In the event of conflict between the provisions of these Standard Procurement Terms and Conditions and any contract, agreement or other document which these Standard Procurement Terms and Conditions may accompany, the provisions of these Standard Procurement Terms and Conditions will to the extent of such conflict take precedence unless such document expressly states that it is amending these Standard Procurement Terms and Conditions.
  
12. Indemnification. Vendor agrees to indemnify and save the Government of Franklin, the City of Franklin and individual, on or off duty, officers, and employees of the City of Franklin, harmless from any and all losses, damages and expenses, including court costs and attorneys' fees, by reason of any loss, whatsoever, arising out of or relating to or in consequence of the work done in connection with the contract of which this agreement is

# Standard Procurement Terms and Conditions

## City of Franklin, Tennessee

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a part, excepting only such losses as shall be occasioned solely by the negligence of the City of Franklin.

13. Additions/Modifications. If seeking any addition or modification to the Contract, the parties agree to reference the specific paragraph number sought to be changed on any future document or purchase order issued in furtherance of the Contract, however, an omission of the reference to same shall not affect its applicability. In no event shall either party be bound by any terms contained in any purchase order, acknowledgement, or other writings unless: (a) such purchase order, acknowledgement, or other writings specifically refer to the Contract or to the specific clause they are intended to modify; (b) clearly indicate the intention of both parties to override and modify the Contract; and (c) such purchase order, acknowledgement, or other writings are signed, with specific material clauses separately initialed, by authorized representatives of both parties.
14. Applicable Law; Choice of Forum/Venue. These Standard Procurement Terms and Conditions are made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to any state's choice-of-law rules. The choice of forum and venue shall be exclusively in the Courts of Williamson County, TN.
15. Termination. Unless the City has indicated otherwise for a specific procurement solicitation, either party may terminate these Standard Procurement Terms and Conditions, with or without cause, upon thirty (30) calendar days' notice to the other. Upon termination by the vendor, the City shall be entitled to retain ownership of any and all goods and equipment purchased. Upon termination by the City, the vendor shall be entitled to receive any amounts due as a result of goods and equipment already delivered and/or services already rendered; however, the City shall maintain ownership and control of any goods and equipment purchased. Upon termination of services, whether connected or unconnected to goods and equipment, such services shall be rendered until the conclusion of the 30<sup>th</sup> calendar day as stated in the notice or until a contractual benchmark has been achieved, or as the parties may otherwise agree.

# Standard Procurement Terms and Conditions

## City of Franklin, Tennessee

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16. Breach. Upon deliberate breach of these Standard Procurement Terms and Conditions, or of any contract, agreement or other document which these Standard Procurement Terms and Conditions may accompany, by either party, the non-breaching party shall be entitled to terminate these Standard Procurement Terms and Conditions without notice, with all of the remedies it would have in the event of termination under section 10 ("Severability") above, and may also have such other remedies as it may be entitled to in law or in equity.
  
17. Default. If Vendor fails to perform or comply with any provision of these Standard Procurement Terms and Conditions, or of any contract, agreement or other document which these Standard Procurement Terms and Conditions may accompany, then the City (i) may cancel the purchase award and/or the accompanying contract or agreement or purchase order, in whole or in part, without penalty or protest by Vendor; (ii) may consider such failure to perform or comply as a breach of contract; (iii) reserves the right to purchase its requirements from the vendor that submitted the next lowest and best responsive and responsible bid, or the vendor that submitted the next best proposal, if that vendor will still honor that bid or proposal, or to seek new bids or proposals, or to pursue one or more other options available to the City in compliance with its then current purchasing policy; and (iv) may hold the defaulting vendor liable for all damages provided by law, including cost of cover.
  
18. Entire Agreement. These Standard Procurement Terms and Conditions, including any contract, agreement or other document which these Standard Procurement Terms and Conditions may accompany, constitutes the entire agreement between the parties and supersedes any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of these Standard Procurement Terms and Conditions. The terms and conditions of these Standard Procurement Terms and Conditions may not be changed except by an amendment expressly referencing these Standard Procurement Terms and Conditions by section number and signed by an authorized representative of each party.
  
19. Survival. These Standard Procurement Terms and Conditions shall survive the completion of or any termination of any contract, agreement or other document which these Standard Procurement Terms and Conditions may accompany.