

# Tech Procurement Trends

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Harvest Procurement Innovation

# Tech is Everywhere

## Baltimore Rolls Out Smart Trash Cans

*The city will spend \$15 million to deploy 4,000 sensor-equipped trash receptacles that will increase collection efficiency.*

## Smart Pavement Startup Announces Contract with Colorado Department of Transportation

## Government Use of IoT Needs to Catch Up with the Technology

## The Path Forward: States Turn the Corner on Cloud Computing



# Top Smart Infrastructure Technologies

Anticipated  
state and  
local  
procurements  
by 2022

33%   
Commuter  
apps

23%   
Connected  
vehicle  
infrastructure

19%   
Advanced traffic  
management  
systems

18%   
Solar LED  
signs

18%   
Controllable  
traffic signals

18%   
Electric car  
charging stations

Source: Center for Digital Government



# Tech Procurement and Spend is Up

(First Quarter Analysis 2012-2018)



Aging systems require modernization or replacement

Source: Govtech Navigator



# More Money, More Problems

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**The Financial Consequences of Using Unlicensed Software**

**Government IT can't modernize without reforming procurement practices**

**Report: 61 percent of enterprises face license audits**

**Nobody Loves Government Procurement, but How Can It Be Fixed?**

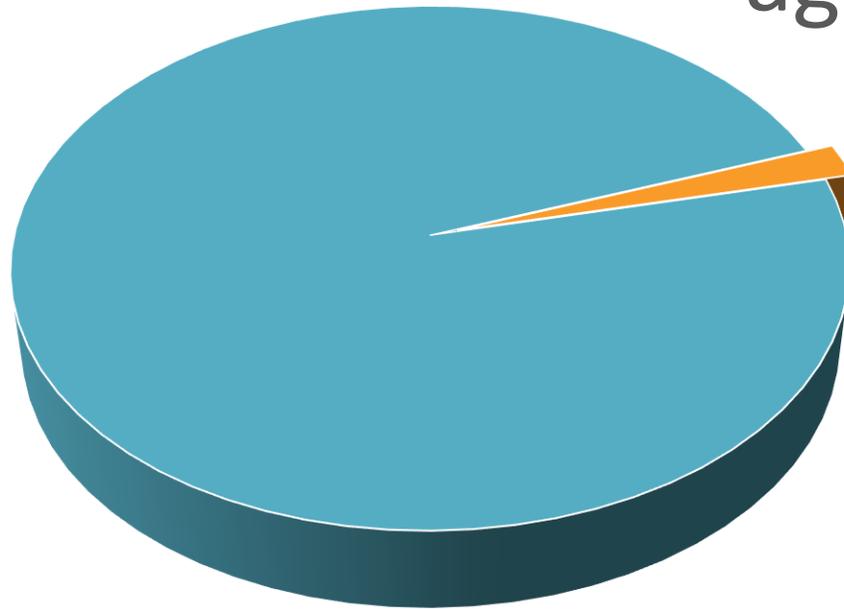
**Contracting in the Cloud:  
Who Pays for a Data  
Breach?**



# Lack of Awareness

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Who actually reads software license agreements?



- Customers
- People who wrote them



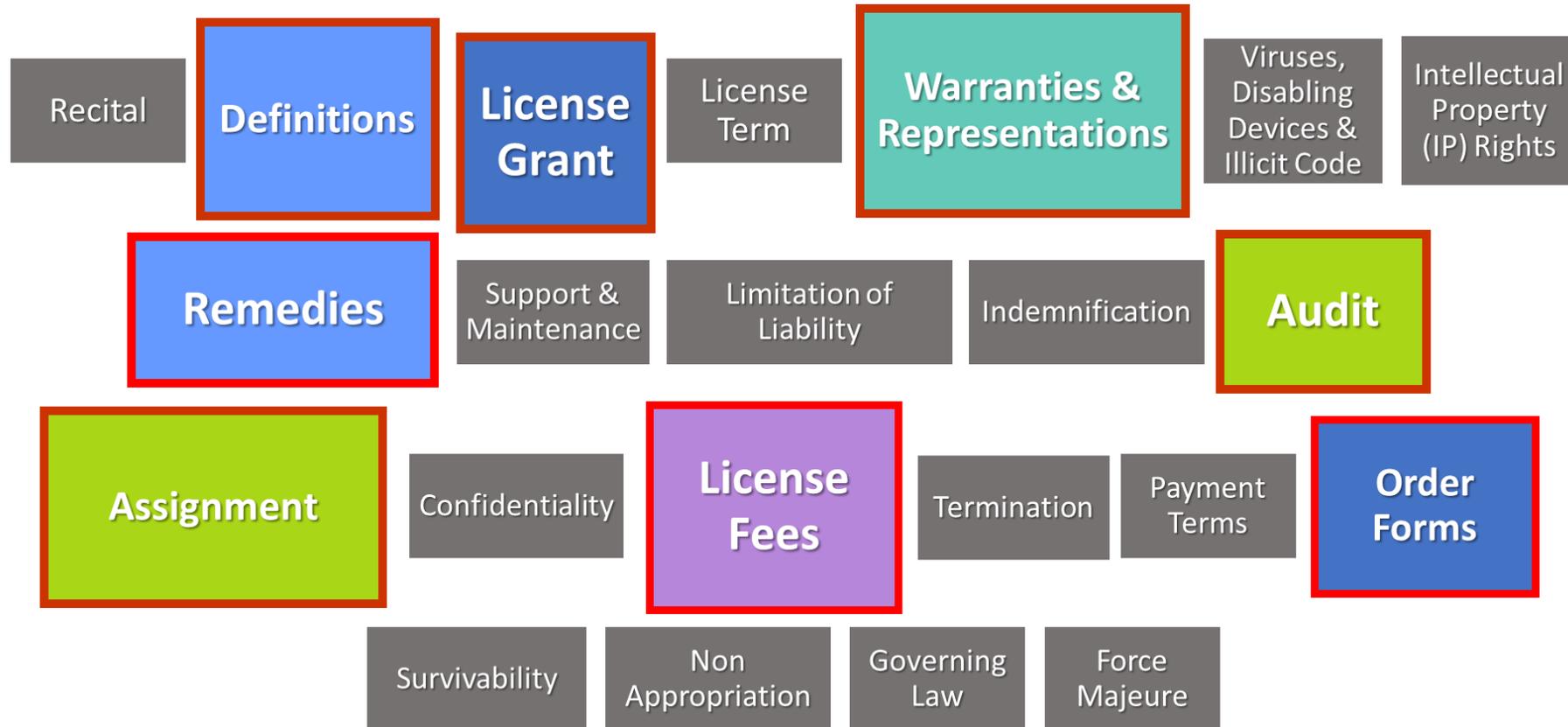
# “Technically” Not Top 8

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- Governing Law
- Indemnification
- Force Majeure
- Non Appropriation
- Limitation of Liability



# Top 8 Tech Contract T&C's



# #8: Fees and Payment Terms

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## WHAT IT IS

- Standard declaration of how much the customer will pay for what's on contract and when that will happen

## WHY WE CARE

- Typically disconnected from a state's standard payment term
- Common place for conflict with negotiated pricing in a competitive RFP/bid
- Termination or cancellation costs for expected revenue lost



# #7: Assignment

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## WHAT IT IS

- Determines whether rights, obligations and duties under agreement may be transferred in whole in or part to another party

## WHY WE CARE

- Not typically mutual
- Licensor wants full flexibility and no preemptive notice
- Unclear if all rights transfer



# Straight Talk: Assignment

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Licensor says, “We can transfer our rights and obligations in this Agreement whenever and to whomever we want and we might tell you about it ahead of time.”



You say, “Oh, yeah? So can we and guess what, all these terms and conditions stay in place until we agree they don’t.”



# #6: Warranties and Representations

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## WHAT IT IS

- Assertion or representation of a fact and the promise of action to be taken if assertion is false



## WHY WE CARE

- License typically says that product is being provided “as is”
- More language devoted to exclusions and disclaimers
- Usual contains at least one conflict with a promise made during competitive process used to win a contract



# #5: Remedies

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## WHAT IT IS

- The contractually required response to an unmet warranty or representation



## WHY WE CARE

- Warranties without Remedies won't get your problem fixed
- Unless documented, your only remedy may be the Licensor saying, "Oops, my bad!"



# Redlines! Remedies

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*If Software does not conform to the warranties made by Big Dog in the Agreement, or is otherwise defective, **Big Dog shall correct the errors or non-conformities within ten (10) days** of notice from Customer. If Big Dog does not remedy any and all Software defects within such period, **Customer may elect to terminate** this Agreement without penalty and shall be entitled to return of **all License Fees paid**.*



# #4: Order Forms

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## WHAT IT IS (SHOULD BE)

- Harmless document used to initiate and complete a purchasing transaction



## WHY WE CARE

- Often long with terms that reset a master agreement, takes precedence
- Conflict in principle-every supplier contract attempts to disclaim the validity of your purchase order terms, so why should order forms be any different?



# #3: Audit

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## WHAT IT IS

- Allows Licensor to verify you're using their software (intellectual property) as permitted under the license



## WHY WE CARE

- Not always presented in a clear way (in hyperlink or another document)
- If any violation of license is found, supplier sets right to compensation, rate and ability to immediately terminate



# Straight Talk: Audit

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Licensors says...

“We can look into how you use our stuff whenever we want and if we don’t like what we see, you have to pay a fine and immediately pay for the extra stuff at whatever price we’re charging for it now or you have to stop using all of it right this minute.”



# Straight Talk: Audit

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You say, “Fine and dandy, we got nothing to hide BUT...

- You need to call us 90-days ahead to make sure we’re not busy.
- You can’t visit more than once a year.
- You don’t get free run of the place, we’ll let you look at a report that shows how much of your stuff we have and where it is.
- If we screwed up and have more than we paid for, we’ll pay the difference based on the cost we paid in the first place.
- Oh, and you just can’t send anyone you want in your place. We’re cool with one of those fancy accounting firms but we get to make the final decision on who gets access to our stuff.”



# #2: License Grant

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## WHAT IT IS

Details what you can and can't do with the software:

- Version
- Types of users
- Purposes of use
- Manner of use (number of installs, type of hardware)
- Location of use

## WHY WE CARE

- Term where restrictions are buried on common use circumstances (back up, archival copy, service bureau use)
- Doesn't contemplate a publisher-directed fix that could be considered reverse engineering



# Redlines! License Grant

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*Big Dog Software (Big Dog) grants to Customer a perpetual, nonexclusive, worldwide license **to install, have access to, benefit from, copy, test, and display** the Software **on any hardware** at **any Customer site** and to make **back-up** and **archival copies** of the software **as needed**. There shall be **no limit** to the number of machines, number of users, number of locations or size of the hardware on which Customer can operate the Software. Customer may provide **access to** the Software by its **authorized consultants**. **Unless directed by Big Dog**, Customer will not modify or create derivative works based on the Software; or disassemble, reverse engineer, or decompile the Software.*



# #1: Definitions

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## WHAT IT IS

- Outline the meaning of capitalized terms used in the license
- Purpose is to achieve clarity without needless repetition
- Recommended source:
  - International Business Software Management Association (IBSMA)  
<http://www.ecpmedia.com/glossary.html>

## WHY WE CARE

- Words matter!
  - “Acceptance”
  - “Deliverable”
  - “User”



# Questions, Wrap Up

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