Exhibit 1 - SMX Elevate Solutions Terms & Conditions

This SMX Elevate ™ Solutions Terms & Conditions Exhibit shall apply to all service offerings which includes any related module included within the SMX Elevate ™ Solution as sold by Smartronix, LLC & Affiliates Part of SMX Group and described at [SMX | SMX Elevate (smxtech.com)](smxtech.com).

1 **Definitions.** Capitalized terms not otherwise defined in this Agreement have the meanings set forth below:

1.1 **"Affiliate"** means any other commercial entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with SMX.

1.2 **"Authorized User"** means Customer's employees, and agents who are authorized by Customer to access and use the Solutions under the rights granted to Customer pursuant to this Agreement, and for whom access to the Solutions has been purchased.

1.3 **"Component System"** means any one or more of the Modules of the Solutions Customer has currently licensed, subscribed to, or been granted cloud access to, including all copies of Source Code, Object Code and all related specifications, Documentation, technical information, and all corrections, modifications, additions, development work, improvements and enhancements to and all Intellectual Property Rights for such Component System.

1.4 **"Customer Data"** means information, data, and content, in any form or medium, collected, downloaded, or otherwise received, directly or indirectly from Customer, an Authorized User or end-users by or through the Solutions, provided the data is not personally identifiable and not identifiable to Customer.

1.5 **"Custom Modification"** means a change that SMX has made at Customer's request to any Component System in accordance with a SMX-generated specification, but without any other changes whatsoever by any Person.

1.6 **"Customer Systems"** means the Customer's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated by Customer or through the use of third-party services.

1.7 **"Data Protection Laws"** means all applicable data protection and privacy Laws that apply to the processing of personal data for a particular Online Service, including, as applicable, any US state or federal Laws or regulations relating to the collection, use, disclosure, security or protection of personal data, or to security breach notification, including but not limited to the California Consumer Privacy Act of 2018 ("CCPA"), the Texas Data Privacy and Security Act ("TDPSA"), the Colorado Privacy Act (CPA), the Connecticut Data Privacy Act (CTDPA), the Utah Consumer Privacy Act (UCPA), the Indiana Consumer Data Protection Act (ICDPA), the Iowa Consumer Data Protection Act (ICDPA), the Montana Consumer Data Privacy Act (MCDPA), the Tennessee Information Protection Act (TIPA) and the Virginia Consumer Data Protection Act ("VCDPA"), together with the EU General Data Protection Regulation 2016/679 ("GDPR").

1.8 **"Documentation"** means any manuals, instructions, or other documents or materials that SMX provides or makes available to Customer in any form or medium and which describe the functionality, components, features, or requirements of the Solutions, including any aspect of the installation, configuration, integration, operation, use, support, or maintenance thereof.

1.9 **"Harmful Code"** means any software, hardware, device or other technology, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede any (i) computer, software, firmware, hardware, system, or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data Processed thereby; or (b) prevent Customer or any Authorized User from accessing or using the Solutions as intended by this Agreement.

1.10 **"Intellectual Property Rights"** means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

1.11 **"Modules"** means any one or more of the Services that comprise SMX Elevate that are identified in Exhibit 2 to this Agreement.

1.12 **"Person"** means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

1.13 **"Personal Information"** means any information that does or can identify a specific individual or by or from which a specific individual may be identified, contacted, or located. Personal Information includes all "nonpublic personal information" as defined under the Gramm-Leach-Bliley Act, "protected health information" as defined under the Health and Insurance Portability and Accountability Act of 1996, "Personal Data" as defined in the EU General Data Protection Regulation (GDPR 2018), "Personal Information" as defined under the Children's Online Privacy Protection Act of 1998, other Data Protection Laws, and all rules and regulations issued under any of the foregoing.

1.14 **"Representatives"** means, with respect to a party, that party's employees, officers, directors, agents, subcontractors, authorized signatories, and legal advisors.

1.15 **"Services"** means that support SMX provides via this Agreement to help clients explore, adopt, and optimize the power of cloud.

1.16 **"SMX Team Personnel"** means all individuals involved in the performance of Support Services and as employees, agents, Subcontractors or independent contractors of SMX.

1.17 **"Solution(s)"** means the Component Systems, Documentation, Custom Modifications, development work, SMX Team Systems and any and all information, data, documents, materials, works, devices, methods, processes, hardware, software, technologies, inventions, deliverables, technical or functional descriptions, requirements, plans, and reports, provided or used by SMX or any Subcontractor in connection with Services rendered under this Agreement.

1.18 **"Third-Party Materials"** means materials and information, in any form or medium, including any software, documents, data, content, specifications, products, related services, equipment, or components of or relating to the Solutions that are not proprietary to SMX.

2   Solutions, Grant of Limited Rights and Scope of Use, & Delivery.

2.1   <u>Support</u>: Subject to and conditioned on Customer and their Authorized Users' compliance with the terms and conditions of this Agreement, during the Term SMX will provide to Customer the Services outlined in Exhibit 2.

2.2   <u>Grant of Limited Rights and Scope of Use</u>. Subject to and conditioned on Customer and their Authorized Users' compliance with the terms and conditions of this Agreement, SMX hereby grants Customer a revocable, non-exclusive, non-transferable right to access and use the Solutions, solely by Authorized Users and limited to Customer's internal use. Any third-party licenses applicable to this Agreement are subject to the most current terms of the third party's end user license agreement and all other terms and conditions required by the third party for the use of the subject license, all of which are incorporated by reference into this Agreement.

2.3   <u>Delivery</u>. For additional purchases of software and/or hardware from SMX (or Third-Party Offerings through SMX), SMX Team Personnel shall deliver to Customer the initial copies of the Solution(s) purchased by electronic delivery. Physical shipment is on FOB-SMX's shipping point, and electronic delivery is deemed effective at the time SMX provides Customer with access to download the Solutions. The date of such delivery shall be referred to as the **"Delivery Date."**

3   System Control, Limitations & Exceptions.

    3.1   <u>System Control</u>. Except as otherwise expressly provided in SMX | SMX Elevate (smxtech.com): (i) SMX has and will retain sole control over the content and composition of SMX Elevate and how it is provided to customers; and (ii) Customer has and will retain sole control over the operation, maintenance, management of, and all access to and use of, the Customer Systems, and sole responsibility for access to and use of the Solutions by any Person by or through the Customer Systems or other means controlled by Customer or any Authorized User, including any reports or results obtained from any use of the Solutions, and conclusions, decisions, or actions based on such use.

    3.2   <u>Limitations</u>. Customer must provide SMX with such facilities, equipment and support as deemed by SMX reasonably necessary for SMX to perform its obligations under this Agreement, including, if required by SMX, remote access to the Customer Systems. SMX is not responsible or liable for any delay or failure of performance caused in whole or in part by any Customer delay or Customer's failure to perform any obligations under this Agreement.

    3.3   <u>Exceptions</u>. SMX has no obligation to provide Services relating to any Defect with the Solutions that, in whole or in part, arise out of or result from any of the following:

        3.3.1   software, or media on which provided, that is modified or damaged by Customer or third party;

        3.3.2   any negligence, abuse, misapplication, or misuse of the Solutions, including any Customer use of the Solutions other than as expressly authorized in writing by SMX, which SMX shall consider a breach of this Agreement and subject to termination for cause pursuant to the terms of this Agreement;

        3.3.3   the operation of, or access to, Customer's or a third party's system, materials or network;

        3.3.4   any beta software, software that SMX makes available for testing or demonstration purposes, temporary software modules, or software for which SMX does not receive a fee;

        3.3.5   any breach of or noncompliance with any provision of this Agreement by Customer or any of its Representatives or any Force Majeure Event (including abnormal physical or electrical stress).

4   Reservation of Rights. Except for the specified rights outlined in Section 2.2 titled "<u>Grant of Limited Rights and Scope of Use</u>", nothing in this Agreement grants any right, title, or interest in or to any Intellectual Property Rights in or relating to the Support Services, Solutions, or Third-Party Materials, whether expressly, by implication, estoppel, or otherwise. All right, title, and interest in the Solutions, and the Third-Party Materials are and will remain with SMX and/or the respective rights holders.

5   Changes. SMX reserves the right, in its sole discretion, to make any changes to the Modules, Services and Solutions that it deems necessary or useful to: (a) maintain or enhance the quality or delivery of SMX's services to its customers, the competitive strength of or market for SMX's services, or the Support Services' cost efficiency or performance; or (b} to comply with applicable law. Without limiting the foregoing, either party may, at any time during the Term, request in writing changes. No requested changes will be effective unless and until memorialized in either a SMX a written change order. Modification, or amendment to this Agreement signed by both parties.

6   Subcontractors. SMX may from time to time in its discretion engage third parties to perform Support Services (each, a **"Subcontractor").**

7   Security Measures. The Solutions may contain technological measures designed to prevent unauthorized or illegal use of the Solutions. Customer acknowledges and agrees that: (a) SMX may use these and other lawful measures to verify compliance with the terms of this Agreement and enforce SMX's rights, including all Intellectual Property Rights, in and to the Solutions; (b) SMX may deny any individual access to and/or use of the Solutions if SMX, in its reasonable discretion, believes that person's use of the Solutions would violate any provision of this Agreement or applicable law, regardless of whether Customer designated that person as an Authorized User; and (c) SMX may

collect, maintain, process, use and disclose technical, diagnostic and related non-identifiable data gathered periodically which may lead to improvements in the performance and security of the Solutions.

8   Use Restrictions. Customer shall not, and shall not permit any other Person to, access or use the Solutions except as expressly permitted by this Agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement expressly permits:

8.1   copy, modify, or create derivative works or improvements of the Solutions, or rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Solutions to any Person;

8.2   reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the SMX software or Solutions, in whole or in part;

8.3   bypass or breach any security device or protection used by Solutions or access or use the Solutions other than by an Authorized User through the use of his or her own then valid access;

8.4   input, upload, transmit, or otherwise provide to or through the SMX Team any information or materials that are unlawful or injurious, or contain, transmit, or activate any Harmful Code;

8.5   damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner SMX's provision of Services to any party, in whole or in part;

8.6   remove, delete, alter, or obscure any trademarks, Specifications, Documentation, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Documentation or Solutions, including any copy thereof;

8.7   access or use the Solutions in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party, or that violates any applicable law;

8.8   access or use the Solutions for purposes of competitive analysis of the Solutions, the development, provision, or use of a competing software service or product or any other purpose that is to SMX's detriment or commercial disadvantage or otherwise access or use the Solutions beyond the scope of the authorization granted under this Section.

9   Customer Obligations.

9.1   <u>Customer Systems and Cooperation.</u> Customer shall at all times during the Term: (a) set up, maintain, and operate in good repair all Customer Systems on or through which the Solutions are accessed or used; (b) provide the SMX Team Personnel with such access to Customer's premises and Customer Systems as is necessary for SMX to perform the Support Services in accordance with the Support Standard; and (c) provide cooperation as SMX may reasonably request to enable SMX to exercise its rights and perform its obligations under and in connection with this Agreement.

9.2   <u>Effect of Customer Failure or Delay.</u> SMX is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement.

9.3   <u>Corrective Action and Notice.</u> If Customer becomes aware of any actual or threatened activity prohibited by Section 10, Customer shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Solutions and permanently erasing from their systems and destroying any data to which any of them gained unauthorized access); and (b) notify SMX of any such actual or threatened activity.

10 Confidentiality.

10.1 <u>Confidential Information.</u> **"Confidential Information"** means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations. Without limiting the foregoing, Confidential Information of SMX includes the Solutions, all software provided with the Solutions, and algorithms, methods, techniques and processes revealed by the Source Code of the Solutions and any software provided with the Solutions. In connection with this Agreement each party (as the **"Disclosing Party"**) may disclose or make available Confidential Information to the other party (as the **"Receiving Party").**

10.2 <u>Exclusions.</u> Confidential Information does not include information that: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public without breach of any agreement including but not limited to this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that was or is independently developed by the Receiving Party without reference or use of any Confidential Information.

10.3 <u>Protection of Confidential Information.</u> As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall:

10.3.1 not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;

10.3.2 not disclose or permit access to Confidential Information other than to its Representatives who:

10.3.3 need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section; and (iii) are bound by written confidentiality or restricted use obligations at least as protective of the Confidential Information as the terms in this Section;

10.3.4 safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its sensitive information and in no event less than a reasonable degree of care;

10.3.5 ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this Section.

10.4 <u>Compelled Disclosures.</u> If the either Party or any of its Representatives is compelled by applicable law to disclose any Confidential Information then, to the extent permitted by law, that Party shall: (a) promptly, and prior to such disclosure, notify the other Party in writing of such requirement so that they can seek a protective order or other remedy or waive its rights under Section .3; and (b) provide reasonable assistance to the Disclosing Party in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section, the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose.

10.5 <u>Trade Secrets.</u> Notwithstanding any other provisions of this Agreement, the Receiving Party's obligations under this Section with respect to any Confidential Information that constitutes a trade secret under any applicable law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable laws other than as a result of any act or omission of the Receiving Party or any of its Representatives.

11 Security.

11.1 SMX will implement commercially reasonable administrative, technical and physical safeguards designed to ensure the security and confidentiality of Customer Data, protect against any anticipated threats or hazards to the security or integrity of Customer Data, and protect against unauthorized access or use of Customer Data. SMX will review and test such safeguards on no less than an annual basis.

11.2 Customer shall maintain, in connection with the operation or use of the Solutions, adequate technical and procedural access controls, system security requirements and devices, necessary for data privacy, confidentiality, integrity, authorization, authentication, non-repudiation, virus detection and eradication. Customer shall provide documentation upon request and as needed by SMX to determine the compliance with these requirements.

11.3 To the extent that Authorized Users are permitted to have access to the Solutions, Customer shall maintain reasonable procedures with such Authorized Users that adequately protect the confidentiality and Intellectual Property Rights of SMX in the Solutions and Documentation, and disclaim any liability or responsibility of SMX with respect to such Authorized Users. . Customer shall provide documentation upon request and as needed by SMX to determine the compliance with these requirements.

12 Personal Data.
If SMX processes or otherwise has access to any personal data or personal information on Customer's behalf when performing SMX's obligations under this Agreement, then:

12.1 Customer shall be the data controller (where **"data controller"** means an entity which alone or jointly with others determines purposes for which and the manner in which any personal data are, or are to be, processed) and SMX shall be a data processor (where **"data processor"** means an entity which processes the data only on behalf of the data controller and not for any purposes of its own);

12.2 Customer shall ensure that it has obtained all necessary consents and it is entitled to transfer the relevant personal data or personal information to SMX so that SMX may lawfully use, process and transfer the personal data and personal information in accordance with this Agreement on Customer's behalf, which may include SMX processing and transferring the relevant personal data or personal information outside the country where Customer and the Authorized Users are located in order for SMX to provide the Solutions and perform its other obligations under this Agreement;

12.3 SMX shall process personal data and information only in accordance with lawful and reasonable instructions given by Customer and as set out in and in accordance with the terms of this Agreement; and

12.4 Each party shall take appropriate technical and organizational measures against unauthorized or unlawful processing of the personal data and personal information or its accidental loss, destruction or damage so that, having regard to the state of technological development and the cost of implementing any measures, the measures taken ensure a level of security appropriate to the harm that might result from such unauthorized or unlawful processing or accidental loss, destruction or damage in relation to the personal data and personal information and the nature of the personal data and personal information being protected. If necessary, the parties will cooperate to document these measures taken.

13 Representations and Warranties.

13.1 <u>Services Representation and Warranty</u>. SMX represents, warrants, and covenants to Customer that during the Term, SMX will perform the Services using personnel of appropriate and adequate skill, experience, and qualifications and in a professional and workmanlike manner in accordance with both generally recognized industry standards for similar services, and the specific guidance for support found in Exhibit 2 and will devote adequate resources to meet its obligations under this Agreement. If Customer reasonably believes that any Services failed to meet this warranty, they will follow the identified escalation path.

13.2 **DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH ABOVE, SMX MAKES NO WARRANTIES WHATSOEVER, EXPRESSED OR IMPLIED, WITH REGARD TO THE SOLUTIONS, SERVICES, AND/OR ANY OTHER MATTER RELATING TO THIS AGREEMENT, AND THAT SMX DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHER, INCLUDING ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE, AND SPECIFICALLY DISCLAIMS IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. FURTHER, SMX EXPRESSLY DOES NOT WARRANT THAT A SOLUTION, ANY CUSTOM MODIFICATION OR ANY IMPROVEMENTS WILL BE USABLE BY CUSTOMER, OR WILL BE ERROR FREE, WILL OPERATE WITHOUT INTERRUPTION OR WILL BE COMPATIBLE WITH ANY HARDWARE OR SOFTWARE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS-IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY OF THEM IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER.**

14 Force Majeure.

14.1 <u>No Breach or Default</u>. Neither Party will be liable to the other for any failure or delay in fulfilling or performing any term of this Agreement (except for any payment obligation) when and to the extent such failure or delay is caused by any circumstances beyond such Party's reasonable control (a **"Force Majeure Event"),** including Acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, national or regional emergency, riot or other civil-unrest, labor disruption, acts and omissions of third parties, governmental and judicial action (e.g., embargoes, export or import restrictions, but does not include lack of funding or appropriations) not the fault of the Party failing or delaying in performance.

14.2 <u>Affected Party Obligations.</u> In the event of any failure or delay caused by a Force Majeure Event, the affected Party shall give prompt written notice to the other Party stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

15 Mutual Indemnification.

18.1 <u>SMX Indemnification</u>. SMX will defend, indemnify and hold harmless Customer , its affiliates, subsidiaries, or their respective officers, directors, and employees, from any liability, damages and expenses (including court costs and reasonable attorneys' fees) arising out of or resulting from any third-party claim based on: (a) SMX's gross negligence or intentional misconduct; or (b) any claim against Customer alleging that Customer's use of the Service infringes or misappropriates any Intellectual Property Rights of such third party. SMX has no obligation for any infringement or misappropriation to the extent that it arises out of or is based upon (i) use of the Service in combination with other products or services; (ii) any aspect of the Service configured specifically to comply with designs, requirements, or specifications required by or provided by or on Customer 's behalf; (iii) use of the Service by Customer outside the scope of the rights granted in this Agreement; or (iv) any modification of the Service not made or authorized in writing by SMX.

18.2 <u>Customer Indemnification</u>. Customer will defend, indemnify and hold harmless SMX, its affiliates, subsidiaries, or their respective officers, directors, and employees, from any liability, damages and expenses (including court costs and reasonable attorneys' fees) arising out of or resulting from any third-party claim based on or otherwise attributable to: (a) Customer's negligence or intentional misconduct; (b) a security breach that were not a result of sole negligence on the side of SMX; (c) any misrepresentations made by Customer with respect to SMX or the Solution; (d) Customer's actions that result in violation of any third party rights of privacy or confidentiality; or (e) Customer's violation of applicable law.

16 **Termination.** This Agreement may be terminated:

16.1 <u>For cause by either Party</u>. By written notice to the other Party, if the other Party materially breaches this Agreement and: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach.

16.2 <u>For lack of payment</u>. By written notice to Customer, if Customer's failure to pay amounts due under this Agreement has continued more than ninety (90) days after delivery of written notice of non-payment.

16.3 <u>Governmental Customer (Only) Budgetary Appropriations</u>. Customer represents and warrants to SMX that it has appropriated sufficient funds due to SMX under this Agreement and hereby certifies that it will make appropriate requests for budget appropriations to meet continued obligations herein in subsequent fiscal years. If a funding or budgetary issue arises, Customer agrees to notify SMX as soon as commercially reasonable. If SMX and Customer cannot resolve the funding issue within sixty (60) days, the Agreement will terminate, with Customer to pay SMX any amounts owed for goods and services provided prior to termination of the Agreement.

16.4 <u>Effect of Termination or Expiration</u>. On the expiration or earlier termination of this Agreement all rights, access, and authorizations granted to Customer hereunder will immediately terminate and Customer shall immediately cease all use of and other activities with respect to SMX's Confidential Information relating to the Solutions, and within thirty (30} days deliver to SMX, or at SMX's request destroy and erase SMX's Confidential Information from all systems Customer directly or indirectly controls; and all access or subscription fees, services rendered but unpaid, and any amounts due by Customer to SMX of any kind are immediately payable and due no later than thirty (30) days after the effective date of the termination or expiration, including anything that accrues within those thirty days. The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature (including but not limited to: Use Restrictions, Confidential Information, Warranty Disclaimers, Mutual Indemnifications & Limitations of Liability), should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement.

16.5 <u>Return of Customer Data</u>. If Customer requests in writing at least ten (10) days prior to the effective date of expiration or earlier termination of this Agreement, SMX shall within sixty (60) days following such expiration or termination, deliver to Customer in SMX's standard format the then most recent version of Customer Data maintained by SMX, provided that Customer has at that time paid all Fees then outstanding and any amounts payable after or as a result of such expiration or termination.

16.6 <u>Deconversion</u>. In the event of (i) expiration or earlier termination of this Agreement, or (ii) Customer no longer purchasing certain Solutions (including those indicated to be Third-Party Materials), if Customer requests assistance in the transfer of Customer Data to a different vendor's applications **("Deconversion"),** SMX will provide reasonable assistance. SMX and Customer will negotiate in good faith to establish the relative roles and responsibilities of SMX and Customer in effecting Deconversion, as well as the appropriate date for completion. SMX shall be entitled to receive compensation for any additional consultation, software and documentation required for Deconversion on a time and materials basis at SMX's then standard rates.

17 **Assignment.** Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without SMX's prior written consent, which consent SMX may give or withhold in its sole discretion. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation, or reorganization involving Customer (regardless of whether Customer is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under this Agreement for which SMX's prior written consent is required. No delegation or other transfer will relieve Customer of any of its obligations or performance

under this Agreement. Any purported assignment, delegation or transfer in violation of this Section is void. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors.

18 **No Waiver.** Failure to enforce rights with respect to any single or continuing breach of this Agreement will not act as a waiver of the right of that Party to later enforce such rights or enforce any other subsequent breach.

19 **Dispute Resolution.**

19.1 **Exclusive Dispute Resolution Mechanism.** The parties agree to resolve any dispute, controversy, or claim arising out of or relating to this Agreement (each, a "Dispute"), exclusively under the provisions of this Section. Either Party may seek interim or provisional relief in any court of competent jurisdiction, if necessary, to protect the rights or property of that Party pending the appointment of the arbitrator or pending the arbitrator's determination of the merits of the dispute. The parties agree to send written notice to the other party of any Dispute ("Dispute Notice"). After the other party receives the Dispute Notice, the parties agree to undertake good faith negotiation between themselves to resolve the Dispute at either CST or the Customer's location. Each Party shall be responsible for its associated travel costs. The parties agree to attend no fewer than three negotiation sessions attended Vice Presidents of each party (or employees of equivalent or superior position). If the parties cannot resolve any Dispute during the good faith negotiations either party may initiate mediation. The Parties agree to act in good faith in selecting a neutral mediator and in scheduling the mediation proceedings. The parties agree to use commercially reasonable efforts in participating in the mediation. The parties agree the mediator's fees and expenses, and the mediator's costs incidental to the mediation will be shared equally between the parties. The parties shall bear their own fees, expenses, and costs.

19.2 **Confidential Mediation.** The parties further agree all written or oral offers, promises, conduct, and statements made in the course of the mediation are confidential, privileged, and inadmissible for any purpose in any litigation, arbitration or other proceeding involving the parties. However, evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

19.3 **Litigation as a Final Resort.** If the parties cannot resolve a Dispute through mediation, then once an impasse is issued by the mediator either party may commence litigation in accordance with the provisions of regarding Choice of Law.

20 **Jurisdiction and Governing Law.** This Agreement and any dispute or claim arising, directly or indirectly, out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) is governed by, and shall be construed and enforced in accordance with, the laws of the State of Maryland excluding choice of law. Each party irrevocably (i) waives the right to trial by jury, and (ii) consents to service of process by first class certified mail, return receipt requested, postage prepaid, to the address at which the party is to receive notice.

21 **Severability.** If any provision of this Agreement is illegal or unenforceable, it will be deemed stricken from the Agreement and the remaining provisions of the Agreement will remain in full force and effect.

22 **LIMITATIONS OF LIABILITY. EACH PARTY'S TOTAL LIABILITY TO THE OTHER PARTY UNDER THIS AGREEMENT, FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, WILL BE LIMITED TO THE PAYMENTS MADE BY CUSTOMER TO SMX UNDER THIS AGREEMENT DURING THE 12 MONTHS PRIOR TO THE DATE OF THE EVENT GIVING RISE TO THE LIABILITY.**

23 **EXCLUSION OF DAMAGES. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF USE, LOSS OF DATA OR LOSS OF GOODWILL) OR COSTS OF PROCURING SUBSTITUTE SERVICE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE SERVICES,**

WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (including negligence), product liability, or otherwise, and whether or not the party has been advised of the possibility of such damage.

24 **Third-Party Materials.** Customer is hereby advised that SMX provides front-line support services for third parties, but these third parties assume all responsibility for and liability in connection with the Third-Party Materials. SMX is not authorized to make any representations or warranties that are binding upon the third party or to engage in any other acts that are binding upon the third party, excepting specifically that SMX is authorized to represent the fees for the Third-Party Materials as the same is provided for in the Agreement and to accept payment of such amounts from Customer on behalf of the third party for as long as such third party authorizes SMX to do so. As a condition precedent to installing/accessing any Third-Party Materials, Customer may be required to execute a click-through, shrink-wrap EULA or similar agreement provided by the Third-Party Materials provider.

25 **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other person any legal or equitable right, benefit, or remedy of any nature under or by reason of this Agreement.

26 **Cooperative Purchases.** This Contract may be used by other government agencies. SMX has agreed to offer similar services to other agencies under the same terms and conditions as stated herein except that the compensation may be negotiated between SMX and other agencies based on the specific revenue expectations, agency reimbursed costs, and other agency requirements. The Customer will in no way whatsoever incur any liability in relation to specifications, delivery, payment, or any other aspect of purchases by such agencies.