

## EHS Insight Terms of Service

Last updated May 31, 2018

These EHS Insight Terms of Service, including all applicable Exhibits hereto (collectively, this “**Agreement**”) is a binding contract between you (“**Customer**” or “**you**”) and StarTex Software LLC, a Texas limited liability company, d/b/a EHS Insight (each, “**StarTex**”). Please read this Agreement carefully before using the Services (defined below). By clicking or selecting the “I Accept” option below, or otherwise accessing or using the Services, you agree to the terms and conditions in this Agreement, and your subsequent use of the Services confirms your unconditional acceptance of the terms and conditions of this Agreement. If you do not accept or agree to this Agreement, do not use the Services. Please also read our Privacy Policy, available at <http://www.ehsinsight.com/privacy.html>, which governs our collection and use of your personally-identifiable information.

This Agreement applies to the access and use of Services via StarTex’s website at <http://www.ehsinsight.com>. Use of the EHS Insight software through a mobile device via StarTex’s mobile application is governed by the terms of the applicable End-User License Agreement (EULA) accompanying such mobile application.

### Section 1. Definitions

In addition to terms defined elsewhere in this Agreement, whenever used in this Agreement with the initial letter capitalized, the following terms will have the following specified meanings:

“**Affiliate**” means, with respect to a party, any entity which directly or indirectly controls, is controlled by, or is under common control with such party. “**Control**,” for purposes of this definition, means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of a party.

“**Beta Evaluation Term**” means the 60 day period beginning on the date Customer accesses the beta-version of the Services.

“**Customer Data**” means all electronic data or information submitted or uploaded by Customer or a User in connection with the Services.

“**Documentation**” means StarTex’s user manuals or other documentation regarding the Services, accessible via Customer’s account management section

within the StarTex website at <http://www.ehsinsight.com> and <http://support.ehsinsight.com> (or successor location), as may be updated by StarTex from time to time upon written notice to Customer.

**“General Support”** means the Support Services provided for a defined period from general availability (“GA”) of a release. General Support includes bug and security fixes and technical support services.

**“Intellectual Property Rights”** means any and all patents, copyrights, moral rights, trademarks, trade secrets and any other form of intellectual property rights recognized in any jurisdiction, including applications and registrations for any of the foregoing.

**“Malicious Code”** means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents, programs, or the like.

**“Onboarding Services”** means help provided by an onboarding specialist during implementation, such as demonstrating use of the system or validating historical data.

**“Order Form”** means the ordering documents for Customer’s evaluation or purchase of subscriptions to the Services hereunder, including addenda thereto, that are signed or electronically delivered by Customer and accepted by StarTex from time to time. Order Forms shall be deemed incorporated herein by reference.

**“Output”** means the analytics, results and related reports generated by Customer’s use of the Services and based upon the Customer Data.

**“Purchased Services”** means Subscription Services, training on the Services, or Onboarding Services that Customer or a permitted Customer Affiliate purchases under an Order Form.

**“Registration”** means an instance of a unique learner associated with a single online training requirement.

**“Services”** means StarTex’s online, web-based EHS Insight software provided via the website <http://www.ehsinsight.com>, and/or other designated websites as described in the Documentation, that are ordered by Customer in beta-form or for either evaluation purposes or as Purchased Services under an Order Form.

**“Subscription Services”** means access or subscriptions to the Services.

**“Subscription Services Term”** means the subscription term for the Subscription Services as specified in an Order Form.

**“Support Level”** means the Support Services plan purchased by Customer.

**“Support Services”** means General Support and Technical Support, which are provided at according to the Support Level.

**“Technical Support”** means the provision of telephone or web-based technical assistance by StarTex to Customer’s technical contact(s) with respect to service requests, at the corresponding Support Level purchased by Customer.

**“Trial Evaluation Term”** means the evaluation period, if any, for Customer’s evaluation of the Services, as specified in an Order Form.

**“Users”** means Customer’s authorized users that may access and use the Services. Users may only be Customer’s employees or contractors authorized by Customer to access the Services for internal purposes. This includes employees and contractors of Customer’s subsidiaries.

## **Section 2. License, Users and Order Forms**

### **2.1 Beta and Trial Licenses.**

(a) Beta Evaluation Period. During the Beta Evaluation Term, subject to the terms and conditions of this Agreement, StarTex hereby grants to Customer a nonexclusive, nontransferable, nonsublicensable, revocable and limited license to: (a) access and use the beta-version of the Services solely for Customer’s evaluation purposes; and (b) use, access and reproduce the Output for internal business purposes (provided that Customer’s license to use Output generated and retained by Customer during the Beta Evaluation Term for Customer’s internal business purposes shall survive expiration or termination of the Beta Evaluation Term). NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, STARTEX DOES NOT PROVIDE ANY SERVICE LEVELS OR WARRANTIES WITH RESPECT TO THE BETA-VERSION OF THE SERVICES, AND CUSTOMER’S USE OF THE BETA-VERSION OF THE SERVICES IS AS-IS AND WITHOUT ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND STARTEX SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES THAT MAY ARISE BY OPERATION OF LAW.

(b) Evaluation Term License. During the Evaluation Term, subject to the terms and conditions of this Agreement, StarTex hereby grants to Customer a nonexclusive, nontransferable, nonsublicensable, revocable and limited license to: (a) access and use the Services solely for Customer's evaluation purposes; and (b) use, access and reproduce the Output for internal business purposes (provided that Customer's license to use Output generated and retained by Customer during the Evaluation Term for Customer's internal business purposes shall survive expiration or termination of the Evaluation Term). Any data that Customer or any Users upload or enter into the Services and any customizations made to the Services by or for Customer during the Evaluation Term will be permanently lost and/or erased at the end of the Evaluation Term or within thirty (30) days thereafter, unless Customer elects to purchase Purchased Services before the expiration of the Evaluation Term. IF PURCHASED SERVICES ARE NOT PURCHASED BY CUSTOMER PRIOR TO SUCH EXPIRATION, STARTEX WILL HAVE NO LIABILITY OF ANY KIND TO CUSTOMER FOR ANY CUSTOMER DATA ERASED OR DELETED BY STARTEX AFTER SUCH THIRTY (30) DAY PERIOD. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, STARTEX DOES NOT PROVIDE ANY SERVICE LEVELS OR WARRANTIES WITH RESPECT TO THE EVALUATION VERSION OF THE SERVICES, AND CUSTOMER'S USE OF THE EVALUATION VERSION OF THE SERVICES IS AS-IS AND WITHOUT ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND STARTEX SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES THAT MAY ARISE BY OPERATION OF LAW.

2.2 Subscription Services Term License. During the Subscription Services Term, subject to the terms and conditions of this Agreement, the applicable Order Form and Customer's payment of Fees (defined in Section 4.1), StarTex hereby grants to Customer a nonexclusive, nontransferable, nonsublicensable, and limited license to: (a) access and use the Services for internal purposes only; and (b) use and reproduce the Documentation for internal purposes only.

2.3 Restrictions. Customer will not: (a) make the Services available to any third party other than designated Users; (b) make the Services available to any Customer Affiliate without the express prior written consent of StarTex; (c) sell, resell, rent, lease, modify, translate or create derivative works of the Services; (d) decompile, reverse engineer or reverse assemble any portion of the Services, or attempt to discover any source code or underlying ideas or algorithms of the Services; (e) access the Services in order to build a competitive product or service, or copy

any features, functions or graphics of the Services; (f) use the Services to store or transmit material in violation of third party privacy or other rights; (g) use the Services to store or transmit Malicious Code; (h) interfere with or disrupt the integrity or performance of the Services or third party data contained therein; (i) attempt to gain unauthorized access to the Services or their related systems or networks; or (j) remove or alter any trademark, logo, copyright or other proprietary notices associated with the Documentation. The Documentation may include additional restrictions or limitations to the use of the Services, including, without limitation, limitations on storage space in the Services, and Customer agrees to comply with any such restrictions or limitations. StarTex reserves the right to immediately suspend Customer's access to and use of the Services if StarTex determines, in its reasonable discretion, that Customer has engaged in any of the activities set forth in this Section 2.3 or Section 2.4 below (each a "**Restriction Violation**"). StarTex shall provide notice of such suspension to Customer (via the Services or otherwise) and, where practicable, the parties shall thereafter work together in good faith to resolve such Restriction Violation. In the event the Restriction Violation cannot be cured within a reasonable period of time after StarTex's notification, StarTex reserves the right to immediately terminate this Agreement and any Order Forms then in effect.

2.4 APIs. Use of the Services includes use of StarTex's application program interface (API). Use of the API requires Customer's compliance with the terms of this Agreement with respect to the Services. If Customer abuses, excessively uses the API, or otherwise violates any Restriction Violation, StarTex reserves the right to deny Customer access and use of the API. The Documentation may include additional restrictions on or limitations to the use of the Services, including, without limitation, limitations on API access of the Services, and Customer agrees to comply with any such restrictions or limitations.

2.5 Updates. StarTex may make available to Customer any update or upgrade to the Services when made generally available to other StarTex customers.

2.6 No Source Code. Customer acknowledges that its rights under this Agreement do not include any rights whatsoever to source code.

2.7 Order Forms. Customer may issue Order Forms for Services for StarTex's acceptance. StarTex may, in its discretion, accept or deny any Order Form, and will indicate its acceptance by enabling access to the Services in accordance with the terms of the applicable Order Form. Order Forms may be modified only by mutual written agreement of the parties.

### Section 3. Additional Obligations

3.1 By StarTex. During the Subscription Services Term, StarTex will: (a) provide to Customer basic support for the Subscription Services at no additional charge in accordance with StarTex's support policies and procedures; and (b) use commercially reasonable efforts to make available the Subscription Services in accordance with the Service Level Warranty described in Exhibit A, B, or C (depending on selected Support Level) to this Agreement, except for: (i) planned downtime for the Services, (ii) any interruptions, delays, failures, acts or omissions caused by any third party (including third party hosting providers), or (iii) any unavailability of the Services caused by circumstances beyond StarTex's reasonable control, including, without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, or Internet-service-provider failures or delays. StarTex will be excused from any breach of its warranties in Section 7.1(a) and Section 7.1(b) to the extent that such breach is due to Customer's computer systems, technology or other similar items used by Customer in connection with the Services that result in interference with or disruption of the integrity or performance of the Services.

3.2 By Customer. Customer will: (a) be responsible for all Users' compliance with this Agreement; (b) be solely responsible for the accuracy, quality, integrity and legality of the Customer Data and of the means by which Customer acquired the Customer Data; (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify StarTex promptly of any such unauthorized access or use; (d) be responsible for any third party products or services used by Customer in connection with the Services or any Customer Data; and (e) use the Services and Output only in accordance with the Documentation and all applicable laws, regulations, rules, orders and other requirements of any applicable international, federal, state or local governmental authority ("**Laws**"). Customer understands and acknowledges that StarTex has no obligation to review Customer content or the Customer Data.

3.3 Customer Equipment. Customer will be solely responsible, at its own expense, for acquiring, installing and maintaining all connectivity equipment, hardware, software and other equipment as may be necessary for its Users to connect to, access and use the Service except as otherwise provided by StarTex. For example, Customer will be responsible for standard computer workstations and necessary network connections not provided by StarTex. Customer acknowledges and agrees that StarTex is not obligated to

provide any anti-virus services, and Customer is responsible for ensuring that its environments are virus-free.

3.4 Additional Services. If you request services that do not qualify as Purchased Services or which we notify you do not qualify as basic support under Section 3.1, StarTex may agree to provide such services as additional services subject to these Terms of Service (the "Additional Services"). StarTex will provide Additional Services only based upon receipt of a written purchase order ("PO") from you describing the Additional Services you are requesting. Upon receipt of a PO, StarTex will provide a form of statement of work ("SOW") outlining the cost for performing the requested Additional Services. If you execute and return the SOW to StarTex, you have authorized the Additional Services to be performed and StarTex shall invoice you based on the applicable SOW. You will be responsible for the payment of taxes based on the Additional Services (except for taxes based on StarTex's income or employment taxes for StarTex personnel performing the Additional Services). You must pay all undisputed invoices for Additional Work within 30 days after receipt, and you will be deemed to have accepted the Additional Services under an SOW upon payment. StarTex may exercise its remedies under Section 4.4 for nonpayment of an invoice delivered to you pursuant to this Section.

## **Section 4. Fees and Payment**

4.1 Fees. Unless otherwise stated in an Order Form, Customer will not be charged any fees for the Services during the Evaluation Term. During the Subscription Services Term (or Evaluation Term where applicable), Customer will be charged fees based on the features enabled and the count of Active Contacts, which are employees and other people entered into the Service and not marked inactive, whether or not they are users ("Fees"). Except as otherwise specified herein or in an Order Form: (a) Fees are quoted and payable in United States dollars; and (b) payment obligations are non-cancelable and Fees paid are non-refundable.

4.2 Fee Increases. StarTex may increase Fees for Services for renewal subscription terms after the initial Subscription Services Term stated in an Order Form. Customer acknowledges that StarTex may, from time to time, add additional features or functionality to the Services, and that Customer's access to and use of such additional features and functionality may require payment by Customer of additional Fees.

4.3 Payments. Customer will pay Fees via credit card or by other means specified by StarTex in an applicable Order Form. If Customer is making payments for Fees via credit card, Customer will provide accurate payment information, and hereby authorizes StarTex to charge such credit card for all Fees in an applicable Order Form for the initial Subscription Services Term and any renewal thereof. Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. For payment of Fees by any other method, StarTex will invoice Customer in advance of the provision of applicable Services and otherwise in accordance with the relevant Order Form. All payments for which invoices are delivered are due within thirty (30) days of Customer's receipt of the invoice. If Customer has elected to pay Fees via credit card and the credit card is charged back to StarTex or if any Fees invoiced to Customer are not paid within thirty (30) days of invoice, StarTex may: (i) with respect to chargebacks, cease charging Customer's credit card and invoice Customer for the amount charged back and any future Fees; (ii) accelerate the payment of any Fees payable for the current subscription term; (iii) immediately suspend Customer's Services until payment is made; and/or (iv) immediately terminate the applicable Order Form for which Fees were due and/or terminate this Agreement, provided, however that termination will not occur prior to Customer being given a reasonable period of time to remedy nonpayment after written notice thereof by StarTex. Any Fees not paid from Customer by the applicable due date shall accrue late charges at the rate of 1.5% per month of the outstanding balance, or the maximum rate permitted by law, whichever is lower, from the due date until the date paid.

4.4 Suspension of Service. If Customer's account is 30 days or more overdue, in addition to any of its other rights or remedies, StarTex reserves the right to suspend Customer's access to the Service until such amounts are paid in full.

4.5 Taxes. Unless otherwise stated, the Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). Customer is responsible for paying all Taxes (except those based on StarTex's income) associated with the Services purchased hereunder.

## **Section 5. Proprietary Rights**

5.1 Ownership. As between the parties and subject to the license grants under this Agreement, (a) StarTex owns all right, title and interest in and to the Services,



the Documentation, and any and all Intellectual Property Rights embodied therein (collectively, "**StarTex Technology**"); and (b) Customer owns all right, title and interest in and to all Customer Data uploaded to the Services, all Output, and any and all Intellectual Property Rights with respect to the same. Other than as expressly set forth in this Agreement, StarTex does not grant or otherwise convey any license or other right in or to the StarTex Technology to Customer or its Users. StarTex expressly reserves all rights to the StarTex Technology not expressly granted under this Agreement. There are no implied licenses under this Agreement. Customer acknowledges and agrees that any breach of this Agreement by its User or any other employee, agent or contractor of Customer shall be deemed a breach of this Agreement by Customer.

5.2 License to Output. Customer grants StarTex a worldwide, nonexclusive, royalty-free, perpetual, irrevocable, transferable and sublicensable license in and to the (i) Output for StarTex's business purposes, and to analyze the Output for usage, statistics, injury rates and other purposes, and (ii) the Customer Data for the purpose of StarTex performing its obligations under this Agreement.

## **Section 6. Confidentiality**

6.1 Confidential Information. As used herein, "**Confidential Information**" means all confidential information disclosed by a party (the "**Disclosing Party**") to the other party (the "**Receiving Party**"), whether orally or in writing, that is designated as confidential or the Receiving Party knows or should know, given the facts and circumstances surrounding the disclosure of the information by the Disclosing Party, is confidential information of the Disclosing Party. Confidential Information includes, but is not limited to, Customer Data, Output, the terms of this Agreement as well as components of the business plans, inventions, product plans, design plans, financial plans, computer programs, know-how, customer information, strategies, marketing plans, technology and technical information, business processes and other similar information. Without limiting the foregoing, StarTex's Confidential Information includes the Services and the Documentation. Confidential Information does not include information that: (a) is in or enters the public domain without breach of this Agreement through no fault of the Receiving Party; (b) the Receiving Party can reasonably demonstrate was in its possession prior to first receiving it from the Disclosing Party without breach of any nondisclosure or confidentiality obligation; (c) the Receiving Party can demonstrate was developed by the Receiving Party independently and without use of or reference to the Disclosing Party's Confidential Information; or (d) the Receiving Party receives from a third party without restriction on disclosure and

without breach of a nondisclosure obligation. Except as otherwise permitted in writing by the Disclosing Party, the Receiving Party shall (i) use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care); (ii) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement; and (iii) limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Notwithstanding any terms to the contrary in this Agreement, any suggestions, comments or other feedback provided by Customer to StarTex with respect to StarTex or the Services (collectively, "**Feedback**") will constitute StarTex's Confidential Information and Customer hereby irrevocably and unconditionally assigns and transfers to StarTex all right, title and interest in and to such Feedback, without further consideration. Further, StarTex will be free to use, disclose, reproduce, license and otherwise distribute and exploit the Feedback provided to it as it sees fit, entirely without obligation or restriction of any kind on account of Intellectual Property Rights or otherwise.

6.2 Compelled Disclosure. Notwithstanding Section 6.1, the Receiving Party may disclose the Disclosing Party's Confidential Information if it is compelled to do so by Law or in connection with other legal proceedings involving the Disclosing Party, provided that the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) so as to permit the Disclosing Party a reasonable opportunity to prevent such disclosure. If the Receiving Party is compelled by Law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

6.3 Security of Passwords. Customer is solely responsible for all activities that occur in Customer's or its User's account(s) and for the security of any Customer and User passwords. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, STARTEX HAS NO LIABILITY OF ANY KIND (WHETHER BY CONTRACT, TORT OR OTHERWISE) FOR ANY UNAUTHORIZED ACCESS TO CUSTOMER'S OR ITS USERS' ACCOUNT TO THE EXTENT SUCH UNAUTHORIZED ACCESS IS DUE TO CUSTOMER OR ITS USERS ACTIONS OR INACTIONS.

## Section 7. Representations and Warranties

7.1 StarTex Warranties. StarTex warrants that it has the legal power to enter into and perform its obligations under this Agreement, and doing so as well as performing its obligations under this Agreement will not violate any other agreement to which StarTex is a party. StarTex further warrants that: (a) the Services shall perform materially in accordance with the Documentation during the Subscription Services Term; and (b) StarTex will perform its obligations and exercise its rights under this Agreement in accordance with all applicable laws, rules and regulations.

7.2 Customer Warranties. Customer warrants that: (a) it has the legal power to enter into and perform its obligations under this Agreement, and doing so as well as performing its obligations under this Agreement will not violate any other agreement to which Customer is a party; (b) it will not transmit any Malicious Code in connection with the Services; (c) it has the right and authority and has obtained all necessary consents required to use the Customer Data and any other Customer content or data used in connection with the Services; (d) any Customer Data or other data or content used by Customer in connection with the Services shall not infringe the Intellectual Property Rights of any third party; and (e) it will comply with all applicable Laws in its performance of this Agreement.

7.3 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES THAT MAY ARISE BY OPERATION OF LAW. WITH THE EXCEPTION OF THE EXPRESS WARRANTIES SET FORTH IN SECTION 7.1 ABOVE AND THE SERVICE LEVEL WARRANTY CONTAINED IN EHXIBIT "A", EHXIBIT "B", or EHXIBIT "C" ACCORDING TO THE SUPPORT LEVEL INCLUDED ON THE ORDER FORM, STARTEX DOES NOT MAKE ANY WARRANTIES THAT THE SERVICES ARE FREE FROM ANY BUGS, ERRORS OR OMISSIONS. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, DURING THE EVALUATION TERM THE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY. STARTEX WILL NOT BE RESPONSIBLE FOR ANY LOSS OF CUSTOMER DATA (OR ANY DATA RELATED THERETO). THE FOREGOING DISCLAIMERS WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

7.4 Internet Disclaimer. BOTH PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE INTERNET IS A NETWORK OF PRIVATE AND PUBLIC NETWORKS AND THAT (I) THE INTERNET IS NOT A SECURE INFRASTRUCTURE, (II) NEITHER PARTY HAS CONTROL OVER THE INTERNET, AND (III) NEITHER PARTY IS LIABLE FOR DAMAGES

UNDER ANY THEORY OF LAW RELATED TO THE DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET THAT MIGHT RESTRICT OR PROHIBIT THE OPERATION OF THE SERVICES.

## Section 8. Indemnity

8.1 By StarTex. StarTex will defend, indemnify and hold Customer, Customer Affiliates, and each of their respective directors, officers, employees, contractors, agents, successors and assigns (each, a “**Customer Indemnatee**”) harmless from and against any and all actual or threatened third party claims, suits, actions or proceedings, including all related damages, payments, deficiencies, fines, judgments, settlements, liabilities, losses, costs and expenses (including but not limited to reasonable attorneys’ fees) (collectively, “**Claims**”) incurred by a Customer Indemnatee arising out of or relating to: (a) a claim that Customer, a permitted Customer Affiliate or a User’s use of the Services or Documentation as permitted hereunder and in accordance with the Documentation infringes or misappropriates the Intellectual Property Rights of a third party; (b) StarTex’s or StarTex’s Affiliates’ gross negligence or willful misconduct; (c) any violation of any applicable Law in connection with the Services by StarTex or a StarTex Affiliate; or (d) StarTex’s or StarTex Affiliates’ inclusion of any Malicious Code in the Services or Customer Data. Notwithstanding the foregoing, StarTex shall have no such indemnification obligation with respect to claims of actual or alleged infringement or misappropriation of a third party’s Intellectual Property Rights in connection with Customer’s use of StarTex’s Services, to the extent such infringement or misappropriation: (i) relates to the use of StarTex’s Services in combination with other software, data products, processes, or materials not provided by StarTex (including, without limitation, Customer Data); (ii) arises from or relates to modifications to the Services not made or authorized by StarTex; (iii) arises from or relates to modifications to the Services undertaken by StarTex at Customer’s specific direction; (iv) arises from or relates to Customer’s use of StarTex’s Services not in accordance with this Agreement; or (v) where Customer continues any activity or use constituting or contributing to the infringement or misappropriation after written notification thereof. If StarTex’s right to provide the Services is enjoined, or in StarTex’s opinion is likely to be enjoined, StarTex may, at its election and expense, either: (a) replace or modify the Services so that they no longer infringe or misappropriate, without breaching any warranties made in Section 7.1 above; (b) obtain a license for Customer to continue to use the Services in accordance with this Agreement; or (c) immediately terminate this Agreement and

any Order Form then in effect, and refund a pro-rata portion of Fees already paid by Customer for Services yet to be provided.

8.2 By Customer. Customer will defend, indemnify and hold StarTex, its Affiliates and each of their respective directors, members, officers, employees, suppliers, consultants, contractors and agents (each, a “**StarTex Indemnatee**”) harmless from and against any and all actual or threatened third-party Claims incurred by a StarTex Indemnatee arising out of or relating to: (a) (i) Customer, Customer Affiliates’ or their User’s transmission of Malicious Code in connection with the Services, (ii) Customer, Customer Affiliates or their Users not having the right and authority or not having obtained the necessary consents required to use the Customer Data in connection with the Services, and (iii) Customer’s, Customer Affiliates’ or the Users’ use of Customer Data or other data or content in connection with the Services infringing the Intellectual Property Rights of any third party; (b) Customer’s or Customer Affiliates’ or its or their Users’ gross negligence or willful misconduct; or (c) any violation of any applicable Law in connection with the Services by Customer, a Customer Affiliate or a User.

8.3 Process. Each party seeking indemnification hereunder will: (a) promptly give the indemnifying party written notice of the Claim; (b) give the indemnifying party sole control of the defense and settlement of the Claim, provided that the indemnifying party may not settle any Claim that involves the payment of monies or acknowledgment of liability or wrongdoing on the part of the indemnified party without the indemnified party’s prior written consent; and (c) provide to the indemnifying party, at the indemnifying party’s expense, all reasonable assistance necessary for the defense and settlement of the Claim. Failure by the indemnified party to comply with the foregoing process will not relieve the indemnifying party of its indemnity obligations hereunder.

## **Section 9. Limitations of Liability**

9.1 Exclusion of Consequential and Related Damages. EXCEPT AS PROHIBITED BY APPLICABLE LAW, IN NO EVENT WILL STARTEX OR ANY OF ITS AFFILIATES BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, LOSS OF CUSTOMER DATA (OR ANY DATA RELATED THERETO) OR ANY INTERRUPTION OF BUSINESS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF STARTEX

HAS BEEN ADVISED OR IS OTHERWISE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

9.2 Limitation of Liability. EXCEPT AS PROHIBITED BY APPLICABLE LAW, IN NO EVENT WILL STARTEX'S OR ANY OF ITS AFFILIATES' TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE AGGREGATE OF THE AMOUNTS PAID BY CUSTOMER TO STARTEX DURING THE SIX MONTHS OF THE SUBSCRIPTION SERVICES TERM PRECEDING SUCH CLAIM. MULTIPLE CLAIMS WILL NOT EXPAND THIS LIMITATION. THE FOREGOING DISCLAIMER WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## **Section 10. Term and Termination**

10.1 Term of Agreement. If Customer elects to use the Services for evaluation only, the term of this Agreement will commence on the date of the trial invitation email and, unless earlier terminated, will expire following the end of the Evaluation Term stated in an applicable email, but usually 14 days. If Customer elects to obtain Purchased Services, the term of this Agreement will commence on the Effective Date and, unless earlier terminated, will continue for the duration of any Subscription Services Term in an applicable Order Form. Except as otherwise specified in the applicable Order Form, all Subscription Services Terms shall automatically renew for additional periods equal in duration to the expiring Subscription Services Term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 60 days before the end of the relevant Subscription Services Term.

10.2 Termination. Either party may terminate this Agreement or any individual Order Form as follows: (a) for cause if the other party breaches this Agreement or an Order Form and does not remedy such breach within thirty (30) days after its receipt of written notice of such breach; (b) immediately if the other party (i) terminates its business activities or becomes insolvent, (ii) admits in writing to the inability to pay its debts as they mature, (iii) makes an assignment for the benefit of creditors, or (iv) becomes subject to direct control of a trustee, receiver or similar authority; or (c) in the case of StarTex, immediately if Customer does not pay the Fees when due as described in Section 4 following written notice and a reasonable cure period to remedy the outstanding Fees due. Customer may terminate this Agreement for convenience upon 60 days' written notice to StarTex, in which case Customer shall continue to owe StarTex any and all remaining Fees through the end of the applicable term.

10.3 Effect of Termination. Upon any expiration or termination of this Agreement: (a) Customer's right to use the Services shall cease, and StarTex shall have no further obligation to make the Services available to Customer; (b) except as otherwise expressly stated herein, all rights and licenses granted to Customer under this Agreement will immediately cease; (c) Customer will be solely responsible for retrieving any Customer Data residing within the Services, and will clear the Services client-side data cache; and (d) Customer will pay any unpaid Fees payable for the remainder of the Subscription Services Term under any applicable Order Form in effect prior to the termination date.

10.4 Survival. The following provisions will survive any expiration or termination of this Agreement: Sections 1 (Definitions), 2.1 (Evaluation Term License, for the duration of any transition to a Purchased Service Term), 2.4 (Restrictions), 2.5 (APIs), 2.7 (No Source Code), 4 (Fees and Payment), 5 (Proprietary Rights), 6.1 (Confidential Information), 6.2 (Compelled Disclosure), 6.3 (Security of Passwords), 8 (Indemnity), 9 (Limitations of Liability), 10.3 (Effect of Termination), 10.4 (Survival), 11 (Copyrights and DMCA Claims), 12 (Notices), and 13 (Miscellaneous).

## Section 11. Copyrights and DMCA Claims

If you are a copyright owner or an agent thereof and believe that any content in the Services infringes upon your copyrights ("**Posting**"), you may submit a notification pursuant to the Digital Millennium Copyright Act ("**DMCA**") by providing StarTex's Copyright Agent (identified below) with the following information in writing:

- A physical or electronic signature of a person authorized to act on behalf of the owner of the work that is allegedly infringed;
- Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
- Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled and information reasonably sufficient to permit us to locate the material;
- Information reasonably sufficient to permit us to contact you, such as an address, telephone number or email address;
- A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent or the law; and

- A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

StarTex's designated Copyright Agent to receive notifications of claimed infringement is: [copyright@ehsinsight.com](mailto:copyright@ehsinsight.com). Only claimed infringement notifications may be sent to the Copyright Agent.

If you believe that your Posting that was removed or disabled is not infringing, or that you have the authorization from the copyright owner, the copyright owner's agent, or pursuant to the law, to post and use the content in your Posting, you may send a counter-notice containing the following information to the Copyright Agent:

- Your physical or electronic signature;
- Identification of the Posting that has been removed or to which access has been disabled and the location at which the Posting appeared before it was removed or disabled;
- A statement that you have a good faith belief that the Posting was removed or disabled as a result of mistake or a misidentification of the Posting; and
- Your name, address, telephone number, and e-mail address, a statement that you consent to the jurisdiction of the federal court in Houston, Texas, and a statement that you will accept service of process from the person who provided notification of the alleged infringement.

## **Section 12. Notices**

Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing via first class mail, (iii) the first business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination), at the following addresses:



If to Customer, to the address and contact information set forth in the Order Form.

If to StarTex:

StarTex Software LLC,

840 W Sam Houston Parkway N Suite 250

Houston, Texas 77024

Fax: (832) 201-7300

Attn: Gary McDonald

Only Customer's account administrator may contact StarTex directly for technical support, the contact instructions for which will be provided by StarTex to Customer. Customer will submit all ordinary user questions through StarTex's online support forum on its website at <http://www.ehsinsight.com> and <http://support.ehsinsight.com> (or successor location).

### **Section 13. Miscellaneous**

13.1 Export Compliance. Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Services. Without limiting the foregoing: (a) each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports; and (b) Customer shall not permit Users to access or use Services in violation of any U.S. export embargo, prohibition or restriction.

13.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without reference to conflict of laws principles, except that U.S. federal law shall govern in matters of intellectual property. Any dispute arising out of or relating to this Agreement or the breach

thereof, which cannot be settled through negotiation, shall be finally settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. Judgment on the award rendered by the arbitrator may be entered in a court of competent jurisdiction. The parties acknowledge and agree that the transactions contemplated under this Agreement are commercial in nature, and the parties expressly and irrevocably waive (i) any claim or right which the parties may have to immunity (whether sovereign immunity or otherwise) for the parties or with respect to any of the parties' assets in connection with any legal action, award or other proceedings to enforce this Agreement, including, without limitation, immunity from service of process, immunity of any of the parties' assets from pre- or post-judgment attachment or execution and immunity from the jurisdiction of any court or tribunal; and (ii) service of process pursuant to the Hague Convention. The parties further agree that their respective rights and obligations under this Agreement will be solely and exclusively as set forth in this Agreement, and that the 1980 United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act to this Agreement ("**UCITA**"), whether enacted in whole or in part by any state or applicable jurisdiction, regardless of how codified, will not apply to this Agreement and are hereby disclaimed.

13.3 Assignment. Neither this Agreement nor any right or duty under this Agreement may be transferred, assigned or delegated by Customer (including to a Customer Affiliate), by operation of law or otherwise, without the prior written consent of StarTex. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective representatives, heirs, administrators, successors and permitted assigns

13.4 Relationship of Parties. Neither party will, for any purpose, be deemed to be an agent, franchisor, franchisee, employee, representative, owner or partner of the other party, and the relationship between the parties will solely be that of independent contractors.

13.5 Severability. If any provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other provisions of this Agreement will nonetheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner adverse to any party. Upon such determination that any provision is invalid, illegal or incapable of being enforced, the parties will negotiate in good faith to modify this Agreement so as to effect the original intent of the

parties as closely as possible in an acceptable manner which ensures that all transactions contemplated hereby are fulfilled.

13.6 No Waiver. No failure or delay (in whole or in part) on the part of a party to exercise any right or remedy hereunder will operate as a waiver thereof or affect any other right or remedy. All rights and remedies hereunder are cumulative and are not exclusive of any other rights or remedies provided hereunder or by law. The waiver of one breach or default or any delay in exercising any rights will not constitute a waiver of any subsequent breach or default. Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

13.7 Force Majeure. Except for obligations to make payment, neither party shall be liable for any failure to perform or delay in performing any obligation under this Agreement if such failure or delay is due to fire, flood, earthquake, strike, war (declared or undeclared), embargo, blockade, legal prohibition, governmental action, riot, insurrection, damage, destruction, component or materials shortage or any other cause beyond the reasonable control of such party.

13.8 Equitable Relief. Customer agrees that any breach of this Agreement by Customer, its Affiliates or Users may cause irreparable damage and that, in the event of such breach, in addition to any and all remedies at law, StarTex shall have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction without the requirement of posting a bond or undertaking or proving injury as a condition for relief.

13.9 Entire Agreement; Amendments; Counterparts. This Agreement, together with each Order Form, is the entire agreement of the parties regarding the subject matter hereof, superseding all other agreements between them, whether oral or written, with respect to such subject matter. No modification, addition, deletion or waiver of any rights under this Agreement will be binding on a party unless: (a) made in writing; (b) clearly understood by the parties to be a modification, addition, deletion or waiver; and (c) signed by a duly authorized representative of each party. This Agreement and any Order Form may be executed in one or more counterparts, each of which when so executed and delivered or transmitted by facsimile, e-mail or other electronic means, shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument. A facsimile or electronic signature is deemed an original signature for all purposes under this Agreement and any Order Form.

## SUPPPORT LEVELS

If you purchased or plan to purchase the Standard Support Level see [Exhibit A](#), which defines Standard Support Services.

If you purchased or plan to purchase the Premium Support Level see [Exhibit B](#), which defines Premium Support Services.

If you purchased or plan to purchase the Enterprise Support Level see [Exhibit C](#), which defines Enterprise Support Services.

## ONLINE TRAINING ADDITIONAL TERMS

If you purchased or plan to purchase the Online Training Content Library Services see [Exhibit D](#), which defines additional Terms related to your subscription.

If you purchased or plan to purchase the Bring Your Own Content Services see [Exhibit E](#), which defines additional Terms related to your subscription.