

# HELIOS ONLINE SUBSCRIPTION AGREEMENT

*Last Updated: 2021-Mar-04*

This Helios Online Subscription Agreement ("Agreement") is between Tx3 Services, LLC ("Tx3"), and the legal entity identified on one or more order forms, purchase orders, or similar documents ("Customer"), that incorporate this Agreement by reference (collectively, "Orders"). This Agreement governs Customer's access and use of the application software hosting platform known as Tx3 "Helios" ("Platform"), under the terms and conditions set forth below. The specifics of the Platform and the third-party dev-ops tools to be hosted in it ("Software") will be set forth in the applicable Order. By accessing or using the Platform, Customer acknowledges that it hereafter and understands this Agreement, that it accepts all of the terms and conditions contained here in full, and that it agrees that the terms and conditions shall be fully and legally binding upon it, without the need for any further indication of acceptance on its part (such as by signature, click through or other means of electronic acceptance).

This Agreement takes effect when Tx3 accepts an Order submitted and signed (or otherwise accepted) by Customer, or, if earlier, when Customer first accesses or uses any aspect of the Platform ("Effective Date").

BEFORE USING THE PLATFORM, CUSTOMER MUST READ THIS AGREEMENT CAREFULLY.

Customer represents to Tx3 that Customer is lawfully able to enter into contracts (e.g., is not a minor). If Customer is entering into this Agreement or using the Platform for the benefit of a legal entity, such as the company Customer works for, then Customer represents to Tx3 that Customer has legal authority to bind that entity.

## 1. Platform and Software

Subject to the terms of this Agreement, Tx3 will use commercially reasonable efforts to provide Customer the Platform. Subject to Customer obtaining the necessary rights from the owners and licensors of each piece of Software, Tx3 will use commercially reasonable efforts to make the Software available to Customer through the Platform. For clarity, the Software must be verified, valid, and paid for by Customer, prior to being hosted on the Platform.

## 2. License Grant and Restrictions.

(a) License. Subject to the terms and conditions set forth in this Agreement and in the applicable Order (e.g., limitations on the number of users, data consumption, etc), Tx3 grants to Customer a limited, worldwide, non-exclusive, non-sublicensable, non-transferable (except as specifically set forth in this Agreement), license for the duration of the applicable Order to: (i) use the Platform on a SaaS basis, for Customer's internal business purposes; and (ii) make a reasonable number of copies of the documentation accompanying the Platform ("Documentation") in support of Customer's licensed use of the Platform.

(b) Restrictions. Customer will use the Platform only for its own internal business purposes, and may not loan, distribute, rent, or lease the Platform, and will not make the Platform available as a service or on a service bureau basis. Furthermore, Customer shall not distribute to any third party or make publicly available the Platform. Customer will not disassemble, reverse engineer, or take other action to attempt to derive the source code of the Platform, except to the extent that applicable local law expressly permits such activity. Customer will not remove any disclaimer, copyright, trademark, proprietary rights, or other notice included on or embedded in the Platform or the Documentation. Customer will use the Software only in accordance with the agreement between Customer and the applicable owners and licensors of the Software.

(c) Reservation of Rights. As between Customer and Tx3, Tx3 retains ownership of the Platform and Documentation, and all intellectual property therein and Customer retains ownership of the Software and all intellectual property therein. All rights not expressly granted are reserved. Customer has no rights to use, modify, distribute, copy, or reproduce the Platform or Documentation except as expressly set forth in this Agreement.

(d) Feedback. From time to time Customer may provide suggestions, enhancement or modification requests, recommendations or other feedback relating to the Platform (the "Suggestions"). Tx3 owns all right, title and interest in any Suggestions, and Customer hereby assigns and transfers to Tx3 all its right, title and interest (including all intellectual property rights) in and to the Suggestions. Customer agrees to provide Tx3 any assistance Tx3 reasonably requests to document, perfect, and maintain its rights in the Suggestions.

(e) Attribution. Customer hereby grants to Tx3 a royalty-free, non-exclusive license during the Term to use Customer's trademarks, service marks, and other proprietary indicia in a client list on Tx3's website, in its marketing materials, and in its press releases. Tx3 will comply with Customer's reasonable written requests as to the usage, display, and presentation of such trademarks, service marks, or other proprietary indicia. Furthermore, Customer consents to Tx3 releasing a press release announcing that Customer is a Customer, provided that Tx3 does not release the pricing, or other details of the parties' business relationship. Except as expressly

provided in this Section 1(e) or otherwise in this Agreement, neither party will use the other party's trade or service marks or other proprietary indicia without the other party's prior written consent in each instance.

(f) AUP. Customer shall ensure that its use of the Platform complies with the Helios Acceptable Use Policy, which is available here: [Acceptable Use Policy](#).

### 3. Payment.

Tx3 will invoice Customer for the fees set forth in each Order, upon execution of such Order or as otherwise set forth therein. Customer shall pay the amounts set forth in each such invoice within thirty (30) days of its date, in U.S. dollars, by check, ACH transfer, or other method mutually agreed by the parties (email sufficing). Customer shall be responsible for any applicable sales, use, value added or similar taxes payable with respect to the licensing of the Platform to Customer, or arising out of or in connection with this Agreement, unless such taxes levied or imposed are based upon Tx3's income. If Customer has tax-exempt status, Customer shall provide written evidence of such status to Tx3 promptly after first using the Platform. Customer must provide Tx3 with written notice of any disputed fees within fifteen (15) days after the date of the applicable invoice, or will have waived its right to dispute fees. If a dispute is properly submitted for the applicable invoice, Customer agrees to pay the invoiced amount minus the disputed amount on or before the due date. The dispute notice shall set forth in reasonable detail the information concerning the disputed charges and reasons for the dispute. If the parties are not able to resolve such dispute within thirty (30) days of the date of such notice, then either party may terminate this Agreement immediately on written notice to the other and Customer's right and license to use the Platform will automatically end upon such termination. Tx3 may charge interest on overdue amounts at the rate of one and one-half percent (1.5%) per month or the highest lawful rate, whichever is less. In the event that Tx3 must institute legal proceedings to collect any fees or enforce its rights under this Agreement, Customer shall be liable for all reasonable attorneys' and professionals' fees and other legal and collection costs associated therewith, including any fees owed to collections agencies.

### 4. Support.

During the term of the applicable Order, and subject to Customer's timely payment of the fees set forth in the applicable Order, Tx3 will ensure that the Platform is available, and support Customer's use thereof, in accordance with Tx3's standard service level agreement and support policies ("Support Terms"). Tx3 will provide a copy of such Support Terms to Customer promptly upon request. For clarity, Tx3 will make the Platform available for access over the Internet via the supported Web browsers set forth in the Support Terms. Customer is responsible for obtaining computers capable of running such supported Web browsers and maintaining a high-speed Internet connection to such computers.

### 5. Term; Termination.

(a) Term. This Agreement begins on the Effective Date and continues for so long as there is an Order in effect ("Term"). Each Order begins and ends as set forth therein.

(b) Termination. Either party (the "Terminating Party") may immediately terminate this Agreement or an Order (as applicable) upon written notice to the other party in the event that the other party materially breaches this Agreement or the Order (as applicable) including, without limitation, the obligation to pay amounts due under this Agreement and such breach is not cured within thirty (30) days after written notice from the Terminating Party. The Terminating Party may terminate this Agreement immediately on written notice to the other party upon the other party's dissolution, liquidation, composition, financial reorganization or recapitalization with creditors, assignment for the benefit of creditors, or the appointment of a receiver, trustee, custodian, or similar agent for the party's business or property.

(c) Effect of Termination. Termination of this Agreement pursuant to clause (b) also terminates all Orders then-currently in effect. On termination or expiration of an Order, Customer's right and license to use the Platform described therein will automatically end.

(d) Suspension. Tx3 may immediately, and without notice: suspend, in whole or in part, access to the Platform, or delete any Customer Materials (as defined below) in its possession, if: (a) Customer is in breach of this Agreement; (b) Tx3 determines that doing so is necessary to prevent itself, any aspect of the Platform, or its end users from harm; or (c) Tx3's provision of the Platform has become materially burdensome due to a change in law or new law, after the Effective Date.

(e) Survival. The following sections will survive termination or expiration of this Agreement: 1(d), 2 (to the extent fees were due prior to termination or expiration), 4(c), 5 (for a period of two (2) years), and 8 – 10.

### 6. Confidentiality.

For the purposes of this Agreement, "Confidential Information" means, under the terms of this Agreement, any non-public information or other materials provided by one party to the other under or in connection with this Agreement that is either: (a) in

tangible form marked as "confidential" or "proprietary" or with a similar legend; (b) in intangible form that is designated by the disclosing party as confidential at or near the time of disclosure; or (c) a person would reasonably understand under the circumstances to be treated as confidential, whether or not the specific designation "confidential" or any similar designation is used. Confidential Information does not include any information to the extent that the receiving party can reasonably demonstrate such information: (w) is or becomes part of the public domain, other than as a result of the actions of the receiving party or its employees or contractors; (x) was already rightfully known to the receiving party as of the time it is disclosed to or obtained by the receiving party and without limitation on use or disclosure; (y) is subsequently learned from a third party not under a confidentiality obligation to the disclosing party; or (z) is independently developed by the receiving party without reference to the other party's Confidential Information. Except with the prior written consent of the disclosing party, a receiving party shall not: use the disclosing party's Confidential Information except to exercise or its rights or perform its obligations in this Agreement, or disclose the disclosing party's Confidential Information other than: (i) to such party's attorneys, accountants and financial representatives under a duty of confidentiality as may be reasonably necessary in order to receive their professional advice; (ii) to such party's employees and contractors who have a need to know; and (iii) in connection with any legal, governmental or administrative proceeding, provided that the receiving party gives prior written notice of such disclosure to the disclosing party (if legally permitted) in order to afford the disclosing party a reasonable opportunity to seek a protective order and the receiving party cooperates with the disclosing party, at the disclosing party's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure. Notwithstanding anything in this Agreement to the contrary, Tx3 may derive data from usage of the Platform (collectively, "Aggregated Data"). Tx3 owns all rights, title, and interest in and to Aggregated Data, and may use and disclose it for Tx3's business purposes, such as improving its products and services, provided that Tx3 does not disclose Aggregated Data in a manner that identifies Customer.

## 7. Data Processing.

Customer represents and warrants that it owns or otherwise have the necessary rights and consents in and relating to the Software, data, and other materials it provides to Tx3 or otherwise processes using the Platform (collectively, "Customer Materials"), and Tx3's hosting, use, and other processing of Customer Materials, when in accordance with this Agreement, does not and shall not infringe upon, misappropriate or otherwise violate law, or the intellectual property, proprietary, or privacy rights of any third party. Each party shall comply with the Tx3's Data Processing Agreement, which is available here: [Data Processing and Security Agreement](#)

## 8. Warranty, Remedy and Restrictions.

(a) Tx3 Warranties. Tx3 represents and warrants to Customer that: (i) Tx3 has the legal power and authority to enter into this Agreement; and (ii) the Platform, as provided by Tx3 to Customer, will perform substantially in compliance with the specifications as described in the applicable Documentation ("Product Warranty").

(b) Customer Warranty. Customer warrants to Tx3 that: (i) it has the legal power and authority to enter into this Agreement; and (ii) Customer shall use the Platform in compliance with any laws, rules and regulations applicable to its activities, industry and geographic territory.

(c) Product Warranty Remedies. Customer's sole and exclusive remedy for any breach of the Product Warranty is: (i) for Tx3 to exercise commercially reasonable efforts to repair or modify the Platform and, after exercising such efforts without success, (ii) for Tx3 to terminate this Agreement on notice and Customer and refund any pre-paid periodic fees paid by Customer, prorated based on the amount of time remaining in the pre-paid period.

(d) Exclusions. Tx3 is not obligated to remedy any Platform defect that cannot be adequately repeated. The Product Warranty does not apply to any defect relating to: (i) Software that has been altered, except if such alteration is by Tx3 or by an authorized representative or subcontractor of Tx3, (ii) using the Platform or Software in conjunction with another vendor's product resulting in the defect where such usage was not approved by Tx3 in writing, (iii) is not the most current version of the Software, (iv) Customer's abuse, misuse, accident, or negligence with respect to the Platform or Software, (v) software that is not the property of, or licensed by Tx3, (vi) interfacing with other systems that are not performing as documented. Because the Platform and Documentation are complex, Tx3 does not warrant that they are error-free or that their use will be uninterrupted.

(e) Intended Uses. Customer acknowledges that the Platform is not fault tolerant or fail-safe and not intended to be in any application or system requiring such features. Tx3 shall have no liability whatsoever for any injuries, losses or damages arising from the use of the Platform, or any components or modifications thereof, for any such purposes, including any use in aircraft, weapons or missile systems, systems used in providing medical care, or systems used in connection with the operation or maintenance of nuclear plants or any type of hazardous materials.

## 9. Indemnification and Infringement.

(a) Tx3 Indemnity. Tx3 shall defend Customer, its affiliates, and their officers, directors, employees, and agents against any and all third-party allegations, suits, claims, actions or proceedings (each a "Claim") resulting from or related to the Platform's infringement, misappropriation, or violation of a third party's rights including their intellectual property rights. Tx3 shall indemnify the Customer,

its affiliates, and its and their officers, directors, employees, and agents from any out-of-pocket and reasonably-incurred costs, expenses, and fees (including reasonable attorneys' fees) incurred by them in connection with such Claim, and damages, awards, penalties, and other amounts awarded against or owed to a third party by them (the "Liabilities"), resulting from any final non-appealable judgment or settlement (as permitted herein) of such Claim.

(b) Customer Indemnity. Customer shall defend Tx3, its affiliates, and its and their officers, directors, employees, and agents against any and all Claims resulting from or related to the Customer's breach of this Agreement, or use of the Platform or Software in violation of law, or a third-party's rights including their intellectual property rights. Customer shall indemnify the Tx3, its affiliates, and its and their officers, directors, employees, and agents from any out-of-pocket and reasonably-incurred costs, expenses, and fees (including reasonable attorneys' fees) incurred by them in connection with such Claim, and Liabilities resulting from any final non-appealable judgment or settlement (as permitted herein) of such Claim.

(c) Further Infringement Obligations. Should the Platform become, or in Tx3's opinion is likely to become, the subject of a claim of infringement or trade secret misappropriation, Tx3 may, at its option and expense either: (i) procure for Customer the right to continue to use the Platform, or (ii) replace or modify the Platform to make its use non-infringing without loss of substantial functionality. Notwithstanding the foregoing, if Tx3, in its sole discretion, determines that neither of the such options are commercially reasonable, Tx3, at its option, may terminate Customer's license for the Platform, in which event Tx3 shall refund to Customer any periodic fees prepaid in respect of the Platform, prorated based on the amount of time remaining in the pre-paid period.

(d) Infringement Exclusions. Notwithstanding the foregoing, Tx3 has no liability or obligation to Customer with respect to any Claim based on (i) use of the Platform by Customer in combination with other business processes, products, devices, or software that were not furnished to Customer by Tx3 or included with the Platform; (ii) modification or alteration of the Platform by Customer or its agents, if the infringement would not have occurred but for the modification or alteration; (iii) use of the Platform in excess of the license granted under this Agreement or in violation of the Agreement or applicable Order; or (iv) Software.

(e) Indemnification Process. The foregoing indemnification obligations of each indemnifying party will be dependent on the indemnified party: (i) providing the indemnifying party with prompt written notice of a Claim (except that the indemnified party's failure to promptly notify the indemnifying party only excuses the indemnifying party's indemnity obligation to the extent that the indemnifying party is materially prejudiced thereby); (ii) permitting the indemnifying party to control the defense and settlement of the Claim (except that the indemnifying party shall not, without the indemnified party's prior written approval, agree to any settlement of any Claim that imposes a financial obligation or admission of liability on the indemnified party); (iii) refraining from entering into any settlement or compromise of any such Claim without the prior written approval of the indemnifying party; (iv) providing the indemnifying party with reasonable information and assistance for the defense or settlement of the action (at the indemnifying party's expense); and (v) using all commercially reasonable efforts to mitigate any loss, damage or costs related to the Claim.

(f) Entire Liability. THIS SECTION 8 STATES THE ENTIRE LIABILITY OF TX3 WITH RESPECT TO THE INFRINGEMENT OF ANY COPYRIGHTS, PATENTS, OR OTHER INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS RELATED TO THE PLATFORM OR ITS USE.

#### 10. Limitation of Warranty and Liability.

(a) Warranty Limitations. EXCEPT FOR THE EXPRESS WARRANTIES MADE IN SECTION 7, TX3 MAKES AND CUSTOMER RECEIVES NO OTHER EXPRESS OR IMPLIED WARRANTIES OF ANY KIND AND TX3 SPECIFICALLY DISCLAIMS AND EXCLUDES ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FREEDOM FROM VIRUSES, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE; IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE; OR STATUTORY REMEDY. NO STATEMENT WHETHER MADE BY TX3'S EMPLOYEES, AGENTS OR OTHERWISE, SHALL BE DEEMED TO BE A WARRANTY BY TX3 FOR ANY PURPOSE OR TO GIVE RISE TO ANY LIABILITY ON THE PART OF TX3 UNLESS SPECIFICALLY CONTAINED IN THIS AGREEMENT.

(b) Exclusion of Consequential and Related Damages. EXCEPT FOR A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 5, A BREACH BY CUSTOMER OF SECTION 1, OR CUSTOMER'S OBLIGATIONS IN SECTION 8, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER UNDER THIS AGREEMENT OR OTHERWISE FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS, LOSS OF DATA OR USE OF DATA OR INTERRUPTION OF BUSINESS, EVEN IF SUCH PARTY OR ITS REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS.

(c) Limitation of Liability. EXCEPT FOR A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 5, A BREACH BY CUSTOMER OF SECTION 1, OR CUSTOMER'S OBLIGATIONS IN SECTION 8, IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL FEES PAID BY CUSTOMER TO TX3 UNDER THIS AGREEMENT IN THE SIX MONTHS PRECEDING THE LATEST CLAIM. The foregoing shall not limit Customer's obligation to pay for fees owed to Tx3 under this Agreement.

## 11. General.

(a) Governing Law. This Agreement and any claim, controversy or dispute arising under or related to this Agreement shall be governed in all respects by the laws of the State of New York, USA, without giving effect to principles of conflicts of laws. The United Nations Convention for the International Sale of Goods shall not apply to this Agreement. Subject to the following sentence, both parties irrevocably consent to the exclusive jurisdiction of the state and federal courts located in or embracing New York County, New York, United States of America. Either party may seek emergency or injunctive relief from any court of competent jurisdiction to protect its rights in its Confidential Information or intellectual property.

(b) Notices. All notices or reports shall be in writing and shall be delivered by personal delivery, facsimile transmission, e-mail, overnight mail or certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery, five (5) days after deposit in the mail, or upon acknowledgment of receipt of electronic transmission. Notices shall be sent to the respective addresses set forth on the applicable Order, and shall be addressed to the Chief Executive Officer.

(c) No Agency. The parties to this Agreement are independent contractors and nothing in this Agreement shall be deemed to create a joint venture, partnership, or agency relationship between the parties.

(d) Injunctive Relief. Each party acknowledges that its breach of this Agreement may cause the other party immediate and irreparable damage for which recovery of money damages would be inadequate. Therefore, each party agrees that the other party may be entitled to seek injunctive relief to protect its rights under this Agreement in addition to any other remedies available to said party, without the necessity of posting bond.

(e) Force Majeure. Neither party shall be liable to the other, for any failure or delay in the performance of its obligations (except for required payments pursuant to Section 2 and confidentiality obligations pursuant to Section 5) due to any cause that is beyond the reasonable control of such party ("Force Majeure Event").

(f) Waiver. If one party fails to enforce a provision of this Agreement, it shall not be precluded from enforcing the same provision at another time.

(g) Severability. If any provision of this Agreement is deemed unenforceable or invalid by law or by a court decision, the provision shall be changed and interpreted if possible to accomplish the intent of the provision within the constraints of the law. Only that provision that is deemed unenforceable or invalid, and not the entire agreement, shall be invalidated.

(h) Assignment. Customer may not assign this Agreement, in whole or in part to any third party without the prior written consent of Tx3; provided, however, Customer may assign this Agreement to an affiliate or entity that acquires all or substantially all of Customer's assets (by merger, asset acquisition, or otherwise) upon written notice to Tx3. However, Tx3 retains the right to prohibit any assignment to a direct competitor of Tx3.

(i) No Conflicting Terms. Tx3 shall not accept, and this Agreement does not operate as an acceptance of, any different or additional terms and conditions, and this Agreement shall prevail over any such different or additional provisions, of any Customer order or any other Customer originated instruments.

(j) Entire Agreement. This Agreement supersedes all previous agreements, whether oral or written, with respect to its subject matter.

(k) Order of Precedence. In the event of any inconsistencies between the Agreement and an Order, the conflict shall be resolved in the following order of priority: (i) Agreement and (ii) Order.

(l) Export Compliance. Regardless of whether Customer is a US-based entity, Customer shall not export or re-export the Platform or Documentation (in whole or in part) to any country without ensuring that such export complies with the Export Administration Regulations of the U.S. Department of Commerce, or any other agency of the U.S. Government, or similar laws governing the export of software or products of any other government having jurisdiction over such export, re-export, or use, pursuant to any applicable statute, regulation, or governmental order. Customer agrees to remain in full compliance with U.S. Government export policy and regulations and failure of such compliance shall constitute a material breach of this Agreement.

(m) Restricted Rights. The Platform and any related information are commercial computer software and commercial computer software documentation, and, as specified in FAR 12.212 or DFARS 227.7202, and their successors, as applicable, the U.S. federal government's rights to use, reproduce or disclose such software, documentation and other information are restricted in accordance with the terms and conditions of this Agreement. Use, duplication or disclosure by the U.S. federal government is subject to the restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable.

(n) Updates. Tx3 may change or modify this Agreement from time to time ("Revisions") by posting such Revisions to the Tx3 website or otherwise giving notice thereof. The Revisions will be effective upon posting to the Tx3 website, or if later, the effective date set forth in such notice or the Revisions ("Revisions Effective Date"). By continuing to use the Platform after the Revisions Effective Date, Customer agrees to be bound by the Revisions. It is Customer's responsibility to check the Tx3 website regularly for Revisions. Customer may provide Tx3 with written notice that the Revisions adversely affect Customer's use of the Platform, provided that Customer does so within thirty (30) calendar days from the Revisions Effective Date. If, after its receipt of such notice, Tx3 is able to verify such adverse effect, but is unable to reasonably mitigate the Revision's impact on the Platform, then Customer may terminate this Agreement on written notice to Tx3, without further obligation to pay fees to Tx3 after the termination date, provided that Customer gives such termination notice within sixty (60) calendar days from the Revisions Effective Date. This termination is Customer's sole and exclusive remedy for Revisions.

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## Appendix

### 1. General

Security takes priority in decisions for design, implementation, and updates. Tx3 continually review industry security issues, designs, technology, and threats. Tx3 reserves the right to make changes to environments for security purposes without prior notification, if warranted.

### 2. Availability

Tx3 will use commercially reasonable efforts to ensure that the Platform is Available at least 99.8% of each month during the Term. Tx3 will monitor the Platform on a 24x7 basis, and automatically alert its relevant personnel when capacity and/or performance thresholds are exceeded. Tx3 will begin remediation work promptly after receiving such an alert, and will notify Customer on becoming aware of any negative impact to Customer's ability to access the Platform.

"Available" is calculated as follows:

$$\frac{(\text{total minutes in month} - \text{Excluded Downtime} - \text{Downtime})}{(\text{total minutes in month} - \text{Excluded Downtime})} * 100$$

"Downtime" means the Platform has no external connectivity.

"Excluded Downtime" means any Downtime caused by an exclusion (as described in Section 9), scheduled maintenance (as described in section 6), or unscheduled emergency maintenance.

### 3. GxP Qualification

Tx3 provides a Qualified infrastructure and Software installation (as defined by GAMP 5). Infrastructure is documented for requirements and verified post-deployment. Software is installed per documented requirements and verified post-installation. Once qualified, the system is placed under change control. GxP *Validation* activities for a target Software system are the responsibility of Customer.

### 4. Change Control

Deployed Software and the Platform are subject to Tx3's standard change management policies. Such policies require that: (a) any subsequent change to the Software or Platform is reviewed and analyzed by Tx3 for risk and technical/business impact, prior to deployment in production; (b) planned steps and testing/verification are documented by Tx3; (c) Tx3 performs pre-execution review and approvals; (d) once approved by Tx3, the change is coordinated with the Customer and executed, and success evidence collected by Tx3; (e) final Tx3 approvals are applied to post-deployment documentation, and the "Change Control" item is closed. Tx3 will provide an executive summary of its change management policies to Customer, upon request.

### 5. Support

Platform support is included in any Helios subscription cost. Infrastructure events that impact Availability are handled as a Business Critical support case. Support for a specific piece of Software is purchased as either *Standard Support* (aka "break-fix") or *Enhanced Support* (a monthly subscription of support activities beyond basic break-fix operations), and more detail will be set forth in the applicable Order. Either support choice has the following response time Service Level once a ticket is created in the Tx3 Support site:

Priority	Definition	Initial Response	Support Team Follow up requirement
Low	Issue presents minimal impact to achieve desired outcome, does not impact data integrity, nor system operations, but needs addressing to prevent further escalation.	2 Days	Follow-up on progress of Support Request once a week via email or phone. Leaving a voicemail is appropriate if the contact person is not available.
Medium	Issue hinders task completion, but a workaround exists. The issue may impact data integrity and/or system operation.	Next Day	Where possible, follow-up daily or at least every other day to convey status changes (if any), data requests, or progress reports. Email or phone is appropriate
High	Issue prevents task completion, limiting productivity and impacts data integrity and/or system operation.	2-4 hours	Follow-up daily until case is resolved. High impact case communication is primarily by phone.
Business Critical	The system is down and no work can be completed.	1 hour	Continuous contact is required (bridge line / web meeting). This impact indicates that we will stay in constant contact with one or more Support Engineers actively monitoring the progress of this case. Support Management will be involved in ensuring that enough resources are dedicated to the situation, and that there are enough to cover the other customers.

## 6. Maintenance

(a) Each month, a maintenance “window” requires system downtime. This is pre-scheduled and coordinated with the Customer. Maintenance activities are announced prior to, at the beginning of, and at the end of all tasks. Tx3 makes reasonable efforts to accommodate Customer’s requested schedules, postponing maintenance, if possible.

(b) The Platform is updated monthly for security patches.

(c) Any Platform security patches that are deemed to be high priority or emergency patches due to industry documented threat level can be applied at any time.

(d) During monthly maintenance windows Tx3 may patch Software, if necessary, based on need and Tx3 testing of a specific patch.

(e) Tx3 provides up to one major Software upgrade per year, if a customer requires. Additional major upgrades are arranged with Tx3’s Consulting Services.

## 7. Backup/Restore

All Software data residing in the Platform is backed up on a regular schedule. Schedules specifics vary by Software. For Customer data files residing on a file system (e.g. configuration files, attachments, images) in the Platform, backups occur on this schedule:

**BACKUP FREQUENCY:** Daily at 5:30 AM UTC

**Retention of daily backup point:** Retain backup taken every day at 5:30 AM for 60 Day(s)

**Retention of weekly backup point:** Retain backup taken every week on Sunday at 5:30 AM for 6 Week(s)

**Retention of monthly backup point:** Retain backup taken every month on First Sunday at 5:30 AM for 12 Month(s)

**Retention of yearly backup point:** Retain backup taken every year in January, June, July, October on First Sunday at 5:30 AM for 2 Year(s)

Software that involves SQL Server has this schedule: [full backups](#) every week, [differential backups](#) every 12-24 hours, and [transaction log backups](#) every 5 to 10 minutes.

(b) Software Data Recovery Point = 1 day (the data file period)

(c) Software Data Recovery Time = 6 hours.

## 8. Disaster Recovery

Tx3 will maintain and implement a commercially reasonable disaster recovery plan for the Platform, designed to achieve the Recovery Point and Recovery Time set forth below. Tx3 will annually test this plan, and provide an executive summary of the test results to Customer on request.

(b) Recovery Point = 1 day (to most recent successful backup)

(c) Recovery Time = 24 hours

## 9. Exclusions

Under no circumstances will Tx3 be liable or responsible for issues with the Platform that are erroneously reported by Customer or are caused by: (a) Customer's failure to use the Platform in accordance with the Documentation; (b) a Force Majeure Event; (c) Software, Customer equipment, software or other technology and/or third party equipment, software or other technology; or (d) Tx3's suspension or termination of Customer's license to the Platform, as permitted by the Agreement.

## 10. First-Call Support for Software

Unless agreed otherwise in the applicable Order, Tx3 agrees to provide First-Call Support for any Software. "**First-Call Support**" means and is limited to fielding any questions on the use, interaction, and/or configuration of the Software in conjunction with the Platform. In the event that Customer reports to Tx3 any error or defect in the Software, Tx3 shall furnish support, in the form of consultations, assistance, and advice on the use and maintenance of the Software and shall use commercially reasonable efforts to assist the Customer in dealing with the vendor of the Software. For clarity, however, First-Call Support does not include training, setup assistance, or integration or programming services for the Software. For the avoidance of doubt, the parties agree that vendors of any Software are ultimately be responsible for correcting any errors and providing maintenance and support for the Software.