

Helios Version 12 (Enterprise) Agreement

VERSION 12 (ENTERPRISE) TERMS OF USE:

BY CLICKING THE "I ACCEPT" BUTTON DISPLAYED AS PART OF THE ORDERING PROCESS, YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS (THE "AGREEMENT") GOVERNING YOUR USE OF HELIOS, LLC'S (HELIOS) ONLINE APPLICATION, VERSION 12 (ENTERPRISE), (COLLECTIVELY, THE "SERVICE"). IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST SELECT THE "I DECLINE" BUTTON AND MAY NOT USE THE SERVICE.

Welcome

As part of the Service, Helios will provide you with use of the Service, including a browser interface and data encryption, transmission, access and storage. Your registration for, or use of, the Service shall be deemed to be your agreement to abide by this Agreement including any materials available on the Helios website incorporated by reference herein, including but not limited to Helios' privacy and security policies. For reference, a Definitions section is included at the end of this Agreement.

1. Privacy & Security; Disclosure

Helios' privacy and security policies may be viewed at <http://www.gohelios.com>. Helios reserves the right to modify its privacy and security policies in its reasonable discretion from time to time. Individual users, when they initially log in, will be asked whether or not they wish to receive marketing and other non-critical Service-related communications from Helios from time to time. They may opt out of receiving such communications at that time or at any subsequent time by changing their preference under Personal Setup. Note that because the Service is a hosted, online application, Helios occasionally may need to notify all users of the Service (whether or not they have opted out as described above) of important announcements regarding the operation of the Service. If you become a paying customer of the Service, you agree that Helios can disclose the fact that you are a paying customer.

2. License Grant & Restrictions

Helios hereby grants you a non-exclusive, non-transferable, worldwide right to use the Service, solely for your own internal business purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to you are reserved by Helios and its licensors.

You may not access the Service if you are a direct competitor of Helios, except with Helios' prior written consent. In addition, you may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

You shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service or the Content in any way; (ii) modify or make derivative works based upon the Service or the Content; (iii) create Internet "links" to the Service or "frame" or "mirror" any Content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service. User licenses are per location (roof top, not workstation).

You may use the Service only for your internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (v) attempt to gain unauthorized access to the Service or its related systems or networks.

3. Your Responsibilities

You are responsible for all activity occurring under your User accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. You shall: (i) notify Helios immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Helios immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by you or your Users; and (iii) not impersonate another Helios user or provide false identity information to gain access to or use the Service.

4. Account Information and Data

Helios does not own any data, information or material that you submit to the Service in the course of using the Service ("Customer Data"). Helios agrees not to use your client data for marketing purposes or provide your client data to any third party for same said purpose. You, not Helios, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and Helios shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data. In the event this Agreement is terminated (other than by reason of your breach), Helios will make available to you a file of the Customer Data within 30 days of termination if you so request at the time of termination. Helios reserves the right to withhold, remove and/or discard Customer Data without notice for any breach, including, without limitation, your non-payment. Upon termination for cause, your right to access or use Customer Data immediately ceases, and Helios shall have no obligation to maintain or forward any Customer Data.

5. Intellectual Property Ownership

Helios alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the Helios Technology, the Content and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Service. This Agreement is not a sale and does not convey to you any rights of ownership in or related to the Service, the Helios Technology or the Intellectual Property Rights owned by Helios. The Helios name, the Helios logo, and the product names associated with the Service are trademarks of Helios or third parties, and no right or license is granted to use them.

6. Third Party Interactions

During use of the Service, you may enter into correspondence with, purchase goods and/or services from, or participate in promotions of advertisers or sponsors showing their goods and/or services through the Service. Any such activity, and any terms, conditions, warranties or representations associated with such activity, is solely between you and the applicable third-party. Helios and its licensors shall have no liability, obligation or responsibility for any such correspondence, purchase or promotion between you and any such third-party. Helios does not endorse any sites on the Internet that are linked through the Service. Helios provides these links to you only as a matter of convenience, and in no event shall Helios or its licensors be responsible for any content, products, or other materials on or available from such sites. Helios provides the Service to you pursuant to the terms and conditions of this Agreement. You recognize, however, that certain third-party providers of ancillary software, hardware or services may require your agreement to additional or different license or other terms prior to your use of or access to such software, hardware or services.

7. Charges and Payment of Fees

You shall pay all fees or charges to your account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. Payments may be made annually or monthly consistent with the Initial Term. All payment obligations are noncancelable and all

amounts paid are nonrefundable. You must provide Helios with valid banking account or credit card information as a condition to signing up for the Service. Helios reserves the right to modify its fees and charges and to introduce new charges at any time, upon at least 30 days prior notice to you, which notice may be provided by e-mail. All pricing terms are confidential, and you agree not to disclose them to any third party.

8. Excess Data Storage Fees

The maximum disk storage space provided to you at no additional charge is (i) 2 GB per User license. If the amount of disk storage required exceeds these limits, you will be charged the then-current storage fees. Helios will use reasonable efforts to notify you when the average storage used per license reaches approximately 90% of the maximum; however, any failure by Helios to so notify you shall not affect your responsibility for such additional storage charges. Helios reserves the right to establish or modify its general practices and limits relating to storage of Customer Data.

9. Billing and Renewal

Helios charges and collects in advance for use of the Service. Helios will automatically renew and bill your banking account or credit card information that is on file (a) every month for monthly licenses, or (b) each year on the subsequent anniversary for annual licenses. The renewal charge will be equal to the then-current license fee in effect during the prior term, unless Helios has given you at least 30 days prior written notice of a fee increase, which shall be effective upon renewal and thereafter. Fees for other services will be charged on an as-quoted basis. Helios's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes based solely on Helios's income.

You agree to provide Helios with complete and accurate billing and contact information. This information includes your legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and License Administrator. You agree to update this information within 30 days of any change to it. If the contact information you have provided is false or fraudulent, Helios reserves the right to terminate your access to the Service in addition to any other legal remedies.

All fees are stated and will be billed in U.S. dollars and subject to U.S. payment terms and pricing schemes.

If you believe your billing is incorrect, you must contact us in writing within sixty (60) days of the billed date. You must provide us with the date and amount in question in order to have an adjustment or credit processed for consideration.

10. Non-Payment and Suspension

In addition to any other rights granted to Helios herein, Helios reserves the right to suspend or terminate this Agreement and your access to the Service if your account becomes delinquent (falls into arrears). Delinquent accounts are subject to interest of 1.0% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. You will continue to be charged for User license(s) during any period of suspension. If you or Helios initiates termination of this Agreement, you will be obligated to pay the balance due on your account computed in accordance with the Charges and Payment of Fees section above. You agree that Helios may charge such unpaid fees to the account that you provided during the sign up process or the account information that you last modified to for your user account.

Helios reserves the right to impose a reconnection fee in the event you are suspended and thereafter request access to the Service. You agree and acknowledge that Helios has no obligation to retain Customer Data and that such Customer Data may be irretrievably deleted if your account is 30 days or more delinquent.

11. Termination upon Expiration/Reduction in Number of Licenses

This Agreement commences on the Effective Date. The term is indefinite and may be terminated at any time in Helios' sole discretion. Either party may terminate this Agreement or reduce the number

of licenses, effective only upon the expiration of the then current License Term, by notifying the other party in writing at least thirty (30) business days prior to the next billing date. In the event this Agreement is terminated (other than by reason of your breach), Helios will make available to you a file of the Customer Data within 30 days of termination if you so request at the time of termination. You agree and acknowledge that Helios has no obligation to retain the Customer Data, and may delete such Customer Data after 30 days from termination.

12. Termination for Cause

Any breach of your payment obligations or unauthorized use of the Helios Technology or Service will be deemed a material breach of this Agreement. Helios, in its sole discretion, may terminate your password, account or use of the Service if you breach or otherwise fail to comply with this Agreement. You agree and acknowledge that Helios has no obligation to retain the Customer Data, and may delete such Customer Data, if you have materially breached this Agreement, including but not limited to failure to pay outstanding fees, and such breach has not been cured within 30 days of notice of such breach.

13. Representations & Warranties

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Helios represents and warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof and that the Service will perform substantially in accordance with the online Helios help documentation under normal use and circumstances. You represent and warrant that you have not falsely identified yourself nor provided any false information to gain access to the Service and that your billing information is correct.

14. Mutual Indemnification

You shall indemnify and hold Helios, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of the Customer Data infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by you of your representations and warranties; or (iii) a claim arising from the breach by you or your Users of this Agreement, provided in any such case that Helios (a) gives written notice of the claim promptly to you; (b) gives you sole control of the defense and settlement of the claim (provided that you may not settle or defend any claim unless you unconditionally release Helios of all liability and such settlement does not affect Helios's business or Service); (c) provides to you all available information and assistance; and (d) has not compromised or settled such claim.

Helios shall indemnify and hold you and your parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that the Service directly infringes a copyright, a U.S. patent issued as of the Effective Date, or a trademark of a third party; (ii) a claim, which if true, would constitute a violation by Helios of its representations or warranties; or (iii) a claim arising from breach of this Agreement by Helios; provided that you (a) promptly give written notice of the claim to Helios; (b) give Helios sole control of the defense and settlement of the claim (provided that Helios may not settle or defend any claim unless it unconditionally releases you of all liability); (c) provide to Helios all available information and assistance; and (d) have not compromised or settled such claim. Helios shall have no indemnification obligation, and you shall indemnify Helios pursuant to this Agreement, for claims arising from any infringement arising from the combination of the Service with any of your products, service, hardware or business process(s).

15. Disclaimer of Warranties

HELIOS AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR ANY CONTENT. HELIOS AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY,

UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE AND ALL CONTENT IS PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY HELIOS AND ITS LICENSORS.

16. Internet Delays

HELIOS' SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. HELIOS IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

17. Limitation of Liability

IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY EXCEED THE COST OF ONE MONTH'S SERVICE ACTUALLY PAID BY AND/OR DUE FROM YOU IN IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

18. Additional Rights

Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of damages, so the exclusions set forth above may not apply to you.

19. Local Laws and Export Control

This site provides services and uses software and technology that may be subject to United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies and the export control regulations of Switzerland and the European Union. The user of this site ("User") acknowledges and agrees that the site shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries as to which the United States, Switzerland and/or the European Union maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Service, you represent and warrant that you are not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. You agree to comply strictly with all U.S., Swiss and European Union export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required.

This site may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000.

Helios and its licensors make no representation that the Service is appropriate or available for use in other locations. If you use the Service from outside the United States of America, Switzerland and/or the European Union, you are solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries. Any diversion of the Content contrary to United States, Swiss or European Union (including European Union Member States) law is prohibited. None of the Content, nor any information acquired through the use of the Service, is or will be used for nuclear activities, chemical or biological weapons, or missile projects, unless specifically authorized by the United States government or appropriate European body for such purposes.

20. Notice

Helios may give notice by means of a general notice on the Service via electronic mail to your e-mail address on record in Helios' account information, or by written communication sent by first class mail to your address on record in Helios' account information. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail) or 12 hours after sending (if sent by email). You may give notice to Helios (such notice shall be deemed given when received by Helios) via certified letter from the USPS or delivered by nationally recognized overnight delivery service which requires a signature as receipt and provides tracking information. All correspondence must be sent to Helios at the following addresses: Helios, LLC, 6270 Corporate Drive, Indianapolis, IN 46278 addressed to the attention of: Cancellations Department.

21. Modification to Terms

Helios reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Service at any time, effective upon posting of an updated version of this Agreement on the Service. You are responsible for regularly reviewing this Agreement. Continued use of the Service after any such changes shall constitute your consent to such changes.

22. Assignment; Change in Control

This Agreement may not be assigned by you without the prior written approval of Helios but may be assigned without your consent by Helios to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void. Any actual or proposed change in control of you that results or would result in a direct competitor of Helios directly or indirectly owning or controlling 50% or more of you shall entitle Helios to terminate this Agreement for cause immediately upon written notice.

23. General

This Agreement shall be governed by Indiana law and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Service shall be subject to the exclusive jurisdiction of the state and federal courts located in Indianapolis, Indiana. No text or information set forth on any other purchase order, preprinted form or document (other than an Order Form, if applicable) shall add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between you and Helios as a result of this agreement or use of the Service. The failure of Helios to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Helios in writing. This Agreement, together with any applicable Order Form, comprises the entire agreement between you and Helios and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein.

24. Definitions

As used in this Agreement and in any Order Forms now or hereafter associated herewith:

"Agreement" means these online terms of use, any Order Forms, whether written or submitted online via the Online Order Center, and any materials available on the Helios website specifically incorporated by reference herein, as such materials, including the terms of this Agreement, may be updated by Helios from time to time in its sole discretion; "Content" means the audio and visual information, documents, software, products and services contained or made available to you in the course of using the Service; "Customer Data" means any data, information or material provided or submitted by you to the Service in the course of using the Service; "Effective Date" means the date this Agreement is accepted by selecting the "I Accept" option presented on the screen after this Agreement is displayed; "Initial Term" means the initial period during which you are obligated to pay for the Service equal to the billing frequency selected by you during the subscription process (e.g., if the billing frequency is monthly, the Initial Term is the first month); "Intellectual Property Rights" means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world; "License Administrator(s)" means those Users designated by you who are authorized to purchase licenses online using the Online Order Center or by executing written Order Forms and to create User accounts and otherwise administer your use of the Service; "License Term(s)" means the period(s) during which a specified number of Users are licensed to use the Service pursuant to the Order Form(s); "Order Form(s)" means the form evidencing the initial subscription for the Service and any subsequent order forms submitted online or in written form, specifying, among other things, the number of licenses and other services contracted for, the applicable fees, the billing period, and other charges as agreed to between the parties, each such Order Form to be incorporated into and to become a part of this Agreement (in the event of any conflict between the terms of this Agreement and the terms of any such Order Form, the terms of this Agreement shall prevail); "Online Order Center" means Helios' online application that allows the License Administrator designated by you to, among other things, add additional Users to the Service; "Helios" means collectively Helios, LLC, an Indiana company, having its principal place of business at 6270 Corporate Drive, Indianapolis, IN 46278; "Helios Technology" means all of Helios' proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to you by Helios in providing the Service; "Service(s)" means the specific edition of Helios' online customer relationship management, billing, data analysis, or other corporate ERP services identified during the ordering process, developed, operated, and maintained by Helios, accessible via <http://www.gohelios> or another designated web site or IP address, or ancillary online or offline products and services provided to you by Helios, to which you are being granted access under this Agreement, including the Helios Technology and the Content; "User(s)" means your employees, representatives, consultants, contractors or agents who are authorized to use the Service and have been supplied user identifications and passwords by you (or by Helios at your request).

Questions or Additional Information:

If you have questions regarding this Agreement or wish to obtain additional information, please send an e-mail to info@gohelios.com.