

# Terms of Service

Last Updated November 16, 2021

Welcome to Helcim!

We at Helcim USA Inc. ("**Helcim**", "**we**", or "**us**") agree to provide various business and payment services (the "**Services**") to you and your business ("**you**"). This web page (the "**General Terms**"), in addition to the documents linked on the left of this web page ("**Appendices**") are the agreement (the "**Agreement**") which sets out how our Services will be provided to you. By using the Services, you agree to be bound by the following terms and conditions in this Agreement, including the Acceptable Use Policy and the Privacy Policy described below. You agree that any new features or tools which are added to the Services shall also be subject to the Agreement. You can view the current Agreement at any time by visiting <https://legal.helcim.com/us/terms-of-service/>.

The Agreement contains provisions that govern the resolution of all claims between you and Helcim, including an agreement and obligation to arbitrate disputes. The arbitration clause requires you to submit claims that you may have against Helcim to binding arbitration and to waive your rights to class-action proceedings.

In order to provide the Services to you, Helcim must comply with various laws, rules and obligations Helcim has to others. One of the purposes of the Agreement is to make sure that Helcim can comply with these obligations and provide the Services to you.

Subject to this Agreement, Helcim is acting in the capacity of a "Payment Service Provider" (under the Visa Rules), a "Payment Facilitator" (under the MasterCard Rules) and an "**Third-Party Sender**" with respect to Bank Payments and will provide you the Services as described herein. Helcim provides processing services with respect to credit card or bank payment transactions including Visa U.S.A., Inc. ("**Visa**"), MasterCard Worldwide ("**MasterCard**"), DFS Services LLC ("**Discover Network**"), American Express, JCB, Discover, Diners Club, and the National Automated Clearing House Association ("**NACHA**") (collectively, "**Associations**"). We intend for you to be able to accept transactions for all of these Associations, except where industry-specific Association restrictions apply.

You must read, agree with and accept this Agreement before you may apply for an account or use the Services.

## 1. Definitions

**"Acquirer"** shall mean Elavon, LLC and Elavon Canada, which is the entity contracted by Helcim to submit sales drafts and transaction information to the Associations on behalf of Helcim and to receive and pay to Helcim settlement funding for such sales transactions and that is a member of the Associations

**"Agreement"** consists of these General Terms, Acceptable Use Policy, Privacy Policy and Financial Services Terms including all appendices, schedules, exhibits and attachments.

**"Authorized Deductions"** means (a) any refunds to a Customer processed by us at your request; (b) any Chargebacks and/or indemnity claims made by a Customer; and (c) any Failures.

**"Bankholder"** means a Customer authorized to use a bank account for a Bank Payment.

**"Bank Payment"** means a Transaction where the funds are drawn directly from a Bankholder's bank account.

**"Business Day"** means any day other than: Saturday or Sunday; or a day on which banking institutions in the United States are authorized by law to be closed; or a day on which the Federal Reserve Bank is closed.

**"Card"** means a Visa, MasterCard, American Express or Discover Network credit card or debit card.

**"Card-Not-Present"** means mail order, telephone order, e-commerce order, internet order, or other transactions that are not Card-Present Transactions.

**"Card-Present Transaction"** means a Transaction in which the Card is processed through a terminal, register or other device, capturing the Card information encoded on the magnetic strip or chip.

**"Cardholder"** means a person authorized to use a Card.

**"Chargeback"** means a Transaction that Helcim returns to you pursuant to this Agreement or the Operating Rules. A Chargeback typically arises when a Cardholder has a dispute with you about the goods or services provided in relation to a Transaction. Other situations where a Chargeback can occur are described in more detail later in this Agreement.

**"Customer Mandate"** means the authority provided by the Customer which authorises you to take Bank Payments and pursuant to which you will make Payment Orders.

**"Customers"** means your customers, to whom you provide goods or services.

**"Failures"** means any collections attempted from Customers by us, on your behalf, that do not result in a successful Transaction, or that are initially a successful Transaction that is later reversed by the Customer's bank or other financial institution.

**"Issuer"** means an Association member that issued a Card to a Cardholder.

**"Payment Order"** means a request made by you through the Helcim Dashboard for a Bank Payment to be made by a Customer to you, for a specified amount on a specified date.

**"Payment Timings Deadline"** means 4:30pm local time in Calgary, Alberta on the day that the Payment Order is to take effect.

## 2. Account Requirements

- a. You must be 18 years old or older, have a valid SSN, and at least the age of majority in the jurisdiction where you reside and the jurisdiction from which you use the Services.
- b. To access and use the Services, you must apply for an account (the **"Account"**) by providing Helcim your
  - i. full legal name;
  - ii. business name (if applicable);
  - iii. mailing address;

- iv. phone number;
  - v. email address; and
  - vi. any other information indicated as required (collectively your "**Contact Information**").
- c. Helcim may reject your application for an Account, or cancel an existing Account, for any reason, in its sole discretion. You agree that you will keep your Contact Information correct, accurate and complete and that you will contact Helcim if there are any changes to your Contact Information or other information about your business, including your business activities, your representatives, beneficial owners, principals, or any other pertinent information, including but not limited to tax information or tax identification numbers. We may suspend your Account or terminate this Agreement if you fail to keep this information current.
- d. Helcim has developed a comprehensive set of tools as part of the Services to assist you in running your business. You can manage your Account through the Helcim Dashboard, as well as view important notifications and reports. Helcim also provides access to a comprehensive API through which you can access the Services programmatically. You may only use the API in accordance with the Helcim Developer API Documentation and this Agreement. You are responsible for all activity that occurs in relation to your API Tokens; do not publish or share your API Tokens with unauthorized persons. As with every part of the Services, the functionality and documentation for the API are subject to change from time to time. We will notify you through the Helcim Dashboard if any API functionality is changed, deprecated or removed.
- e. You acknowledge and agree that Helcim will use the Helcim Dashboard and email address you provide as the primary methods for communication.
- f. You agree that we can also provide any notices regarding the Services to you through Helcim's website, through the Helcim Dashboard or via email or regular mail. You agree that any notice sent via electronic means has the same legal effect as a physical copy. You agree that such notices may contain urgent or time-sensitive information and to review all such notices within 48 hours. You may withdraw this consent by terminating your Helcim account as described below and discontinuing your use of the Services.

- g. You are responsible for keeping your username, password, account PIN, and any API Tokens secure (collectively your "**Login Information**"). Helcim cannot and will not be liable for any loss or damage from any failure by you to protect your Login Information.
- h. You authorize us to send Text/SMS messages or emails for the purposes of verifying your identity through two-factor authentication in conjunction with your Login Information. Data or messaging charges may apply to such notices.
- i. You are responsible for all activity on your Account and any content including, but not limited to, data, text, links, information, materials, illustrations, layout, images, photos, graphics, videos and audio files that are created, generated, uploaded to, or provided by your Account, but not including credit card information or bank account information where such information is stored in our system correctly (collectively, "**Account Content**").
- j. Your use of the Services and Account Content must comply with Helcim's Acceptable Use Policy (the "**AUP**") which is available at <https://legal.helcim.com/us/acceptable-use-policy/>. By agreeing to the Agreement, you agree that you have read, understood and agree to the AUP – please take the time to read the AUP as it includes important terms which apply to you. You agree to reimburse Helcim for all fees, fines, losses or other costs that Helcim incurs arising from Account Content that is in breach of this agreement or the AUP.
- k. If you create user profiles to allow other individuals access to your Account and Account Content ("**Secondary Users**") you agree that you are responsible for all activity on your Account including all Secondary User activity. You agree to ensure that all Secondary Users are aware of, and abide by, the Agreement.
- l. With respect to Account Content, you agree:
  - i. to allow others to view your Account Content;
  - ii. to ensure that your Account Content complies with the AUP;
  - iii. to allow Helcim to display and store your Account Content;
  - iv. that Helcim can, at any time, review your Account Content; and
  - v. that you are responsible for compliance of your Account Content with any Applicable Laws or regulations.

- m. You understand that your Account Content may be
  - i. transmitted unencrypted over public or private networks; or
  - ii. modified to conform and adapt to technical requirements of connecting networks or devices.
- n. Any breach or violation of the Agreement, as determined in Helcim's sole discretion, may result in an immediate termination of your Account and/or deletion of any Account Content.

### 3. Account Activation

- a. Subject to section 2(b), the person signing up for the Account will be the contracting party for the purposes of the Agreement and will be the person who is authorized to use any corresponding Account and Login Information Helcim may provide in connection with the Services.
- b. If you are signing up for an Account on behalf of your employer or principal, then you represent and warrant that you have the authority to bind your employer or principal to the Agreement.
- c. At any time during the term of this Agreement and your use of the Services, we may require additional information or documentation in relation to you for the purpose of
  - i. verifying identity or other information; or
  - ii. assessing risk.
- d. You also authorize us to obtain information about you from third parties, such as credit reporting agencies and information bureaus, and you authorize and direct those third parties to assemble and provide us the information we request.
- e. We may also request that you provide copies of financial statements or records pertaining to your compliance with this Agreement or require you to provide other security, such as a personal or company guarantee. Your failure to provide this information or such guarantee may result in suspension or termination of your Account.
- f. In the event that

- i. you are the subject of any bankruptcy or insolvency proceeding, application, receivership or similar event, whether involuntary or voluntary (a "**Bankruptcy Petition**");
- ii. there is a significant adverse change in your financial condition, including any planned liquidation or substantial change in the nature of your business;
- iii. there is a sale, or transfer of more than 25% of your assets that is not in the ordinary course of business;
- iv. there is a change in control or ownership of your business (or any parent entity); or
- v. you are subject to a judgment, attachment, execution, levy or lien against at least 25% of your assets;

you agree to notify us via email including particulars of the event at [help@helcim.com](mailto:help@helcim.com) within 24 hours of the event.

- g. In the event of a Bankruptcy Petition, you will include Helcim on the list of creditors filed with any court or tribunal in respect of the Bankruptcy Petition.
- h. You agree that this Agreement cannot be assigned by you in the event of a Bankruptcy Petition as this Agreement is a contract for the advance of money or credit within the meaning of Paragraph 11.01(b) of the Companies' Creditors Arrangement Act (Canada), Paragraph 65.1(4)(b) of the Bankruptcy and Insolvency Act (Canada) and Section 365 of the Bankruptcy Code (US) as applicable; you acknowledge that without this sentence, Helcim would not have entered into this Agreement.

#### 4. Use of the Services

- a. The services are available for use only by businesses, sole proprietors, charities or other entities or persons.
- b. You may only use the Services to engage in legitimate, commercial transactions with your Customers ("**Transactions**") for payment for goods sold and/or leased or services provided to the Customer by you. The Services may not be used to conduct personal or non-commercial transactions, to send money to others, or for any other purpose prohibited by this Agreement.

- c. You acknowledge that you know your Customers best, and that it is your responsibility to manage your relationship with them. Helcim is not responsible for any of your products or services, or for any of your communications with your customers. You agree that Helcim has no way of knowing if a particular Transaction you use the Services for is accurate, and that you are responsible for knowing if a Transaction is erroneous, suspicious or fraudulent and that you are solely responsible for any losses which relate to your Transactions. Helcim may provide information or tools as part of the Services to assist you in determining the risk associated with a given Transaction, but Helcim provides no warranty with respect to such information or tools. You agree that the determination to proceed with a Transaction is your responsibility.
- d. You agree that in order to provide Bank Payments you must provide the Bankholder's name, address, email address and bank account information (collectively the "**Bankholder Information**"). You agree that you must keep all Bankholder Information up to date, and notify us immediately of any changes to the Bankholder Information.
- e. Before you can use Bank Payments or create Payment Orders in respect of a Customer, you must obtain a Customer Mandate from that specific Customer. Where possible, we will make reasonable efforts to assist you in obtaining Customer Mandates from your Customers including using a commercially reasonable method to verify that Bankholder is authorized to use the bank account, based on the information provided by you or your Customer.
- f. You are solely responsible for obtaining authorization to debit your Customer's bank account for each Bank Payment, and you agree that you shall obtain such authorization for each Bank Payment before you create a Payment Order. You represent and warrant that you have obtained all necessary authorizations from a Customer when you create a Payment Order in respect of that Customer. You agree that you shall not have the right to amend a Bank Payment other than to void or cancel the Bank Payment prior to settlement.
- g. If, for any reason, you wish to cancel a Payment Order or Customer Mandate, you must notify us before the Payment Timings Deadline. Notice for these purposes can be given by logging into the Helcim Dashboard and cancelling the Payment Order or Customer Mandate. We reserve the right to notify any Customer if you cancel their Payment Order or Customer Mandate.

- h. If a Customer cancels any order or contract to which a Payment Order relates, you must:
  - i. notify us as soon as reasonably practicable as described above (in which case we will not process the Payment Order if we are notified before the Payment Timings Deadline);
  - ii. refund the Transaction through the Helcim Dashboard; or
  - iii. refund directly to the Customer the sums received by you in connection with the Payment Order;
- i. If a Customer cancels their Customer Mandate or Payment Order before the Payment Timings Deadline, Helcim will have no obligation to pay you in respect of such cancelled Payment Orders and has no liability to you in respect of such cancellation. We will inform you as soon as reasonably practicable of any Customer Mandate or Payment Order cancelled by the Customer by displaying such information in the Helcim Dashboard.
- j. You agree that Helcim may, in its sole discretion, suspend, refuse or condition any Transaction that we believe may be in breach of any agreement you have with us, or that exposes you, us or any other party to unacceptable risk.
- k. If we suspect that you may be using the Services for unauthorized or illegal purposes, we may share any information related to such use of the Services with any appropriate financial authority, law enforcement authority or regulatory authority in accordance with our legal obligations.

## 5. Fees and Fines

- a. You agree to pay all fees, including, but not limited to processing fees and monthly service fees as specified during the application process, the account information page accessed through the Helcim Dashboard, and in accordance with this Agreement and any other agreement between you and Helcim. You also agree to pay Helcim the amount of any fees, charges, or penalties assessed against Helcim, as applicable, by any Association, Issuer, Acquirer, bank, or any other third-party provider of financial services (each a **"Financial Services Provider"**).
- b. Notwithstanding any other provision of this Agreement, you shall be responsible for all amounts imposed or assessed to you, Helcim, or a Financial Services Provider in

connection with this Agreement (including the Operating Rules, as defined below) by third parties such as, but not limited to, Acquirer, Associations and third-party service providers (including telecommunication companies) to the extent that such amounts are not the direct result of the gross negligence or willful misconduct of Helcim or the Financial Services Provider, as applicable. Such amounts include, but are not limited to, fees, fines, assessments, penalties, loss allocations etc. Any changes or increases in such amounts shall automatically become effective upon notice to you. In the event that Acquirer assesses Helcim with the cost of funds associated with a circumstance where Acquirer, for whatever reason, advances settlement or any amounts and/or delays the assessment of any fees, you shall be fully responsible for any portion of such assessment that is attributable to the Services provided to you.

- c. Should Helcim take any action against you to collect sums due hereunder, you agree to pay all costs associated with such collection efforts, including but not limited to reasonable attorney's fees.

## 6. Taxes

- a. You know your business best. You agree that you are solely responsible
  - i. for determining what, if any, taxes, fees or other charges ("**Taxes**") imposed by any governmental authority are applicable to your Transactions, and
  - ii. for collecting, calculating, assessing, reporting and remitting any Taxes to the appropriate governmental authority.
- b. You acknowledge that we are not obligated nor able to determine the applicability of any Taxes, or to calculate, collect, report or remit any Taxes to any governmental authority. In some circumstances, we may withhold any amount we deem appropriate to cover such Taxes if we cannot validate any tax-related information you provide us.
- c. The Services and your Account may contain preloaded information including, but not limited to, tax rates for various jurisdictions in Canada and the United States (the "**Default Configuration**"). The Default Configuration is provided for convenience only, and Helcim and its officers, directors, employees, contractors and agents make no warranty or

representation that the Default Configuration is correct, complete or suitable for your intended use of the Account.

- d. We may send documents to you and tax authorities for Transactions processed using the Services. Specifically, we may be required to file periodic informational returns with taxing authorities in relation to your use of the Services. You acknowledge that we will report the total amount of payments you receive each calendar year as required by the Internal Revenue Service.
- e. We also may, but are not obliged to, electronically send you tax-related information including, but not limited to, a Form 1099-K. You understand that this consent is required for us to provide the Services and applies until the end of any tax year in which you use the Services.

## 7. General Conditions

- a. You acknowledge and agree that Helcim may amend the Agreement at any time by posting the amended Agreement on Helcim's website, available at <https://legal.helcim.com/us/terms-of-service/>.
- b. You acknowledge and agree that any amendments to the Agreement are effective as of the date of posting. Your continued use of the Services after the amended Agreement is posted to Helcim's website constitutes your agreement to, and acceptance of, the amended Agreement. If you do not agree to the amended Agreement, do not continue to use the Services.
- c. From time to time, Helcim may change all rates, fees and charges set forth in the Agreement. Helcim will provide a minimum of thirty (30) days notice to you of all amendments to non-pass through rates, fees, and charges. Notice may be given on the Helcim Dashboard. Your continued use of the Services after the notice period constitutes your acceptance of the new rates, fees and or charges.
- d. You are solely responsible for reconciling your Transactions and Payment Orders with your accounts and actual bank transactions.
- e. **Use of Marks.** You will display prominently at your place of business, where payments are accepted for card present transactions, Card emblems and other promotional material and

literature provided by Helcim.

f. By accepting this Agreement, you represent and warrant that:

- i. you are eligible to register and use the Services and have the authority to execute and perform the obligations required by this Agreement;
- ii. any information you provide us about your business, products, or services is accurate and complete;
- iii. that, if agreeing to this Agreement on behalf of a corporation, you have authority to bind the corporation;
- iv. that you have obtained all necessary regulatory approvals, certificates and licenses to provide any services you intend to offer and that you are in compliance with the regulations of the Federal Trade Commission and the Federal Communications Commission and shall comply with all present and future federal, state and local laws and regulations of the United States pertaining to Transactions, including, without limitation, the Federal Fair Credit Reporting Act, the Federal Truth-in-Lending Act, the Electronic Fund Transfers Act, the Federal Equal Credit Opportunity Act, as amended, and the Telephone Disclosure and Dispute Resolution Act, the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"), the Standards for Privacy of Individually Identifiable Health Information (the "**Privacy Rule**") and the Standards for Security of Electronic Protected Health Information (the "**Security Rule**") promulgated thereunder, the Health Information Technology for Economic and Clinical Health Act (Division A, Title XIII and Division B, Title IV, of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) (the "**HITECH Act**") and the regulations implementing the HITECH Act, as applicable.
- v. Each transaction is genuine and arises from a bona fide transaction, permissible under the Operating Rules and Applicable Law, by the Customer directly with you;
- vi. Each transaction represents a valid obligation for the amount shown on the sales draft and does not involve the use of a Card for any other purpose;
- vii. Each Transaction represents an obligation of the related Customer for the amount of the Transaction;

- viii. The amount charged for each Transaction is not subject to any dispute, set off or counterclaim, or has been previously subject to a Chargeback;
  - ix. Each Transaction amount is only for respective goods or services (including taxes, but without any surcharge) sold and/or leased to a Customer by you and, except for any delayed delivery or advance deposit transactions expressly authorized by this Agreement, that merchandise or service was actually delivered to or performed for the Customer entering into that transaction simultaneously upon your accepting and submitting that transaction for processing;
  - x. With respect to each Transaction, you have no knowledge or notice of any fact, circumstance, or defense which would indicate that such transaction is fraudulent or not authorized by the related Customer or which would otherwise impair the validity or collectability of that Customer's obligation arising from that transaction or relieve that Customer from liability with respect thereto;
  - xi. Each Transaction is made in accordance with this Agreement and Applicable Law;
  - xii. Each sales draft is free of any alteration not authorized by the related Customer;
  - xiii. you will not use the Services for household purposes or peer-to-peer money transmission, or (except in the normal course of business) intercompany Transactions; and
  - xiv. you will not use the Services, directly or indirectly, for any fraudulent or illegal undertaking, or to interfere in any manner with the normal operation of the Services.
- g. Helcim will make reasonable efforts to keep the Services operational except for any unavailability caused by:
- i. planned downtime;
  - ii. system outages; or
  - iii. circumstances beyond Helcim's control, including but not limited to, 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.

- h. You acknowledge and agree that: Helcim is not a bank, financial institution, or other chartered depository institution. You may not use the Services for any illegal, fraudulent or unauthorized purpose nor may you, in the use of the Services, violate any laws applicable to you in your jurisdiction or your Customer's jurisdiction. You will comply with all Applicable Laws, rules and regulations in your use of the Services.
- i. You acknowledge that in order to provide the Services to you, Helcim must enter into agreements with third parties. You are not a third-party beneficiary to these agreements.
- j. You must not transmit any worms, trojans, malware, viruses or any other code of a malicious or destructive nature.

## 8. Your Obligations and Requirements

- a. You shall comply with the Associations' operating rules ("**Operating Rules**"), including the Visa Rules and Regulations, the MasterCard Rules, the NACHA rules, the American Express Merchant Operating Guide, and the Discover Network Rules and all applicable local, provincial, and federal laws, rules, and regulations ("**Applicable Laws**"). The Operating Rules are available from the Associations or on websites, such as <http://www.usa.visa.com/merchants> and <http://www.mastercardmerchant.com>, as updated from time to time. Without limiting the foregoing, you agree that you will fully comply, with any and all confidentiality and security requirements of the USA Patriot Act (or similar law, rule or regulation), the Associations, including but not limited to the Visa Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Associations. Should any portion of the Operating Rules not be publicly available or otherwise made available to you, such unavailability shall not alter or limit your obligation to comply with the Operating Rules. Notwithstanding Helcim's assistance in understanding the Operating Rules, you expressly acknowledge and agree that you are assuming the risk of your compliance with all provisions of the Operating Rules, regardless of whether you have possession of those provisions. Both MasterCard and VISA make excerpts of their respective Operating Rules available on their internet sites. You agree that you will not take any action that could interfere with or prevent the exercise of this right by the Associations. In the event of any inconsistency between any provisions hereof and the

Operating Rules, the Operating Rules will govern to the fullest extent possible under Applicable Laws.

- b. You will honor a Card by accepting it for payment. You will not engage in any acceptance practice or procedure that discriminates against, or discourages the use of, any particular card type in favor of any competing card brand. You understand and agree that you are expressly prohibited from presenting sales transactions for any purposes related to any illegal or prohibited activity, including but not limited to money-laundering or financing of terrorist activities. For all Cards issued by U.S. Issuers, you will honor all cards within the card types elected and approved in accordance with this Agreement. You acknowledge that no party will acquire any right, title, or interest in or to the marks of any Associations. You will not assign to any third party any of the rights to use the marks of any Associations.
- c. You shall not submit a Transaction until you have performed your obligations to the Customer in connection with the Transaction. You must not perform a Transaction that you know or should have known to be fraudulent or not authorized by the Customer . You are responsible for all actions or omissions of your employees or agents. You may only submit a Transaction for a prepayment of services, a future event or booking, or of custom-ordered merchandise, manufactured to a Customer's specifications, if you advise the Customer of the immediate billing at the time of the Transaction and within time limits established by the Operating Rules. If you accept payment for products or services (including bookings or future events) that will not be provided until a future date (a "**Prepayment Transaction**") we may, in our sole discretion, hold Reserves for all or a portion of the Prepayment Transaction.
- d. **Identify Yourself.** To the extent you interact with Customers , you will prominently and unequivocally inform the Customer of your identity at all points of interaction so that the Customer can readily distinguish your business from any other party, such as one of your suppliers of products or services, including Helcim. Further, you must ensure that the Customer understands who is responsible for the card transaction, including delivery of the products (whether physical or digital) or provision of the services that are the subject of the Transaction, and for customer service and dispute resolution, all in accordance with the terms applicable to the Transaction.
- e. **Bank Account (the "Bank Account").** You shall establish a Bank Account at a financial institution of your choice prior to processing any payments. The Bank Account shall be

utilized for deposits from Transactions. You shall advise Helcim of the name and address of the financial institution, routing number and account number of the account. You authorize Helcim to debit fees and charges from the Bank Account either daily, monthly or at other times deemed appropriate by Helcim.

- f. **Maintenance of the Bank Account.** You shall maintain the Bank Account throughout the term of this Agreement, to include any extensions or renewals thereof. You shall, at all times, maintain sufficient funds in the Bank Account to ensure that any and all fees, charges, and costs provided for under the Agreement are paid, including any Chargeback amounts or Reserve requirements set by Helcim in accordance with this Agreement. You agree to deposit funds into the Bank Account as required in order to ensure that sufficient funds are maintained in the Bank Account at all times.
- g. **Authorization and Waiver.** You authorize Helcim to make deposits to or withdrawals from the Bank Account at any time without notice. Helcim will have no signatory or ownership rights in the Bank Account and will have no right to negotiate or assert ownership rights in deposited funds. You shall be responsible for all Bank charges and you shall designate employees authorized to make changes to the Bank Account. Any changes proposed to the Bank Account shall be submitted via the Helcim Dashboard and must be approved by Helcim. Should you modify these terms without following the aforementioned process, you indemnify and hold Helcim harmless for any administration or other activity initiated by Helcim. If required by Helcim, or any other financial institution where the Bank Account is maintained, you agree to sign any other additional documents to authorize the deposits and withdrawals, including without limitation, ACH transactions. You waive any claims for loss or damage arising out of any charges or debits to the Bank Account against any other designated financial institution where the account is maintained.
- h. **Adjustments and Returns.** You will maintain a fair exchange and return policy and make adjustments with respect to goods and services sold or leased to its customers whenever appropriate. In the event that goods are returned, or any services are discounted, written off, or cancelled, or any price is adjusted on a Transaction, You will prepare and transmit a credit or return Transaction electronically, for the amount of the adjustment as a deduction from the total amount of sales drafts transmitted that day. In the event the amount of credit or return transactions exceeded the amount of sales draft transactions, Helcim shall charge the Bank Account for the excess. You shall make no cash refunds on Transactions,

except Bank Payment Transactions, and shall handle all credit adjustments as provided in this Section. Sales drafts for any Transaction for which no refund or return will be given must be conspicuously marked as a "final sale" and "no returns" on the customer's copy of the sales draft at the time of the Transaction. You must follow Visa, MasterCard, American Express, and Discover Network reservation/no-show policy. You must notify Cardholders in writing of this policy on all advance reservations. The Cardholder must be notified of the exact number of days required for reservation deposit refunds. If you fail to follow the Visa, MasterCard, and Discover Network reservation/no-show policy you may receive a Chargeback to the Bank Account.

- i. **Investigations.** In rare circumstances, a Transaction may need to be investigated. In such circumstances, you agree to assist Helcim in such investigation and will provide a report to Helcim in a timely manner upon Helcim's request. You must notify Helcim as soon as reasonably practicable if you become aware of any fraudulent or other illegal activity on the part of a Customer (including, without limitation, money laundering or terrorist financing) by emailing us at [trustandsafety@helcim.com](mailto:trustandsafety@helcim.com).
- j. **Customer Complaints.** You shall respond promptly to inquiries from Customers and shall resolve any disputes amicably. The Associations monitor your Transactions, and in accordance with the Operating Rules, the Associations may charge penalties to you if certain types of Transaction activity exceed certain thresholds. Helcim reserves the right to charge you reasonable fees, in addition to any applicable Association fees, penalties or charges, on account of excessive Customer inquiries, refunds, or Chargebacks. You agree to maintain the following information in writing with respect to each claim or defense asserted by a Customer for which you have received notice:
  - i. The Customer's name;
  - ii. A unique confirmation number, transaction sequence number, or other identifier that you can use to reference the transaction in subsequent communications with Helcim;
  - iii. The date and time the Customer asserted the claim or defense;
  - iv. The nature of the claim or defense; and
  - v. The steps that you took in an attempt to resolve the dispute.

Upon request, you shall furnish Helcim with this information in writing within ten (10) days.

## 9. Security Interest, Reserve, Setoff Rights

- a. Security Interest and Lien. You hereby grant a security interest and lien (and in Quebec, a hypothec on) upon the Bank Account or any substitute account now and in the future and all proceeds thereof to Helcim to secure all fees, costs, and charges due in accordance with this Agreement, including all fees as specified during the application process, your account information page accessed through the Helcim Dashboard, and in accordance with this Agreement and any other agreement between you and Helcim, including without limitation, Chargebacks, return entries, refunds and Association fees or fines (the "**Amounts Due**"). In the exercise of its rights with regard to the security interest and lien, Helcim may only debit the Bank Account to the extent of the then existing amounts due and shall only do so if Helcim becomes reasonably concerned about whether you will otherwise fulfill your financial obligations. You shall provide such documentation as required by Helcim in connection with the security interest and lien. The security interest and lien granted herein shall survive the termination of this Agreement until all amounts due are determined and paid in full. You hereby authorize Helcim to prepare all documents or to take other actions reasonably necessary to perfect its security interest or lien in the Bank Account or any substitute account therefor.
- b. Establishment of Reserve. We may withhold funds by temporarily suspending or delaying payouts of proceeds to you and/or designate an amount of funds that you must maintain in your Bank Account or in a separate reserve account of Helcim's ("**Reserve**") to secure the performance of your obligations under any agreement between you and Helcim. We may require a Reserve for any reason related to your use of the Services. The Reserve will be in an amount as reasonably determined by us to cover potential losses to Helcim. The Reserve may be raised, reduced or removed at any time by Helcim, in its sole discretion, based on your payment history, a credit review, the amount of any arbitration award or court judgment against you in Helcim's favor, or otherwise as Helcim or Acquirer may determine or require. If you do not have sufficient funds in your Reserve, we may fund the Reserve from any funding source associated with the Services, including any funds (a) deposited by you, (b) due to you, or (c) available in your Bank Account, or other payment instruction registered with us. You authorize us to make any withdrawals on debits from the

Reserve or your Bank Account, without prior notice to you, to collect amounts that you owe us.

- c. **Funding of Reserve.** The Reserve may be funded by deduction from payments due to you, a charge against the Bank Account, or against any of your accounts at the financial institution at which you maintain the Bank Account. Subject to Helcim's approval and agreement, the reserve may be funded by an irrevocable letter of credit. The amount required to be maintained in the Reserve and the terms and conditions for maintaining the account shall be established by Helcim in its discretion.
- d. **Additional Reserve.** Upon termination of this Agreement, Helcim may require an additional reserve to cover possible indebtedness to Helcim for Transactions initiated prior to termination. This Reserve will be maintained for a minimum of six (6) months from the termination date or until such time as Helcim determines that the release of the funds to you is prudent, in the best interest of Helcim, commercially reasonable and your account with Helcim is fully resolved. Upon expiration of this period, any balance remaining in the Reserve will be paid to you. Helcim will inform you of any charges debited to the Reserve during this period.
- e. **Set-Off Rights.** To the extent permitted by law, we may set off against the proceeds for any obligation you owe us under any agreement with Helcim (e.g., Chargebacks, Failures or refunds). If you owe us an amount that exceeds your cumulative incoming proceeds, we may debit the Bank Account. If we are unable to debit the Bank Account for the amount owing for any reason, you agree that we may invoice you for any balance owing, such an amount is a debt to us that is due and payable immediately. Your failure to fully pay amounts that you owe us on demand will be a breach of these terms. You are liable for any of our costs associated with collection in addition to any amounts owed, including attorneys' fees and expenses, collection agency fees, and any applicable interest.
- f. **Interest.** If you do not pay when invoiced for sums owing pursuant to this agreement within 30 days of the invoice, or we are unable to debit your Bank Account for sums due to Helcim, Helcim may charge and you agree to pay interest at a rate of 1.5% per month on the outstanding balance, or the highest amount allowed by law, whichever is less.

## 10. Payment Services Terms

- a. Your use of the Services is subject to additional terms that apply between you, Helcim and Acquirer ("**Financial Services Terms**") such terms are linked to the left of this page. By using the Services, you agree to the Financial Services Terms (including those that separately bind you with Financial Services Providers or payment method providers).
- b. You authorize Financial Services Providers to hold, receive, and disburse funds on your behalf; and to instruct such Financial Services Providers as to how and when funds are transferred to you. You also authorize us to designate which Financial Services Providers may hold settlement funds, on deposit and in trust, pending transfer of funds to you in accordance with the terms of this Agreement.
- c. **Electronically Transmitted Transactions.** Helcim shall deliver payment to you by a credit to the Bank Account equal to the reconciled summary of your total Transactions since the previous credit. This credit will be net of following charges:
  - i. The sum of all Customer charges denied, refused or subject to Chargeback;
  - ii. All refunds processed on account of Cardholders during said time period;
  - iii. Any Authorized Deductions;
  - iv. All taxes, penalties, charges and other items incurred by Helcim that are reimbursable pursuant to this Agreement; and
  - v. Fees, including but not limited to an amount equal to a specified percentage of each Transaction value, a specified amount per Transaction ("**Transaction Fee**"), and any processing fees collected from Customers (such as convenience fee and or payment plan setup fees).
- d. **Provisional Credit.** Any credits to the Bank Account are provisional only and subject to adjustment or revocation by Helcim until such time that the Transaction is final and no longer subject to chargeback by the Issuer, Cardholder, or Associations.
- e. **Merchant Statement.** Helcim shall make available a statement ("**Merchant Statement**") or similar information on no less than a monthly basis. All information appearing on the Merchant Statement shall be deemed accurate and affirmed by you unless you object by written notice specifying the particular item in dispute within thirty (30) days after the date

the Merchant Statement became available to you. The Merchant Statement shall be provided to you through the Helcim Dashboard.

- f. **Rights to Dispute Charges, Reports, Invoices.** You expressly agree that your failure to notify us that you have not received any settlement funds within three (3) business days from the date that settlement was due to occur, or fail to reject any report, notice, or invoice within thirty (30) business days from the date the report or invoice is made available to you, shall constitute your acceptance of the same. In the event you believe that Helcim has failed in any way to provide the Services, you agree to provide Helcim with written notice, specifically detailing any alleged failure, within sixty (60) days of the date on which the alleged failure first occurred.
- g. **Chargebacks.** Chargebacks are typically the result of your failure to amicably resolve a dispute with your customer, or the processing of a transaction not authorized by the Cardholder, such as a fraudulent Transaction. You agree that Helcim is not in any way financially responsible for Chargebacks. Helcim shall be authorized to Chargeback Transactions to you as specified throughout this Agreement. You understand that under the Operating Rules, Chargebacks can occur for many reasons, some of which include:
- i. The Transaction was made at or by a person other than you;
  - ii. The Transaction otherwise violates the terms of this Agreement or the Operating Rules;
  - iii. Any representation or warranty made by you in connection with the Transaction is false or inaccurate in any respect;
  - iv. Helcim or Issuer has received a complaint from or on behalf of a Cardholder stating that there is an unresolved dispute or defense to a charge (whether or not valid) between you and Cardholder;
  - v. The Cardholder makes a written complaint to Helcim or Issuer that the Cardholder did not make or authorize the Transaction; or
  - vi. A Transaction is charged back by an Issuer.

Excessive chargeback activity (typically a chargeback rate of 1% or higher) can result in your inability to use the Services and can result in your inability to accept payment cards

for your business.

In any case, including those defined above, Helcim shall not be obligated to accept a Transaction for credit to the Bank Account. If Helcim has credited the Bank Account or Reserve Account for such Transaction, Helcim may return the Transaction to you, and Helcim shall recover the amount of the Transaction from the aforementioned account. You agree that Helcim, without prior notice, may:

- vii. Charge the amount of the Transaction to the Bank Account;
- viii. Recoup the amount of the Transaction by adjustment of the credits due to you; or
- ix. Set off the amount of the Transaction against any account or property Helcim holds for or on your behalf.

## 11. Prohibited Transactions

You understand that the Applicable Laws and the Operating Rules prohibit a large variety of types of Transactions. Some examples of such prohibited Transactions exist where you:

- a. Establish a minimum below the amount allowed by the Associations; provided, however, you may establish a minimum sale amount as a condition for honoring Cards, provided that the minimum transaction amount does not differentiate between Associations and/or issuers and the minimum transaction amount does not exceed \$10.00 (or any higher amount established by Applicable Law or the Operating Rules);
- b. Obtain authorization for purposes of setting aside Cardholder's credit line for use in future sales;
- c. Make any special charge to or extract any special agreement or security from any Cardholder in connection with any Transaction;
- d. Transmit or accept for payment any Transaction which was not originated directly between you and a Customer for the sale or lease of goods or the performance of services of the type you initially submitted to and approved by Helcim;
- e. Honor or accept a Card as payment for any legal services or expenses arising out of or related to (1) the defense of any crime other than a traffic violation; (2) any domestic relations matter where such services or expenses are furnished to a person whose name

- is not embossed on a Card; or (3) any bankruptcy, insolvency, compromise, composition or other process affecting Cardholder's creditors;
- f. Use a personal Card, or one to which you have access, to process a Transaction for the purpose of obtaining credit for your own benefit;
  - g. Redeposit a previously charged Transaction, regardless of whether the Cardholder consents;
  - h. Initiate a Transaction credit without a balance in the Bank Account equal to the credit;
  - i. Add any tax to Transactions unless Applicable Law expressly requires that you collect such a tax. Any tax, if allowed, must be included in the Transaction amount and not collected separately;
  - j. Disburse funds in the form of cash, except in respect of a Payment Order related to a cancelled contract where it was not possible to cancel the Payment Order or refund the Customer through the Helcim Dashboard;
  - k. Accept a Card to collect or refinance an existing debt;
  - l. Resubmit a Transaction that was subject to a Chargeback; or
  - m. Require a Cardholder to complete a postcard or similar device that includes the Card's account number, Card expiration date, signature or any other Card account data in plain view when mailed.

## 12. Helcim Rights

- a. Helcim may, but has no obligation to, remove Account Content or terminate an Account that contains content that Helcim determines in its sole discretion to be unlawful, offensive, threatening, libelous, defamatory, pornographic, obscene, or otherwise objectionable or otherwise violates the Agreement or the AUP.
- b. Verbal or written abuse of any kind (including threats of abuse or retribution) towards any Helcim employee, customer, contractor, member, director or officer will result in immediate Account termination.
- c. Helcim does not pre-screen Account Content and Helcim may, at any time, in its sole discretion, refuse to provide the Services or remove any Account Content.

- d. Helcim reserves the right to provide the Services to anyone and makes no promise of exclusivity.
- e. Helcim reserves the right at any time, and from time to time, to modify or discontinue the Services (or any portion thereof) without notice. Helcim shall not be liable to you or to any third party for any modification, price change, suspension, data loss, or discontinuance of the Services.
- f. Helcim reserves the right to determine, in its sole judgment, rightful Account ownership and to transfer an Account to the rightful owner. In the event of an ownership dispute, Helcim may temporarily disable an Account until the ownership dispute is resolved.
- g. In the event of a dispute regarding Account ownership, Helcim may request documentation to resolve the dispute. You agree to provide any requested documentation within fifteen (15) days.

### 13. Limitation of Liability and Disclaimer of Warranties

- a. You acknowledge and agree that Helcim, and any officers, directors, employees, and agents of Helcim, and Helcim's vendors, resellers, distributors, and other contractors, shall not be liable for any consequential, aggravated, punitive, special, exemplary, incidental, direct or indirect damages, including but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses, under any theory or cause of action whether in tort, contract or otherwise, resulting in any way from the use of, inability to use, or the improper operation of the Services or Helcim's website (however arising, including negligence).
- b. You agree to indemnify, defend and hold harmless Helcim and (as applicable) its parent, subsidiaries, affiliates, partners, officers, directors, agents, employees, contractors and suppliers from any claim or demand, including reasonable lawyer's fees (collectively, "**Claims**"), made by any third party to the extent that such Claims are based on, or arise out of (a) your use of the Services; (b) your breach of the Agreement (including the AUP and the Privacy Policy); (c) your gross negligence or wilful misconduct; (d) the performance, non-performance, or improper performance of your products and services; or (e) your violation of any law or the rights of a third party.

- c. Your use of the Services is at your sole risk. The Services are provided on an "as is" and "as available" basis without any warranty, representation or condition, express, implied or statutory. Helcim and its officers, directors, employees, contractors and agents make no warranty, representation or condition about the accuracy, availability, completeness, suitability, or content of the Services.
- d. Helcim and its officers, directors, employees, contractors and agents make no warranty, representation, or condition: (i) that the Services will meet your requirements or expectations, (ii) that your access to or use of the Services will be uninterrupted, timely, secure or error free, (iii) that any defects in the Services will be corrected, or (iv) that the Services or any server through which you access the Services is free of malicious software or other harmful components.
- e. You understand that in using the Services, sensitive information will travel through third-party infrastructure which is not under Helcim's control. You acknowledge that Helcim makes no warranty with respect to such third-party infrastructure.
- f. Any material downloaded or otherwise obtained through the Services is accessed at your own discretion and risk, and Helcim is not responsible for any damage or loss of data that results from such material.
- g. No advice or information, whether oral or written, obtained by you from Helcim or through or from the Services shall create any right, warranty or condition not expressly stated in the Agreement.
- h. **Indemnification.** In addition to any other indemnification circumstances in the Agreement, you agree to indemnify and hold Helcim and Acquirer harmless from any and all losses, claims, damages, liabilities and expenses, including reasonable attorneys' fees and costs arising out of any of the following:
  - i. Card-Present Transactions using the Card's magnetic strip;
  - ii. Card-Not-Present Transactions;
  - iii. Bank Payments;
  - iv. Unauthorized Transactions; or
  - v. Prohibited Transactions.

- i. You shall indemnify Helcim against any losses, costs, claims, damages and expenses suffered or incurred by us as a result of or in connection with any failure by you to obtain all consents and authorisations from Customers, or to provide Customers or Helcim with any information necessary for the lawful processing of Payment Orders.
- j. You shall indemnify Helcim in respect of any amounts and costs incurred as a result of any: (i) Chargeback, claim or refund (fraudulent or otherwise) initiated by a Customer and that we are obliged to make under the relevant rules; or (ii) Failures. For greater certainty, Helcim may not claim under this indemnity where any amounts or costs incurred arise directly from our gross negligence or wilful default.
- k. **Limitation of Liability.** In addition to any other limitations provided in the Agreement, Helcim and Acquirer shall not be liable to you or your customers or any other person for any loss or liability resulting from the denial of credit to any person or your retention of any Card or any attempt to do so.

#### 14. Data and Security

- a. The protection and safe handling of your data and that of your customers is one of Helcim's primary concerns. While we build our systems and Services with this in mind, as a person with access to this data you must also share this concern while using the Services and conducting your business.
- b. There are several types of information (collectively, "**Information**") that Helcim uses to provide the Services:
  - i. Personal Information – means information about a specific, identifiable individual.
  - ii. Merchant Information – means information about you or your business, and can include information about your customers, products, orders or operations. This may include credit reports or other financial information.
  - iii. Payment Information – means any information relating to a potential or completed Transaction; any information related to your Bank Account, or other information communicated with Acquirer or a Financial Services Provider related to the Applicable Laws or Operating Rules.

- iv. Helcim Information – means any information used in the context of Helcim's infrastructure or systems, including any information relating to Helcim API or Helcim Dashboard functionality, information relating to fraud detection or otherwise created through the use of the Services. This also includes non-personally identifiable information about device or computer usage.
- c. Helcim uses the above Information to:
- i. provide the Services to you and your customers;
  - ii. mitigate fraud and other risks and losses;
  - iii. comply with Helcim's obligations, including obligations under the Applicable Laws and the Operating Rules, which includes providing Information to Acquirer or Financial Services Providers; and
  - iv. maintain, develop and improve the Services.
- d. Helcim does not provide Personal Information to unaffiliated parties for the purposes of marketing.
- e. **Confidentiality.** Helcim will only use Merchant Information as permitted by this Agreement, or as otherwise directed by you or agreed. You will protect all Information you receive through the Services, and you will only use such Information permitted by this Agreement. Neither party may use any Personal Information for marketing purposes unless it has received the express consent from the specific individual to which the Personal Information relates. You may not disclose Payment Information to others except in connection with processing Transactions and consistent with Applicable Laws and Operating Rules.
- f. **Privacy.** The protection of your and your customers' privacy is of the utmost importance to Helcim. Our Privacy Policy available at <https://legal.helcim.com/us/privacy-policy/> (the "**Privacy Policy**") describes how we collect, retain, disclose and use Information. You agree that you have read, understood and agree to the Privacy Policy – please take the time to read the Privacy Policy as it includes important terms which apply to you. You assert that you are and will continue to comply with all Applicable Laws relating to privacy, data protection and security.

- g. **Security.** Helcim is responsible for protecting the security of Information in our possession. We maintain commercially reasonable administrative, technical, and physical procedures to protect Information stored in our servers from unauthorized access, accidental loss, modification, or breach. We comply with related Applicable Laws and Operating Rules when we handle Information. However, no security system is perfect, and we cannot guarantee that unauthorized parties will not access or misuse any Information in our possession. You understand that any security measures we provide may not be sufficient for your business, and you agree to additional controls that meet your specific requirements. At any time, we may take any action, including suspension of your Account, to maintain the integrity and security of the Services or Information, or to prevent harm to you, us, or any third party. You waive any right to make a claim against us for losses you incur that may result from our actions.
- h. You agree that you are solely responsible for the security of any Information on your website, or otherwise in your possession. You will comply with Applicable Laws and Operating Rules when handling or maintaining Information. You will provide evidence of your compliance to us upon our request. If you do not provide evidence of such compliance to our satisfaction, we may suspend transactions on your account or terminate this Agreement.
- i. We may provide or suggest security procedures and controls intended to reduce the risk to you of fraud ("**Security Controls**"). You agree to review the Security Controls and the documentation that we provide to you, and to select the Security Controls that meet your business requirements. If you believe that the Security Controls are insufficient, then you agree to separately implement additional controls that meet your requirements.
- j. If we believe that a security breach, leak, loss, or compromise of Information has occurred on your systems, website, or app affecting your compliance with this Agreement, we may require you to permit a third-party auditor approved by us, and your expense, to conduct a security audit of your systems and facilities. The auditor will issue a report to us and our Financial Services Providers.
- k. You will immediately notify us of any suspected, alleged, or confirmed compromised data ("**Compromised Data Event**"), regardless of the source, including any from any of your third-party service providers. We or servicers may engage a forensic vendor approved by an Association. You must cooperate with the forensic vendor so that it may immediately

conduct an examination of your equipment, systems, and your third-party service providers' procedures and records and issue a written report of its findings. You agree that upon your suspected or actual discovery of a Compromised Data Event, you will not alter or destroy any related records. You agree to maintain complete and accurate documentation regarding any modifications made to the records. You will share with us and our servicers information related to your or any Associations' investigation related to any actual or suspected Compromised Data Event (including, but not limited to, forensic reports and systems audits), and we and our servicers may share that information with Associations. Upon notice to you, we or our servicers, or the respective representatives of each may conduct remote electronic scans of your systems to confirm compliance with the requirements of the Operating Rules and Applicable Laws. You must promptly cooperate with any such parties to facilitate the scans.

- I. **Payment Card Industry Compliance.** If you use the Services to accept Transactions, you must comply with the Payment Card Industry Data Security Standards ("**PCI-DSS**") and, if applicable to your business, the Payment Application Data Security Standards ("**PA-DSS**") (collectively, the "**PCI Requirements**"). The specific steps you will need to take to comply with the PCI Requirements will depend on your business and your use of the Services, and Helcim provides tools that may simplify your PCI compliance process. You can review your PCI Compliance status via the Helcim Dashboard. Additional information regarding PCI compliance in relation to your use of the Services is available through the Helcim Dashboard. You agree to provide us with evidence demonstrating your compliance with the PCI Requirements, if requested. If you store, hold and maintain "Account Data", as defined by the PCI Requirements (including Customer card account number or expiration date), you further agree that you will either maintain a PCI-compliant system or use a compliant service provider to store or transmit such Account Data; further, you agree to never store any "Sensitive Authentication Data", as defined by the PCI Requirements (such as CVC or CVV2), data at any time. You can find information about the PCI Requirements on the PCI Council's website. <https://www.pcisecuritystandards.org/>

## 15. Intellectual Property

- a. "**Work Product**" means all work product created in connection with the Services, including text, graphics, images, illustrations, artwork, maps, photographs, layouts, fonts, visual and

- audio recordings, websites, software, computer code, script or markup, and other content in whatever form or media, but not including your Account Content.
- b. As between you and Helcim, you agree that Helcim owns all right, title and interest in the Services and the Work Product, including all modifications and additions to the foregoing, and all intellectual property in the foregoing (collectively, the "**Helcim Property**").
  - c. You may not: (i) copy, modify, or reverse engineer any part of the Services or Helcim Property (except to the extent such restriction is prohibited by Applicable Law); or (ii) rent, sell, lease, distribute or otherwise use the Services or Helcim Property for the benefit of any third party. The names, logos or trademarks of any third-party companies and products mentioned on the Services (including, without limitation, a Third-Party Provider) may be the trademarks of their respective owners.
  - d. Helcim does not claim any intellectual property rights over your Account Content. However, you agree to grant Helcim a non-revocable license to use any business names, trademarks, service marks and logos associated with your Account (except where such constitutes Personal Information) to promote the Services.
  - e. Helcim will not disclose your Confidential Information to third parties, except as directed by you or required in the course of providing the Services. "**Confidential Information**" includes any materials or information provided by you to Helcim which is not publicly known. Confidential Information does not include information that: (i) was in the public domain at the time Helcim received it; (ii) comes into the public domain after Helcim received it through no fault of Helcim; (iii) Helcim received from someone other than you without breach of Helcim or its confidentiality obligations; or (iv) Helcim is required to disclose by law or court order.

## 16. **Fraud Defender Service**

In addition to the Agreement applicable to the Services, the following terms apply to your access and use of Helcim's fraud defender service (the "**Fraud Defender Service**").

- a. As part of the Services, Helcim may provide various tools and information to help you determine the validity of Transactions and protect against risk. While these tools may provide a "**score**" or suggestion in respect of a given Transaction or activity, the tools are not a guarantee of the outcome of any Transaction or activity. You know your business

best and must use your own judgment when making a determination about the risk associated with each Transaction and your use of the Services.

- b. You acknowledge and agree that the Fraud Defender Service does not constitute legal or financial advice and that you should consult an appropriate professional for specific advice tailored to your situation.

## 17. Cancellation and Termination

- a. Helcim reserves the right to terminate your Account for any reason, without notice, at any time. Some reasons that this may occur include:

- i. We determine, in our sole discretion that your use of the Services constitutes an ineligible risk of fraud or credit risk;
- ii. You use the Services in a manner contrary to this Agreement, our policies or in an otherwise prohibited manner;
- iii. Non-payment of any amounts owing to us for any reason;
- iv. Chargebacks in excess of Association monitoring guidelines;
- v. Your percentage of error Transactions or retrieval requests is excessive in the opinion of Helcim;
- vi. You appear on the Association Terminated Merchant File; or
- vii. Applicable Law or a Financial Services Provider requires us to.

- b. You may terminate your Account at any time by emailing [help@helcim.com](mailto:help@helcim.com) and following the instructions provided.

- c. Upon termination, you agree to

- i. complete all pending Transactions;
- ii. stop accepting new Transactions;
- iii. remove all Helcim or payment network logos from your website.

- d. Upon termination of your Account for any reason:

- i. Helcim will cease providing you with the Services and you will no longer be able to access your Account;
- ii. in the event that we are unable or unwilling to make payments to you as a result of concerns relating to fraud, a Bankruptcy Petition, anti-money laundering or other regulatory or legal requirements, we may refund or otherwise return, or recommend that Customers Chargeback amounts that have been collected from Customers by us but not paid out to you;
- iii. any licenses granted to you by Helcim under this agreement will end;
- iv. unless otherwise provided in the Agreement, you will not be entitled to any refunds of any fees, pro rata or otherwise;
- v. any amounts owed to you will be paid out in accordance with sections 9(d) 10(c);
- vi. the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry;
- vii. any outstanding amounts owed to Helcim for your use of the Services through the effective date of such termination will immediately become due and payable in full; and
- viii. Helcim will have no obligation to retain or preserve any of your Account Content.

## 18. Third-Party Services

- a. In addition to the Agreement, you also agree to be bound by the additional service-specific terms applicable to services you purchase from, or that are provided by, Acquirer, Helcim's partners or other third parties.
- b. Helcim may from time to time recommend, provide you with access to, or enable third-party software, applications, products, services or website links (collectively, "**Third-Party Services**") for your consideration or use. Such Third-Party Services are made available only as a convenience, and your purchase, access or use of any such Third-Party Services is solely between you and the applicable provider of the service (the "**Third-Party Provider**"). Any use by you of any Third-Party Service is entirely at your own risk and

discretion. It is your responsibility to read the terms and conditions and related policies applicable to such Third-Party Services before using them.

- c. In no event shall you use a Third-Party Provider unless they are compliant with PCI and/or the PA-DSS, as required by the Operating Rules. You acknowledge and agree that you shall cause any Third-Party Provider to complete any steps or certifications required by any Association. You shall be solely responsible for any and all applicable fees, costs, expenses and liabilities associated with such steps, registrations and certifications. You expressly agree that neither Acquirer or Helcim shall in any event be liable to you or any third party for any actions or inactions of any Third-Party Provider used by you, even if Acquirer or Helcim introduced or recommended such Third-Party Provider.
- d. Helcim and Acquirer do not provide any warranties with respect to Third-Party Services. You acknowledge that Helcim has no control over Third-Party Services and shall not be responsible or liable to anyone in respect of any Third-Party Services. The availability of Third-Party Services on Helcim's website or the integration or enabling of such Third-Party Services with the Services does not constitute or imply an endorsement, authorization, sponsorship, or affiliation by or with Helcim. Helcim strongly recommends that you seek expert advice before using or relying on Third-Party Services.
- e. If you install or enable a Third-Party Service for use with the Services, you grant Helcim permission to allow the applicable Third-Party Provider to access your Account Content and to take any actions required for the interoperation of the Third-Party Service with the Services.
- f. If you install or enable a Third-Party Service for use with the Services, you agree that you remain responsible for ensuring that your Account and Account Content comply with the Agreement.
- g. Any exchange of Information, data or other interaction between you and the Third-Party Provider is solely between you and the Third-Party Provider. Helcim is not responsible for any disclosure, modification or deletion of your data or Account Content, or for any corresponding loss or damage you may suffer, as a result of access by a Third-Party Service or a Third-Party Provider to your Account Content.
- h. Under no circumstances shall Helcim or Acquirer or their officers, directors, employees, contractors and agents be liable for any direct, indirect, incidental, special, consequential,

punitive, extraordinary, exemplary or other damages whatsoever, which result from any Third-Party Services or your relationship with any Third-Party Provider.

## 19. General

- a. **Waiver.** The failure of Helcim to exercise or enforce any right or provision of the Agreement shall not constitute a waiver of such right or provision. All remedies afforded by this Agreement for a breach hereof shall be cumulative.
- b. **Entire Agreement.** The Agreement constitutes the entire agreement between you and Helcim and governs your use of the Services, superseding any prior agreements between you and Helcim (including, but not limited to, any prior versions of the Agreement). Without limiting the foregoing, the Services may interface with third-party systems (including those of financial institutions) that are governed by their own terms and conditions, and it is your responsibility to read and comply with any such terms and conditions.
- c. **Captions and Headings.** Captions and Headings in this Agreement are for convenience of reference only and are not to be considered as defining or limiting in any way the scope or intent of the provisions of this Agreement.
- d. **Setoff.** In addition to any other legal or equitable remedy available to it in accordance with this Agreement or by law, Helcim may set off any amounts due to Helcim under this Agreement against (i) any amounts which Helcim would otherwise deposit to the Bank Account, (ii) any other amounts Helcim may owe you under this Agreement, or (iii) against any property of yours in the possession or control of Helcim.
- e. **Security.** You agree to appoint Helcim as your attorney-in-fact to execute such documents as necessary or desirable to accomplish perfection of any security interests. The appointment is coupled with an interest and shall be irrevocable as long as you owe any amount to Helcim.
- f. **Legal Process.** You acknowledge that Helcim may respond to and comply with any writ of attachment, lien, levy, subpoena, warrant, or other legal order ("**Legal Process**") that we believe to be valid. We or any Financial Services Provider may deliver or hold any funds or, subject to the terms of our Privacy Policy, any Information as required under such Legal Process, even if you are receiving funds or Information on behalf of other parties. Where permitted by Applicable Law, we will make reasonable efforts to provide you with notice of

such Legal Process. We are not responsible for any losses, whether direct or indirect, that you may incur as a result of our response or compliance with a Legal Process.

- g. **Assignment.** Neither you nor your successors may assign any of the rights or obligations under the Agreement directly or by operation of law, without the prior written consent of Helcim which consent may be withheld for any reason, at Helcim's sole discretion. You agree that Helcim may assign its rights or obligations under the Agreement in whole or in part at any time.
- h. **Enurement.** The provisions of the Agreement are intended for the benefit of, and are enforceable solely by, the parties hereto, and nothing in the Agreement shall be construed as giving any other person any right, remedy or claim under or in respect of the Agreement or any provision hereof.
- i. **Independent Contractor.** Nothing herein shall be interpreted to mean that either party is the employer, employee, agent or representative of the other party, or that the parties are partners for any purpose.
- j. **Limitation of Damages.** HELCIM SHALL NOT BE LIABLE FOR ANY PUNITIVE, INDIRECT, SPECIAL, OR CONSEQUENTIAL LOSSES OR DAMAGES TO YOU OR TO ANY THIRD PARTY IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE SERVICES TO BE PERFORMED BY HELCIM PURSUANT TO THIS AGREEMENT. IN NO CASE SHALL YOU BE ENTITLED TO RECOVER DAMAGES FROM HELCIM THAT EXCEED THE FEES RETAINED BY HELCIM FROM THIS AGREEMENT DURING THE ONE (1) MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO THE CLAIM FOR DAMAGES.
- k. **Warranty Disclaimer.** YOU ACKNOWLEDGE THAT HELCIM HAS NOT PROVIDED ANY WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE WITH RESPECT TO THE SERVICES PROVIDED HEREIN. SHOULD THERE BE ERRORS, OMISSIONS, INTERRUPTIONS, OR DELAYS RESULTING FROM HELCIM'S PERFORMANCE OR FAILURE TO PERFORM OF ANY KIND, HELCIM'S LIABILITY SHALL BE LIMITED TO CORRECTING SUCH ERRORS, IF COMMERCIALY REASONABLE. YOU HEREBY ACKNOWLEDGES THAT THERE ARE RISKS

ASSOCIATED WITH THE ACCEPTANCE OF CARDS AND YOU HEREBY ASSUMES ALL SUCH RISKS EXCEPT AS MAY BE EXPRESSLY SET FORTH HEREIN.

- l. **Force Majeure.** Helcim shall be excused from performing any of its obligations under this Agreement that are prevented or delayed by any occurrence not within Helcim 's control including, but not limited to, strikes or other labor matters, destruction of or damage to any building, natural disasters, accidents, war, riots, emergency conditions, interruption of transmission or communications facilities, equipment failure, or any regulation, rule, law, ordinance or order of any federal, state or local government authority. Should any provision of the Agreement be found invalid or unenforceable, such provision shall be limited or deleted to the minimum extent necessary so that the Agreement shall otherwise remain in full force and effect. It is the Parties' desire that if any provision of this Agreement for business to business services is determined to be ambiguous, then the rule of construction that such provision is to be construed against its drafter shall not apply to the interpretation of the provision.
- m. **Attorneys' Fees.** If Helcim takes legal action against you for any amounts due to Helcim or if you are required to indemnify Helcim pursuant to this Agreement, you shall pay reasonable costs and attorneys' fees incurred by Helcim whether suit is commenced or not. Attorneys' fees are due whether or not an attorney is an employee of Helcim, or its affiliates.
- n. **Survival.** In the event of termination, any provision of this Agreement which relates to your obligations incurred or existing under this Agreement prior to termination shall survive the termination. In addition, any provisions of this Agreement that give rise to a party's ongoing obligation will survive termination of this Agreement
- o. **Choice of Law.** The Agreement shall be governed by and interpreted in accordance with the laws of the state of Washington and the federal laws applicable therein, without regard to conflict of laws principles. Subject to section 20, the parties irrevocably and unconditionally attorn to the exclusive jurisdiction of the courts of the state of Washington with respect to any dispute or claim arising out of or in connection with the Agreement or the use of the Services.

## 20. Binding Arbitration

- a. **Binding Arbitration:** Any dispute, controversy or claim arising out of or relating to this Agreement, or in respect of any legal relationship associated with or derived from this Agreement, including without limitation the formation, interpretation, breach or termination thereof, including whether the claims asserted are arbitrable, will be referred to and finally determined by arbitration administered by International Centre for Dispute Resolution ("**ICDR**") in accordance with its ICDR International Dispute Resolution Rules. The number of arbitrators shall be one. The place of the arbitration shall be Calgary, Alberta, Canada. The language of the arbitration shall be English. Judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof.

This Agreement shall be governed by the laws of the state of Washington and the federal laws applicable in that state. Nothing in this paragraph will preclude the parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

Either party may commence arbitration by providing to ICDR and the other party to the dispute a written demand for arbitration, setting forth the subject of the dispute and the relief requested ("**Arbitration Demand**").

- b. **Service of Process:** Each party hereby irrevocably and unconditionally consents to service of process through personal service at their corporate headquarters, registered address, or primary address (for individuals or sole proprietors). Nothing in this Agreement will affect the right of any party to serve process in any other manner permitted by Applicable Law.
- c. **Class Waiver:** To the fullest extent permitted by Applicable Law, each of the parties agree that any dispute arising out of or in connection with this Agreement, whether in arbitration or in court, will be conducted only on an individual basis and not in a class, consolidated or representative action. If for any reason a claim or dispute proceeds in court rather than through arbitration, each party knowingly and irrevocably waives any right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement or any of the transactions contemplated between the parties.
- d. **Provision of an Award:** Subject to the limitations of liability identified in this Agreement, the appointed arbitrators may award monetary damages and any other remedies allowed by the laws of the state of Washington. In making a determination, the arbitrator will not have the authority to modify any term or provision of this Agreement. The arbitrator will

deliver a reasoned written decision with respect to the dispute (the "**Award**") to each party, who will promptly act in accordance with the Award. Any Award (including interim or final remedies) may be confirmed in or enforced by any court having jurisdiction over either party or its assets. The decision of the arbitrator will be final and binding on the parties and will not be subject to appeal or review.

- e. **Fees:** Each party will advance one-half of the fees and expenses of the arbitrators, the costs of the attendance of the arbitration reporter at the arbitration hearing, and the costs of the arbitration facility. In any arbitration arising out of or related to this Agreement, the arbitrators will award to the prevailing party, if any, the costs and attorneys' fees reasonably incurred by the prevailing party in connection with those aspects of its claims or defenses on which it prevails, and any opposing awards of costs and legal fees awards will be offset.
- f. **Confidentiality:** The parties will maintain the confidential nature of the arbitration proceeding, the hearing and the Award, except (i) as may be necessary to prepare for or conduct the arbitration hearing on the merits, (ii) in connection with a court application as contemplated above for a preliminary remedy, or confirmation of an Award or its enforcement, (iii) our disclosure of the Award in confidential settlement negotiations, or (iv) as otherwise required by Applicable Laws. The parties, witnesses, and arbitrator will treat as confidential and will not disclose to any third person (other than witnesses or experts) any documentary or other evidence produced in any arbitration hereunder, except as required by Applicable Law or except if such evidence was obtained from the public domain or was otherwise obtained independently from the arbitration.
- g. **Conflict of Rules:** In the case of a conflict between the provisions of this Section 20 and the rules governing arbitration identified in Section 20.a, the provisions of this Section 20 will prevail. If any provision of this Agreement to arbitrate is held invalid or unenforceable, it will be so held to the minimum extent required by Applicable Law and all the other provisions will remain valid and enforceable.