

Helcim Merchant Terms of Service

Last Updated February 28, 2024

Previous version: [September 2021](#)

Welcome to Helcim! By signing up for a Helcim Account or by using any Helcim Services, you are agreeing to be bound by the following terms and conditions (the “**Terms of Service**”).

As used in these Terms of Service, “**we**”, “**us**”, “**our**” and “**Helcim**” means the applicable Helcim Contracting Party (as defined in Section 22 below), and “**you**” and “**your**” means the Merchant. Account Owner, Helcim user, or the business employing the Secondary User and any of its affiliates.

Helcim provides a comprehensive payment processing platform tailored for businesses, aimed at unifying their payment activities across various commerce environments. Our platform offers a suite of tools enabling businesses to seamlessly process payments online, in-store, at pop-up locations, and through other physical venues, all with the most transparent fee structure in the industry. Whether transactions occur through web, mobile, or any in-person settings, Helcim's services are designed to support businesses in managing payments efficiently and securely.

Services provided by Helcim include, but are not limited to, payment processing, transaction and customer management, analytics and reporting, fraud prevention and security, and customer support, all aimed at enhancing the payment experience for businesses and their customers. Any such service or services offered by Helcim are referred to in these Terms of Service as the “**Service(s)**”. Furthermore, any new features or tools that are added to the current Services will also be subject to these Terms of Service. You can view the current Terms of Service at any time by visiting <https://legal.helcim.com/ca/terms-of-service/>.

This web page, in addition to the documents linked on the left of this web page, form part of the Terms of Service that set out how our Services will be provided to you. By using the Services, you accept and agree to be bound by all of the terms and conditions contained or expressly referenced in these Terms of Service, including the Acceptable Use Policy and Privacy Policy, and, if applicable, the Data Processing Addendum, Fee Disclosures, and Financial Services Terms as well as all appendices, schedules, exhibits and attachments. You must read, agree with, and accept these Terms of Service when you apply for an account and before you use the Services. For clarity, your (and your Secondary Users') use of the Services constitutes your continued acceptance of these Terms of Service and any updates thereto.

The Terms of Service contain 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.

Required Regulatory Disclosures and Fee Disclosures

We are required by law to provide you at the beginning of our agreement with a summary of certain information from the Terms of Service and disclosure of our fees.

You can find these disclosures at <https://legal.helcim.com/ca/fee-disclosures/>. Our fees are also set out on our public website at <https://www.helcim.com/pricing/>.

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 Terms of Service is to make sure that Helcim can comply with these obligations and provide the Services to you.

Information Summary Box

Date of Contract

The Terms of Service are effective upon the date you agree to them (by electronically indicating acceptance) and continue so long as you use the Service or until terminated by Helcim.

Acquirer

Elavon Inc. and Elavon Canada Company, which are the entities 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 funds.

Elavon Canada Company 4576 Yonge Street, Suite
200 Toronto, Ontario M2N 6N4

Payment Facilitator

Helcim Inc. <https://www.helcim/contact/>

Helcim operates as a Payment Facilitator sponsored by Elavon Canada Company. Helcim is not an affiliate, subsidiary, or a member of Elavon Canada Company.

Cancellation of contract and
any applicable penalties

You may close your Helcim Account at any time by following the instructions on our website. We may close your Helcim Account at any time for any reason by providing you notice in accordance with these Terms of Service. There are no penalties for termination or cancellation fees. However, closing your Account does not alter your liability for processed payments, related chargebacks, and other obligations that survive termination as set out in these Terms of Service.

Complaint handling
procedures

Helcim's complaint handling procedure:

You may submit any complaint to Helcim Support by
writing to: help@helcim.com

Telephone: 1-877-643-5246

Information about payment
terminal

This disclosure applies to users who purchase Helcim
Terminal products as described in the [Helcim
Hardware Terms](#).

Purchase Pricing: You may purchase Helcim Terminal
products at then-current pricing specified at the time
of your purchase.

Fees: Fees associated with use of Helcim Terminal
products are described [here](#).

Termination: You do not have the right to terminate an
order for Helcim Terminal products after such an order
has been placed. However, you are not obligated to
purchase any additional Helcim Terminal products.

Termination rights with respect to the Helcim Terminal Services are the same as those stated in the Cancellation of Contract and Applicable Penalties box above.

Hardware return policy

To learn more about how to issue refunds and the terms and conditions associated with refunds, please visit: <https://legal.helcim.com/ca/hardware-policy/>

Code of Conduct

The Code of Conduct for the Credit and Debit Card Industry is available at the [FCAC's website here](#).

Statements

Your transaction history will be available to you on your dashboard when you login to your Helcim Account on our website.

Subject to these Terms of Service, Helcim is acting in the capacity of a "Payment Service Provider" (under the Visa Rules), a "Payment Facilitator" (under the MasterCard Rules), or a "Third-Party Service Provider", "Third-Party Sender, or "Payment Service Provider" (under NACHA rules or Payments Canada rules for ACH transactions), as the case may be, and will provide you the Services as described herein. Helcim provides

credit card transaction processing services for Visa U.S.A., Inc. ("**Visa**"), MasterCard Worldwide ("**MasterCard**"), DFS Services LLC ("**Discover Network**"), American Express, JCB, Discover, and Diners Club (collectively, "**Associations**"). We intend for you to be able to accept transactions for all of these Associations, except where industry-specific Association restrictions apply.

1. **Definitions**

For the purposes of the General Terms, the definitions contained in the "Definitions" section or defined within the body of the Agreement apply to capitalized words contained within, unless the context otherwise requires.

"**ACH Transaction**" means a Transaction where the funds are withdrawn directly from a Bankholder's bank account.

"**Acquirer**" shall mean Elavon Inc. and Elavon Canada Company, which are the entities 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 which are members of the Associations.

"**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.

"**Business Day**" means any day other than: Saturday or Sunday; or a day on which banking institutions in Alberta are authorized by law to be closed.

"Card" means (1) a Visa, MasterCard, American Express or Discover Network credit card; or (2) a debit card.

"Card-Not-Present" means the Card was not electronically read (e.g. a mail order, telephone order, e-commerce order, internet order, manual keypad entry or other transaction that is not a Card-Present Transaction).

"Card-Present Transaction" means a Transaction in which the Card is physically 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 these Terms of Service 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 these Terms of Service.

"Customer" means your customer, to whom you provide goods or services.

"Customer Mandate" means the authority provided by the Customer Bankholder which authorizes you to take ACH Transactions and pursuant to which you will make Payment Orders.

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

"Helcim Dashboard" means the proprietary web-based interface provided by Helcim to you, through which you may access and manage your Account, view

and generate reports, access Helcim Services, manage Transactions, and configure settings and preferences related to the Services offered by Helcim. The Helcim Dashboard serves as your central hub for the administration and oversight of your interactions with Helcim's platform and Services, facilitating a comprehensive and user-friendly experience for monitoring, managing, and analyzing your payment processing activities. We reserve the right to change the name of the Helcim Dashboard at any time, and in such event, all references to the Helcim Dashboard in these Terms of Service shall be deemed to refer to the dashboard by its new name.

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

"NACHA" means the United States National Automated Clearinghouse Association.

"NACHA Operating Rules" means the rules NACHA publishes that govern automated clearing house transactions on the ACH Network, located at www.nachaoperatingrulesonline.org.

"Payment Order" means a request made by you through the Helcim Services for an ACH Transaction to be made by a Customer to you, for a specified amount on a specified date.

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

"Third Party Content" means information, documents, forms or templates obtained by us from publicly available sources or our third-party content providers and made available to you through the Services.

"Transaction" means a payment transaction request initiated via the Helcim

Services and technology through which Helcim is directed to capture funds for or from a payer's associated account with respect to a payment from a Customer to you, and includes the authorization, settlement and if applicable, disputes, refunds and reversals with respect to that payment transaction request.

2. **Account Requirements**

1. You or your business must have a valid tax identification number, and you must be at least the age of majority in the jurisdiction where you reside and the jurisdiction from which you use the Services.
2. To access and use the Services, you must apply for an account (the "**Account**") by providing Helcim your
 1. full legal name;
 2. business name (if applicable);
 3. mailing address;
 4. phone number;
 5. email address; and
 6. any other information indicated as required (collectively your "**Contact Information**").
3. 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 by updating the information stored in the Helcim Dashboard or by submitting a support ticket, 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, PCI Requirements compliance status, or any other pertinent information. We may suspend your Account or terminate these Terms of Service if you fail to keep this information current.

4. 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, view important notifications, and generate reports through the Helcim Dashboard. Helcim also provides access to a proprietary Application Program Interface (the “API”) through which you can access the Services programmatically. You may only use the API in accordance with the Helcim Developer API Documentation (the “Documentation”) available at <https://devdocs.helcim.com/docs> and elsewhere, and these Terms of Service. You are responsible for all activity that occurs in relation to your API Tokens (as defined in the Documentation). We will endeavor, but are under no obligation, to notify you through the Helcim Dashboard if any API functionality is changed, deprecated or removed.

Notwithstanding the foregoing, you are responsible for monitoring the Documentation with respect to material changes of the API functionality.

5. Except where prohibited in these Terms of Service or by Applicable Law, we reserve the right to modify, suspend, or cancel the Services or any part thereof for any reason, without notice and at any time.
6. You acknowledge and agree that Helcim will use the Helcim Dashboard and email address you provide as the primary methods of communicating with you.

7. You also agree that we can provide any notices (including legal 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 later in these Terms of Service and discontinuing your use of the Services.
8. You are responsible for keeping secure and not sharing your username, password, account PIN, two-factor authentications, and any API Tokens (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.
9. You authorize us to send Text/SMS messages or emails for the purposes of verifying your identity through two-factor authentication related to your Login Information. Data or messaging charges may apply to such messages or emails.
10. You are responsible for all activity on your Account and any content you input, upload or store therein including, but not limited to, data, text, links, information, materials, documents, illustrations, layout, images, photos, graphics, videos and audio files that are created, generated, uploaded to, or provided by your Account (collectively, "**Account Content**").
11. 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/ca/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.

12. 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 THESE TERMS OF SERVICE, THE AUP OR APPLICABLE LAWS.

13. If you create user profiles to allow other individuals (such as your employees or agents) 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 Terms of Service.

14. With respect to Account Content, you agree:

1. to allow others to view your Account Content;
2. to ensure that your Account Content complies with the AUP;
3. to allow Helcim to display and store your Account Content;
4. that Helcim can, at any time, review your Account Content; and
5. that you are responsible for compliance of your Account Content with any Applicable Laws or regulations.

15. You understand that your Account Content may be

1. transmitted unencrypted over public or private networks; or
2. modified to conform and adapt to technical requirements of connecting networks or devices.

16. 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**

1. Subject to Section 2(b), the person signing up for the Account will be the contracting party (the “**Account Owner**”) for the purposes of the Terms of Service and will be the person who is authorized to use any corresponding Account and Login Information Helcim may provide in connection with the Services. You are responsible for ensuring that the name of the Account Owner (including the legal name of the company that owns and operates the business, if applicable) is clearly visible on its website.
2. If you are signing up for an Account on behalf of a business entity, or your employer or principal, then you represent and warrant that you have the authority to bind that business entity, employer or principal to the Terms of Service.
3. At any time during the term of these Terms of Service and your use of the Services, we may require additional information or documentation in relation to you for the purpose of
 1. verifying identity or other information; or
 2. assessing risk.

4. 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 with the information we request. For additional information about how we collect and use your personal information, please refer to our Privacy Policy.
5. 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.
6. In the event that
 1. you are the subject of any bankruptcy or insolvency proceeding, application, receivership or similar event, whether involuntary or voluntary (a "**Bankruptcy Petition**");
 2. there is a significant adverse change in your financial condition, including any planned liquidation or substantial change in the nature of your business;
 3. there is a sale, or transfer of more than 25% of your assets that is not in the ordinary course of business;
 4. there is a change in control or ownership of your business (or any parent entity); or
 5. you are subject to a judgment, attachment, execution, levy or lien against at least 25% of your assets;

7. you agree to notify us via email including particulars of the event at trustandsafety@helcim.com within 24 hours of the event.
8. 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.
9. You agree that these Terms of Service cannot be assigned by you in the event of a Bankruptcy Petition as these Terms of Service are a contract for the advance of money or credit within the meaning of Paragraph 11.01(b) of the *Companies' Creditors Arrangement Act* (Canada), and Paragraph 65.1(4)(b) of the *Bankruptcy and Insolvency Act* (Canada) as applicable; YOU ACKNOWLEDGE THAT WITHOUT THIS SENTENCE, HELCIM WOULD NOT HAVE ENTERED INTO THESE TERMS OF SERVICE.

4. Use of the Services

1. The Services are available for use only by eligible and permitted businesses, sole proprietors, charities or other entities or persons with legal and legitimate commercial enterprises or endeavors.
2. 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 these Terms of Service.

3. 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 for which 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 related 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.
4. You agree that in order to provide ACH Transactions you must provide the Bankholder's name, address, email address and bank account information (collectively "**Bankholder Information**"). You agree that you must keep all Bankholder Information up to date, and notify us immediately of any changes to Bankholder Information.
5. Before you can use ACH Payments or create Payment Orders in respect of a Customer, you must obtain a Customer Mandate from that specific Customer, either manually or through the Helcim Dashboard. 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 a Bankholder is authorized to use a bank account, based on the information provided by you or your Customer.

You represent and warrant that you have obtained all necessary authorizations for the Customer Mandate (including any required letters of undertaking or pre-authorized debit (PAD) agreements) 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 an ACH Transaction other than to void or cancel the ACH Transaction prior to settlement.

6. 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.
7. If a Customer cancels any order or contract to which a Payment Order relates, you must:
 1. notify us as soon as reasonably possible as described above (in which case we will not process the Payment Order if we are notified before the Payment Timings Deadline);
 2. refund the Transaction through the Helcim Dashboard; or
 3. refund directly to the Customer the sums received by you in connection with the Payment Order;
8. 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

possible of any Customer Mandate or Payment Order cancelled by the Customer by displaying such information in the Helcim Dashboard.

9. 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.
10. 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. **Beta Services.** From time to time, Helcim may, in its sole discretion, invite you to use, on a trial basis, pre-release or beta features that are in development and not yet available to all merchants ("**Beta Services**"). Beta Services are not part of the Services, and Beta Services may be subject to additional terms and conditions, which Helcim will provide to you prior to your use of the Beta Services. Such Beta Services and all associated conversations and materials relating thereto will be considered Helcim Confidential Information and subject to the confidentiality provisions in these Terms of Service. Without limiting the generality of the foregoing, you agree that you will not make any public statements or otherwise disclose your participation in the Beta Services without Helcim's prior written consent. Helcim makes no representations or warranties that the Beta Services will function. Helcim may discontinue the Beta Services at any time in its sole discretion. Helcim will have no liability for any harm or damage arising out of or in connection with a Beta Service. The Beta Services

may not work in the same way as a final version. Helcim may change or not release a final or commercial version of a Beta Service in our sole discretion. You understand that these services are still in development, may contain bugs or errors, may be feature incomplete, may materially change prior to a full commercial launch, or may never be released commercially. We provide Beta Services AS IS, and without warranty of any kind, and your use of, or reliance on Beta Services is at your own risk.

6. Fees and Fines

1. 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 these Terms of Service 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**").
2. **Additional or Premium Services.** From time to time we may offer you and you may purchase additional features or services that may be subject to additional or different terms of service or fees. You may not use these additional services unless you agree to any applicable agreement or terms governing the use of those additional services or features.
3. Notwithstanding any other provision of these Terms of Service, you shall be responsible for all amounts imposed or assessed to you, Helcim, or a Financial Services Provider in connection with these Terms of Service

(including the Operating Rules, as defined below in Section 98) by third parties 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.

4. 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.
5. Helcim reserves the right to modify any rates, fees, and charges detailed in the Terms of Service. When required by Applicable Law, rules, or regulation, you will receive at least ninety (90) days' notice for changes to non-pass-through rates, fees, and charges, which are generally associated with payment processing services. For updates to fees related to additional services, software add-ons, and tools, Helcim will provide at least thirty (30) days' notice. 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, charges, or terms (as applicable).

7. Taxes

1. You know your business best. You agree that you are solely responsible
 1. for determining what, if any, taxes, fees or other charges ("**Taxes**") imposed by any governmental authority are applicable to your Transactions, and
 2. for collecting, calculating, assessing, reporting and remitting any Taxes to the appropriate governmental authority.
2. 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 related to your Transactions. In some circumstances, we may withhold amounts we deem appropriate to cover such Taxes if we cannot validate any tax-related information you provide to us.
3. 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.

8. General Conditions

1. You acknowledge and agree that Helcim may amend the Terms of Service at any time by posting the amended version on Helcim's website, available at <https://legal.helcim.com/ca/terms-of-service/>.

2. You acknowledge and agree that any amendments to the Terms of Service are effective as of the date of posting. Your continued use of the Services after the amended Terms of Service are posted to Helcim's website constitutes your agreement to, and acceptance of, the amended Terms of Service. If you do not agree to the amended Terms of Service, do not continue to use the Services.
3. You are solely responsible for reconciling your Transactions and Payment Orders with your accounts and actual bank transactions.
4. **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 and/or as required pursuant to the Operating Rules.
5. By accepting these Terms of Service, you represent and warrant that:
 1. you are eligible to register for and use the Services and have the authority to execute and perform the obligations required by these Terms of Service;
 2. any information you provide us about your business, products, or services is accurate and complete;
 3. that, if agreeing to these Terms of Service on behalf of a corporation or other business entity, you have authority to bind the corporation or business entity;
 4. that you have obtained all necessary regulatory approvals, certificates and licenses to provide any goods or services you

intend to offer and that you are in compliance with all laws applicable to you and your business;

5. Each transaction is genuine and arises from a bona fide commercial transaction, permissible under the Operating Rules and Applicable Law, directly between you and your Customer;
6. 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;
7. Each Transaction represents an obligation of the related Customer for the amount of the Transaction;
8. The amount charged for each Transaction is not subject to any dispute, set off or counterclaim, or has been previously subject to a Chargeback;
9. Each Transaction amount is only for respective goods or services (including taxes) sold and/or leased to a Customer by you and, except for any delayed delivery or advance deposit transactions expressly authorized by these Terms of Service, 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;
10. 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;

11. Each Transaction is made in accordance with these Terms of Service and Applicable Law;
 12. Each sales draft is free of any alteration not authorized by the related Customer;
 13. you will not use the Services for household purposes or peer-to-peer money transmission or remittance, or (except in the normal course of business) intercompany Transactions; and
 14. 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.
6. Subject to (c) below, Helcim will make reasonable efforts to keep the Services operational except for any unavailability caused by:
1. planned downtime;
 2. system outages; or
 3. 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, pandemics, or other labor problems or internet service provider failures or delays.
7. 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.

8. 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.

9. **Your Obligations, Restrictions, and Requirements**

1. You shall comply with the Associations' operating rules ("**Operating Rules**"), including the Visa Rules and Regulations, the MasterCard Rules, the American Express Merchant Operating Guide, and the Discover Network Rules, the rules of Payments Canada or NACHA (as applicable for Interac or Bank Payments) and all applicable local, provincial/state, and federal laws, rules, and regulations ("**Applicable Laws**"). The Operating Rules are available directly from the Associations or on their websites, such as <https://www.usa.visa.com/merchants> and <https://www.mastercard.ca/en-ca/business/overview/get-support/rules.html>, 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 that the Associations require, including 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 websites. You agree that you will not take any action that could interfere with or prevent the Associations from exercising their rights. 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.

2. **Pre-Notifications.** You agree to be bound by, comply with, respect and apply all relevant provisions of the *Canadian Payments Act* and all related by-laws, rules and standards in force from time to time as they apply to PADs including, without limitation, the Confirmation/Pre-notification requirements or waiver of Pre-notification requirements and cancellation requirements as set out in Rule H1. You agree that the obligations in this paragraph are included in the definition of Operating Rules.
3. **Fair Practices.** 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 these Terms of Service. 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.

4. **Timing of Transactions.** 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 and Secondary Users. 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.

5. **Identify Yourself.** To the extent you interact with Customers, you will prominently and unequivocally inform the Cardholder 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.

6. **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.
7. **Maintenance of the Bank Account.** You shall maintain the Bank Account throughout the term of these Terms of Service, including 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 Terms of Service are paid, including any Chargeback amounts or Reserve requirements set by Helcim in accordance with these Terms of Service. 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.
8. **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 the Bank Account 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.

9. **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 your 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, including ACH 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 policies and incorporate them into your own documented reservation/no-show policies (if applicable). You must notify Cardholders in writing of these policies on all advance reservations (if applicable). 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 policies you may receive a Chargeback to your Bank Account.

10. Investigations. In certain circumstances, a Transaction may need to be investigated. In such circumstances, you agree to assist Helcim in such investigation and will provide a transaction report and any other supporting documentation to Helcim in a timely manner upon Helcim's request. You must notify Helcim as soon as reasonably possible 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.

11. 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 Cardholder for which you have received notice:

1. The Customer's name;
 2. A unique confirmation number, transaction sequence number, or other identifier that you can use to reference the transaction in subsequent communications with Helcim;
 3. The date and time the Customer asserted the claim or defense;
 4. The nature of the claim or defense; and
 5. The steps that you took in an attempt to resolve the dispute.
12. Upon request, you shall furnish Helcim with this information in writing within ten (10) days.
13. **Compliance.** You are solely responsible for the goods or services that you may sell or lease through the Services, including compliance with any applicable laws or regulations.
14. **Malicious Code.** You must not transmit any worms, trojans, malware, viruses or any other code of a malicious or destructive nature.
15. **Other Restrictions.** You will not store or transmit infringing, libelous, or otherwise unlawful or tortious material, or store or transmit material in

violation of third-party rights; store or transmit malicious code, or send spam; interfere with or disrupt the integrity or performance of the Services; attempt to gain unauthorized access to the Services; permit access to or use of the Services in a way that circumvents a contractual service limit, or use the Services to access or use Helcim intellectual property except as permitted under these Terms of Service; copy the Services or any part, feature, function or user interface of the Services; frame or mirror any part of the Services; access or use the Services in order to build a competitive product or service or to benchmark the Services with a competing product or service; or reverse engineer the Services or any software used to provide the Services (to the extent such restriction is permitted by applicable laws). If you or your Secondary Users intentionally violate these restrictions, or use the Services in breach of these Terms of Service in a way that, in our judgement, imminently threatens the security, integrity or availability of the Services, we may immediately suspend your use of the Services.

10. Security Interest, Reserve, Setoff Rights

- 1. Security Interest and Lien.** You hereby grant a security interest and lien (and, in Quebec, a hypothec) 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 these Terms of Service, including all fees as specified during the application process, your account information page accessed through the Helcim Dashboard, and in accordance with these Terms of Service 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 these Terms of Service 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.

2. **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 judgement against you in Helcim's favour, 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 your current or past use of 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.

3. **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.
4. **Additional Reserve.** Upon termination of these Terms of Service, 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.

5. **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 (i) debit the Bank Account, (ii) withhold any other amounts Helcim may owe you under these Terms of Service, or (iii) set off against any property of yours in the possession or control of Helcim. 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.
6. **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.
7. **Pre-Authorized Debits ("PADs").** You authorize us and our agents to initiate debit and credit entries to the Bank Account, or any other account maintained by you at any institution that is a member of the Canadian Payments Association, doing business as Payments Canada, all in accordance with these Terms of Service. You agree that any withdrawal

by us and our agents in accordance with these Terms of Service are PADs for business purposes, as defined under Rule H1 of Payments Canada.

YOU AGREE THAT YOUR ACCOUNT MAY BE DEBITED IN ACCORDANCE WITH THESE TERMS AFTER THREE DAYS. YOU AGREE TO WAIVE YOUR RIGHT TO RECEIVE PRE-NOTIFICATION OF ANY AMOUNTS DEBITED FROM YOUR ACCOUNT AND AGREE THAT YOU DO NOT REQUIRE ADVANCE NOTICE OF THE AMOUNT OF PADS BEFORE THE DEBIT IS PROCESSED. This authorization will remain in effect after termination of these Terms of Service and until all of your obligations have been paid in full. If you change the Bank Account, this PAD authorization will apply to the new account and you shall provide us in writing such information regarding the new account as we deem necessary. Such new account shall thereafter be and become the Bank Account for the purpose of these Terms of Service. It may take us up to ten (10) business days after receipt of a written notice from you to reflect in our system any change to the Bank Account. If you change the Bank Account, you agree that you are responsible for all costs incurred by us in connection with your decision to change the Bank Account. You may revoke this PAD authorization upon thirty (30) days' prior written notice to us, but any such revocation shall constitute a material breach of these Terms of Service that we may deem as your notice of cancellation of your Account. You may obtain a sample cancellation form, as well as further information on your right to cancel a PAD authorization by contacting your financial institution or by visiting the Payments Canada website. You

have certain recourse rights if any debit does not comply with this PAD Agreement. For example, you have the right to receive reimbursement for any debit that is not authorized or is not consistent with this PAD Agreement. To obtain more information on your recourse rights, you may contact your financial institution or Payments Canada.

11. Payment Services Terms

1. 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 web 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).
2. 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.
3. **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:
 1. The sum of all Cardholder charges denied, refused or subject to chargeback;
 2. All refunds processed on account of Cardholders during said time period;
 3. Any Authorized Deductions;

4. All taxes, penalties, charges and other items incurred by Helcim that are reimbursable pursuant to these Terms of Service; and
 5. Fees, including but not limited to an amount equal to a specified percentage of each Transaction value, a specified amount per Transaction ("**Transaction Fee**"), any processing fees collected from Cardholder (convenience\surcharge fee and or payment plan setup fees)
4. **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.
 5. **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.
 6. **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 your failure 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 materially failed to provide core payment processing 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.

7. **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. You understand that, under the Operating Rules, Chargebacks can occur for many reasons, some of which include:
 1. The Transaction was made at or by a person other than you;
 2. The Transaction otherwise violates the terms of these Terms of Service or the Operating Rules;
 3. Any representation or warranty made by you in connection with the Transaction is false or inaccurate in any respect;
 4. 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;
 5. The Cardholder makes a written complaint to Helcim or Issuer that the Cardholder did not make or authorize the Transaction; or
 6. A Transaction is charged back by an Issuer.
8. Excessive chargeback activity (typically a chargeback rate of 1% or higher) can result in Helcim, in its sole discretion, suspending your use of

the Services and can result in your inability to accept payment cards for your business.

9. You agree that Helcim, without prior notice, may:

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

12. 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:

1. Establish a minimum sale amount 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);
2. Obtain authorization for purposes of setting aside Cardholder's credit line for use in future sales;
3. Make any special charge to or extract any special agreement or security from any Cardholder in connection with any Transaction;

4. 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 was approved by Helcim;
5. Honor or accept a Card as payment for any legal services or expenses (1) in contravention of any applicable law society or bar association fee rules or ethical requirements; or (2) arising out of or related to any bankruptcy, insolvency, compromise, composition or other process affecting a Cardholder's creditors;
6. 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;
7. Redeposit a previously charged Transaction, regardless of whether the Cardholder consents;
8. Initiate a Transaction credit without a balance in the Bank Account equal to the credit;
9. 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, and listed separately on the sales draft, invoice or receipt;
10. 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;
11. Resubmit a Transaction that was subject to a Chargeback; or

12. 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.

13. Helcim Rights

1. 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, infringing upon another party's proprietary rights, or otherwise objectionable or otherwise violates the Terms of Service or the AUP.
2. 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.
3. 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.
4. Helcim reserves the right to provide the Services to anyone and makes no promise of exclusivity.
5. 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.
6. Helcim reserves the right to determine, in its sole judgement, 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.

7. 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.

14. Limitation of Liability and Disclaimer of Warranties

1. 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).
2. 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 lawyers' 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 Terms of Service (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.

3. 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.
4. 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.
5. 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.
6. 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.

7. 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 Terms of Service.
8. **Indemnification.** In addition to any other indemnification circumstances in the Terms of Service, 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:
 1. Card-Present Transactions using the Card's magnetic strip;
 2. Card-Not-Present Transactions;
 3. Bank Payments;
 4. Unauthorized Transactions; or
 5. Prohibited Transactions.
9. 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 authorizations from Customers, or to provide Customers or Helcim with any information necessary for the lawful processing of Payment Orders.
10. 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.

11. Limitation of Liability. In addition to any other limitations provided in the Terms of Service, 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.

12. 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 THESE TERMS OF SERVICE OR ANY OF THE SERVICES TO BE PERFORMED BY HELCIM PURSUANT TO THESE TERMS OF SERVICE. IN NO CASE SHALL YOU BE ENTITLED TO RECOVER DAMAGES FROM HELCIM THAT EXCEED THE FEES RETAINED BY HELCIM FROM THESE TERMS OF SERVICE DURING THE ONE (1) MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO THE CLAIM FOR DAMAGES.

13. Warranty Disclaimers. 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

ACKNOWLEDGE THAT THERE ARE RISKS ASSOCIATED WITH THE ACCEPTANCE OF CARDS AND YOU HEREBY ASSUME ALL SUCH RISKS EXCEPT AS MAY BE EXPRESSLY SET FORTH HEREIN. FORMS, TEMPLATES (SUCH AS HELCIM'S FORM OF PAD AGREEMENT) AND THIRD PARTY CONTENT ARE PROVIDED "AS IS," AND AS AVAILABLE, EXCLUSIVE OF ANY WARRANTY WHATSOEVER, AND ARE USED BY YOU AT YOUR OWN RISK. WE DO NOT WARRANT THAT FORMS, TEMPLATES AND THIRD PARTY CONTENT COMPLY WITH APPLICABLE LAWS OR YOUR LEGAL OR REGULATORY REQUIREMENTS, THAT THEY ARE ACCURATE OR CURRENT, OR THAT THEY ARE EFFECTIVE TO ACCOMPLISH THEIR APPARENT PURPOSE. YOU ACKNOWLEDGE THAT WE ARE NOT PROVIDING ANY LEGAL OR FINANCIAL ADVICE TO YOU, AND YOU AGREE TO OBTAIN YOUR OWN LEGAL AND FINANCIAL ADVICE ON ALL MATTERS RELATED TO THE SERVICES, FORMS, TEMPLATES, AND THIRD PARTY CONTENT.

15. Data and Security

1. 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, you share responsibility for handling your data securely while using the Services and conducting your business.
2. There are several types of information (collectively, "**Information**") that Helcim uses to provide the Services:
 1. Personal Information - means information about a specific, identifiable individual.

2. 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.
3. 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.
4. 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.

3. Helcim uses the above Information to:

1. provide the Services to you and your Customers;
2. mitigate fraud and other risks and losses;
3. comply with Helcim's obligations, including obligations under the Applicable Laws and the Operating Rules, including providing Information to Acquirer, Financial Services Providers, regulators and other governmental authorities to help fight the funding of terrorism and money laundering activities; and
4. maintain, develop and improve the Services.

4. Helcim does not provide Personal Information to unaffiliated parties for the purposes of marketing.
5. **Use of Information.** Helcim will only use Merchant Information as permitted by these Terms of Service, or as otherwise directed or agreed by you. You will protect all Information you receive through the Services, and you will only use such Information permitted by these Terms of Service. Neither party may use any Personal Information for marketing purposes unless it has received the express consent from the specific individual to whom 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.
6. **Privacy.** The protection of your privacy and that of your Customers is of the utmost importance to Helcim. Our Privacy Policy available at <https://legal.helcim.com/ca/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.
7. **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 implement 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 SUCH ACTIONS TAKEN BY HELCIM FOR INTEGRITY SECURITY REASONS.

8. 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 these Terms of Service.
9. 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.

10. 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 these Terms of Service, we may require you to permit a third-party auditor approved by us, and at 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.

11. You will immediately notify us of any suspected, alleged, or confirmed compromised data ("**Compromised Data Event**"), regardless of the source, including a Compromised Data Event of any of your third-party service providers, by emailing both security@helcim.com and legal@helcim.com. We may engage a forensic vendor approved by an Association to investigate a Compromised Data Event, and you agree to cooperate with such a forensic vendor so that it may immediately conduct an examination of your equipment, systems, and your third-party service providers' procedures and records to enable it to 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 service providers 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 service providers may share that information with Associations. Upon notice to you, we or our service providers, 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.

12. 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. Additional information regarding PCI compliance in relation to your use of the Services is available through the Helcim Dashboard and documentation provided by us. You agree to provide us with evidence demonstrating your compliance with the PCI Requirements not less than annually. 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. You further 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/>.

16. Intellectual Property

1. **"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.
2. **Ownership.** As between you and Helcim, you agree that Helcim owns all right, title and interest in the Services, the Work Product, and the Helcim Marks including all modifications and additions to the foregoing, and all intellectual property in the foregoing (collectively, the **"Helcim Property"**).
3. **Restrictions.** 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.
4. **Your Account Content.** Helcim does not claim any intellectual property rights over your Account Content. However, you agree to grant Helcim a 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. Notwithstanding the foregoing, Helcim will request your written authorization to use your Account Content prior to using it in any public marketing materials.

5. **License to Use Your Feedback.** You grant us a worldwide, perpetual, irrevocable, royalty-free, transferable, sublicensable (through multiple tiers) license to use and incorporate into the Services any suggestion, enhancement request, recommendation, correction or other feedback provided by you or your Secondary Users.
6. **"Helcim Marks"** means any and all trade names, trademarks, service marks, logos, domain names, and any other features of the Helcim brand, including both registered and unregistered marks. This includes, without limitation, the name "Helcim," the Helcim logo, and any other symbols, designs, likenesses, phrases, or graphical elements that are associated with Helcim and distinguish the goods or services of Helcim from those of others.
7. **Your License to Use Helcim Marks.** Subject to the terms and conditions of these Terms of Service, Helcim hereby grants to you a revocable, non-exclusive, non-transferable, non-sublicensable license to use the Helcim Marks solely in connection with the marketing and promotion of the Services as permitted hereunder, and strictly in accordance with Helcim's branding guidelines and any other instructions provided by Helcim from time to time. You agree not to alter, modify, or change the Helcim Marks in any way and agree to use the Helcim Marks without disparaging Helcim or the Services. You acknowledge that all use of the Helcim Marks will inure to the benefit of Helcim and that you will not acquire any rights in the Helcim Marks as a result of such use. Helcim reserves the right to revoke this license at any time, at Helcim's sole

discretion, upon written notice to you. Upon termination of these Terms of Service for any reason, or upon Helcim's revocation of this license, you agree to immediately cease all use of the Helcim Marks.

8. **Confidentiality.** From time to time a party to these Terms of Service (the “**Discloser**”) may disclose to the other party (the “**Recipient**”) their confidential information. A Recipient will not disclose the Confidential Information of a Discloser to third parties, except as directed by the Discloser, or, in the case of Helcim, as required in the course of providing the Services, or as described in the Privacy Policy. “**Confidential Information**” includes any materials or information provided by a Discloser which is not publicly known. Confidential Information does not include information that: (i) was in the public domain at the time a Recipient received it; (ii) comes into the public domain after a Recipient received it through no fault of the Recipient; (iii) a Recipient received from someone other than the Discloser without breach of the Recipient or its confidentiality obligations; or (iv) a Recipient is required to disclose by law or court order.
9. **Subcontractors.** Helcim may use subcontractors and other third parties to perform some or all of the Services. You acknowledge and agree that Helcim may share your Account Data with such subcontractors and third parties, solely to the extent necessary for them to perform their obligations to Helcim in providing the Services. Helcim will ensure that such subcontractors and third parties are bound by obligations of confidentiality and security with respect to your data.

10. Creation and Use of Aggregated Data. Helcim may also use your data to create aggregated and anonymized data for the purpose of improving the Services and for other lawful purposes. Aggregated and anonymized data does not include any personally identifiable information or information which could be used to identify you or your Customers.

17. Fraud Defender Service

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

1. 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 judgement when making a determination about the risk associated with each Transaction and your use of the Services.
2. 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.

18. Cancellation and Termination

1. Helcim reserves the right to terminate your Account for any reason, without notice, at any time. Some reasons that this may occur include:
 1. We determine, in our sole discretion, that your use of the Services constitutes a risk of fraud or credit risk unacceptable to Helcim;

2. You use the Services in a manner contrary to these Terms of Service, our policies or in an otherwise prohibited manner;
 3. Non-payment of any amounts owing to us for any reason;
 4. Chargebacks in excess of Association monitoring guidelines;
 5. Your percentage of error Transactions or retrieval requests is excessive in the opinion of Helcim;
 6. You appear on the Association Terminated Merchant File; or
 7. Applicable Law or a Financial Services Provider requires us to.
2. You may terminate your Account at any time by calling [Helcim's Support team](#) during Business Hours and following the instructions provided.
 3. Upon termination, you agree to:
 1. complete all pending Transactions;
 2. stop accepting new Transactions;
 3. remove all Helcim or payment network logos from your website.
 4. Upon termination of your Account for any reason:
 1. Helcim will cease providing you with the Services and you will no longer be able to access your Account;
 2. 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;

3. any licenses granted to you by Helcim under these Terms of Service will end;
4. unless otherwise provided in the Terms of Service, you will not be entitled to any refunds of any fees, pro rata or otherwise;
5. any amounts owed to you will be paid out in accordance with Sections 10(d) 11(c);
6. 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 Terms of Service which existed at or before the date of termination or expiry;
7. 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
8. Helcim will have no obligation to retain or preserve any of your Account Content.

5. **Data Retention after Cancellation.** Helcim retains information stored in your Account after you cancel your use of the Services (or in the event you have applied, but are not approved, to use the Services) pursuant to our data retention policies and procedures, which are available upon request. We retain this information to comply with our legal, regulatory and contractual obligations. For example, as a provider of payment services, Helcim is required to comply with anti-terrorism and anti-money laundering laws and regulations, which mandate the retention of certain application data and personal information. Helcim also retains this data to

maintain and operate our fraud detection, monitoring and loss prevention efforts, and to comply with our tax, accounting, and financial reporting obligations. We retain anonymized data for business intelligence and other purposes (such as improving the quality of our services, and promoting our products) for the durations commensurate with these business activities.

19. **Third-Party Services**

1. In addition to the Terms of Service, 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 whose services interoperate with the Helcim Services.
2. Helcim may from time to time recommend, provide you with access to, or enable within the Helcim Services third-party software, applications, products, services or website links (collectively, "**Third-Party Services**") for your consideration or use. For example, we may offer product integrations or APIs so that other software products you use can transfer data to and from your Helcim software products. 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.

3. When required by the Operating Rules, in no event shall you use a Third-Party Provider unless they are compliant with PCI and/or the PA-DSS. 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.
4. 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 Helcim 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.
5. 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.

6. 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 Terms of Service.
7. Any exchange of Information, data or other interaction between you and a 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.
8. 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.

20. General

1. **Waiver.** The failure of Helcim to exercise or enforce any right or provision of the Terms of Service shall not constitute a waiver of such right or provision. All remedies afforded by these Terms of Service for a breach hereof shall be cumulative.
2. **Entire Agreement.** These Terms of Service constitute 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 Terms of Service). 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.

3. **Captions and Headings.** Captions and Headings in these Terms of Service 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 these Terms of Service.
4. **Security** You agree to appoint Helcim 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.
5. **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.
6. **Assignment.** Subject to Section 3(h) above, neither you nor your successors may assign any of the rights or obligations under the Terms of Service 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 Terms of Service in whole or in part at any time.

7. **Enurement.** The provisions of the Terms of Service are intended for the benefit of, and are enforceable solely by, the parties hereto, and nothing in the Terms of Service shall be construed as giving any other person any right, remedy or claim under or in respect of the Terms of Service or any provision hereof.
8. **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.
9. **Force Majeure.** Helcim shall be excused from performing any of its obligations under these Terms of Service 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/provincial or local government authority. Should any provision of the Terms of Service be found invalid or unenforceable, such provision shall be limited or deleted to the minimum extent necessary so that the Terms of Service shall otherwise remain in full force and effect.
10. **Construction.** It is the Parties' desire that if any provision of these Terms of Service 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.

11. 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 these Terms of Service, 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.

12. Survival. In the event of termination, any provision of these Terms of Service which relates to your obligations incurred or existing under these Terms of Service prior to termination shall survive the termination. In addition, any provisions of these Terms of Service that give rise to a party's ongoing obligation will survive termination of these Terms of Service.

13. Choice of Law. In accordance with Section 22 labeled "Helcim Contracting Party", these Terms of Service shall be governed by and interpreted in accordance with the laws of (a) the Province of Alberta and the laws of Canada applicable therein if your billing address is located in Canada or anywhere not in the United States; or (b) the State of Delaware if your billing address is located in the United States, and in all cases without regard to conflict of laws principles.

21. Binding Arbitration

1. Binding Arbitration: Any dispute, controversy or claim arising out of or relating to these Terms of Service, or in respect of any legal relationship

associated with or derived from these Terms of Service, 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 before a single arbitrator administered by ICDR Canada in accordance with its Canadian Arbitration Rules and procedures outlined below. Judgement upon the award rendered by the arbitrator may be enforced by any court having jurisdiction thereof. Nothing in this Section will preclude the parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. Helcim may waive its right to arbitration at its sole discretion.

2. **Language:** The language of the arbitration shall be English.
3. **Seat:** The place of the arbitration shall be Calgary, Alberta, Canada.
4. **Commencement of the Arbitration:** Either party may commence arbitration by providing to ICDR Canada 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**").
5. **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 these Terms of Service will affect the right of any party to serve process in any other manner permitted by Applicable Law.

6. **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 these Terms of Service, 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 these Terms of Service or any of the transactions contemplated between the parties.
7. **Provision of an Award** Subject to the limitations of liability identified in these Terms of Service, the appointed arbitrators may award monetary damages and any other remedies allowed by the laws governing these Terms of Service. In making a determination, the arbitrator will not have the authority to modify any term or provision of these Terms of Service. 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. The Arbitrator may award pre- and post-judgment interest in accordance with applicable legislation or contractual rates of interest.
8. **Default Award:** If the responding party fails to respond to the Arbitration Demand within thirty (30) days (or a time otherwise agreed by the parties)

or refuses to participate in the arbitration proceedings, the arbitrator has the discretion to issue a final and binding Award favourable to the claimant which can be confirmed or enforced by any court having jurisdiction over either party or its assets.

9. **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 these Terms of Service, 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.
10. **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.

11. **Conflict of Rules:** In the case of a conflict between the provisions of this Section 21 and the rules governing arbitration identified in Section 21.a, the provisions of this Section 21 will prevail.

12. **Severability:** Should any provision of this agreement to arbitrate be found 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.

22. **Helcim Contracting Party.** Where Merchant should direct notices, what Law governs these Terms of Service, and which courts have exclusive jurisdiction will depend on the Helcim Contracting Party, which in turn depends on the billing address of the Merchant. These Terms of Service will be construed in accordance with the applicable governing law below, without regard to choice or conflicts of law rules, and the Parties hereby consent to personal jurisdiction and venue therein. The Parties agree that these Terms of Service are not governed by the United Nations Convention on Contracts for the International Sale of Goods nor the Uniform Computer Information Transactions Act (UCITA).

**Helcim Contracting
Party:**

**Merchant
Billing
Address:**

**Governin
g
Laws:**

**Courts with
jurisdict
ion:**

Helcim Inc. a Canadian corporation, with offices located at Suite 400 - 440 2nd Avenue SW, Calgary, AB T2P 5E9	If your billing address is located in Canada or anywhere not in the United States	Province of Albert a	Courts of Alberta in the City of Calgary
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Helcim USA Inc. % Helcim Inc. (see address above)	If your billing address is located in the United States	State of Delaw are	Courts of Delawar e
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23.

Notices. All notices, requests, demands, claims, and other material communications under these Terms of Service must be in writing, and will be deemed duly given: (a) by Helcim to you as described in Section 2(g) above; and (b) by you to Helcim when delivered personally or by courier to the address in Section 22 above, with a copy delivered via email to legal@helcim.com.