

Partners terms & conditions

FIDELITY PAYMENT PROCESSING LIMITED TERMS AND CONDITIONS for the FIDELITY PAYMENT REFERRAL AGREEMENT

(these "Terms and Conditions")

1. Interpretation

In this Agreement:

1.1 Unless the context requires otherwise, the following terms shall have the following meanings:

"Agent": has the meaning set out in Clause 4.10;

"Agreement": these Terms and Conditions together with the relevant Order Form and the Data Protection Addendum as well as any document referred to in these Terms and Conditions, the Order Form or the Data Protection Addendum;

"BA 2010": has the meaning set out in Clause 14.1(a);

"Bank": a bank whose merchant services are promoted by FIDELITY;

"Client": an entity to whom FIDELITY has not at any time previously provided the Merchant Services;

"Commencement Date": has the meaning set out in Clause 2.4;

"Compensation": has the meaning set out in the Order Form;

"Confidential Information": means all proprietary, secret or confidential information or data relating to either party and its affiliates, operations, employees, fundraisers, donors, products or services, clients, customers, Clients, Leads or potential customers. Confidential Information shall include customer lists, cardholder account numbers, pricing information, computer access codes, instruction and/or procedural manuals, and the terms and conditions of this Agreement. Information shall not be considered Confidential Information to the extent, but only to the extent, that such information is: (i) already known to the receiving party free of any restriction at the time it is obtained; (ii) subsequently learned from an independent third party free of any restriction and without breach of this Agreement; (iii) or becomes publicly available through no wrongful act of the receiving party;

(iv) independently developed by the receiving party without reference to any Confidential Information of the other; or (v) required to be disclosed by law;

"Data Protection Addendum": the document attached to the Order Form setting out each party's respective data protection obligations under this Agreement;

"Extended Term": has the meaning set out in the Order Form; **"Initial Term"**: has the meaning set out in the Order Form; **"Lead"**: has the meaning set out in Clause 3.1;

"Merchant": each Lead that executes a Merchant Agreement for Merchant Services as a result of Referrer's solicitation efforts hereunder;

"Merchant Agreement": an electronic or written merchant agreement between Merchant, FIDELITY and/or Bank for Merchant Services together with application material submitted by the Merchant;

"Merchant Services": FIDELITY's promotion of merchant services offered by certain banks;

"Net Revenue": the compensation received by FIDELITY from the relevant Bank in respect of the Merchants including any value added tax or other sales tax, less the costs and expenses of FIDELITY related to Merchants and the processing the transactions under the Merchant Agreements;

"Order Form": the written document, that FIDELITY provides to the Referrer for signature and submission to FIDELITY in accordance with Clause 2.4, containing specific information relating to this Agreement;

"Relevant Policies": has the meaning set out in Clause 14.1(c);

"Relevant Requirements": has the meaning set out in Clause 14.1(a);

"Relevant Terms": has the meaning set out in Clause 14.2; and

"Term": the Initial Term and/or each relevant Extended Term;

1.2 A **"person"** includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality);

1.3 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time, and a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;

1.4 A reference to **"writing" or "written"** includes in electronic form and similar means of communication (except in relation to Clause 11);

1.5 Any phrase introduced by the terms **"including", "include", "in particular"** or any similar expression, shall be construed as illustrative, shall not limit the sense of the words preceding or following those terms, and shall be deemed to be followed by the words "without limitation" unless the context requires otherwise; and

1.6 References to "**Clauses**" are to the clauses of these Terms and Conditions.

2. Agreement

2.1 This Agreement applies to the exclusion of any terms and conditions submitted, proposed or stipulated by the Referrer in whatever form and at whatever time.

2.2 Save as expressly provided in this Agreement, this Agreement shall operate to the entire exclusion of any other agreement, understanding or arrangement of any kind between the parties preceding the date of this Agreement and in any way relating to the subject matter of this Agreement and to the exclusion of any representations not expressly stated in this Agreement except for any fraudulent misrepresentations or any misrepresentation as to a fundamental matter. Each of the parties acknowledges that it has not entered into this Agreement based on any representation that is not expressly incorporated into this Agreement.

2.3 This Agreement constitutes the whole agreement and understanding of the parties as to the subject matter of this Agreement and there are no provisions, terms, conditions or obligations, whether oral or written, express or implied, other than those contained or referred to in this Agreement.

2.4 The Order Form provided by the Referrer to FIDELITY must be in the form that FIDELITY requires from time to time. This Agreement shall be legally formed and the parties shall be legally bound when FIDELITY has received and signed the Order Form that the Referrer has signed and submitted to FIDELITY ("**Commencement Date**"). Submission by the Referrer to FIDELITY of the Order Form shall be deemed to be an offer by the Referrer to submit Leads to FIDELITY, subject to the provisions of this Agreement, and FIDELITY's counter-signature on the Order Form shall be considered acceptance of such offer.

2.5 In the event of a conflict between these Terms and Conditions and the Order Form and any documents referred to in these Terms and Conditions or the Appendix, then the Order Form shall prevail over these Terms and Conditions, which prevails over any other document.

3. Promotion

3.1 Referrer agrees to endorse the Merchant Services to Clients in a manner that is agreeable to both parties hereto. In the event that a Client may be interested in procuring Merchant Services, the Referrer will provide the contact information of that Client to FIDELITY. Each such Client whose contact information has been provided to FIDELITY by Referrer shall be referred to herein as a "**Lead**". The Referrer shall use its best endeavours to procure Leads.

4. Obligations on the Referrer

4.1 As per the rules and regulations of Visa and MasterCard, which are binding on the FIDELITY, Referrer will (a) use only the name of FIDELITY and not its own business name or any other name or identifying mark other than those prescribed by FIDELITY; (b) not distribute or publish any marketing or other promotional materials or press releases, utilize any name, trademark, trade name, logo or other intellectual property rights of FIDELITY or any of its sponsoring institutions or Visa, MasterCard or other payment card association or brand without prior express written consent of FIDELITY; (c) use a business card featuring FIDELITY's logo and Bank's name, city and country that has been preapproved by FIDELITY; and (d) answer and respond to all telecommunications or other correspondence relating to the Referrer's activities hereunder using the name of FIDELITY and no other name. Both parties shall comply with all applicable laws and all rules of Visa, MasterCard, any other relevant payment card associations or brands, and the sponsoring bank of FIDELITY and FIDELITY itself such as they may be from time to time.

4.2 The Referrer shall serve FIDELITY faithfully and diligently and not allow its interests to conflict with its duties under this Agreement.

4.3 The Referrer shall report in writing to FIDELITY from time to time on progress made with Clients.

4.4 The Referrer shall comply with all reasonable and lawful instructions of FIDELITY.

4.5 The Referrer shall have no authority, and shall not hold itself out, or permit any person to hold it self out, as being authorised to bind FIDELITY in any way, and shall not do any act which might reasonably create the impression that the Referrer is so authorised.

4.6 The Referrer shall not make or enter into any contracts or commitments or incur any liability for or on behalf of FIDELITY, including for the provision of Merchant Services or the price for them, and shall not negotiate any terms for the provision of Merchant Services with Clients.

4.7 The Referrer shall not produce any marketing material for Merchant Services or use FIDELITY's name, logo or trade marks on any marketing material for Merchant Services without FIDELITY's prior written consent.

4.8 The Referrer shall not, without FIDELITY's prior written consent, make or give any representations, warranties or other promises concerning Merchant Services which are not contained in FIDELITY's marketing material.

4.9 The Referrer shall at its own expense comply with all laws and regulations relating to its activities under this Agreement, as they may change from time to time, and with any conditions binding on it in any applicable licenses, registrations, permits and approvals.

4.10 The Referrer shall not engage any subcontractor, delegate or agent (collectively, "**Agents**") to assist in the performance of Referral's obligations and duties hereunder unless agreed to by FIDELITY in writing and subject to any terms and conditions required by FIDELITY. Referrer is fully responsible and liable for all acts and omissions of its employees, Agents and any other representatives.

4.11 During and following the Term hereof and so long as Referrer is receiving any payments hereunder, Referrer shall immediately notify FIDELITY if Referrer becomes aware of any adverse information concerning the financial condition of a Merchant or any other potential liabilities relating to Merchants.

4.12 During the term of this Agreement, Referrer shall not itself, nor shall any of its affiliates, enter into any agreement similar to this Agreement with a third party or otherwise solicit Clients to offer them credit or debit card processing services or any other payment services offered by FIDELITY or Bank for or on behalf of any third party.

5. Consideration

5.1 Referrer shall be paid the Compensation. Compensation shall be paid by FIDELITY to the Referrer:

(a) so long as (i) Referrer and its Agents are in compliance with the terms hereof; (ii) FIDELITY is receiving its own compensation indirectly from Bank in respect of such Merchant; (iii) the Merchant is continuing to process transactions through Bank in conformity with the Merchant Agreement; and (iv) this Agreement has not been terminated; and

(b) for the initial term of the Merchant Agreement not including any extension or renewal beyond the initial term of such contract.

5.2 FIDELITY reserves the right to offset from Compensation: (a) any amounts owed by Referrer or any Agents FIDELITY or Bank for any reason including, without limitation, indemnification obligations hereunder; (b) any revenue paid to Referrer that is uncollected from the Merchant or Bank or that is refunded by Bank to the Merchant; or (c) any losses incurred by FIDELITY due to wrongful or negligent acts by Referrer or any Agents.

5.3 In order for any Compensation to become due and payable hereunder, Referrer's total Compensation payable for the period then due must equal or exceed £100.00, lower balances will be carried over until the minimum is met. If, after 180 days, the monthly minimum is not met, no amounts will be payable hereunder and this Agreement shall automatically terminate. There shall be no Compensation payable to Referrer in respect of any Merchant that was referred to FIDELITY prior to Referrer referring the Merchant to FIDELITY.

6. Non-Solicitation

6.1 Referrer agrees that, during the Term hereof, so long as Referrer is receiving Compensation hereunder and for a period of 12 months thereafter neither it nor any of its affiliates will directly or indirectly itself, or permit or assist any third party to as an employee, employer, consultant, agent, principal, partner, stockholder, corporate officer, director, or in any other individual or representative capacity to, call on, solicit, take away, or attempt to call on, solicit, or take away any of the Leads, Merchants, or other customers of FIDELITY whether referred by the Referrer or not. During such time, Referrer shall also not:

- (a) entice, induce or in any manner influence any person or entity who is, or shall be in the direct or indirect service of FIDELITY to leave the same for the purpose of engaging in a business or being employed by or associated with any other business; or
- (b) engage or participate in any business that is in competition in any manner whatsoever with the business and/or contractual relationships of FIDELITY, Bank or other sponsoring banks or processors of FIDELITY.

6.2 None of FIDELITY or any of its affiliates may directly or indirectly itself or permit any third party to use information concerning Leads or Merchants to solicit any of the Clients to offer them any product or service other than Merchant Services.

7. Term

7.1 This Agreement shall begin on the Commencement Date and shall continue for the Initial Term after which it shall renew for successive Extended Terms automatically, unless terminated in accordance with the terms hereof. Either party hereto shall have the right to terminate this Agreement at the end of the Initial Term or the then current Extended Term, upon sixty (60) days prior written notice to the other party.

8. Termination

8.1 Without affecting any other rights that it may be entitled to, FIDELITY may give notice in writing to the Referrer terminating this Agreement immediately if:

- (a) the Referrer is in breach of any of its obligations under this Agreement, and, where such breach is capable of remedy, the Referrer fails to remedy such breach within a period of 10 normal working days of being notified of such breach by FIDELITY;
- (b) the Referrer gives notice to any of its creditors that it has suspended or is about to suspend payment or if it shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or an order is made or a resolution is passed for the winding-up of the Referrer or an administration order is made or an administrator is appointed to manage the affairs, business and property of the Referrer or a receiver and/or manager or administrative receiver is appointed in respect of all or any of the

Referrer's assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver and/or manager or administrative receiver or administrator or which entitle the court to make a winding-up or bankruptcy order or the Referrer takes or suffers any similar or analogous action in consequence of debt in any jurisdiction;

(c) the Referrer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; and/or

(d) there is a change of control of the Referrer (within the meaning of section 1124 of the Corporation Tax Act 2010).

8.2 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination. Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.

9. Relationship of the parties

9.1 Referrer and FIDELITY agree that in performing their responsibilities pursuant to this Agreement they are in the position of independent contractors. This Agreement is not intended to create, nor does it create and shall not be construed to create, a relationship of partnership or joint venture or agency or any association for profit between Referrer and FIDELITY.

9.2 Referrer is not authorized here under to hold itself out as an agent of FIDELITY or any of its sponsoring institutions or suppliers or to inform or represent to any person that Referrer has authority to bind or obligate FIDELITY or to otherwise act on behalf of FIDELITY.

9.3 As per Visa MasterCard rules and regulations Referrer may not quote any rates to any merchants.

9.4 Referrer shall not make any representation or warranty, or create any liability or potential liability on behalf of FIDELITY.

9.5 All expenses and disbursements, including those for travel and maintenance, entertainment, training, office, employees, source deductions, taxes, employee taxes or remittances, clerical and general selling expenses that may be incurred by Referrer in connection with this Agreement shall be borne wholly and completely by Referrer, and FIDELITY shall not be in any way responsible or liable therefore. Additionally, Referrer shall be liable for any and all taxes payable on the Compensation earned by it hereunder. The total amount of Compensation the Referrer receives hereunder, if any,

shall be reported on a tax form applicable to independent contractors at the end of each calendar year.

9.6 Except as otherwise provided, each party shall bear its own administrative costs and overhead expenses arising out of its performance of this Agreement.

9.7 As between FIDELITY and Referrer, FIDELITY has full and exclusive ownership rights in all Merchant Agreements and all Merchant Services-related information relating to Merchants. FIDELITY may have the right to cause the Bank to assign Bank's rights in all or any of the Merchant Agreements to any third party at any time and for any reason, in accordance with FIDELITY's agreement with the Bank and FIDELITY may dispose of its right to receive compensation in respect of some or all Merchants.

10. Assignment

10.1 The Referrer must not assign, transfer, charge or otherwise encumber, create any trust over, or deal in any manner with, this Agreement or any right, benefit or interest under it, nor transfer, novate or sub-contract any of its obligations under it, without the prior written consent of FIDELITY (such consent not to be unreasonably withheld or delayed).

11. Notices

11.1 Any notice given to either party under or in connection with this Agreement shall be in writing, addressed to the relevant party at its registered office or such other address as that party may have specified to the other party in writing, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery or commercial courier.

11.2 A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 11.1 above; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second normal working day after posting; or, if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

11.3 The provisions of this Clause 11 shall not apply to the service of any proceedings or other documents in any legal action.

12. Confidential Information

12.1 Each party shall keep the other party's Confidential Information confidential and shall not:

(a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement; or

(b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 12.

12.2 A party may disclose the other party's Confidential Information to those of its employees and Agents who need to know such Confidential Information provided that:

(a) it informs such employees and Agents of the confidential nature of the Confidential Information before disclosure; and

(b) it does so subject to the employees' and Agents' agreeing in writing to comply with obligations that are equivalent to those set out in this Clause 12.

12.3 A party may disclose the Confidential Information of the other party to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 12.3, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

12.4 The obligations of confidentiality in this Clause 12 shall not extend to any matter which either party can show:

(a) is in, or has become part of, the public domain other than as a result of a breach of the confidentiality obligations of this Agreement; or

(b) was independently developed by it; or

(c) was independently disclosed to it by a third party entitled to disclose the same; or

(d) was in its written records prior to receipt.

12.5 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this Agreement are granted to the other party, or to be implied from this Agreement.

12.6 On termination of this Agreement, each party shall:

(a) return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;

(b) erase all the other party's Confidential Information from its computer systems (to the extent possible); and

(c) certify in writing to the other party that it has complied with the requirements of this Clause 12.6, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential

Information to the extent required by law or any applicable governmental or regulatory authority.

The provisions of this Clause 12 shall continue to apply to any such documents and materials retained by a recipient party following termination of this Agreement for any reason.

12.7 The provisions of this Clause 12 shall continue to apply after termination of this Agreement.

13. Liability

13.1 The Referrer agrees to indemnify, defend, and hold harmless FIDELITY, its employees and agents, from and against any loss, liability, damage, penalty or expense (including, without limitation, reasonable attorneys' fees and cost of defence) that FIDELITY may suffer or incur as a result of:

- (a) any failure by the Referrer or any of its employees or Agents to comply with the terms of this Agreement;
- (b) any warranty or representation made by the Referrer or any of its employees or Agents being false or misleading;
- (c) any representation, warranty or undertaking made by the Referrer or any of its employees or Agents other than as specifically authorized by this Agreement;
- (d) acts or omissions of Referrer or any Agent or any of their respective affiliates, including negligence, fraud and wilful misconduct.

13.2 UNDER NO CIRCUMSTANCES SHALL FIDELITY BE LIABLE TO THE REFERRER FOR ANY INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES. UNDER NO CIRCUMSTANCES SHALL THE LIABILITY OF FIDELITY HEREUNDER EXCEED THE TOTAL AMOUNT OF COMPENSATION PAID OR PAYABLE HEREUNDER FOR THE PRECEDING 6 (SIX) MONTH PERIOD.

14. Anti-bribery and corruption

14.1 The Referrer shall:

- (a) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption ("**Relevant Requirements**"), including but not limited to the Bribery Act 2010 ("**BA 2010**");
- (b) not engage in any activity, practice or conduct outside the UK which would constitute an offence under sections 1, 2 or 6 of the BA 2010 if such activity, practice or conduct had been carried out inside the UK;

- (c) comply with FIDELITY's ethics and anti-bribery policies as may be provided to the Referrer by FIDELITY from time to time ("**Relevant Policies**");
- (d) have and maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the BA 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and Clause 14.1(b) above, and will enforce them where appropriate;
- (e) promptly report to FIDELITY any request or demand for any undue financial or other advantage of any kind received by the Referrer in connection with the performance of this Agreement;
- (f) immediately notify FIDELITY in writing if a foreign public official becomes an officer or employee of the Referrer or acquires a direct or indirect interest in the Referrer, and the Referrer warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of this Agreement; and
- (g) within three months of the date of this Agreement, and annually thereafter, certify to FIDELITY in writing signed by an officer of the Referrer, compliance with this Clause 14 by the Referrer and all persons associated with it under Clause

14.2. The Referrer shall provide such supporting evidence of compliance as FIDELITY may reasonably request.

14.2 The Referrer shall ensure that any person associated with the Referrer who is performing services in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Referrer in this Clause 14 ("Relevant Terms"). The Referrer shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Referrer for any breach by such persons of any of the Relevant Terms.

14.3 For the purpose of this Clause 14, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purpose of this Clause 14, a person associated with the Referrer includes, but is not limited to, any Agent of the Referrer.

15. Governing law and jurisdiction

15.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including, without limitation, non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England. The parties irrevocably agree that the courts of England shall have exclusive jurisdiction

to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation.

16. Miscellaneous

16.1 A person that is not a party to this Agreement shall not have any rights under or in connection with this Agreement.

16.2 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected. If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

16.3 A waiver of any right or remedy under this Agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

16.4 Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

16.5 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).