

If you are a user having your usual residence in the United Kingdom, Switzerland, EEA, or anywhere outside of the United States of America, these End User Terms (<https://fidelapi.com/legal/end-user-terms-outside-us.pdf>) shall apply.

If you are a user having your usual residence in the United States of America, the following End User Terms shall apply.

Fidel API End User Terms (for US Users)

LAST UPDATED: 15 Sep 2022

Fidel API operates a service that allows you to share your transaction data with operators of loyalty programs (“**Publishers**”) that you have joined (the “**Fidel API Service**”).

The Fidel API Service is delivered by Fidel Limited (“**Fidel API**”, “**we**”, “**us**”) (<https://fidelapi.com/>), a company registered in England and Wales (company number 10278251) with our registered office at 9th Floor, 107 Cheapside, London, United Kingdom, EC2V 6DN. Fidel API’s main trading address is 2nd and 3rd floors 25 Kingly St, London W1B 5QB.

These end-user terms of service (“**Terms**”) apply to you and your use of Fidel API Service through the applications or websites of the relevant Publisher.

Please read these Terms carefully before you start to use the Fidel API Service. By using the Fidel API Service at any time, you confirm that you agree to these Terms as they are in force at that time. If you do not agree to these Terms, you must not use the Fidel API Service. **These Terms include information about** future changes to these Terms, limitations of liability, a class action waiver and resolution of disputes by arbitration instead of in court. **PLEASE NOTE THAT YOUR USE OF AND ACCESS TO THE FIDEL API SERVICE IS SUBJECT TO THE FOLLOWING TERMS; IF YOU DO NOT AGREE TO ALL OF THE FOLLOWING, YOU MAY NOT USE OR ACCESS THE FIDEL API SERVICE IN ANY MANNER.**

ARBITRATION NOTICE AND CLASS ACTION WAIVER: EXCEPT FOR CERTAIN TYPES OF DISPUTES DESCRIBED IN THE ARBITRATION AGREEMENT SECTION BELOW, YOU AGREE THAT DISPUTES BETWEEN YOU AND US WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION AND YOU WAIVE YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION.

1. Definitions

1.1 In these Terms, the following words and expressions have the following meaning:

Card Networks: means a payment processor that facilitates card payment transactions between issuing banks who are authorized by you to provide your transaction data to Fidel API (including Visa, Mastercard and American Express);

Eligible Payment Card: means a Payment Card which is eligible to become a Linked Card as determined in accordance with paragraph 5.;

Linked Card: means an Eligible Payment Card that you enroll with the Fidel API Service for use in connection with your participation in the Publisher’s loyalty program;

Offer: means any scheme or offer operated by a Publisher or a Participating Merchant that permits you to receive cashback, points, discounts, enhanced services, benefits or other incentives or value when you enter into transactions with that Publisher or a Participating Merchant, or as otherwise specified by that Publisher or Participating Merchant;

Payment Card: means a credit or debit card issued by an issuing bank;

Participating Merchant: means merchants that are part of the Publisher’s loyalty program; and

Qualifying Transaction: means any purchase of goods and/or services made by you from a Participating Merchant using a Linked Card, which complies with the terms associated with an Offer available at that Participating Merchant.

2. How to contact us

2.1 You can contact us via email at: terms@fidelapi.com.

3. Information about you and your privacy

- 3.1 Your privacy is important to us. You should read our Privacy Policy to understand how we collect, use and share information about you available at: <https://fidelapi.com/legal/privacy>.

4. User eligibility

- 4.1 In addition to meeting any relevant eligibility criteria set out in your agreement with the relevant Publisher, you must be 18 years or older or of legal age in your territory in order to be eligible to use the Fidel API Service.

The Children's Online Privacy Protection Act ("COPPA") requires that online service providers obtain parental consent before they knowingly collect personally identifiable information online from children who are under 13 years of age. We do not knowingly collect or solicit personally identifiable information from children under 18 years of age; if you are a child under 18 years of age, please do not attempt to register for or otherwise use the Fidel API Service, or send us any personal information. If we learn we have collected personal information from a child under 18 years of age, we will delete that information as quickly as possible. If you believe that a child under 18 years of age may have provided us personal information, please contact us at the address provided in Clause 2. (*How to contact us*).

- 4.2 You acknowledge and agree that if at any time, Fidel API in its sole and absolute discretion determines that you do not meet (a) any of the criteria set out in the above paragraph 4.1 or (b) any of the relevant Publisher's applicable eligibility criteria, Fidel API may immediately terminate your access to the Fidel API Service.

5. Card eligibility and linking

- 5.1 Only Eligible Payment Cards may become Linked Cards. Please note that not all Visa, MasterCard and American Express cards are able to become Eligible Payment Cards. The Payment Cards not eligible to become Linked Cards are Visa, MasterCard, and American Express Corporate cards, Visa, MasterCard, and American Express Purchasing cards, non-reloadable prepaid cards, government-administered prepaid cards (including EBT cards), healthcare (including Health Savings Account (HSA) or Flexible Spending Account (FSA) or insurance prepaid cards, Visa Buxx, and Visa-branded, MasterCard-branded, and American Express-branded cards whose transactions are not processed through the Visa payment system, MasterCard payment system, and/or American Express payment system, and any other type of card notified to you by Fidel API from time to time.

- 5.2 Fidel API and the Card Networks may in their sole and absolute discretion decide whether a Payment Card is eligible to become a Linked Card.

- 5.3 Depending on the territory your registered debit card transaction must be processed as a 'credit' (i.e., authorized with signature and not a PIN) transaction to make sure the transaction can be monitored.

- 5.4 You may link one or more Eligible Payment Cards to the Publisher's loyalty program (as per the Publisher's applicable terms and conditions) to become Linked Cards.

- 5.5 You are responsible for entering the correct information when setting up your Linked Card, and neither will we nor the Card Networks be responsible for any error in this respect, nor are we or the Card Networks responsible if for any technical or other reason, you are unable to link your Payment Card to your account with the Publisher.

- 5.6 A Linked Card shall remain a Linked Card unless you un-link it. You can un-link an Eligible Payment Card by following the process for un-linking as set out by your Publisher.

6. Loyalty programs

- 6.1 You may earn points or rewards by making a Qualifying Transaction on a Linked Card at a Participating Merchant in accordance with the applicable terms of the Publisher's loyalty program.

- 6.2 We and the Card Networks are not the operators of loyalty program operated by Publishers and have no control over how points or rewards are awarded, used or forfeited. As such, we and the Card Networks do not have any responsibility or liability to you arising out of your participation in a loyalty program using a Linked Card.

- 6.3 If you have any complaint or concern in relation to the operation of a loyalty program, you must contact the relevant Publisher.

7. Collection and use of transaction data

7.1 By agreeing to these Terms and checking the appropriate box at the time of enrolling the Linked Card(s), you are providing the following authorization (for the entire duration of your use of the Fidel API Service) to enable your participation in the Publisher's loyalty program using the Linked Card and for related purposes:

- (a) Fidel API to share your Linked Card information with the Card Networks so the applicable Card Network(s) is or are informed of the registration of the Linked Card as a part of the Fidel API Service;
- (b) Card Network(s) to monitor your transactions on your Linked Card(s) and to share transaction information with Fidel API related to point of sale purchases made by you with a Linked Card with a Participating Merchant to determine whether you have made a Qualifying Transaction;
- (c) Card Network(s) to share such information with Fidel API, Publishers, and Participating Merchants (and for each such party to share this information amongst themselves) to enable Offers or to provide Offers that may be of interest to you and for the operation of the relevant loyalty program; and
- (d) Fidel API to share your transaction data received from Card Networks with governmental authorities to comply with lawful requests.

7.2 You may opt-out of the monitoring and collection of your transaction data by un-linking your Linked Card by following the process for un-linking as set out by your Publisher.

7.3 Any relevant Card Network(s) shall have the right to enforce the terms of this paragraph 7..

8. Our responsibility to you

8.1 THE FIDEL API SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND WE EXPRESSLY EXCLUDE ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING (BUT NOT LIMITED TO) THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, OR THAT USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, TO THE EXTENT PERMITTED BY LAW.

8.2 TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE) SHALL ANY OF THE FIDEL API PARTIES BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR (A) ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING DAMAGES FOR LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, OR COMPUTER FAILURE OR MALFUNCTION, (B) ANY SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, (C) ANY AMOUNT, IN THE AGGREGATE, IN EXCESS OF ONE-HUNDRED (\$100) DOLLARS, OR (D) ANY MATTER BEYOND OUR REASONABLE CONTROL.

8.3 For the avoidance of doubt, the exclusions of warranties and liability set out at Clauses 8.1 and 8.2 also apply to and exclude any warranties and liability that may otherwise subsist between you and the Card Networks to the extent these become relevant under these Terms.

8.4 Certain features may rely on your device or networks and connections that are beyond our control. We shall therefore not be liable or responsible for any failure to perform, or delay in performance, of any of our obligations to you which is caused by events outside our reasonable control.

8.5 We and the Card Networks are not responsible for any losses or damages that arise out of or in connection with any actions or omissions of the Publisher or any Participating Merchant or your participation in any loyalty program operated by a Publisher.

8.6 Nothing in these Terms excludes or limits any (a) statutory rights which may apply to your use of the Fidel API Service which cannot be excluded, restricted or modified by contract, or (b) any liability to you where it would be unlawful to do so. This includes liability for death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors or for fraud or fraudulent misrepresentation.

8.7 You agree to indemnify and hold Fidel API (including its employees, officers, directors, consultants,

agents and affiliates) and the Card Networks harmless from and against any and all claims, liabilities, damages (actual and consequential), losses and expenses (including attorneys' fees) arising from or in any way related to any claims relating to (a) your use of the Fidel API Service (including any actions taken by a third party using your account), and (b) your violation of these Terms. In the event of such a claim, suit, or action ("**Claim**"), we will attempt to provide notice of the Claim to the contact information we have for your account (provided that failure to deliver such notice shall not eliminate or reduce your indemnification obligations hereunder).

9. Termination by us

9.1 We may suspend or end your use of the Fidel API Service at any time in accordance with paragraph 4.2 and if:

- (a) Your relationship with the Publisher ends;
- (b) Your Linked Card expires or is deactivated; or
- (c) You breach these Terms in a serious way.

10. Changes to these Terms

10.1 We may change these Terms from time to time. Any changes we may make to these Terms in the future will be posted on Fidel API's website (<https://fidelapi.com>).

10.2 By continuing to use the Fidel API Service following such changes, you agree to be bound by any changes we make. Please review this page frequently to see any updates or changes to these Terms.

11. Arbitration agreement; class action and jury trial waiver

PLEASE READ THE FOLLOWING ARBITRATION AGREEMENT CAREFULLY BECAUSE IT REQUIRES YOU TO ARBITRATE CERTAIN DISPUTES AND CLAIMS WITH FIDEL API AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM FIDEL API. Both you and Fidel API acknowledge and agree that for the purposes of any dispute arising out of or relating to the subject matter of these Terms, Fidel API's officers, directors, employees and independent contractors ("**Personnel**") are third-party beneficiaries of these Terms, and that upon your acceptance of these Terms, Personnel will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as the third-party beneficiary hereof.

11.1 The parties shall use their best efforts to settle any dispute, claim, question, or disagreement arising out of or relating to the subject matter of these Terms directly through good-faith negotiations, which shall be a precondition to either party initiating arbitration. If such negotiations do not resolve the dispute, it shall be finally settled by binding arbitration in New York County, New York. The arbitration will proceed in the English language, in accordance with the JAMS Streamlined Arbitration Rules and Procedures (the "**Rules**") then in effect, by one commercial arbitrator with substantial experience in resolving intellectual property and commercial contract disputes. The arbitrator shall be selected from the appropriate list of JAMS arbitrators in accordance with such Rules. Judgment upon the award rendered by such arbitrator may be entered in any court of competent jurisdiction.

11.2 The Rules will govern payment of all arbitration fees. Fidel API will pay all arbitration fees for claims less than seventy-five thousand (\$75,000) dollars. Fidel API will not seek its attorneys' fees and costs in arbitration unless the arbitrator determines that your claim is frivolous.

11.3 Either you or Fidel API may assert claims, if they qualify, in small claims court in New York County, New York, or any United States county where you live or work. Furthermore, notwithstanding the foregoing obligation to arbitrate disputes, each party shall have the right to pursue injunctive or other equitable relief at any time, from any court of competent jurisdiction, to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights.

11.4 YOU AND FIDEL API WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR JURY. You and Fidel API are instead choosing to have claims and disputes resolved by arbitration. Arbitration procedures are typically more limited, more efficient, and less costly than rules applicable in court and are subject to very limited review by a court. In any litigation between you and Fidel API over whether to vacate or enforce an arbitration award, you and Fidel API waive all rights to a jury trial, and elect instead to have the dispute be resolved by a judge.

- 11.5 ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS. CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER. If however, this waiver of class or consolidated actions is deemed invalid or unenforceable, neither you nor Fidel API is entitled to arbitration; instead all claims and disputes will be resolved in a court as set forth in (g) below.
- 11.6 You have the right to opt out of the provisions of this section by sending written notice of your decision to opt out to the following address: Fidel API, ATTN: General Counsel, 2nd and 3rd floors, 25 Kingly St, London, W1B 5QB, United Kingdom, postmarked within thirty (30) days of first accepting these Terms. You must include (i) your name and residence address, (ii) the email address and/or telephone number associated with your account, and (iii) a clear statement that you want to opt out of these Terms' arbitration agreement.
- 11.7 If you send the opt-out notice and/or in any circumstances where the arbitration agreement permits either you or Fidel API to litigate any dispute arising out of or relating to the subject matter of these Terms in court, then the arbitration agreement will not apply to either party, and both you and Fidel API agree that any judicial proceeding (other than small claims actions) will be brought in the state or federal courts located in, respectively, New York County, New York or the federal district in which that county falls.
- 11.8 If the prohibition against class actions and other claims brought on behalf of third parties contained above is found to be unenforceable, then all of the preceding language in this section 11. will be null and void. This arbitration agreement will survive the termination of your relationship with Fidel API.

12. Legal stuff

- 12.1 All intellectual property in the Fidel API Service and all content contained therein (including but not limited to the screen displays, the content, the text, graphics and look and feel of the Fidel API Service and Fidel API's website), belongs to us or our licensors.
- 12.2 All other trademarks, service marks, company names or logos are the property of their respective holders. Any use by you of these marks, names and logos may constitute an infringement of the holders' rights. We do not warrant that the Fidel API Service do not infringe any intellectual property rights of third parties.
- 12.3 The invalidity or unenforceability of any provision (in whole or part) of these Terms shall not affect the validity or enforceability of the remaining provisions (in whole or part).
- 12.4 The whole or part of any provision which is held by a court of competent jurisdiction to be invalid or unenforceable shall be deemed deleted from these Terms.
- 12.5 These Terms are personal to you. You shall not be entitled to assign these Terms in whole or in part to any third party without our prior written consent.
- 12.6 We may transfer our rights and obligations under these Terms to another organization. We will always tell you in writing if this happens and we will ensure that the transfer will not affect your rights under these Terms.
- 12.7 These Terms do not give rise to any rights for any third parties save that the relevant Card Network may enforce these Terms where it is an intended beneficiary.
- 12.8 Any failure by us to enforce any of these Terms shall not be a waiver of them or limit the right to subsequently enforce any of these Terms.
- 12.9 These Terms shall be governed and construed in accordance with the laws of the State of New York, without regard to the conflicts of law provisions thereof.
- 12.10 The state and federal courts located in the State of New York will have exclusive jurisdiction over any claims, suits, actions, or proceedings arising from or relating to these Terms.