

## **FREEDOMPAY SURCHARGING PRODUCT TERMS AND CONDITIONS**

These FreedomPay Surcharging Product Terms and Conditions shall apply to the extent a Counterparty is consuming or reselling FreedomPay Surcharging Optional Services from FreedomPay. For purposes of these terms and conditions, "Counterparty" shall mean a Client, Reseller, or Customer of a Reseller, as such terms are defined in an applicable agreement.

**A. FreedomPay Surcharging:** FreedomPay Surcharging allows Counterparty to enable functionality that adds a surcharge to card present credit card transactions, where permitted by applicable law. The surcharge amount will be a percentage of the amount of the transaction, as permitted by card brand rules and applicable law (the "Surcharging Amount"). FreedomPay Surcharging is an "Optional Service" under the Agreement.

**B. Fees:** Existing Transaction pricing will continue to apply, but there are no additional recurring or per-Transaction Fees for FreedomPay Surcharging. Any installations associated with FreedomPay Surcharging will be billed at FreedomPay's standard rates.

**C. Territory Availability:** FreedomPay Surcharging is available only in the United States, in those states where permitted by applicable law.

**D. Surcharge Amount:** FreedomPay must have in place an agreement with Counterparty's acquirer to allow FreedomPay to enable FreedomPay Surcharging at a percentage that is compliant with card brand rules (the "Acquirer Agreement"). FreedomPay will set the Surcharge Amount based on Client's Acquirer Agreement.

**E. Warranties:**

1. Counterparty Warranty: Counterparty represents and warrants that
  - i. it will enable FreedomPay Surcharging in compliance with all applicable laws, acquirer requirements, and card brand rules;
  - ii. it will be solely responsible for displaying a surcharge disclaimer at the point of sale;
  - iii. it will not attempt to collect any surcharges using FreedomPay Equipment in states or countries where surcharging is prohibited, and it shall not circumvent any FreedomPay settings to alter the Surcharge Amount or otherwise modify the FreedomPay Surcharging enablement.
  - iv. if it becomes aware of any changes to Counterparty's acquiring that could impact the Surcharge Amount, it shall promptly notify FreedomPay in writing.
2. FreedomPay Warranty:
  - i. FreedomPay represents and warrants that the components of FreedomPay Surcharging within FreedomPay's control comply with all applicable laws, acquirer requirements, and card brand rules;
  - ii. FreedomPay represents and warrants that with respect to the components within its control, it will implement FreedomPay Surcharging in compliance with all card brand rules and limitations with regards to Surcharge Amounts and types of cards and transactions that can be charged a Surcharge. FreedomPay will update its implementation of FreedomPay Surcharging as needed to remain in compliance with all applicable rules and regulations during the Term of the Agreement.
3. Except for the warranties provided in this Section, the Warranties provided in the Agreement shall control with respect to the FreedomPay Surcharging.

**F. Indemnification and Limitation of Liability. Subject to the Limitation of Liability provision in the Agreement :**

1. Each Party shall indemnify, defend, and hold harmless the other Party's Indemnitees for breach of the warranties provided herein.

**G. SALES TAX CALCULATION DISCLAIMER: PURSUANT TO LAWS APPLICABLE TO COUNTERPARTY, COUNTERPARTY MAY BE OBLIGATED TO COLLECT AND PAY STATE OR LOCAL SALES TAX ON THE SURCHARGES IT COLLECTS FROM ITS CUSTOMERS ("COLLECTED SURCHARGES"). FREEDOMPAY WILL MAKE AVAILABLE TO THE APPLICABLE COUNTERPARTY A REPORT THAT WILL ENABLE IT TO DETERMINE THE AMOUNT OF ANY COLLECTED SURCHARGES, BUT COUNTERPARTY ACKNOWLEDGES THAT, NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT TO THE CONTRARY, CALCULATING, REPORTING AND REMITTING ANY APPLICABLE SALES TAXES TO STATE OR LOCAL AUTHORITIES REMAINS SOLELY APPLICABLE COUNTERPARTY'S RESPONSIBILITY.**