

## **APPENDIX A: ON-SITE INSTALLATION SERVICES – TERMS & CONDITIONS**

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This Appendix A to your PAYD Pro Plus® Addendum (“Addendum”) contains the additional terms and conditions that apply if we provide the Installation Services (as defined below) to you as described in the Addendum. Capitalized terms used and not defined herein will have the respective meanings given to such terms in the Addendum. Please ensure that you read this Appendix carefully, as your acceptance of its terms and conditions will occur when you execute the Addendum

### **Section 1. Scope of Installation Services**

Moneris will perform the installation of hardware purchased or rented in the Addendum (“Installation Services”) at your location(s) during normal business hours (8:30am to 5:00pm, Monday to Friday), excluding statutory holidays. Any additional work requested by you delivered outside of the stated hours indicated above will be invoiced to you at Moneris’ standard “Out of Scope” hourly rate. Your locations must be within Moneris’ approved geographic coverage areas in order for Moneris to be able to perform the Installation Services.

### **Section 2. Moneris’ Obligations**

In performing the Installation Services, Moneris shall:

- (a) act in accordance with (i) the standards of care, workmanship, professionalism, skill and diligence ordinarily observed by an industry professional providing similar services at the time the Installation Services are performed; (ii) this Addendum; and (iii) applicable law;
- (b) schedule technicians to perform the onsite installation at your locations;
- (c) allocate appropriate resources and use reasonable commercial efforts to avoid delays on the scheduled date of the installation;
- (d) ensure its technicians carry proper identification, which shall be presented to your personnel upon request;
- (e) ensure that upon arrival at the locations, the Moneris technician shall introduce himself to the site contact and shall request direction where to perform the installation;
- (f) install the solutions using the existing power pack and cable at your locations;
- (g) perform the steps indicated in the configuration procedures for the solutions before initialization of the solutions, if applicable; and
- (h) initialize the new solutions and perform the connectivity test.

### **Section 3. Your Obligations**

To facilitate Moneris' performance of the Installation Services, you shall:

- (a) read this Appendix A carefully;
- (b) have a site contact person available for the duration of the onsite installation/replacement activities;
- (c) manage your locations' readiness for their scheduled installation date;
- (d) provide access to the locations to the Moneris technician on the scheduled installation date;
- (e) execute all the changes required to the your environment (e.g., system/server, cash register) to enable the Moneris technician to complete the installation and initialization of the solutions;
- (f) manage other vendor/resources involved with the solutions installation;
- (g) complete live transaction tests on the new solutions;
- (h) ensure that there are no blackout periods during the day (including lunch time) that would prevent the performance of the Installation Services including, but not limited to the installation of any tablets included in the solutions;
- (i) ensure Moneris technicians shall have easy access to the cables and computers to complete the installation of the solutions;
- (j) before any solutions are installed, ensure that the electrical, communication and other physical facilities comply with all applicable laws that relate to the installation of the solutions and, if applicable, you shall obtain and maintain, at its sole cost and expense, all necessary legal, governmental and third-party consents, approvals, licenses, releases, clearances, and/or authorizations to allow Moneris to provide the Installation Services; and
- (k) use the solutions according to applicable procedures, including any procedures described in any documentation provided to you in connection with the solutions and/or the Installation Services.

### **Section 4. Fees and Payment**

The fees for the Installation Services to be provided by Moneris are set out in the Addendum. You agree you will be responsible for additional fees set out in the Addendum for each additional hour spent by Moneris technicians on the Installation Services above the maximum for the package selected or any Installation Services performed outside of Moneris' regular business hours or for additional services outside the scope of the Installation Services. For greater certainty, you agree you will be charged these additional fees if there is a delay caused by a factor within your control, including, but not limited to, your readiness for Moneris' performance of the Installation Services, resulting in time in excess of the maximum number of hours in the appropriate package set out in the Addendum. You agree that you will be responsible for the cancellation fee set out in the Addendum if you cancel the Installation Services within 24 hours of the scheduled installation date.

Any and all amounts payable by you to Moneris under the Addendum constitutes a debt payable to Moneris for which Moneris may give instructions to your financial institution to debit your bank account without prior notice and you irrevocably authorizes its financial institution to accept such instructions. In the event that any such debit cannot be processed, you will immediately pay Moneris the amount of the debit together with applicable interest. In the event that a debit results in an overdraft in your bank account, you agrees to pay Moneris the amount of the overdraft plus two percent (2%) interest per month (twenty-four (24) percent per year), or the maximum rate allowable at law, calculated from the date.

## **Section 5. Exclusions**

You agree that the Installation Services only includes the Installation described in Section 2 and without limiting the foregoing, specifically excludes all of the following:

1. electrical work external to the solutions and maintenance of accessories, alterations, attachments or other devices not furnished by the manufacturer thereof;
2. ethernet cabling;
3. installation of solutions or other equipment not sold by Moneris;
4. drilling any holes and/or passing-through cable holes;
5. removal or relocating PIN Pad holders and/or tether cables;
6. installing new PIN Pad holders at your locations;
7. repair of damage, replacement of parts or increase in service time caused by any of the following:
  - (a) failure to continuously provide a suitable installation environment with all facilities prescribed by the manufacturer of the solutions including the failure to provide or the failure of adequate electrical power, air - conditioning or humidity
  - (b) the use of the solutions in a manner or for a purpose other than the manner and purpose for which the solutions were designed,
  - (c) the use of supplies (including, ribbons, paper, cartridges or like materials) not prescribed by the manufacturer of the solutions,
  - (d) any strike, fire, flood, governmental acts or orders or restrictions, or any other reason where failure to perform is beyond the reasonable control of Moneris,
  - (e) any transportation or relocation, repairs, replacements or maintenance performed by persons other than Moneris representatives or those authorized by Moneris,
  - (f) neglect, misuse or abnormal use of the solutions,
  - (g) use of parts or attachments which deviate from solutions' manufacturers' physical, mechanical or electrical design or which are otherwise not recommended for field replacement, or
  - (h) operator error or negligence;
  - (i) furnishing supplies or accessories, painting or refinishing the solutions or furnishing materials for same, inspecting altered solutions making specification changes or performing services
  - (j) connected with the relocation of solutions or adding or removing accessories, attachments or other devices;

## **Section 6. Limitation of Liability**

In no event shall Moneris be liable for any indirect, special, incidental, punitive, exemplary or consequential damages in connection with or arising out of the performance or non-performance of this Appendix A how so ever caused including, without limitation, any business or economic loss whatsoever even if Moneris has been advised of the possibility thereof. You agree that the total liability of Moneris

arising out of contract, tort, statute or otherwise shall not exceed that portion of the fees paid that is directly involved in the claim. Moneris' sole warranty under this Appendix A shall be to perform or re-perform the Installation Services. Other than as described in the previous sentence, Moneris makes no representations or warranties to you or any other person or entity, whether express, implied, or statutory, as to description, quality, merchantability, completeness or fitness for any purpose of any service provided or described in this Appendix A or Addendum or as to any other matter, and any such warranties are hereby excluded and disclaimed. Without limiting the foregoing, Moneris shall not be responsible for any damage to your countertops at your locations.

### **Section 7. Indemnification**

You agree to indemnify Moneris, for any loss, cost (including legal fees), damage, injury, liability, claim, penalty, fine, interest or any cause of action whatsoever resulting howsoever from or in connection with: (i) this Appendix A or the Addendum; (ii) the provision of any of the On-Site Installation Services; (iii) any interruption of any of the Installation Services howsoever caused; (iv) any Installation Services provided by a third party provider, except to the extent that any such liability of Moneris to you is caused by Moneris' gross negligence or willful mis conduct.

### **Section 8. Force Majeure**

Non-performance by Moneris shall be excused to the extent the performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, or any other reason where failure to perform is beyond the reasonable control of Moneris. In the case of such an event, Moneris shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference.

### **Section 9. Miscellaneous**

Moneris may assign or subcontract its rights or obligations under this Addendum to any person without notice to you.

## **APPENDIX B: HARDWARE SALES - TERMS & CONDITIONS**

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This Appendix B to your PAYD Pro Plus® Addendum (the “Addendum”) contains the additional terms and conditions that apply if we sell the hardware set out in the Addendum. Capitalized terms used and not defined herein will have the respective meanings given to such terms in the Addendum. Please ensure that you read carefully this Appendix, as your acceptance of its terms and conditions will occur when you have executed the Addendum.

### **1. Orders**

(a) Any order for hardware set out in an Addendum (“Products”) placed with Moneris is subject to acceptance by Moneris.

(b) Moneris may decline any order, in whole or in part, for any reason. The taking and acknowledgment of orders does not, in any way, constitute automatic acceptance of such orders by Moneris. Moneris may cancel any accepted order prior to shipment.

(c) The Products offered by us are available for purchase by you, subject to certain supply and quantity restrictions. You agree to provide us with all information, including bank account or credit card information, required to complete the transaction of paying for your Products. Products may be purchased only for end use and you agree not to resell any Products and/or Services.

(d) You may request a change to or cancellation of an order for Products prior to commencement of the shipping process. The acceptance of such a request is at Moneris’ sole discretion.

(e) Moneris may at any time reject orders and the manufacturers of the Products may change or modify models, offerings, specifications, construction or design of Products. Any Products so changed or modified and offered to you in fulfillment of your original orders are subject to your acceptance. If you do not cancel the original orders within seven (7) days the change or modification will be deemed as accepted. You acknowledge and agree that Moneris shall have no liability to you as a result of any action it takes in furtherance of any of the foregoing

(f) Moneris may make partial shipments of your order without liability for any failure to ship a complete order or for any shipment delay. You will be invoiced separately for each partial shipment and will pay each invoice when due, without regard to subsequent deliveries.

### **2. Delivery, risk and title**

(a) Without prejudice to your rights under Section 4 (Warranty), each shipment shall be deemed correct and undamaged unless you notify Moneris of the discrepancy or damage in writing within forty eight (48) hours of delivery of the given shipment. All such notifications must include the shipment number, and the exact nature of the damage or the discrepancy between the order and the shipment in number or type of Products shipped. For under-shipments, Moneris shall, at its sole discretion, issue a replacement shipment, or a credit to your account within thirty (30) days of receipt of your written notice. For the avoidance of doubt, Moneris will not process such notices from you that are not supported evidentially by proof-of-delivery documentation.

- (b) Moneris will use all reasonable commercial efforts to deliver Product by any quoted or agreed date but will not be liable for any damages or claims occurring as a result of any delay beyond that date.
- (c) Risk of loss of or damage to the Product will pass to you on delivery to the carrier.
- (d) Title in the Product will pass to you only on payment in full to Moneris of the purchase price.

### **3. Price and payment**

- (a) Pricing for Product shall be provided to buyer in the Addendum. All prices specified in the quotation are in CDN (Canadian Dollars).
- (b) Terms are FOB MONERIS Montreal.
- (c) Payment terms for Products are NET 30 days from date of the execution of the Addendum, unless otherwise stated above.
- (d) Past due balances shall be subject to an interest charge of the lesser of 2% per month (24% per annum) of the balance exclusive of interest charges and the maximum amount legally chargeable.
- (e) You acknowledge that we may invoke any of the remedies to recover its Products sold, or sums due for such Products that are available at law.

### **4. Warranty**

PRODUCTS ARE SOLD "AS-IS" WITH ALL FAULTS AND WITHOUT EXPRESS OR IMPLIED WARRANTIES BY MONERIS. PRODUCTS MAY BE ACCOMPANIED BY THEIR MANUFACTURER'S STANDARD LIMITED WARRANTIES. YOU ACKNOWLEDGE AND AGREE THAT THE ONLY WARRANTY APPLICABLE TO ANY PRODUCTS IS THE LIMITED WARRANTY SUPPLIED BY THE MANUFACTURER FOR THE PRODUCTS. YOU ACKNOWLEDGE AND AGREE THAT WE MAKE AND YOU RECEIVE NO WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INFRINGEMENT, OR THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE, WITH RESPECT TO THE PRODUCTS.

### **5. Limitation of Liability**

- (a) In no circumstance will Moneris be liable, whether in contract, tort or otherwise for (a) special, consequential, indirect or incidental loss or damage of any kind (including exemplary or punitive damages), or (b) loss of business, profits or income, whether actual or anticipated, or loss of data or the cost of re-entering it.
- (b) In addition, Moneris' total liability to you and persons claiming through you, whether arising under contract, tort or otherwise, will not in any circumstance exceed the purchase price you have paid Moneris for the Products. That limit applies irrespective of the number of claims or events giving rise to them.
- (c) Moneris will be excused from a failure to perform any of its obligations under this Appendix B to the extent that the failure is due to (a) failure of a supplier to provide or Moneris' inability to obtain any necessary parts, materials, equipment, facilities or services required to meet contractual obligations, (b) an accident, strike, war or act of terrorism or threat of war or an act of terrorism, act of God or government action or interference, or (c) any other cause beyond Moneris' control.

## **6. Proprietary Rights and Confidentiality**

Moneris' sale of Products to you does not grant any right to use Moneris' name, intellectual property or other rights without Moneris' consent. All information provided by Moneris in connection with the sale, such as but not limited to, detailed functional design specification, technical and/or commercial data, is confidential and proprietary to Moneris and shall remain Moneris' sole property. You agree not to reproduce any of Moneris' proprietary data without Moneris' written permission.

## **7. Returns (non-Apple Products)**

The return of any Products by you must be authorized in advance by us. Moneris may charge a fee for any Products that are not returned in accordance with Moneris' PAYD Hardware Return Policy available online at: [www.moneris.com/PAYDterms](http://www.moneris.com/PAYDterms).

## **8. Apple Products**

If we assist you with any post-sale staging or loading of any Apple Canada Inc. ("Apple") products, you acknowledge and agree that: (i) we are entirely responsible for any technical support, troubleshooting, help desk functions associated with the post-sale staging and loading; (ii) Apple is not responsible in any way for the resulting functionality of the Apple product due to staging or combining such Apple product with any other hardware or software; (iii) you may be required to restore factory settings to obtain warranty support from Apple; and (iv) our actions may void any and all Apple product warranties provided by Apple. You acknowledge and agree that Apple, its officers, affiliates and subsidiaries make no warranties or endorsements with respect to the bundled offers in this Application, any third party product, or the combination of any Apple product with a third-party product, including solutions offered by Moneris. The Moneris Payd Hardware Return Policy applies with respect to Apple Products except that all Apple Hardware Products must be received by our service provider within 14 days from the date or your purchase