

AJB SOFTWARE DESIGN INC.

NOTE: This Agreement contains an Arbitration Clause and Limitations of Warranty and Liability Clauses.

By opening the packaging of this CD you agree to the terms and conditions of this end user license ("Agreement"), effective immediately between you ("Customer") and AJB Software Design Inc., with an address at 5255 Solar Drive, Mississauga, Ontario, Canada L4W 5B8 ("AJB").

TERMS AND CONDITIONS OF LICENSE

1. LICENSE

AJB hereby grants to Customer a non-exclusive, non-transferable license to possess and use, in Canada and the U.S., the Software (being fipaypincsx.exe). The Software includes any related materials and any and all documentation provided in connection therewith in accordance with the terms of this Agreement. Customer agrees to license the Software. Customer may use the Software only for itself and its own business operations provided that those business operations are not separately incorporated companies. This Agreement shall not grant Customer the right or license to use the Software in connection with the provision of services for any third parties. Customer may make one copy of the Software provided that it is kept solely for backup or archival purposes. The license is granted in perpetuity, unless terminated pursuant to this Agreement. No license or right to use, reproduce, translate, rearrange, modify, enhance, perform, display, sell, rent, lease, sublicense, print, transmit or otherwise distribute, transfer, or dispose of the Software, in whole or in part is granted except as expressly provided in writing in this Agreement. Customer shall not reverse-assemble or reverse-compile the Software in whole or in part. The Software is licensed, not sold. AJB retains ownership of the Software, as well as all rights not expressly granted under this Agreement. Title to the Software and to all intellectual property rights, including, without limitation, patent, trademark, copyright, and trade secret rights in and to the Software is and shall remain in Licensor.

2. SUPPORT

Yearly support for the Software may be ordered separately from AJB in accordance with AJB's Software support policy. In any year in which support is available and Customer orders and pays for such support, AJB shall

- a) use its commercially reasonable efforts to correct problems associated with Customer's use of the Software; and
- b) make available to Customer, Software and related documentation updates as commercially released by AJB. All updates, when delivered and all supplemental Software provided to Customer as part of the support services, if any, shall be deemed to be part of this Agreement.

For an additional fee, Licensor shall provide enhancements upon written request from Customer from time to time. The ownership of any such enhancements shall remain in Licensor.

3. TERMINATION

This Agreement is effective until terminated in accordance with any of the terms and conditions of this Agreement. Customer may terminate this Agreement at any time by destroying all copies of the Software. AJB may terminate this Agreement if Customer fails to comply with any of these terms and conditions. Any such termination by AJB shall be in addition to and without prejudice to such other rights and remedies as may be available to AJB, including injunction and other equitable remedies. Upon termination, Customer's license to use the Software shall terminate and Customer shall promptly return to AJB, or certify destruction of, all full or partial copies of such Software and related materials provided by AJB. Sections 3 to 7 herein shall survive termination of this Agreement.

4. TAXES

Customer shall pay all sales, property, excise, or other federal, provincial, or local taxes, exclusive of taxes based on AJB's net income, which are hereafter due and payable by reason of the license of the Software or the use or possession of the same by Customer.

5. WARRANTIES

a) LIMITED WARRANTY

AJB hereby warrants the Software for 90 days from the date of purchase. AJB warrants that the Software will conform substantially to the Software documentation provided therewith, provided that:

- i) the Software is properly installed on the Customer's equipment, and provided the equipment is maintained at the level recommended by the manufacturer;
- ii) the Customer has installed and is using the latest version of a AJB-supported operating system, including the latest service packs; and
- iii) the Customer does not use any non-supported operating system (e.g. Windows NT).

AJB will correct any deficiencies in the Software at no additional charge during this warranty period or, at AJB's sole discretion, AJB may accept the return of the Software in exchange for the return of the license fee or part thereof that has already been paid for the Software. Warranty service shall not extend to assistance required as a result of outside forces such as natural disasters, electrical damage, accident, fire or water damage, or atmosphere harmful to software media. The warranty likewise shall not apply to conditions resulting from modifications to the Software other than modifications made by AJB. **THIS SHALL BE AJB'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF THIS WARRANTY.**

b) INTELLECTUAL PROPERTY WARRANTY AND INDEMNITY

If the Software becomes, or in AJB's opinion is likely to become, the subject of an action, claim or proceeding based on alleged infringement, then AJB shall have the right to do any one or more of the following: (a) change all or any part of the Software in order to avoid any infringement, with such changes providing substantially the same functionality as the Software; (b) procure for the Customer the right to continue using the Software on substantially similar terms; (c) substitute other programs of substantially the same functionality on the terms and conditions contained in this Agreement, or (d) terminate this Agreement in which case AJB shall refund to the Customer a proportionate part of any paid support fees representing the unexpired part of the support period, and if such termination occurs within three years of the date of this Agreement also refund to the Customer a pro-rated portion of the license fee calculated over the balance of such three year period. This Section 5b states the entire liability of AJB to the Customer in respect of the infringement of the intellectual property rights of any third party and any warranty of title, quiet enjoyment or quiet possession.

AJB FiPay PIN End user License Agreement

c) LIMITATION OF LIABILITY AND REMEDIES

IN NO EVENT SHALL AJB BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF MARKETING, LOSS OF PROFITS, LOSS FROM DELIVERY, INSTALLATION, FURNISHING, MAINTAINING, OR SUPPORTING OF THE SOFTWARE TO THE CUSTOMER, NOTWITHSTANDING THE FACT THAT AJB MAY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. AJB SHALL NOT BE HELD TO ANY LIABILITY WITH RESPECT TO ANY CLAIM BY CUSTOMER, OR ANY THIRD PARTY ON ACCOUNT OF, OR ARISING FROM THE DESIGN OF, THE DECISION TO USE, OR THE USE OF THE SOFTWARE OR SUPPORT MATERIALS OR LOSS OF ANY DATA STORED IN THE SOFTWARE, REGARDLESS OF THE CAUSE OF SUCH LOSS OF DATA. CUSTOMER ASSUMES FULL RESPONSIBILITY FOR MAINTAINING A SECONDARY SOURCE OF DATA AS BACKUP TO REPLACE ANY LOST DATA. BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO CUSTOMER. THE ENTIRE LIABILITY OF AJB OR ANY OF ITS SUPPLIERS FOR ANY DAMAGES SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY THE CUSTOMER FOR THE SOFTWARE. THE FOREGOING LIMITATION, EXCLUSION AND DISCLAIMERS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE.

d) NO OTHER WARRANTIES AND DISCLAIMER OF WARRANTY

EXCEPT AS SPECIFICALLY PROVIDED ABOVE, THE SOFTWARE IS PROVIDED "AS IS", WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AJB FURTHER DISCLAIMS ALL WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, LACK OF VIRUSES, ACCURACY OR COMPLETENESS OF RESPONSES, WORKMANLIKE EFFORT AND LACK OF NEGLIGENCE. THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE SOFTWARE AND DOCUMENTATION REMAINS WITH CUSTOMER.

6. PA-DSS-COMPLIANCE

The Software has been PA-DSS 1.2.1 validated and is listed on the PCI-SSC website as a validated payment product. When installed as per AJB's installation and configuration guide, the Software can be used to help merchants achieve PCI-DSS 1.2.1 or 2.0 compliance. In order for a merchant to achieve PCI-DSS compliance, a merchant is required to perform a PCI-DSS Report of Compliance (RoC) or complete a self assessment questionnaire (SAQ). The Customer acknowledges that the PA-DSS program prohibits PA-DSS validated software vendors such as AJB from guaranteeing Customer (merchant) PCI-DSS compliance as the PCI-DSS compliance assessment is at the sole discretion of the reviewing QSA or reviewing bank.

7. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by the laws of the Province of Ontario. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this agreement and it shall be strictly excluded. All disputes arising in connection with this Agreement, its negotiation, performance, breach, existence or validity, shall be determined by binding and final arbitration in Toronto, Canada, in accordance with the *Ontario Arbitration Act, 1991* or the *International Commercial Arbitration Act (Ontario)*, as appropriate, or any successor or replacement legislation which may be in force. In the event that any action is brought by either party under this Agreement, the prevailing party shall be entitled to recover all costs it incurred in connection with such suit, including reasonable attorney fees. In the event the Arbitrator or Arbitration Panel lacks the power to award interim remedies such as injunctive relief, either party may apply to a court of relevant jurisdiction for such relief.

8. ASSIGNMENT

This Agreement and the Software to which it applies may not be assigned, delegated, sublicensed, pledged, or otherwise transferred by Customer to any party without prior written consent from AJB, which will not unreasonably be withheld, delayed or conditioned.

THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES WHICH SUPERSEDES ALL PROPOSALS OR PRIOR AGREEMENTS, ORAL AND WRITTEN, AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.



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