

JULY 2009

(1) ABLAZE SOFTWARE LIMITED

And

(2) PICK & SEND SUBSCRIBERS

**SUBSCRIPTION AGREEMENT FOR THE SUPPLY OF
PICK & SEND LICENSES IN NEW ZEALAND
END USER LICENSE AGREEMENT (EULA)**

Standard Non Signed EULA



Warehouse Management Software

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Master Subscription and End User License Agreement (EULA)

For Pick & Send (New Zealand Customers Only)

This **Agreement** is made on the day that Your Pick & Send Account was set up on our servers and You were given your access code and password. This is the date that Your subscription commenced. This Agreement only applies to You if You have not signed a Master Subscription and EULA for Pick & Send. You agree to be bound by this Agreement by Us setting up Your Pick & Send account and providing You with Your username and password(s) to access the Pick & Send software.

Between

- (1) **Ablaze Software Limited (ASL)**, a company organised under the laws of New Zealand with a principal place of business at 235A SH17 Albany, Auckland, New Zealand; and
- (2) The **Pick & Send Subscriber (the Licensee)**, a company/partnership/individual or other entity resident in New Zealand or having its principle place of business in New Zealand.

Introduction

- A. The Licensee wishes to subscribe monthly for Licenses to use the Pick and Send version described in Item 2 of Schedule 1 and to purchase Products and/or other Services from ASL supplied during the term of this Agreement as described in Item 8 of Schedule 1.
- B. ASL has agreed to license certain software to the Licensee on the terms and conditions contained in this Agreement including the attached Schedule(s). As part of the Service, Ablaze will provide the Licensee with use of the Software specified in Item 2 of Schedule 1 and the Services identified Item 3 of Schedule 1. The parties have agreed to enter into an arrangement for the subscription of Licenses and the supply of the Products and Services as requested by the Licensee on the terms and conditions of this Agreement.

It is agreed

1.0 INTERPRETATION

1.1 Meaning of Terms

- (a) **Agreement** means this Master Subscription and End User License Agreement (“EULA”) and all attached Schedules.
- (b) **Anniversary Date:** for Subscriptions this means the date one calendar month after the date the subscription commenced and continuing in a like manner thereafter until cancellation or termination of

- the Service in accordance with this Agreement. For Support Contracts means the date one calendar year after the date the Support Contract commenced.
- (c) **Application** means the same as Software
 - (d) **Approved Bar Code Scanner** means a bar-code scanner tested and approved by ASL to operate with Pick & Send. A current list of approved bar-code scanners is published on ASL's website at www.ablazesoftware.co.nz
 - (e) **Bug(s)** means a software code error, flaw or mistake or an "undocumented feature" in the Software that prevents the Application from behaving as intended.
 - (c) **Business Day** means 8.30 am to 5 pm Monday to Friday in New Zealand but excludes statutory and public holidays in Auckland New Zealand;
 - (d) **Customer Data** means any records submitted by the Licensee to a hosted service
 - (f) **Default Rate** has the meaning assigned to it in clause 10.2(c)(ii) of this agreement.
 - (g) **Fees:** Additional sums charged for certain events. The current fees as published on our website apply.
 - (h) **Goods** means hardware and/or software.
 - (i) **Hardware** means any physical component that is specified.
 - (j) **Hosted Service** means ASL holds the software and the Licensee's data on ASL's servers. As part of the Hosted Service the Software uses data encryption to encrypt data before it is transmitted across the internet and which the Licensee accesses via the internet using a broadband connection to access the Software and to transmit and access data stored on ASL's servers.
 - (k) **Intellectual Property Rights** means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.
 - (l) **Licensee Administrator(s)** means the person(s) designated by the Licensee who is/are authorized to purchase licenses online using the Online Order form or by executing written Order Forms and to create User accounts and otherwise administer Your use of the Service. The Licensee Administrator(s) is/are identified in Item 12 of Schedule 1.
 - (m) **Major Bug** means the Application or a feature of the Application does work but may produce an erroneous result and there is no work-around. Examples include a total report is incorrect or some fields in the report do not display or the Application does not work at all or crashes.
 - (n) **Minor Bug** means a visual element is flawed in such a way that it does not affect the output of the Application feature. Examples include a spelling mistake or minor layout and colour issues or the Application or a feature of the Application displays unwanted behaviour but that unwanted behaviour does not significantly impact on the output of the Application and there may be a work-around.
 - (o) **Non Hosted Service** means the Licensee maintains the software and stores their own data their own computer systems.
 - (p) **Personal Information** means any information and/or data collected from an individual, partnership, limited liability company, corporate entity, or any other legal or illegal entity (collectively called the Licensee).
 - (q) **Pick & Send** is the name of the software being licensed and the name Pick & Send refers to Pick & Send and any other versions or editions of the Pick & Send Software.

- (r) **Pick & Send Limited** is a New Zealand registered company and it is a subsidiary company of ASL as defined by the Companies Act 1993.
- (s) **PPSA** means the Personal Property Securities Act 1999;
- (t) **PPSR** means the New Zealand personal property securities register;
- (u) **Service(s)**: means use of the Software and Hosted Services Pick & Send online services and offline services and components including customisation of the software provided by ASL or its agents.
- (v) **Software** means the Pick & Send Software or any other non physical component that is supplied with Pick & Send and may include but is not limited to source code, operating system code, executable binaries, text files and images.
- (w) **Web Based** means that an internet browser is required to access the software.
- (x) **Working Day** means a day on which businesses and banks in Auckland are generally open for business.

1.2 Interpretation

- (a) **Singular and Plural terms**: Singular words in this Agreement include, where appropriate, the plural and vice versa.
- (b) **References**: References to “Us”, “Our”, and “We” are references to ASL and its subsidiaries including its successors and assigns, and its agents, authorized officers and employees. References to “You” and “Your” are references to the Licensee including its successors and permitted assigns, and its agents, authorized officers and employees.
- (c) **Joint and Several Liability**: If the Licensee comprises more than one person or entity then each such person or entity will be jointly and severally liable on all of the covenants or the Guarantor covenants (as the case may be) under this Agreement.
- (d) **Headings**: The headings and subheadings in this Agreement are for convenience only and will not affect the construction of the terms and conditions of this Agreement.
- (e) **Assignees**: All rights and powers which We have under this Agreement may be exercised by Our assignee (if any).

2.0 COPYRIGHT, OWNERSHIP & LICENSES

- 2.1 The Pick & Send logo and name are trademarks (registered or otherwise) of Pick & Send Limited (‘PSL’) and/or ASL. The copyright and other intellectual property rights contained in the Software are protected by PSL and ASL. PSL is a subsidiary of ASL.
- 2.2 We reserve all rights of ownership of all Software supplied by Us. Our Software is protected by copyright laws. We own the title in the Software and the copyright and other intellectual property rights in the Software and You acknowledge that all Intellectual Property Rights in the Software and in any enhancements to or modifications of the Software (whether requested by You or carried out by an approved 3rd party) belong to Us and You will do nothing to contest or dispute such ownership.

- 2.3 All rights to distribute, sell, reverse-engineer, decompile or modify the Software are reserved for Us except for some elements of the application which are from a 3rd party supplier and subject to their copyright restrictions.
- 2.4 You agree not to not distribute, copy, reproduce, translate, reverse-engineer, decompile, adapt, vary or modify the Software, in whole or in part other than in accordance with the terms of this Agreement.
- 2.5 The Software comes with two (2) licenses. This allows only two users at any one time to use the Software. If You require more than two users at any one time then You must subscribe for the correct number of licenses.
- 2.6 For the removal of doubt the following example is provided. Two licenses allows You to have one user entering sales orders and those orders are being transmitted wirelessly to one warehouse person using a PDA to collate orders at the same time. If you have one user entering sales orders and those orders are being transmitted wirelessly to two warehouse persons using a PDA to collate orders at the same time then You will require three licenses in total or one additional licence. How You allocate the use of licenses is not part of this Agreement.
- 2.7 Software licenses are subscribed licenses not purchased licenses.
- 2.8 If You have elected to have a Non Hosted Service then You agree that We have the right to enter Your premises during trading hours on any business day to audit the number of Licenses being used and You further agree that We may monitor and record license use through embedded software code and the internet.
- 2.8 In the event that any audit investigation reveals that a breach of copyright or intellectual property law whether or not that breach is covered by this Agreement or any illegal activities in relation to the Software or our Services has occurred then You will be liable to Us for the full costs of the investigation, prosecution and rectification or repair of the damage that those activities may have caused.

2.9 PPSA

- 2.9(a) If You have a Hosted Service or Non Hosted Service or You default in payment under this Agreement You grant Us a security interest in the Software supplied and the data stored on Our Servers under this Agreement and any past and future payments of the Subscription and any other charges under this or any other Agreement we may have with You. We may register a financing statement on the PPSR to perfect its security interest in the Software, data and materials, delivered or to be delivered by the Reseller, in accordance with the provisions of the PPSA and You waive the right to receive a verification statement in respect of any financing statement or financing change statement registered by or on behalf of Us under the PPSA and You agree that as between Us and You , You will have no rights under (or by reference to) sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 127, 129, 131, 132, 133 and 134 of the PPSA and where We have rights in addition to those in Part IV of the PPSA those rights shall continue to apply.

3.0 WHAT YOU MUST PURCHASE AND INSTALL

- 3.1 For the Software to operate You must purchase at least one approved Bar-Code PDA Scanner. If You are purchasing Bar-Code Scanners from US then the type of Bar-Code Scanner is specified in Item 6 of Schedule 1
- 3.2 Generally each Bar Code PDA Scanner requires a license because each Bar Code PDA Scanner (Bar Code Scanner) will contain proprietary software to enable each Bar Code Scanner to work with the Software and is capable of being used simultaneously with other Bar-Code Scanners.
- 3.3 If You purchase your Bar Code Scanner from Us the Bar Code Scanner will be delivered to You after payment has been received by Us unless You have an approved credit account or payment schedule. You must allow time for postage and delivery of the Bar Code scanner(s) and You will be liable to Us for the cost of packing and posting.
- 3.4 The Software requires a wireless network in your warehouse to operate correctly. You must install a wireless network into Your place of business and all costs related to the setting up of that wireless network including but not limited to consultancy, purchase of the necessary wireless equipment, installation and testing is Your responsibility and in no way are We liable for any costs whatsoever in setting up this wireless network or for any losses incurred through delays caused by any reason whatsoever.
- 3.5 You must subscribe to the correct number of Licenses to use the Software. The number of Licenses subscribed for is the greater of the number specified in Item 7 of Schedule 1 or the number of different users recorded by our servers.
- 3.6 For Hosted Services access is via a broadband connection to a remote server. All costs related to the internet broadband connection including but not limited to installation, usage charges, equipment purchases and connectivity fees and maintenance of telephone lines and associated equipment is Your responsibility and in no way are We liable for any costs whatsoever.
- 3.7 Details of what other services You have purchased from Us and any additional terms and conditions are detailed in Item 8 of Schedule 1. Not all 'Other Services' may be included in the final price and these will be invoiced separately.
- 3.8 Non Hosted Services require that the Software must be installed on a local computer system. In these situations We will supply You with upgrades but You are responsible for installing the upgrades, maintaining and upgrading the database engine as required and backing up of Your own data and providing suitable computer equipment to host the Software and web browser software to access the Software.
- 3.9 Item 1 of Schedule 1 records the commencement date for the Service and commencement date for the payment of the first monthly subscription.
- 3.10 Item 3 of Schedule 1 records whether the Services is a Hosted Service or Non Hosted Service.

4.0 WHAT YOUR MONTHLY SUBSCRIPTION PROVIDES

4.1 Hosted Service

- 4.1(a) Access to the Software and service is via broadband connection. The number of users granted access depends on the number of licenses You have subscribed for. The number of licenses subscribed for is specified at Item 7 of Schedule 1
- 4.1(b) Remote storage of Your data on a physically and electronically secure server with automatic backup of Your data. The server(s) will be have backup power supplies and Your data will be available on multiple disks to insure as much as is possible uninterrupted operation and access to Your data.
- 4.1(c) You will receive free software upgrades and free email support for Software technical issues not related to the setting up or ongoing operation of wireless networks and broadband connections. Other support services and initial and ongoing staff training are charged for at our prevailing rates. For information on Our current prevailing rates contact us at the contact details specified in Item 5 of Schedule 1.

4.2 Non Hosted Service

- 4.2(a) The right to use the number of Licenses that You are subscribing to. The number of licenses subscribed for is specified at Item 9 of Schedule 1. We reserve the right to include monitoring code imbedded with the software to ensure compliance with this requirement.
- 4.2(b) You will receive free software upgrades and free email support for Software technical issues not related to the setting up or ongoing operation of wireless networks and broadband connections. Other support services and initial and ongoing staff training are charged for at our prevailing rate. Upgrades to the Software which will be sent to you usually by way of an internet download. For information on Our current prevailing rates contact us at the contact details specified in Item 5 of Schedule 1.

5.0 SUSPENSION AND CANCELLATION OF SERVICE

5.1 Suspension of Service by Us - Hosted Services

- 5.1(a) We may suspend Your service for non payment of monies due in which case We or any of our staff or agents will not be liable to You in any way whatsoever. We will do its best to contact you and agree to alternative payment plans before suspending Your service but acceptance by Us to any alternative arrangements are at the sole discretion of Us.
- 5.1(b) If we suspend Your service You will not be able to access Your data. A suspension fee will apply if You do not reconnect to the Service within ten (10) days. When you reconnect to the service a reconnection fee will apply and in some cases both fees will apply.
- 5.1(c) We will reinstate Your access to the Service as promptly as possible after we have received Your payment. We give no guarantee of how quickly we will be able to re-establish the Service for You but it

would normally be no longer than 12 hours. If You require immediate reconnection to the Service i.e. within 4 hours then additional charges will apply.

- 5.1(d) We are not able to suspend Non Hosted Services.

5.2 Cancellation of Service by You

- 5.2(a) Item 10 of Schedule 1 provides for the minimum time period that You must subscribe to the Service ('non-cancellation period') and during this time You cannot cancel the Service. If you do cancel the Service or default in payment and the Service is cancelled then the outstanding amount due will be calculated by the formula set out in this Agreement in Item 16 of Schedule 1:
- 5.2(b) If during the non-cancellation period You default in payment and that default is not rectified within ten (10) days or You cancel the use the Service or any other event occurs that may lead to a default in payment or the terms of this Agreement then all the monies due under this Agreement shall immediately become due and payable in full.
- 5.2(c) On the Anniversary date after the first non-cancellation period Your subscription will continue to automatically renew for a further 12 months unless You give Us a minimum 30 days advance notice in writing in which case we will determine any final charges (if any) excluding the monthly subscription charge paid in advance and advise You of those charges. Payment is due as required by this Agreement.
- 5.2(d) Subscriptions are only billed in complete months (not part months of use) based upon Your Anniversary Date. If You cancel Your Subscription You must pay Your Subscription fee up to the next anniversary date.
- 5.2(e) If You have a Hosted Service then We will at Your request supply You a copy of all of Your data however extra costs may apply. The cost will depend on the amount of data and time involved and will be charged at Our then prevailing rate plus disbursements.
- 5.2(f) If you have a Non Hosted Service and you cancel the Service then You must stop using the Software at the date the cancellation comes into effect.

5.3 Cancellation of Service by Us - Hosted Services

- 5.3(a) If your Service is suspended you have thirty (30) days to reconnect to the Service calculated from the date of suspension. After thirty days We may permanently cancel Your access to the Service. If We have to cancel Your access to the Service You will not be able to access Your data. We **will not** make a copy of Your data before we cancel Your Service which means Your data will be permanently lost.
- 5.3(b) In the event that We cancel Your service for non payment or other default then You are liable for the outstanding amount due which will be calculated by the formula set out in this Agreement in Item 16 of Schedule 1
- 5.3(c) We may without notice permanently cancel Your Service if You have attempted to access or have accessed the source code of Our software. If We have to cancel Your access to the Service You will not be able to access Your data and We **will not** make a copy of Your data before we cancel Your Service which means Your data will be permanently lost. You are still liable to Us for all arrears and other

charges and the subscription fee up to the next Anniversary Date after the date of cancellation. You may also be subject to other legal actions for breach of this Agreement and copyright laws.

5.3(d) Non scheduled termination, reconnection and urgent reconnection fees are listed on our website.

5.4 Cancellation of Service by Us – Non Hosted Services

- 5.4(a) We may without notice permanently cancel Your right to use Our Software if You have attempted to access or have accessed the source code of Our Software, copied Our Software outside of what is allowed under this Agreement or sold or tried to sell illegal copies of Our Software. You are still liable to Us for all arrears and other charges and the subscription fee up to the next Anniversary Date after the date of cancellation. You may also be subject to other legal actions for breach of this Agreement and copyright laws. In addition to any criminal liability You will be liable to Us under civil law for any damages and copyright infringement and you agree to fully indemnify our costs on a solicitor/client basis.
- 5.4(b) You are in default under this Agreement and that default cannot be remedied in a reasonable period of time.
- 5.4(c) If We cancel Your right to use Our Software We will advise You in writing by giving You a Notice of Cancellation. You must immediately upon receipt of the Notice of Cancellation cease to use Our Software and immediately return all documentation and copies of the Software to Us and after You have copied Your data files but in any event no later than two (2) working days after receipt of the Notice of Cancellation You must permanently remove Our Software from Your computer Systems.

6.0 PRIVACY MATTERS AND OWNERSHIP OF DATA

- 6.1 For credit card transactions We use a third party that is a fully certified Visa AIS and MasterCard SDP (PCI-DSS) compliant at processor level. Credit card information is not stored by Ablaze or any of its subsidiaries except as allowed under this Agreement.
- 6.2 If You have a Hosted Service then No other subscriber to the service will have any access to Your data. Your data is secured by user name and password that You set yourself.
- 6.3 If You have a Hosted Service We do not own Your data and We will not access Your data except if absolutely necessary in the course of troubleshooting a fault reported by You. In that event You will be advised that we need to access Your data to rectify or troubleshoot the fault.
- 6.4 Your use of the Services and products offered by Us involves the collection by Us of certain information about You and We store that information in our databases. This information is used by us for the operation of the Services We provide, to maintain the licensing integrity, to maintain quality of the Services We provide, to provide general statistics regarding use of the Services and to assist Us to deliver customised information and advertising to You.

- 6.5 Where possible, information will be obtained directly from you, but otherwise it may be provided from others (with your consent), or generated within or by the systems used to provide our Services.
- 6.6 You may decide not to provide information to us. However, if you do not provide it, we may not be able to provide our Services to you.
- 6.7 We may provide Your personal information to our related companies, our contractors, credit reference and debt collection agencies, communications network operators and selected business partners to:
- a) Provide our Services for You and others; and
 - b) Send Your bills and recover money You owe; and
 - c) Keep you informed of and conduct, sales and marketing activities in relation to Services available to, or planned for, You from Us and other people; and
 - d) Exercise any lawful right We or any of our related companies, Our contractors, credit reference and debt collection agencies, communications network operators and selected business partners has.
 - e) Conform to legal requirements (including, but not limited to, requirements in accordance with any applicable law, regulation or government request) or comply with legal process, or to help maintain the law
 - f) Protect Our rights or property or those of Our related companies
 - g) Act to protect the interests of Our, or Our related companies, customers or others.
 - h) Enforce Our Master Subscription and End License User Agreement and any other Terms of sale or service that may be in force.
- 6.8 You may ask to see any information we hold about you and we will provide it as long as we have such information and can readily retrieve it. You may also ask us to correct any incorrect information we hold about you. We may charge you for the reasonable costs of retrieving and providing this information.
- 6.9 Personal information collected in relation to Your use of the Services may be stored and processed in New Zealand or any other country in which We or our related companies or agents maintain facilities, and by using Our Services, You consent to any such transfer of information outside of Your country of residence.
- 6.10 You irrevocably authorise Us or Our agents to obtain information that is reasonably necessary to open and manage this Agreement. We currently use Cucina Management Services (“Cucina”) as Our Agent and You irrevocably authorise Us to pass onto Cucina information We have collected from You and You authorise Cucina to pass on the information Cucina has collected on You to Us. Cucina uses the services of Veda Advantage and You understand that We will use the personal information collected from You so as to use Veda Advantage’s credit reporting service to credit check You. You understand that:
- (a) Veda Advantage will give Cucina information about You for that purpose; and
 - (b) Cucina will give Your personal information to Veda Advantage, and that Veda Advantage will hold that information on their systems and use it to provide their credit reporting service; and
 - (c) When other Veda Advantage customers use the Veda Advantage credit reporting service, Veda Advantage may give the information to those customers; and
 - (d) Cucina may use Veda Advantage’s credit reporting services in the future for purposes related to the provision of credit to You. This may include using Veda Advantage's monitoring services to receive updates if any of the information held about You changes; and

(e) If You default in my payment obligations to Us then Cucina as Agent for Us may pass on information about that default to Veda Advantage, and Veda Advantage may give information about my default to other Veda Advantage customers.

7.0 DATA MANAGEMENT

- 7.1 Neither We nor Pick & Send Limited own any of Your data or information that you submit to the Service in the course of using the Service. You have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, of Your data and Ablaze shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data.
- 7.2 In the event this Agreement is cancelled (other than by reason of your breach), We will make available to you a file of the Customer Data within 30 days of cancellation if you so request at the time of cancellation however a charge may apply for this service.

8.0 INTERNET AND WIRELESS TECHNOLOGY ISSUES

- 7.1 If You have a Hosted Service Our services may become subject to speed and/or other limitations, delays and other problems inherent in the use of the internet. We are not responsible for any such limitations or delays or data transfer issues resulting from these issues.
- 7.2 Wireless technology needs to be carefully designed to suit the premises into which it is going to be installed. Many factors including but not limited to design, environment, equipment and interference which may lead to delays and/or interruptions to electronic communication between Your computer (s) and the Wireless Bar Code PDA(s). We are not responsible for any such issues.

9.0 WARRANTIES

9.1 Hardware

- 9.1(a) In respect to any Hardware You purchase from Us, We give you the same warranty that the manufacturer of the Hardware provides Us. We do not warranty hardware not sold by Us.
- 9.1(b) To make any claim under warranty You must notify Us immediately. We will then action your warranty claim. We will not be responsible for any losses that You may incur as a result of any hardware failure.
- 9.1(c) All warranties are void if the hardware has been tampered with or used outside of its warrantable environment and/or conditions

- 9.1(d) We will rectify/replace at our discretion as quickly as possible any faulty hardware and We may at our sole discretion lend You replacement hardware until such time as Your hardware is repaired or replaced.

9.2 Wireless Networks

- 9.2(a) We do not warranty wireless installations and reception/transmission issues related to the same. We do warranty Our installations to operate correctly at the time of installation only if one of Our contractors has installed the wireless system.

9.3 Software

- 9.3(a) You will be provided with a blog site where You may record minor bugs. Major bugs should be reported immediately to our support service by email to support@ablazesoftware.co.nz.
- 9.3(b) Minor bugs will be repaired at suitable time intervals such intervals determined solely by Us.
- 9.3(c) Major bugs We will rectify as quickly as possible
- 9.3(d) To rectify Major Bugs any Software upgrades will be loaded onto Our servers as soon as practicable after rectification and testing is completed. This may result in some minor disruption to service however we will attempt to minimise the impact of such a disruption.
- 9.3(e) Ordinary Software upgrades will be loaded onto Our servers at suitable times of the day to minimise the impact to all of our customers as much as possible. Most upgrades occur without any disruption to Service.
- 9.3(e) If You operate a Non-Hosted Service then You will be advised how and where to download upgrades. It is Your responsibility to download and install the upgrades.

9.4 Server Outages

- 9.4(a) If You have a Hosted Service, We have engaged the services of a world leading server providers however in the unlikely event of a server outage caused by whatever reason We are not liable to You for any disruption to Your business or any other costs that You may incur resulting from that server outage

10.0 PAYMENTS AND DEFAULTS

10.1 What You Must Pay

- 10.1(a) **Monthly Subscriptions:** You will pay to Us such monthly subscriptions in advance as and when due under this Agreement. A failure to pay any monthly subscription will be a default under this Agreement. The monthly amount is specified at Item 7 of Schedule 1

- 10.1(b) **Payment for Software and Hardware:** You will pay to Us the price of any Software and/or Hardware You purchase from Us as specified in Item 11 of Schedule 1. A failure to pay will be a default under this Agreement.
- 10.1(c) **Payment for Services:** You will pay to Us the cost of any Services You request from Us as specified in Items 8 and 11 of Schedule 1. The current costs of our charged services are listed on Our website. Our website address is provided at Item 5 of Schedule 1. A failure to pay will be a default under this Agreement. Service Charges current at the time of this Agreement are listed in Schedule 1. All payments for all Services provided now and in the future are due on delivery of the Service unless the Payment Schedule provides alternative payment dates or You have a credit account with Us.
- 10.1(d) **Taxes:** You will pay to Us all taxes payable (including any tax payable by Us) imposed on or in connection with the supply of hardware and/or Services if there is any change in the rate of tax applying after the commencement of the subscription service or support contract or any quotation that has not been paid for in full before the tax is imposed.
- 10.1(e) **Costs:** You will pay to Us upon demand all damages, costs, charges and expenses including solicitor costs on a solicitor/client basis incurred by Us in or incidental to the exercise of any of Our rights or protecting Our interests under this Agreement. You will also pay to Us upon demand all costs, fees, charges referred to in this Agreement (including but not limited to late payment penalties and interest).
- 10.1(f) **Penalties for Late Payments:** If you are late in making any Payment to Us under this Agreement, You will pay to Us, upon demand default interest at a rate calculated on a daily basis on any such overdue moneys. The default interest rate is specified in clause 10.2(c)(ii) of this Agreement.
- 10.1(g) **Methods of Payment:** All charges due to be paid by You may be paid by credit card or cheque or internet banking or automatic payment free of any deduction whatsoever. If You elect to pay by credit card You will provide Us with Your credit card details and You hereby agree that We may charge Your credit card on a monthly recurring basis until such time as You advise Us that You wish to cancel the Service, such charges to be the cumulative sum of the number of licenses You have subscribed for and You agree that we may charge Your credit card for any other costs that You incur with Us that become due under this Agreement unless You arrange with Us another form of payment. The method of payment is identified in Schedule 1.
- 10.1(h) **Credit Card Payments:** If You have elected to pay by credit card then You agree to provide Us with the necessary credit card details to allow Us to debit Your credit card and You Authorise Us to debit Your credit card for all and any charges that become due now or in the future under this Agreement and for any charges that become due under this Agreement that survive cancellation of this Agreement.
- 10.1(i) **Special Offers:** Certain special offers made by Us may require You to pay more than 1 month in advance in which case You must pay in advance the amounts required by that Special Offer. These special offers detailed in Item 9 in Schedule 1.
- 10.1(j) **Survive Cancellation:** The obligation to pay all monies due under this Agreement and Our rights to enforce payment and/or follow the default and interest clauses of this Agreement will survive cancellation of this Agreement.

10.2 Default

- 10.2(a) You are in default if any of the following events occur:

- i) You fail to make any payment due under this Agreement unless that failure is due to a failing on our part in which case any overdue monies will become due for payment upon rectification of that failing.
 - ii) You fail to comply with the observance or performance of any provision contained or implied in this agreement.
 - iii) You are in default under any other agreement You may have with Us.
 - iv) If at any time any judgment of any Court against You remains unsatisfied for more than seven (7) days.
 - v) If You commit or suffer any act of bankruptcy or become insolvent or have a statutory demand or other legal demand for money served upon You
 - vi) If You make an assignment or composition with Your creditors.
 - vii) If in the opinion of Us, You become unable to pay Us or You do not pay Your debts as and when they fall due.
- 10.2(b) **In the event** that You are in default then subject to any applicable law We may:
- i) Call up and compel payment of all monies for the time being owing under this Agreement notwithstanding that the time or times for the payment might not have arrived.
 - ii) Lodge a notice of such default with all or any credit reporting agencies operating in Your country.
 - iii) Charge default interest at the rate specified in clause 10.2(c) of this Agreement.
 - iv) Charge a default fee of \$100.00 for each Notice of Default letter sent to You and an administration fee of \$150.00 for any other letter sent to in an attempt to remedy that default You after the Notice of Default letter .
 - v) If You have a Hosted Service remove Your access to the server and Your database in which case We will not be liable for any losses You incur
 - vi) In the event that You remain in default for more than thirty (30) days We may discard Your Customer Data without notice and We shall have no obligation to maintain or forward any Customer Data to You.
 - vii) Obtain judgment against You in which case You agree to pay to Us Our full and actual costs of obtaining that judgement on a solicitor/client basis and disbursements.
- 10.2(c) **Default interest:** will if charged
- (i) be payable from the date the moneys became overdue to the date of their receipt in cleared funds by Us; and
 - (ii) accrue at the rate of 21%pa compounding daily.

10.3 Where You Should Make Payments

- 10.3(a) You will make all payments to Our bank account(s) via internet banking, direct credit, cash deposit, cheque deposit or by the credit card facility provided at <http://www.pickandsend.net>. Our bank account details are detailed in Item 14 of Schedule 1

11.0 PRICING , TAXES AND REFUNDS

11.1 Prices and Taxes

- 11.1(a) All prices listed on our website are either exclusive or inclusive of any sales tax or GST or VAT or any other form of consumption tax. Prices will be noted if inclusive or exclusive. All prices listed in Schedule 1 are exclusive of GST. If required by law We will add the amount of sales tax or GST or VAT to the cost of our supplies and You must pay that sum to Us.
- 11.1(b) It is Your responsibility to ensure that You comply with Your own countries tax laws in respect to downloaded software and data storage services that we provide. We will supply You with an appropriate sales/tax invoice detailing Your purchases and/or subscription charges.
- 11.1(c) This Agreement may be used as an ongoing tax invoice for the monthly subscriptions. Our New Zealand GST and Australian Business number is detailed at Item 15 of Schedule 1.

11.2 Refunds

- 11.2(a) We do not refund money paid for monthly subscriptions, hardware, support contracts or any other goods or services We may supply to You under this Agreement. In respect to subscription services once You cancel Your subscription or We cancel Your subscription You will not be charged the monthly subscription again except as specified in this Agreement but you are responsible for whatever charges have already been incurred or will be incurred under this Agreement.
- 11.2(b) In the event that You have been inadvertently overcharged or You have overpaid Us then You will be refunded in full as soon as possible after We become aware of and accept that overcharge or overpayment. Your refund will be refunded to Your source of payment. E.g. If You paid by VISA Card we will refund to that VISA Card. The burden of proof is upon You to prove a refund is due.

12.0 MODIFICATION TO TERMS AND PRICES

- 12.1 Ablaze reserves the right to modify the terms and conditions of this Agreement or its policies and prices relating to the Service(s) We provide at any time such changes becoming effective upon the posting of an updated version of this Agreement on our website. If You have a written Agreement with Us we will also post You a Copy of any new Agreement however the binding Agreement will be the Agreement posted on Our Website. You are responsible for regularly reviewing Our website for any changes to this Agreement. Continued use of Our Software and/or Service(s) after 30 days calculated from the date of posting and/or publishing on our website shall constitute your consent to such changes. For clarification in the event of a price increase that means that any price increase will not be effective until Your next billing date after the 30 days has expired. In any event We undertake not increase Your monthly subscription price for 12 months from the date of commencement of Your service.

13.0 INDEMNITIES AND LIMITATION OF LIABILITY

- 13.1 We are not liable to You for any losses and/or delays that You may incur or suffer resulting from either using Our Software or hardware or Our Software or hardware failing. We will do Our best to rectify the fault and minimise Your downtime but You may be charged for Our time.
- 13.2 If You have a Hosted Service and If we have to take Our servers offline to upgrade the software or Our servers fail for whatever reason then We are not liable to You for anything.
- 13.3 If You operate a Non-Hosted Service We are not liable to You in any way whatsoever for any disruption to Your business or any other costs that You may incur resulting from any installation and/or upgrade problems that may occur whether or not those problems affect Your ability to Use Our Software nor are we liable to You for any wireless issues except as provided for in this Agreement.
- 13.4 You indemnify Us against all costs (including the cost of enforcement), expenses, liabilities (including any tax liability), injuries, losses, damages, claims, demands, legal costs (on a full indemnity basis) and judgments which We may incur as a consequence of a direct or indirect breach or negligent performance or failure in performance by You of Your obligations under this Agreement.
- 13.5 Except as expressly provided in this Agreement or the Customer Licence, We will not have any liability to You or to any customer or to any other person arising out of the supply of the Software or Services or the implementation, maintenance, operation or use of the Software.
- 13.6 Notwithstanding anything in this Agreement to the contrary, We will not be liable under the law of tort, contract or otherwise for any loss of profits or any indirect or consequential loss or damage arising out of or in connection with this Agreement.
- 13.7 Our liability to You arising out of all claims for damages under this Agreement will not exceed in aggregate the total amount paid by You over two (2) months for the Software and/or Services in respect of which the liability purportedly arose.
- 13.8 We will not be in default by reason of any failure to perform Our obligations under this Agreement caused by any act or any event beyond Our control. In any such event We will use Our reasonable endeavours to resume Our obligations under this Agreement as soon as possible.
- 13.9 The obligations of You under this clause 13 will survive termination of this Agreement.

14.0 DISPUTES AND JURISDICTION

- 14.1 If a dispute arises out of or relates to this Agreement (the **Dispute**) a party to the Agreement may not commence any court or arbitration proceedings relating to the Dispute unless it has complied with the following paragraphs of this clause, except where the party seeks urgent interlocutory relief.

- 14.2 A party claiming the Dispute has arisen under or in relation to this Agreement must give written notice to the other party specifying the nature of the Dispute.
- 14.3 On receipt of that notice, the parties will use all reasonable endeavours to resolve the Dispute by discussion, consultation, negotiation or other informal means.
- 14.4 If the Dispute is not resolved within 15 Working Days of the notice being given pursuant to clause 14.2 (or within such further period agreed in writing by the parties) either party may, by giving written notice to the other party, require the Dispute to be determined by the arbitration of a single arbitrator. The arbitrator will be appointed by the parties or, failing agreement within 5 Working Days of the notice requiring arbitration, by the President or Vice President of the New Zealand Law Society on application of either party. The arbitration will be conducted as soon as possible and in accordance with the provisions of the Arbitration Act 1996. All arbitrations will be conducted in New Zealand.
- 14.5 Disputes will if possible be resolved pursuant to clause 14.4 however in the event that a dispute is not resolved then this Agreement shall be governed by the law of New Zealand without regard to the choice or conflicts of law provisions of any other jurisdiction and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Service or any other supply shall be subject to the exclusive jurisdiction of the New Zealand Courts.

16 CONFIDENTIALITY

- 16.1 Each party (the “**Recipient**”) will keep confidential all information obtained from the other which is marked confidential or is by its nature clearly confidential and, except as permitted under clause 11.2, will not divulge the same to a third party without the written consent of the other party.
- 16.2 The Recipient may divulge confidential information only to those of its employees, agents and contractors who are directly involved in fulfilling the obligations of the Recipient under this Agreement and will ensure that such employees, agents and contractors are aware of and comply with these obligations as to confidentiality.
- 16.3 The obligations of confidentiality set out in clause 11.1 will not apply to information that:
- the Recipient can clearly show was independently available to it from a third party having the right to disclose it;
 - at the time of execution of this Agreement is in the public domain, or subsequently enters the public domain, through no fault of the recipient or any other person to whom it discloses the information; or
 - the Recipient is obliged by law to disclose, provided that it has first advised the other party of this obligation, has allowed the other party reasonable time to avoid the disclosure having to be made, and has given the other party such assistance (at the other party’s cost) as the other party reasonably requests in doing this.
- 16.4 The obligations of the parties to ensure non-disclosure and confidentiality under this clause 11 will survive termination of this Agreement.

17.0 GENERAL TERMS

17.1 No Assignment:

- i) You **will not** assign the whole or any part this Agreement or any part of Your rights, interests and obligations under this Agreement without Our prior written consent.
- ii) You **will not** assign, sublet, charge, encumber or mortgage or hire or part with possession or control of any hardware covered by this agreement without first paying in full for the same.
- iii) We may assign and/or transfer all or any part of Our rights, title and interests under this Agreement without your consent to:
 - a) A subsidiary
 - b) A parent company
 - c) An acquirer of assets
 - d) A merger or amalgamation
- iv) You **will not** assign, sublet, charge, encumber or mortgage or hire or part with possession or control of Our Software. If You sell or reorganise Your business then We will allow You to assign this Agreement to the new entity provided that we are notified in writing before assignment of the reason(s) for and to whom the Agreement is being assigned and we give Our approval in writing to You.

17.2 Set Off: We may transfer or set off any part of any credit balance on any account with You to any debit balance on any other account.

17.3 Address and Notices:

17.3(a) You **will** notify Us immediately in writing if You change: the address where the service is used; Your email address; Your credit card to be charged; Your license administrator(s) changes; Your legal company name changes.

17.3(b) Any notice or communication or other document required to be given or served under this Agreement will be deemed to be properly served if sent email to the email address You have provided to us, by pre-paid mail or facsimile transmission addressed to You at Your last known address.

17.3(c) In the case of pre-paid mail You will be deemed to have received the pre paid mail on the second Business Day after the pre-paid letter was posted and in the case of a facsimile transmission receipt will be deemed to be simultaneous with its completed transmission where transmitted on a Business Day and otherwise on the next Business Day.

17.4 No Waiver: Our rights under this Agreement will remain in force notwithstanding any waiver, neglect or forbearance on Our part.

17.5 Non Related Delays: Delays caused by third party hardware or service suppliers will not lessen Your requirement to pay Us under the terms detailed this Agreement however We reserve the right to extend the subscription date in the event of unacceptable delays.

17.6 Use of Your Name and Logo: We may at our sole discretion use your name and logo on our website or other promotional material as a reference site. If we use your logo we will ask You for a suitable electronic copy and such a request will not be unreasonably denied.

- 17.7 No Partnership:** No joint venture, partnership, employment, or agency relationship exists between You and Us as a result of this agreement or use of the Service.
- 17.8 Whole Agreement:** This Agreement comprises the entire Subscription and EULA between You and Us and supersedes all prior or contemporaneous negotiations, discussions or subscription agreements, whether written or oral, between the parties regarding the subject matter contained herein including but not limited to any text or information set forth on any other purchase order, pre-printed form or document.

18.0 SPECIAL CONDITIONS

This Section is not applicable if the Agreement is not signed

SCHEDULE 1

Item 1	Commencement Date of Service (Clause 3.9)	The Day You receive Your Account User Names and Password		
Item 2	Software (Introduction Sections A & B)	Pick & Send		
Item 3	Type of Service (Introduction Section B & Clause 3.10)	As subscribed for and used.		
Item 4	Pick & Send Website Address	http://www.pickandsend.net Under 'About Us' 'Legal & Security' 'Terms & Conditions' Rates are at: http://www.ablazesoftware.co.nz		
Item 5	Our Contact Details (Clauses 4.1(c); 4.2(b))	T: +649 415 3307 F: +649 415 3309 E: enquiry@ablaze.co.nz P: PO Box 39 060 Howick 2145 Manukau New Zealand		
Item 6	Hardware Purchases and Price (Clause 3.1)	Product	Nos.	Price
		As per your purchase order		
Item 7	Number of Software Licenses Subscribed For (Clauses 3.5; 4.1 and 10.1(a))	1 st 2 Licenses included (std)		Price/mth \$580.00
		Additional Licenses each		Price/mth \$290.00
		GST is not included and is to be added to the above prices		
Item 8	Other Services (Clauses 3.7; 18.2(a); 18.3(b))	Deployment & Staff Training, Customisation and testing: Charged for as a separate item at our hourly rates as published on Our web site or as otherwise agreed.		
Item 9	Special Offers (Clause 10.1(i))	N/A		
Item 10	Minimum Term (non-cancellation period). (Clause 5.1; 5.2; 5.3)	36 months from commencement date and thereafter 12 month automatic renewals on the anniversary date unless cancelled in accordance with this Agreement		
Item 11	Payment Schedule (Clauses 10.1(b)(c); 18.2(a); 18.3(b))	Subscription:	Monthly In advance by automatic payment or credit card.	
		Services not Included: Upon delivery or as subsequently agreed.		

Item 12	License Administrator(s) (Clause 1.1(L))	Name: To be Advised by You Name: To be Advised by You
Item 13	Other Agreements (Clause 18.1(a))	You Will Require Signed Agreements
Item 14	Our Bank Account Details (Clause 10.3(a))	Bank of New Zealand East Tamaki Business Centre Account Number: 02-0240-0027675-000
Item 15	Our Company GST & Business Numbers (Clause 11.1(c))	New Zealand: GST 88 773 101 Australia: ABN: 37 791 997 239
Item 16	Early Cancellation Charges	Early cancellation charges are calculated by the formula: $p = (1 + t-u)a + (1 + t-u)ar(t-u) + \text{GST}$ Where T = length of term in months U = months of Term Used A = Payment per month due N = number of months remaining S = subscriptions outstanding R = interest rate per month P = Final payment due for early cancellation example. 35 months of a 36 month contract is used when the subscription is terminated. The monthly subscription was \$580 per month. $P = (1+36-35) \times 580 + (1+36-35) \times 580 \times 2\% \times (36-35)$ $P = \$1183.20 + \text{GST}$
Item 17	Early Cancellation Interest Charges	The early cancellation interest is 2% per month.

SCHEDULE 2

CUSTOMISATION SPECIFICATIONS TO PICK & SEND

**YOU MUST HAVE A SIGNED AGREEMENT FOR THIS SCHEDULE TO BE
APPLICABLE**