Packaged Software Licence Agreement

THIS AGREEMENT is made between:

Spherical Software Limited ("Spherical") whose registered office is at Business First Business Centre, Liverpool Road, Burnley Lancashire BB12 6HH, with company registration number 3593966 ("the Licensor").

The customer who has purchased packaged software from Spherical either on physical media or downloaded from a website.

1.   DEFINITIONS

1.1.   In this agreement the following expressions shall have the following meanings:

1.2.   "Packaged Software" means such computer software that has been provided by "Spherical" for use by one or more customer.

1.3.   "Tailor Made Software" means such computer software that has been provided by "Spherical" specifically for use by one customer.

1.4.   "Equipment" means such computer equipment that is used to run the software covered by this agreement;

1.5.   "Intellectual Property Rights" means all vested, contingent and future intellectual property rights including but not limited to copyright, trade marks, design rights, trade names, patents, know-how, trade secrets, database rights or any similar right exercisable in any part of the world including any application for the registration of any patents or registered designs or similar registrable rights in any part of the world;

1.6.   "The Licence" means the licence granted by the Licensor in accordance with this agreement;

1.7.   "The Licence Fee" means the fee for the Licence;

1.8.   "The Media" means the media on which the Software Programs and the Program Documentation are recorded or printed;

1.9.   "The Program Documentation" means the user instructions, operating manuals and all appropriate documentation supplied by the Licensor to enable the proper operation and functionality of the Software Programs;

1.10.   "The Program Materials" means the Software Programs, the Program Documentation and the Media;

1.11.   "The Site" means the premises specified by the Licensee where the Licensor is to install and/or deliver the Program Materials;

1.12.   "The Software Programs" means the computer software applications covered by this agreement.

2.   GRANT OF LICENCE

2.1.   The Licensor grants to the Licensee a non-exclusive licence to use the Program Materials in accordance with the licence type purchased and the express terms of this agreement and not further or otherwise.

2.2.   Subject to the terms of this Agreement, Spherical Software Limited grants to you a limited, nonexclusive, non-transferable licence, without right to sublicence, to use Abraquest in accordance with this Agreement and any other written agreement with Spherical Software Limited. Spherical Software Limited does not transfer the title of Abraquest to you; the licence granted to you is not a sale. This agreement is a binding legal agreement between Spherical Software Limited and the purchasers or users of Abraquest.

3.   LICENCE

3.1.   Notwithstanding any limitations imposed by the Licence Type, the Licensee shall have the right to:

3.2. Use any alternative equipment provided the limits of the licence are not exceeded.

3.3. Make only so many copies of the Software Programs as are reasonably necessary for backup, archival and other security purposes provided that all copyright notices and any other proprietary notices specified on the Software Programs are reproduced on any such copies. Such copies and the media on which they are stored shall be the property of the Licensor and the Licence shall apply to all such copies as it applies to the Software Programs.

4. PAYMENT

4.1. The Licence Fee shall be paid by the Licensee. The Licence Fee is exclusive of any applicable VAT and other sales tax.

4.2. The Licensor shall have the right to charge interest on overdue invoices at a rate of 2.00% per month above the base rate of the Bank of England from time to time in force from the date when payment becomes due from day to day until the date of payment.

5. DELIVERY

5.1. On the delivery date the Licensor shall make available the Program Materials for delivery in physical form or downloadable from a website.

6. TERM

6.1. The Licence shall commence on the date on which the Software Programs are delivered and shall continue for a period of 5 years and from year to year thereafter until terminated in accordance with the provisions of this agreement.

7. LICENSEE'S UNDERTAKINGS

7.1. Except to the extent permitted by the Licensee as a lawful user of the Program Materials or to the extent permitted by law, the Licensee undertakes not to:

7.1.1. make copies of the Software Programs, in whole or part, except for back-up purposes as permitted in this agreement;

7.1.2. copy, adapt, modify or translate the Program Documentation without the prior written consent of the Licensor. The Licensor shall provide the Licensee with 2 copies of the Program Documentation to enable the proper operation and functionality of the Software Programs;

7.1.3. translate, disassemble, decompile, reverse engineer, adapt, vary or modify the Software Programs without the Licensor's prior written consent. Notwithstanding this clause 8.1.3, in the case of reverse analysis where permitted by applicable law, the Licensee may incidentally decompile the Software Programs only if it is essential to do so in order to achieve interoperability of the Software Programs with another software program or hardware ("Permitted Purpose") and provided the information obtained by the Licensee during such decompilation is only used for the Permitted Purpose and is not disclosed or communicated to any third party without the Licensor's prior written consent and is not used to create any software which is substantially similar to the expression of the Program Materials nor used in any manner which would be restricted by copyright;

7.1.4. delete, vary or obscure any copyright or other proprietary notices on or in the Program Materials;

7.1.5. rent, lease, sub-license, assign, transfer or distribute the Program Materials.

7.2. The Licensee undertakes during the continuance of the Licence to:

7.2.1. keep the Program Materials and all copies under the Licensee's effective control and to maintain adequate security measures to protect the Program Materials from access or use by any unauthorised person;

7.2.2. ensure that, prior to the use of the Program Materials by its employees or agents, that all such parties are notified of the terms of this agreement;

7.2.3. maintain an accurate and up-to-date record of all copies of the Program Materials and shall produce such record to the Licensor on request from time to time.

8. INTELLECTUAL PROPERTY RIGHTS

8.1. The Program Materials and all Intellectual Property Rights of whatever nature in the Program Materials are and shall remain the property of the Licensor and the Licensee agrees to immediately notify the Licensor if it becomes aware of any infringement or any unauthorised use of the Program Materials by any person.

8.2. If the customer requests amendments to be made to packaged software, such amendments are covered by the Tailor Made Software Licence Agreement, although source code is not made available for such amendments.

9. INTELLECTUAL PROPERTY INDEMNITY

9.1. The Licensor agrees to indemnify the Licensee against all actions, claims, proceedings, damages, costs and expenses arising from any actual or alleged infringement of Intellectual Property Rights arising from the Licensee's use of the Program Materials anywhere in the world provided such use is in accordance with the terms of this agreement and that the Licensee promptly notifies the Licensor in writing of any such allegation.

9.2. At the Licensor's request and expense, the Licensee shall permit the Licensor to conduct all negotiations and litigation. The Licensee shall give all reasonable assistance and the Licensor shall pay the Licensee's costs and expenses so incurred.

9.3. The Licensor may, at its expense, modify or replace the Program Materials to avoid any alleged or actual infringement and any modification or replacement must not affect the performance of the Program Materials. If the Licensor is unable to modify or replace the Program Materials, then the Licensee shall return the Program Materials which are the subject of the Intellectual Property Rights claim and the Licensor shall refund to the Licensee the corresponding portion of the Licence Fee, as normally depreciated, whereupon this agreement shall immediately terminate.

9.4. This indemnity shall not apply to infringements arising directly from the combination of the Program Materials with other items not supplied by the Licensor.

10. WARRANTIES

10.1. Subject to the limitations and exclusions of liability set out below, the Licensor warrants that for a period of 30 days from the Acceptance Date ("the Warranty Period") the Software Programs will perform in accordance with the Specification and the Program Documentation will provide adequate instructions to allow the Licensee to make proper use of the Software Programs.

10.2. The Licensor warrants that it shall use and adopt only good quality materials, techniques and standards in performing its obligations under this agreement with the standards of care, skill and diligence required of good computing practice.

10.3. The Licensor warrants that itself, its employees and agents shall take all reasonable precautions to ensure that the Software Programs are free from all viruses that could have been detected by using the latest (at the date of despatch) commercially available virus detection software.

10.4. If within the Warranty Period the Licensor receives written notice from the Licensee of any breach of the warranties given in clause 10.1 then the Licensor shall at its own expense and within 5 days of receiving such notice remedy the defect in question.

10.5. The Licensor shall not be liable under the warranties given in clause 10.1 above if the Software Programs fail to conform to the said warranty because of any corruption, abuse or incorrect use of the Software Programs (including use of the Software Programs with equipment or other software which is incompatible) or because of any unauthorised variation or modification to the Software Programs.

10.6. All other guarantees, representations and warranties of any kind, whether express or implied, including, without limitation, the implied warranties of satisfactory quality, merchantability and fitness for a particular purpose or ability to achieve a particular result are hereby excluded, so far as such exclusion or disclaimer is permitted under the applicable law.

10.7. The Licensor does not warrant that the operation of the Software Programs will be uninterrupted or error free and the Licensee acknowledges and agrees that the existence of such errors shall not constitute a breach of this agreement.

11. INDEMNITY

11.1. Without prejudice to any other rights or remedies available to the Licensee, the Licensor shall indemnify the Licensee for personal injury or death, and against all loss of or damage to any tangible Licensee property, caused by the negligence of the Licensor or its employees or agents in relation to the performance of their duties under this agreement or by defects in any product supplied pursuant to this agreement.

12. LIMITATION OF LIABILITY

12.1. Subject to clause 12.3, in no event shall the Licensor be liable for any damages, including loss of business, loss of opportunity, loss of data, loss of profits or for any other indirect or consequential loss or damage whatsoever that is an indirect or secondary consequence of any act or omission of the Licensor whether such damages were reasonably foreseeable or actually foreseen.

12.2. Subject to clause 12.3, the total liability of the Licensor to the Licensee under this agreement shall not exceed the greater of either:

12.2.1. the sum for which the Licensor carries comprehensive insurance cover pursuant to clause 13 below; or

12.2.2. 100% of the total of all sums paid or due to the Licensor under this agreement.

12.3. Nothing in this agreement shall exclude or limit the liability of the Licensor for fraudulent misrepresentation or for death or personal injury resulting from the negligence of the Licensor or its employees or agents.

13. INSURANCE

13.1. During the term of this agreement the Licensor shall at its own expense maintain such insurances as required by any applicable law and as appropriate in respect of its obligations under this agreement with an insurance company of repute. Such insurances shall include third party liability insurance with an indemnity limit of not less than £500,000 for each and every claim. The Licensor shall on request supply copies of the relevant certificates of insurance to the Licensee as evidence that such policies remain in force.

14. CONFIDENTIALITY

14.1. Either party receiving information ("the Recipient") from the other marked "confidential" or which may reasonably be supposed to be confidential, including, without limitation, information contained in the Program

Materials, the Specification and other information supplied by the Licensee or Licensor, shall not without the other's prior written consent use such information except for the purposes of this agreement or disclose such information to any person other than to their own employees or agents who have a need to know.

14.2. Clause 14.1 shall not apply to information that is lawfully known to the Recipient at the time of disclosure or which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause) or which is ordered to be disclosed to a regulatory body or a court of competent jurisdiction.

14.3. The Recipient shall ensure that any person referred to in clause 14.1 is bound by similar confidentiality terms to those in this clause 14.

14.4. The confidentiality terms in this clause 14 shall remain in full force and effect during the term of this agreement and upon the termination of the Licence or this agreement.

15. TERMINATION

15.1. If the Licensee commits a material breach or persistent breaches of this agreement, and in the case of a breach which is capable of being remedied, fails to remedy the breach within 14 days of written notice from the Licensor to do so, then the Licensor may terminate the Licence forthwith on giving written notice to the Licensee.

15.2. Either party may terminate the Licence at any time by giving at least 30 days' prior written notice to the other.

15.3. Upon termination of the Licence the Licensee shall return the Program Materials and any copies to the Licensor or, if requested by the Licensor, shall destroy the same, provided that the Licensee may extract and store any Licensee data upon a separate media.

15.4. Any termination of the Licence or this agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision in this agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

16. FORCE MAJEURE

16.1. Neither party shall be liable to the other party for any delay or failure to perform any of its obligations under this agreement if the delay or failure results from events or circumstances outside its reasonable control, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party in writing of the nature and extent of such events. If such circumstances continue for a continuous period of more than 28 days, either party may terminate this agreement by written notice to the other party.

17. ASSIGNMENT

17.1. This agreement is personal to the parties and neither this agreement nor any rights, licences or obligations under it may be assigned by either party without the prior written approval of the other party.

18. WAIVER

18.1. Failure or neglect by either party to exercise any of its rights or remedies under this agreement will not be construed as a waiver of that party's rights nor in any way affect the validity of the whole or part of this agreement nor prejudice that party's right to take subsequent action.

19. SEVERANCE

19.1. If any provision of this agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

20. NOTICES

20.1. Any notice to be given by either party to the other may be sent by either email, fax or recorded delivery to the most recent email address, fax number or address notified to the other party, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent or if sent by fax shall be deemed to be served on receipt of an error free transmission report, or if sent by recorded delivery shall be deemed to be served 2 days following the date of posting.

21. ENTIRE AGREEMENT

21.1. This agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. This agreement may be varied only by a document signed by both parties.

22. GOVERNING LAW AND JURISDICTION

22.1. This agreement shall be governed by and construed in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.